CEPANI

1969 - 2019

EPANI

1969 - 2019

YEARS

Jaarlijks Verslag - Rapport Annuel - Annual Report

2018

LE MOT DU PRESIDENT

CEPANI heeft het genoegen u haar activiteitenverslag voor het jaar 2018 voor te stellen.

2018 was een druk jaar waarin onderscheiden grotere projecten werden aangevat die in de loop van 2019 haar uitwerking zullen kennen. Een van die projecten was de herziening van het CEPANI arbitragereglement. Op basis van een lijvig rapport dat in de loop van 2017 werd opgesteld, werd door een Stuurgroep een ontwerp van reglement voorbereid, dat vervolgens door een werkgroep van de Raad van Bestuur uitvoerig werd besproken en verder vorm gegeven. Naast algemene verbeteringen en het verder verfijnen van bepaalde onderdelen, werden onder meer de spoedprocedure herzien (vanaf begin 2020 van toepassing voor geschillen waarvan het geldelijk belang niet hoger is dan € 100.000) en werd de scrutiny van de arbitrale uitspraak als onderdeel van de procedure ingeschreven. Er werd ook een meer duidelijke bepaling inzake vertrouwelijkheid ingeschreven, de *prima facie* beoordeling van de arbitrale clausule, de allocatie van de kosten door het scheidsgerecht, enz. In de komende periode zal het ontwerp van reglement online worden geplaatst teneinde u – de leden van CEPANI – toe te laten hiervan kennis te nemen en opmerkingen te formuleren.

Het herziene CEPANI arbitragereglement zal op 1 januari 2020 in werking treden.

La CEPANI présente également avec beaucoup de fierté son nouveau site internet. En ayant épuré la page d'accueil et rafraichi le site en le rendant plus intuitif, nous espérons pouvoir atteindre un publique encore plus large. Je vous invite à le consulter et vous souhaite d'ores et déjà une agréable navigation.

2018 was not only highly educational, but also a year in which CEPANI is preparing itself for the festivities organised in honour of its 50th anniversary. In the past 50 years, CEPANI became the most important arbitration center in Belgium and a renowned and respected center at both national and international level. This Lustrum will be the occasion for CEPANI to remember its achievements of the past, as well as – and above all – to focus on the future. The festivities will take place on 13, **14** and 15 November 2019. I therefore take the opportunity to invite you all to pin down those dates in your agenda's, as we will be more than happy to receive you in Brussels in honor of this thrilling event. You can now register to the numerous activities organised on this occasion by visiting the cepani50.be website specially set up for this event.

Je vous souhaite une bonne lecture.

Ik wens u een aangename lectuur toe.

Dirk De Meulemeester
Voorzitter - Président

CEPANI 50TH ANNIVERSARY

Dear colleagues and friends,

CEPANI will celebrate its 50th anniversary on 13, **14** and 15 November 2019.

It is important to celebrate this half-century of existence, which has seen CEPANI establish itself as the main arbitration centre in Belgium, and gain a steady reputation and respect on the national and international stage.

This is a wonderful occasion to commemorate the achievements of CEPANI over the last 50 years and to thank all the people who have pursued them. It is also an opportunity to think about the future of CEPANI and the challenges it will encounter in the next 50 years.

CEPANI'S 50TH ANNIVERSARY

Dear colleagues and friends,

CEPANI will celebrate its 50th anniversary on 13, **14** and 15 November 2019.

It is important to celebrate this half-century of existence, which has seen CEPANI establish itself as Belgium's main arbitration centre, and gain renown and respect on the European and international stage.

As well as providing an opportunity to remember past achievements and warmly thank the various actors who enabled CEPANI to develop, this event will above all be a chance to look towards the future.

14 NOVEMBER 2019

09.00 - 14.00

CEPANI colloquium on the theme
« L'arbitrage et le droit des sociétés
- Arbitrage en vennootschappen »
Venue : FEB, Rue Ravenstein 4, 1000 Brussels
Colloquium in the HORTA hall and Walking Lunch in the Foyer

14.00 - 17.00

Academic session

Venue : BOZAR Studio
Rue Ravenstein 23, 1000 Brussels

SUIT UP !

18.00 - 23.00

Gala dinner
Venue : BOZAR
Rue Ravenstein 23, 1000 Brussels

13 NOVEMBER 2019

20.00 - 00.00

CEPANI40 kick-off party
Venue : Cocktail bar Vertigo
Rue de Rollebeek 7, 1000 Brussels

15 NOVEMBER 2019

10.00 - 13.00

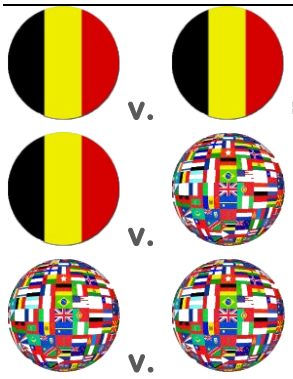
CEPANI40 morning debate
Venue : Stibbe
Rue de Loxum 25, 1000 Brussels

Thank you to our Event Partners :

LYDIAN • VAN BAEL & BELLIS • DMDB LAW • TOSSENS GOLDMAN GONNE • STIBBE
NAUTADUTILH • PHILIPPE & PARTNERS • MATRAY, MATRAY & HALLET • QUINZ
STRELIA • OSBORNE CLARKE • JANSON • WILLKIE FARR & GALLAGHER LLP • PETILLION
WHITE & CASE • HANOTIAU & VAN DEN BERG • ALLEN & OVERY • BAKER MCKENZIE
ARCAS LAW • FIELDFISHER • CEW & PARTNERS • DECHERT LLP • LOYENS & LOEFF
LINKLATERS • OLIVIER CAPRASSE • HERINCKX • LIEDEKERKE WOLTERS WAELBROECK KIRKPATRICK
ALTIUS • DALDEWOLF • ICC BELGIUM • JONES DAY • CONTRAST • LAGA

CEPANI 2018 STATISTICS IN A NUTSHELL

Origin of the Parties



= 69%

= 28%

= 3%

Bahrein	1
France	1
Italy	2
Iran	1
Luxembourg	5
Netherlands	5
Switzerland	1
United Kingdom	2

Language of the arbitral proceedings

DUTCH	FRENCH	ENGLISH
26%	51%	23%

Place of the Arbitration

82% 18%

Nature of the dispute

Civil Law Agreements = 54%

Service Agreements = 8%

Intra Company Agreements = 18%

Share Purchase Agreements = 21%

Amount in dispute

€ 0,00 – € 25.000,00 →	36%
€ 25.000,00 – € 125.000,00 →	18%
€ 125.000,00 – 625.000,00 →	26%
€ 625.000,00 – 2.500.000,00 →	13%
€ 2.500.000,00 – 12.500.000,00 →	2%
> € 12.500.000,00 →	5%

Arbitral Tribunal

= 33% Chairman chosen by
- Parties = 57%
- Appointments Committee = 43%

= 67% Arbitrator chosen by
- Parties = 7%
- Appointments Committee = 93%

1 Emergency Arbitrator

0 Challenges / Replacements

23% ♀ 77% ♂

Parties = 12,50%

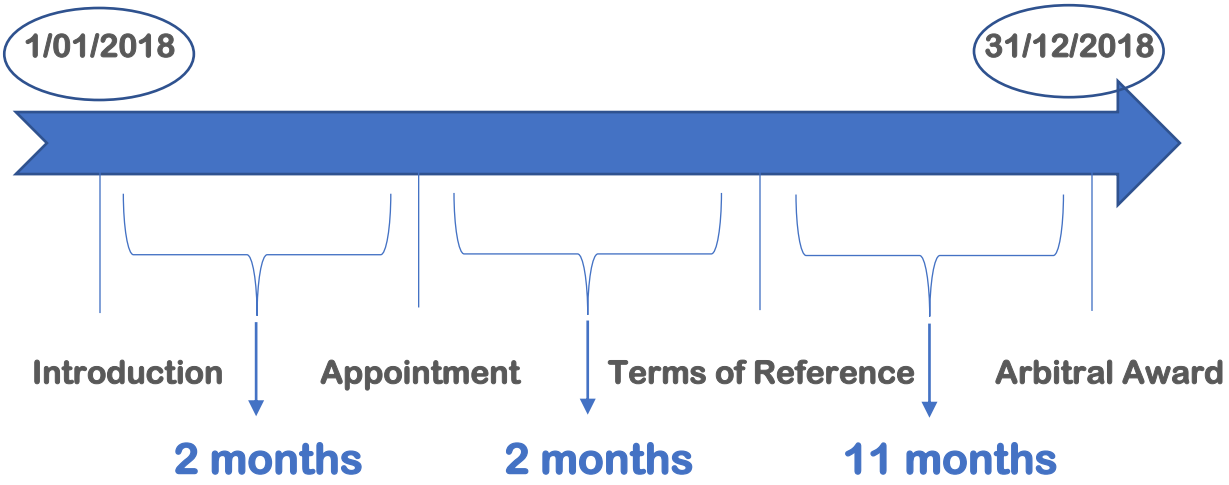
Appointments Committee = 87,50%

↓40y 31 % ↑40y 69 %

Parties = 7%

Appointments Committee = 93%

Average duration of the arbitral proceedings



TOTAL average duration → 15 months

QUI SOMMES NOUS?

Le recours à l'arbitrage est de plus en plus souvent privilégié pour résoudre les différends. Celui-ci offre en effet un certain nombre d'avantages non négligeables : il est rapide, confidentiel et financièrement intéressant.

Le CEPANI, qui est le Centre belge d'arbitrage et de médiation, aide ses clients à résoudre leurs différends commerciaux de manière sûre et efficace. Il s'engage à offrir aux parties en conflit le cadre juridique et administratif adéquat, afin d'assurer le meilleur traitement du litige.

Fondé en 1969, le CEPANI est aujourd'hui le principal centre d'arbitrage en Belgique. Il a étendu ses activités à d'autres formes de règlement des litiges. Situé au cœur de Bruxelles, qui accueille plusieurs institutions européennes ainsi que de nombreuses sociétés et organisations internationales, le CEPANI offre ses services dans un contexte national et international.

UNE DOUBLE MISSION

- **Promouvoir activement l'arbitrage et les autres formes de règlement des litiges**

Le CEPANI désigne des arbitres, des médiateurs, des experts et des tiers indépendants. Il encadre le déroulement des procédures et offre des conseils pratiques ainsi qu'un soutien administratif. Outre l'arbitrage, le CEPANI gère également des procédures de médiation et de mini-trial et assure le suivi des conflits liés aux noms de domaine « .be ».

- **Promouvoir l'arbitrage, la médiation et les autres formes de règlement alternatif des litiges**

Le CEPANI organise régulièrement des conférences, des colloques, des séminaires ; il décerne un prix scientifique et publie des ouvrages sur le thème de l'arbitrage.

- **En matière de règlement alternatif des litiges, le CEPANI offre ses compétences uniques en Belgique**

L'ARBITRAGE, LE BON CHOIX POUR MON ENTREPRISE ?

LES AVANTAGES DE L'ARBITRAGE

Quels sont les litiges pouvant être résolus par l'arbitrage ?

- Affaires financières, commerciales ou industrielles
- Conflits entre associés commerciaux
- Questions liées à une construction ou à la (co-)propriété immobilière
- Gestion de patrimoine, testaments et successions
- Conflits impliquant la responsabilité professionnelle
- Affaires bancaires et liées au droit des sociétés

En tant que mode alternatif de règlement des litiges, qui trouve une assise légale dans le Code judiciaire, l'arbitrage offre les garantie et la sécurité juridique habituelles, avec en prime une plus grande flexibilité et une gestion efficace du temps. Les parties peuvent soumettre leur différend à un tribunal arbitral, composé d'une ou de trois personnes ou plus. Après avoir examiné la demande et les arguments des parties, celui-ci rendra ensuite une décision contraignante, la « sentence arbitrale ».

L'arbitrage ne peut se dérouler qu'avec le consentement de toutes les parties impliquées. Ce consentement peut faire l'objet d'une clause incluse dans tout contrat au moment de sa signature ou d'un accord spécifique conclu après la naissance du litige.

ARBITRAGE INSTITUTIONNEL ET ARBITRAGE *AD HOC*

Les parties qui souhaitent voire résoudre leur conflit par l'arbitrage peuvent opter pour l'arbitrage *ad hoc*, ou pour une procédure supervisée par un centre d'arbitrage tel que le CEPANI.

Dans l'hypothèse d'un arbitrage ad hoc, la procédure est intégralement gérée par les parties ou les arbitres. La survenance de difficultés peut en prolonger la durée. Les parties paient les frais et honoraires directement aux arbitres.

L'avantage de l'arbitrage institutionnel réside dans le fait que les parties peuvent se fonder sur le règlement du centre pour mener la procédure d'arbitrage. Il garantit une procédure équitable, sûre et rapide au terme de laquelle sera rendue une sentence arbitrale. Le règlement du CEPANI est concis et il offre un cadre contractuel souple aux parties. Il présente toutes les garanties d'impartialité voulues.

UN ARBITRAGE CEPANI

Le CEPANI offre aux parties souhaitant entamer une procédure de résolution de conflit tout le support nécessaire. Il fournit aux parties un règlement – la dernière version du règlement d'arbitrage est entrée en vigueur le 1er janvier 2013 – offrant un cadre juridique clair et précis pour la conduite de la procédure. Le CEPANI n'exerce pas lui-même les fonctions d'arbitre, de médiateur ou de tiers indépendant.
Le Centre garantit la compétence et l'impartialité des arbitres, médiateurs et tiers indépendants, qu'il désigne en tenant compte des spécificités de chaque affaire qui lui est confiée. Les honoraires des arbitres et les frais dus au centre sont déterminés conformément à un barème dont le montant est calculé sur la base du montant des demandes.
Le Secrétariat du CEPANI veille à l'application correcte du règlement du CEPANI par les arbitres. Ce faisant, le Centre peut assurer le déroulement rapide et efficace de chaque procédure.

En termes de logistique, le CEPANI met à la disposition des parties

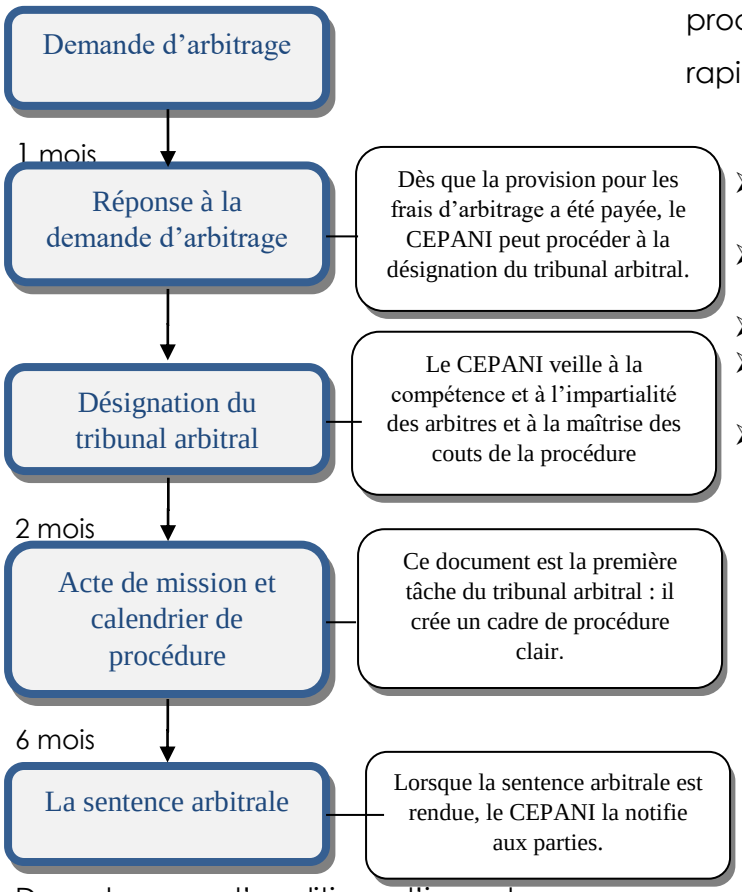
- Des salles de réunion / « breakout rooms »
- Un service de restauration
- Un soutien IT
- Le Wi-Fi, un service de photocopie, d'impression, de fax …

Le rôle du CEPANI est de créer un cadre légal et administratif sûr et de garantir une procédure confidentielle, impartiale et équitable.

Les parties peuvent insérer une clause d'arbitrage dans leur contrat ou convenir d'un arbitrage après la naissance d'un conflit. Les parties qui souhaitent faire référence au règlement d'arbitrage du CEPANI sont invitées à insérer dans leurs contrats la clause type suivante:

"Tous différends découlant du présent contrat ou en relation avec celui-ci seront tranchés définitivement suivant le règlement d'arbitrage du CEPANI par un ou plusieurs arbitres nommés conformément à ce règlement."

Aperçu de la procédure



Dans le cas d'un litige d'importance pécuniaire limitée, le CEPANI propose une procédure simplifiée. Sont visés les conflits pour lesquels le montant de la demande principale et de l'éventuelle demande reconventionnelle ne dépassent pas 25.000 EUR. Si, au cours de la procédure, le montant total des demandes principale et reconventionnelle vient à excéder ce montant, cette procédure reste applicable, sauf si les parties en conviennent autrement.

Pour les litiges d'importance pécuniaire limitée, le CEPANI propose une procédure moins coûteuse et plus rapide :

- Frais d'enregistrement moins élevés (750 EUR)
- Procédure simplifiée / pas d'acte de mission
- Un arbitre unique
- Procédure menée, en principe, intégralement par écrit
- Délais plus courts

ANDERE METHODEN VAN GESCHILLENBESLECHTING

Mediatie

Mediatie is een alternatieve methode van geschillenbeslechting waarbij partijen een derde persoon (de bemiddelaar) verzoeken hen te helpen om een minnelijke regeling te vinden voor hun geschil dat voortvloeit uit eender welke contractuele of andere juridische relatie.

Mini-trial

Mini-trial is de perfecte procedurevorm voor iedere ondernemer die een geschil zo snel en efficiënt mogelijk wil oplossen zodat op korte termijn de normale handelsrelaties zouden kunnen worden hervat. In een mini-trial duidt iedere partij een hooggeplaatste verantwoordelijke aan als bijzitter in het mini-trialcomité. Deze vertegenwoordiger moet voldoende bevoegdheid hebben om de partij te kunnen binden wanneer een minnelijke regeling wordt bereikt. CEPANI duidt de voorzitter van het comité aan.

Technisch deskundigenonderzoek

Indien partijen tijdens een CEPANI-procedure met eventuele technische moeilijkheden worden geconfronteerd, kunnen zij beroep doen op het CEPANI-reglement voor technisch deskundigenonderzoek.

Een dergelijk deskundigenonderzoek kan een minnelijke regeling tussen partijen faciliteren of waardevolle gegevens opleveren. Indien nodig, kunnen partijen de resultaten van het deskundigenonderzoek in latere juridische procedures of in een arbitrage aanwenden. Tenzij anders overeengekomen, zijn de resultaten en conclusies van de expert bindend.

Aanpassing van overeenkomsten

De omstandigheden waarin een overeenkomst wordt gesloten, kunnen mettertijd veranderen. Dan kan de noodzaak ontstaan om de overeenkomst te herzien en waar nodig aan te passen aan de veranderde omstandigheden. Ook voor die procedure biedt CEPANI de juiste ondersteuning. Bij het opstarten van een procedure tot aanpassing van overeenkomsten benoemt CEPANI een

onafhankelijke derde beslisser, die ofwel bepaalde aanbevelingen zal opstellen voor de betrokken partijen, ofwel, indien beide partijen daarmee op voorhand instemmen, een regel zal formuleren die hen definitief bindt.

NOG STEEDS NIET OVERTUIGD?

U beheert dagelijks uw onderneming met alle daarbij horende strategische, operationele en commerciële uitdagingen. Dit vormt een veeleisende en uitdagende opdracht. Er kan zich ten allen tijde een geschil voordoen met uw cliënten, leveranciers of vennoten. Het is in uw belang dat een dergelijk geschil **snel** en **efficiënt** kan worden behandeld.

Hebt u al gedacht aan arbitrage?

Een beslechting van een conflict via arbitrage laat toe om zeer snel **een beslissing te bekomen wanneer de situatie dringend is**. Uw geschil wordt op definitieve wijze behandeld **door competente en ervaren arbiters**. U kan zelfs arbiters kiezen die gespecialiseerd zijn in de sector waarin u actief bent of in de materie van het betrokken geschil.

De arbiters zijn geheel onafhankelijk en beslissen volledig neutraal. De zaken kunnen in om het even welke taal behandeld worden of in om het even welk land gekozen door de partijen. **De vertrouwelijkheid is gegarandeerd** – uw bedrijfsgeheimen en know-how zijn beschermd.

De beslissingen van de arbiters hebben **dezelfde waarde als beslissingen van de rechtbanken.** Zij beslechten daadwerkelijk de geschillen en laten u toe om beslag te leggen op de goederen van uw schuldenaar in meer dan 150 landen ter wereld.

Arbitrage biedt u een alternatieve manier van geschillenbeslechting aan met een grote toegevoegde waarde.

CEPANI biedt u tevens bemiddelings- en verzoeningsdiensten aan, evenals andere manieren van alternatieve geschillenbeslechting die steeds de voorkeur geven aan een minnelijke oplossing.

HET ONDERZOEK NAAR EN DE PROMOTIE VAN ARBITRAGE – WETENSCHAPPELIJKE ACTIVITEITEN VAN CEPANI

Net zoals 2017, vormde 2018 een jaar vol hoogwaardige wetenschappelijke evenementen.

CEPANI

ACTIVITEITENKALENDER

Hierna volgt een opsomming van de evenementen waaraan CEPANI actief heeft deelgenomen en die door CEPANI werden georganiseerd doorheen het jaar 2018:

- **From 5 to 9 February, 2018: 68th session of the UNCITRAL Working Group II (Dispute Settlement) in New York.**

The 68th session of the Working Group II (DISPUTE SETTLEMENT) of the United Nations Commission on International Trade Law (UNCITRAL) took place in New York from 5 to 9 February 2018. CEPANI took part in the Working Group as observer with a five-member delegation consisting of Emma Van Campenhoudt, Sophie Goldman, Vanessa Foncke, Maxime Berlingin and Maarten Draye. The Belgian observer seat was taken by Jean Christophe Boulet (advisor at the Belgian Ministry of Justice), who was assisted by Benoît Kohl.

During this session, after three years of negotiations, the Working Group completed its work on the preparation of a draft Convention and a draft amended Model Law on the enforcement of international commercial settlement agreements resulting from mediation.

The draft Convention, provisionally entitled "United Nations Convention on International Settlement Agreements Resulting from Mediation", contains the conditions under which courts of contracting member states agree to enforce international commercial settlement agreements resulting from mediation. Such enforcement will take place in accordance with the rules of procedure of the state where

enforcement is sought (i.e. the lex fori). In terms of scope, the draft convention only applies to agreements that are international and record a settlement on a commercial dispute, provided that this settlement was reached through the intervention of a mediator. To reduce ambiguity on this point, the Working Group chose to adopt the term "mediation" instead of the term "conciliation" that has been used in UNCITRAL texts in the past. Worth noting is further that the mediation requirement inter alia means that the draft convention does not apply to consent awards (i.e. settlement agreements recorded by arbitral tribunals, which are enforceable as arbitral awards through the New York Convention of 1958), or settlements reached before or recorded by state courts that are enforceable as judgments. To be enforceable, the settlement agreement must further be in "writing". This is defined broadly as "recorded in any form", including electronic communications of some sort. Finally, the draft convention also lists a limited number of grounds for refusing to grant relief.

Broadly speaking, these grounds fall within the following categories: issues surrounding the validity or binding nature of the settlement agreement; a breach by the mediator of applicable standards; lack of impartiality or independence of the mediator; granting relief would be contrary to public policy under the lex fori; or where the subject matter was not capable of settlement through mediation under the lex fori.

The draft Model Law is similar in content to the draft Convention. It is intended to amend the existing UNCITRAL Model Law on International Commercial Conciliation (2002), which did not address the issue of enforcement. The new Model Law is provisionally entitled "UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, 2018 (amending the UNCITRAL Model Law on International Commercial Conciliation, 2002)".

Both draft instruments will be considered for finalization by the Commission at its upcoming session in New York (25 June-13 July 2018). Further information can be found on the Working Group's website.

Having completed its work on the draft instruments, the Working Group considered the following possible future topics:

1. Possible revision of the UNCITRAL Conciliation Rules (1980);
2. Expedited arbitration procedure and adjudication;
3. Uniform principles on the quality and efficiency of arbitral proceedings.

The Working Group concluded that priority should be given to expedited rules as part of a more general discussion on uniform principles, that could serve as an umbrella for future topics. Furthermore, the Working Group agreed to bring the issue of adjudication to the attention of the Commission, but considered that further information would be needed.

The Commission will decide on the future mandate for Working Group II at its upcoming session.

- **<u>On February 23, 2018, "The present and near future of new technologies in arbitration".</u>**

Club Español del Arbitraje

On 23 February 2018, the Club Español de Arbitraje ("CEA") organized its Third Annual Conference, which was hosted and sponsored by Stibbe and FTI Consulting. After the success of the first two editions of this annual event, both of which showed a proclivity for tackling innovative topics for discussion, the topic for this year's Conference was "The present and near future of new technologies in arbitration". Appropriately described during the welcome remarks by Ms. Emma Van Campenhoudt as a "modern and trendy topic", this discussion, just like its predecessors, attracted over 100 participants, including arbitration practitioners, enthusiasts and aspirants alike, together with representation from arbitral institutions and companies that are frequent users of arbitration. Also

represented was the community of technical experts, particularly from the field of data science.

The keynote address was delivered by Ms. Sophie Nappert. The speech, accompanied by an interesting powerpoint presentation, was titled "Algocracy in Arbitration", which term ("algocracy") is a derivative of "algorithm" and "democracy". Ms. Nappert took us through various ongoing developments being conducted in the field of artificial intelligence ("AI"), which, together with the internet, has created a democratic playing field for humans to operate and interact with technology. She spoke about how AI will soon leave a lasting impact on arbitration as a field of practice by introducing algorithmic decision making using machine learning software, which may possibly even reduce the work force involved in arbitration today. According to Ms. Nappert, the only aspect where human judgment still trumps algorithmic decision making is the more intangible values such as empathy, compassion and fairness. In light of this, she called upon us to realize the opportunity that AI offers us to win back the trust in fellow humans, while simultaneously embracing the advancements in technology and keeping pace with them.

This speech created the perfect platform for the two panels of speakers that followed, with the first one focusing on the present technologies being used in arbitration and the second one highlighting potential future technologies that may have an impact.

The first panel, moderated by Ms. Dodo Chochitaichvili and Mr. Maxime Berlingin (Fieldfisher), saw speeches from Ms. Erica Stein (Dechert LLP, Brussels), Mr. Matthew Buckle (Norton Rose Fulbright, London), Dr. Franz Stirnimann Fuentes (Froriep, Geneva) and Mr. Alexander Fessas (ICC Paris). Ms. Stein discussed how consent to arbitrate in today's day and age can be given by and through digital means, such as by email

correspondence, and whether and how such consent is recognized within the regime of Article II of the New York Convention 1958. She was followed by Mr. Buckle who advocated for a case-by-case approach in relation to admissibility of hacked information and documents as evidence in arbitration, taking us through various jurisprudential approaches across the world in relation to this threshold question that touches upon parties' good faith conduct. Thereafter, Dr. Fuentes addressed the issue of confidentiality in the digital age, speaking about how confidentiality today has evolved from interpersonal confidentiality to technological confidentiality. In this regard, he suggested that as arbitration practitioners it is incumbent upon us to be aware of potential security hacks, of which law firms are often targets, establish security protocols at workspaces and train staff to this effect, and ensure a minimum level of virus protection. Lastly, Mr. Fessas addressed the current use of technology in institutionally administered arbitration, and suggested that it is the need of the hour for arbitrators to polish their technological skillset with the ready help of arbitral institutions, while at the same time maintaining the parties' fundamental expectations from arbitration and thus not using very costly and complicated technologies.

The second panel, moderated by Mr. José Rafael Mata Dona and Ms. Niuscha Bassiri (Hanotiau & van den Berg), saw a more futuristic expedition undertaken by Mr. Erik Schäfer (Cohausz & Florack, Düsseldorf), Mr. Charles Raffin (Hardwicke, London), Dr. (Dr.) Meloria Meschi (FTI Consulting, Paris) and Mr. Mohamed S. Abdel Wahab (Zulficar & Partners, Cairo). Mr. Schäfer, taking a leaf from the recent ICC Report on Information Technology and International Arbitration, by the Commission co-chaired by him, discussed various technological innovations in recent years and their potential impact on arbitration in the near future. Touching upon aspects of AI that Ms. Nappert referenced, such as decision making through machine learning and portals for contract formation, Mr. Schäfer called upon practitioners, especially arbitral institutions, to take the lead in familiarizing themselves and the users of arbitration with these innovations.

Thereafter, Mr. Raffin spoke about protection and acquisition of electronic evidence, taking us through the basics of the components of electronically stored information, such as metadata, and indicating avenues that can help protect such information from requests in document production procedures or otherwise. Dr. Meschi, the only data scientist on the panel, then took the discussion on AI further by explaining the basics of machine learning and data mining, while simultaneously urging us to realize that while a software may be readily available and easy to use, it's worth ultimately depends on the human behind the software.

Lastly, Mr. Wahab concluded the discussions by highlighting the necessity of being techno-literate in today's day and age, and the need to bridge the gap between AI and international arbitration, by acquainting oneself with technology and making it a friend, as opposed to a competitor.

Without surprise, the Conference saw an active participation from the audience, evidencing that the topic under discussion had left the listeners with a sumptuous amount of food for thought to comprehend and further explore the relationship between humans and their created offspring, which is technology.

- **Le 19-20 février 2018: Brussels Pre-Moot 2018.**

Début 2017, la Ruritanie a été secouée par un scandale impliquant plusieurs ministres, hauts fonctionnaires et diverses agences gouvernementales. Notamment, nombre de certificats falsifiés ont permis la vente de fèves de cacao avec le label « sustainably grown » alors que ces dernières avaient été cultivées dans des zones protégées. Delicatesy Whole Foods (Claimant) et Comestibles Finos Ltd (Respondent), convaincus qu'un monde meilleur et plus juste est possible, ont été les premières victimes de ce scandale. Une question liée à la responsabilité sociétale des entreprises en découle. Les gâteaux au chocolat fabriqués par Claimant et vendus à Respondent remplissent-ils les conditions du contrat et peuvent-ils être considérés comme conformes au sens de l'article 35 de la Convention de Vienne sur la vente internationale de marchandises ?

Claimant et Respondent ne sont en tout cas pas sur la même longueur d'ondes. Suite à une tentative de médiation avortée, Claimant n'a eu d'autre choix que d'initier une procédure d'arbitrage. Afin de préparer la défense des parties en cause, 366 universités à travers le monde ont été contactées. Des mémoires ont été rendus en décembre 2017 pour la défense de Claimant et en janvier 2018 pour celle de Respondent.

Impatients de tester leurs arguments face à d'autres équipes, une centaine d'étudiants, communément appelés « mooties », représentant seize universités européennes s'étaient donnés rendez-vous à Bruxelles les 19 et 20 février derniers. Ce rassemblement constituait la cinquième édition du Brussels Pre-Moot organisé par le cabinet Tossens Goldman Gonne, en collaboration avec Linklaters et Jones Day, et sous les auspices du CEPANI. Cette épreuve précédait la vingt-cinquième édition du célèbre Vis Moot.

La première édition du Brussels Pre-Moot avait eu lieu en 2014, année où le règlement d'arbitrage du CEPANI était applicable à la procédure. Depuis lors, la réputation de cet événement n'a cessé de grandir. Ce dernier est d'ailleurs maintenant repris parmi les « most prestigious Pre-Moot events around the globe » dans l'ouvrage dont la lecture est indispensable à tout mootie : The Complete (but unofficial) Guide to the Willem C. Vis International Commercial Arbitration Moot.

Cette année encore, le Brussels Pre-Moot a réuni les plus grands arbitres du Royaume, et notamment Niuscha Bassiri, le Professeur Jacques Herbots et Charles Price pour arbitrer la finale qui a opposé les Universités de Mannheim et de Rotterdam. La victoire a été décernée à la première.

L'évènement s'est clôturé par une réception dans les magnifiques locaux de Linklaters. Tous les participants remercient sincèrement Sophie Goldman, Audrey Goessens et Jean-

François Tossens pour la parfaite organisation de l'événement.

- **Mars 2018, la 25ème édition du Willem C. Vis International Commercial Arbitration Moot à Vienne – Impressions des étudiants de l'Université de Liège.**

Cette année, nous avons eu la chance de représenter l'Université de Liège lors de la 25ème édition du prestigieux Willem C. Vis International Commercial Arbitration Moot.

En octobre 2017, nous avons reçu le problème qui allait nous occuper les six prochains mois. Pas de temps à perdre, nous voilà déjà à la bibliothèque. Le planning s'avère intense: les conclusions du "Claimant" devaient être finalisées pour décembre, et celles du "Respondent" pour janvier. Nous avons enchainé avec la préparation aux plaidoiries à partir de février.

Le dossier de cette année nous a plongé, d'une part, dans l'industrie du cacao et du commerce équitable et, d'autre part, dans l'arbitrage ad hoc. Le cas offre à l'une et l'autre des parties bon nombre d'arguments à exploiter. Tout l'enjeu consistait donc à se les approprier pour les rendre les plus convaincants possibles. Le travail a été réparti entre les quatre membres de l'équipe, et supervisé par notre coach Maxime Malherbe et plusieurs alumni. Ceux-ci se sont montrés d'une grande aide, tant pour la phase écrite que pour la phase orale.

Cette expérience restera gravée dans la mémoire de chacun des participants. La préparation à la phase orale nous a emmenés aux quatre coins de l'Europe grâce aux Pre-Moots. Nous avons eu la chance de nous rendre à Bruxelles, Londres, Erlangen ainsi qu'à Stockholm afin de s'entrainer et recevoir les conseils d'arbitres de différentes cultures juridiques.

Nous nous sommes finalement rendus à Vienne fin mars où a pris place le Vis Moot. L'occasion pour nous de revoir certains "Mooties" déjà connus et de créer des nouveaux liens avec d'autres. En effet, un des objectifs du Vis Moot est de permettre à des étudiants venant du monde entier de se rencontrer.

La participation au concours fût un réel enrichissement d'un point de vue professionnel mais aussi personnel. En effet, travailler ensemble sur un même projet nous a offert l'opportunité de vivre une aventure humaine hors du commun. Nous avons appris à travailler en équipe et à faire des concessions, à se soutenir dans les défaites mais aussi à se féliciter dans les victoires. Quelle ne fût pas notre fierté d'atteindre la finale du Pre-Moot de White and Case à Londres et de se classer ainsi meilleure équipe non-anglophone.

Pour conclure, le Vis Moot se présente comme étant "a once-in-a-lifetime experience" et notre équipe ne peut que confirmer cette réputation. Nous aimerions remercier tous ceux qui nous ont soutenu tout au long de notre parcours, en particulier le Professeur Caprasse et Maxime Malherbe ainsi que l'Université de Liège pour leur confiance.

- **From 15 to 18 April, 2018: the ICCA Congress in Sydney.**

The International Council for Commercial Arbitration (ICCA) held its 24th biannual congress between 15 and 18 April 2018 in Sydney. The theme of this Congress was Evolution and Adaptation: The Future of International Arbitration.
The opening ceremony and welcome reception was held on the evening on Sunday 15th April 2018 at the iconic Sydney Opera House with an exclusive performance from the Sydney Symphony Orchestra.

Some 860 delegates attended the Congress, including over 700 from over 60 jurisdictions outside Australia. The quality of the debates in all the substantive sessions was very high.

Monday 16 April started with two breakfast sessions, one by the ICCA-ASIL Task Force on Damages and one hosted by Allens Linklaters, the topic of which

was arbitration on major projects. The keynote address was then given by The Honourable Chief Justice James Allsop AO. The second plenary session of the morning addressed the current crisis of legitimacy in international arbitration.

During the lunch, senior arbitrators and counsel in the international arbitration world gave a number of interesting talks, sharing some thoughts about evolution and adaptation in the arbitration world.

In the first part of the afternoon, sessions dealt with current challenges being faced by both invest treaty arbitration and commercial arbitration. During the second part of the afternoon, panels dealt with the realities of arbitration economics and party autonomy in the choice of decision-makers. In this last session, the different systems for appointment of the arbitrators, and more specifically, the use of the party-appointment system in arbitration was reviewed and was the starting point of a very interesting debate.

Tuesday 17 April similarly started with two breakfast sessions, one hosted by PRIME Finance and the Permanent Court of Arbitration and the other hosted by Dentons to launch the ICCA-Queen Mary Final Report on Third-Party Funding in International Arbitration. Then the delegates had, again, the choice between two parallel sessions; the first one proposed a debate on selected issues relating with arbitration proceedings involving public bodies and public interests; the panel of the second session was in charge of putting forward some (very interesting) practical suggestions to build better arbitration proceedings.

The ICCA 2018 Gala Dinner, themed Dinner under the Southern Stars, was hold the same day in the ICC Grand Ballroom, providing an evening of fine entertainment and warm Australian hospitality to Congress delegates. Following the Gala Dinner, delegates were invited to join Shearman & Sterling for beer and wine at a famous bar in Darling Harbour.

On Wednesday 18 April, the morning plenary sessions were aimed at providing an overview of the potential new types of claims that might appear in international arbitration. Another panel shared its views on the involvement of new participants and

stakeholders in the international arbitration process.

This was followed by a closing keynote address by the Honourable Thomas F Bathurst and an introduction to the 25th Congress, which will be held in Edinburgh in 2020.

- **From 17 to 19 May, 2018: Third Co-Chair's Circle Global Conference 2018 in Rome: "International Arbitration, Local Admiration".**

Amid pizza, pasta and gelato, against the background of the Colosseum, Pantheon and Forum Romanum, and under a more than generous Mediterranean sun, the Eternal City offered the scenery of the 2018 edition of the Co-Chair's Circle (CCC) Global Conference on Friday 18 and Saturday 19 May 2018, hosted by the Italian Forum for Arbitration and ADR (ArbIt).

The CCC Global Conference is an international arbitration conference organized as a joint effort by the different groups taking part in the CCC. The CCC is a platform for cooperation and networking between groups of young arbitration practitioners from around the world. At this moment, around 40 national and transnational groups of young arbitration practitioners are affiliated with CCC. Following previous CCC conferences in Berlin (2014) and Helsinki (2016), Rome was the host of the third CCC Global Conference.

The Aula Magna of the Rome Tre University was the splendid and spacious venue of the mind provoking program of this year's conference, covering a broad range of contemporaneous subject matters in the field of arbitration and international dispute resolution.

The conference started with opening remarks by Giovanni Serges, the director of the Department of Law of Rome Tre University, followed by welcome remarks by Valentine Chessa (co-chair of Arbit), Maria Beatrice Deli (Secretary General, Italian Association for Arbitration and ICC Italy) and Benedetta Coppo (Head of the Rome branch office of the Milan Chamber of Arbitration). A keynote speech was delivered by Alexis Mourre, President of the ICC Court of Arbitration.

This first part of the morning was followed by two panel discussions. The two main subject matters that were discussed in the context of the first panel, titled 'the arbitrators of tomorrow', were 'how to get that first appointment and continue to be appointed' and 'business development at the associate level'.

After a coffee break, the second panel discussion started, under the heading 'The future of cross-border disputes settlement: back to litigation?' During this panel, a presentation was given on the 2005 The Hague Convention on Choice of Court Agreements, outlining the 'architecture' of this convention. Also, by means of a number of examples, the application of this convention was compared to the result under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards in terms of, inter alia, the validity of choice of court agreement/arbitration agreement and enforceability of a judgment/arbitral award.

The end of the second panel was the 'cue' for a full-fledged Italian pranzo lunch. The organizers of the event took the adage 'When in Rome, do as the Romans do' to heart.

The first part of the afternoon program consisted of a number of debates between young practitioners, on topics as diverse as the gender diversity in arbitration, the necessity or usefulness of document production in arbitration, whether arbitrators should impose limitations on submissions and/or evidence to keep proceedings manageable, whether arbitration is only as good as the counsel to the parties and whether an administrative secretary to a tribunal is 'the fourth arbitrator'.

After the debates, the last panel discussion of the day took place on the question how, when and why party appointed experts are necessary/useful in arbitration. This last panel was followed by conclusive remarks on the part of the organizational committee,

thus heralding the evening's social event.

Here, Italy's reputation in the field of aesthetics and living la dolce vita became manifest. Dinner was served in the garden of Palazzo Brancaccio, an oasis of serenity and a true treat for the senses in the middle of Rome. As the evening evolved, the buffet dinner and animated conversations were taken over by the ever-increasing volume of pop and dance music, seducing the participants to dance the night away under the Roman sky.

The conference came to an end on Saturday in a relaxed manner at 'The Sanctuary', a lounge bar/restaurant. During this brunch event the participants were afforded a chance to reflect and contemplate on the events of the previous day, while enjoying soft ambient music and Asian/Italian fusion cuisine.

Saturday afternoon, after the conclusion of the CCC Global Conference, the CCC Retreat took place. During this session, a number of subject matters of a more 'administrative' nature concerning the various young arbitration practitioners groups were discussed, among which the location of the 2020 CCC Global Conference. CEPANI40 has been chosen to host this event in Brussels! Congratulations!

- **On May 23, 2018: the ICC Belgium Annual meeting.**

Members of ICC Belgium, the Belgian chapter of the International Chamber of Commerce (ICC) gathered at the Federation of Enterprises (FEB) for the Annual General Meeting 2018 on 23 May.

As the world business organization, ICC is the only business organisation admitted as an Observer at the United Nations General Assembly, and its International Court of Arbitration® is the world's preferred institution for high-value, complex multi-party and multi-contracts disputes across the globe. While ICC took up its position as observer to the General Assembly on 1 January 2017, aiming to contribute directly to the work of the General Assembly and to promote the essential role the private sector will play in

implementing the UN's 2030 Agenda for Sustainable Development, the Court revealed in March 2017 its latest figures, with a total of 810 new cases filed in 2017, which included 135 cases related to a set of very small claims in a collective dispute. Cases filed in 2017 involved 2,316 parties from a record 142 countries, compared with 137 countries represented in 2016. Newly-registered cases represented an aggregate value in dispute of over US$ 30.85 billion in 2017, while the average amount in dispute in new cases stood at US$45M with over 60% of all cases filed having an amount in dispute exceeding US$2 million. The 1,548 pending cases at the end of 2017 represented an average value in dispute of US$ 137,325, 630. In 2017, the ICC Court saw as well an increase in the total number of women arbitrators. Women arbitrators represented 16.7% of all arbitrators nominated or appointed by the parties, co-arbitrators or by the Court. This represents an increase from 14.8% of nominations or appointments made in 2016. In 2017, of 1,488 arbitrators nominated or appointed, 249 were women, representing 85 nationalities. This compares with 209 of 1,411 arbitrators in 2016. The Court appointed a higher percentage of women (45%) than the parties themselves (41%) and the co-arbitrators (13.7%).

Arbitration stood firmly high on the agenda of ICC Belgium in 2017, with among other activities, the visit of Belgian practitioners to the Court in Paris, France, and the visit of the Secretary-General of the Court designated in 2017, Alexander Fessas, to Antwerp.

During the AGM 2018, Members elected as new President of ICC Belgium, Vincent Reuter, former Managing Director of the Walloon Union of Enterprises (UWE) and former Chair of the Board of Credendo, the official Belgian export credit agency.

- **On May 16, 2018: Panel discussion at the Brussels Global Law Week "Is everything arbitrable?".**

For the second year in a row, the Brussels Global Law Week (organized by the Perelman Centre for Legal Philosophy at the Université libre de Bruxelles) hosted a seminar over the role

of international arbitration in globalization of law.

This year, I had the chance to moderate a fascinating debate focusing on investment arbitration, and the legitimacy criticism it is facing. Three distinguished and experienced speakers joined the debate.

First, M. John Willem, Partner at White & Case Paris, who is experienced with international arbitration proceedings before various institutions, including the International Centre for the Settlement of Investment Disputes (ICSID) and who represented both investors and States.

Secondly, Prof. Nicolas Angelet, who is Professor of international law at the Université libre de Bruxelles and a Partner at Liedekerke, with extensive experience in investment law and a member of the ISCID Panel of Conciliators and Arbitrators.

Thirdly, M. André von Walter, who is legal counsel and negotiator in the Directorate General for Trade of the European Commission and focuses on developing the EU approach to investment dispute resolution. He represented the European Union in bilateral investment negotiations with, among others, Singapore, Canada, Japan and the United States.

The discussion started with an overview of the origin of investment arbitration, which finds its legal ground in a galaxy of Bilateral Investment Treaties, containing both substantive rules, often broad and unprecise (such as 'fair and equitable treatment'), and a dispute settlement clause.

Many criticisms arose against investment arbitration in the recent years. These mainly concerned (i) the costs of the procedure, (ii) the lack of predictability in the absence of a binding precedent system (with States having to defend themselves several times for the same issue), (iii) the fact that public measures can be questioned by an ad hoc tribunal and (iv) the lack of legal review of the award.

This system is however appreciated by investors for the possibility to directly sue the State without referring to local courts. Seeing the media attention over investment arbitration, there is however a reluctance from investors to become the 'worst case', making investors cautious not to bring too aggressive or too 'original' claims.

An important critic is the bias that arbitrators would have in favour of the investors (who are always claimants and thus creating the 'business'). John Willems raised that there is a difference between the perception of the bias in favour of arbitration and case-law. In practice, investors only prevail in 25% of the cases. However, Prof Angelet raised the chilling effect of investment arbitration because of which threats to file investment arbitrations make State reluctant to enact legal changes. For example, seeing the proceedings started by Philip Morris, some States postponed their legislation for neutral packages.

However, everyone is perceived as having a bias, and judges in a court system will be perceived as bias in favour of the States. As a consequence, a system without any (perception of) bias is not possible. The current possibility for each party to appoint one arbitrator appears as a fair compromise to this issue.

Another criticism often raised against (investment) arbitration is lack of transparency, since briefs and hearings are not public (even if ICSID awards are well published). In practice, it appears that States are more reluctant to transparency and that it is the often the (the President of the) Tribunal who pushes for transparency. Some hearings are now available online. Even if these videos are not widely watched (which is understandable seeing their length), the mere fact that the proceeding does not take place behind closed doors reinforce the system.

In this context of international criticism, the European Commission is advocating for a new settlement mechanism for investment disputes. This new system would be the implementation of a (international) court with 2/3 of judges from each signing party and 1/3 of judges from third countries. Judges will be professionals, paid by the States and with the prohibition to act as lawyers at the same time. Each tribunal would be composed by one judge from each country and one from a third country.

The European Commission is currently proposing this court mechanism in all its new investment treaties (as in the famous CETA with Canada). To ensure the success of this court system, the European Commission would like to use the model of the Mauritius Convention, which is a 2014 convention under the

auspices of UNCITRAL on transparency in investment arbitration. To avoid having to change all their BITs to apply this convention, the Mauritius Convention is one instrument that States ratify and which applies when both parties come from a State having ratified the Mauritius Convention (or when the claimant specifically accepts to apply the Mauritius Convention in a case where the defendant is a signatory). This would mean that, without having to change current BITs, other States could join this system. In addition, this court system could allow to reduce the costs of investment disputes, opening the door to claims from small to medium size companies.

The court system is still under construction and several issues are not yet fixed. For example, it is not possible at this stage to determine whether this system will be closer to arbitration or international justice. This is of paramount importance at enforcement stage, since an arbitral award can be widely enforced thanks to the New York Convention.

The European Commission is aware that this system will need a long time to enter into force and to compete with investment arbitration (and for example the Washington Convention). It can at least put some pressure on the current system and force to some (needed) changes.

To conclude, investment arbitration is facing an important legitimacy crisis. If everyone around the table agreed that a dispute settlement mechanism should be in place for investment disputes, future developments will indicate whether this new system tends more for an international court system or a (revised?) arbitration. Another solution which was raised was to clarify the substantive provisions of investment law, to leave less room for interpretation. This would ensure predictability and answer to large criticisms investment arbitration is facing.

- **Op 7 juni 2018 : Algemene Vergadering van CEPANI**

Op 7 juni 2018 vond de jaarlijkse algemene vergadering van CEPANI plaats, waarop al de leden waren uitgenodigd.

Voorzitter Dirk De Meulemeester heeft het jaarverslag 2017 (te raadplegen op de website van CEPANI) voorgesteld. Hij legde de aandacht op de belangrijkste initiatieven die CEPANI en CEPANI40 het laatste jaar hebben genomen. Zo zijn o.m. de CEPANI ADR-regels vernieuwd en op 1 januari 2018 in werking getreden en is tegelijk een werkgroep opgestart om het arbitragereglement te vernieuwen tegen 1 januari 2020.

De diverse activiteiten die werden georganiseerd ter promotie van arbitrage werden toegelicht. Ruime aandacht werd ook besteed aan de statistieken van het aantal arbitrages en in het bijzonder de aanstellingen van de arbiters. Hier is de trend merkbaar dat partijen meer zelf arbiters voordragen en CEPANI hun aanstelling enkel dient te bevestigen.

De nieuwe Secretaris-Generaal, Emma Van Campenhoudt, heeft vervolgens de financiële resultaten van CEPANI in 2017 in detail overlopen.

Belangrijk te noteren is verder dat CEPANI in 2017 opnieuw een groot aantal nieuwe leden heeft verwelkomd, en dat deze trend zich in 2018 heeft doorgezet.

- **<u>Le 7 juin 2018: L'exposé du Professeur Franco Ferrari "Limitations to party autonomy in international arbitration".</u>**

Le 7 juin 2018, le CEPANI, à l'issue de son Assemblée Générale, nous a fait profiter de l'intervention plurilingue (en anglais, français, néerlandais et allemand !) du Professeur Franco Ferrari.

Franco Ferrari intervient comme arbitre dans diverses procédures arbitrales et est professeur, notamment, à la New York University, où il enseigne l'arbitrage commercial international et dont il dirige le Center for Transational Litigation and Commercial Law.

Le sujet du jour était consacré aux limites de l'autonomie de la volonté des parties dans l'arbitrage international. Après avoir rappelé le principe - l'autonomie de la volonté des parties est non seulement la source du pouvoir juridictionnel du tribunal arbitral mais en détermine également les modalités d'exercice - Franco Ferrari s'est attelé à nous exposer comment cette autonomie pouvait être limitée afin de protéger les intérêts des parties, du public, des arbitres et des institutions arbitrales.

L'intérêt des parties elles-mêmes peut justifier qu'il ne soit pas donné effet à leur volonté en toutes circonstances. En effet, les parties ne disposent pas toujours du degré de rationalité et de capacité requis pour poser des choix qui poursuivent leurs intérêts. Afin de protéger ceux-ci, il est dès lors parfois dérogé à l'autonomie de la volonté des parties. Cette protection se fait par le biais de mécanismes de contrôle ex-ante (par ex. contrôle direct ou indirect de la validité de la clause d'arbitrage, ce qui soulève des questions complexes de droit applicable) ou ex-post (par ex. sur la possibilité de restreindre ou d'étendre les motifs d'annulation de la sentence arbitrale).

L'intérêt du public en général peut également justifier qu'il soit dérogé à l'autonomie de la volonté des parties. Bien que la volonté des parties soit la source du pouvoir juridictionnel du tribunal arbitral, sa décision ne produit d'effets juridiques que parce qu'elle s'inscrit dans un système juridique qui le lui permet. Ce système doit donc être respecté par les parties. Ainsi, les parties ne peuvent pas déterminer elles-mêmes si la méthode de résolution de leur conflit peut être qualifiée d'arbitrage, ni si le litige peut être résolu par ce biais. Le contrôle de la conformité de la sentence arbitrale à l'ordre public

constitue une troisième limite établie dans la protection de l'intérêt général.

La limitation de l'autonomie de la volonté des parties est par ailleurs motivée par la protection des intérêts des arbitres et de l'arbitrage en tant que mode viable de résolution des conflits. Le constat selon lequel la volonté des parties constitue la pierre angulaire de tout processus d'arbitrage ne peut avoir pour conséquence que chaque composante des pouvoirs juridictionnels des arbitres doive être préalablement soumise au consentement explicite des parties de déléguer celles-ci. Les compétences du tribunal arbitral de pouvoir se prononcer sur sa propre compétence – même lorsque celle-ci est contestée par l'une des parties – ou de prendre toutes les décisions qui sont inhérentes à sa nature juridictionnelle sont des exemples de facultés qui sont généralement exercées par les arbitres sans le consentement explicite des parties. Dans certaines situations, les arbitres devront même s'écarter de l'accord intervenu entre les parties. Tel sera notamment le cas de tous les accords qui contreviennent à l'ordre public. Hormis cette hypothèse évidente, certains auteurs plaident même pour que les arbitres soient autorisés à déroger aux conventions d'arbitrage dès lors que les procédures envisagées seraient inefficaces, pas nécessaires et moins équitable qu'une approche alternative. Ce point de vue est toutefois controversé, au motif qu'un arbitre dispose toujours de la faculté de donner sa démission en présence de telles déficiences.

Les derniers bénéficiaires de la limitation de l'autonomie de volonté des parties sont les institutions arbitrales. Afin de pouvoir administrer efficacement la conduite des procédures arbitrales, elles élaborent des règles qui définissent le cadre dans lesquelles celles-ci devront sedérouler. Si ces règles procédurales accordent souvent une marge de manoeuvre importante aux parties pour leur permettre de moduler la procédure de la façon qu'elles estiment appropriée, il n'en demeure pas moins que les institutions d'arbitrage refusent généralement d'administrer les procédures qui ne respectent pas certaines des conditions essentielles de leurs règles de procédure. Ces éléments "indérogeables" des règles de procédures, souvent protégés par les

juridictions nationales lorsqu'elles sont saisies de contestations relatives à leur application, constituent la marque de fabrique de chacune de ces institutions.

En conclusion, s'il convient de reconnaitre que l'approche libérale a joué un rôle-clé dans le développement de l'arbitrage international, il est important d'admettre que sans limitations à l'autonomie de la volonté des parties, l'arbitrage ne pourra pas demeurer un mode viable de résolution des conflits.

- **<u>On June 26, 2018: Seminar on the draft law for the creation of the Brussels International Business Court (BIBC).</u>**

On 26 June 2018, the VBO/FEB and Larcier Group jointly organised a seminar on the draft law for the creation of the Brussels International Business Court (BIBC) which was approved by the government and submitted to parliament on 15 May 2018.

Mr. Geens first took the floor, emphasising that the creation of the BIBC is one of the ten "construction yards" of the government. The government is convinced of the need for a specialised state court to settle international trade disputes in the English language in light of the recent national and international economic developments. The expectation is notably that the Brexit will lead to an increase of international commercial disputes. Given the importance of Brussels within Europe and internationally, and the number of international companies established in Brussels, it is crucial that these actors can submit their disputes to a state court. The combination of professional and layman judges specialised in international trade law will enable the BIBC to rule in first and last instance, which will only increase the efficiency of the proceedings and the value of its judgments. The draft law is based on the UNCITRAL model law on international arbitration of the United Nations Commission on international trade law. The procedural rules therefore deviate to an important extent from the standard provisions of the Judicial Code. The draft law should in principle be budget-neutral, with the

contributions to be paid by the participants constituting a special fund within the treasury.

After some brief words of Mr. Alain Courtois, first deputy of Brussels, who welcomed the creation of the BIBC which responds to the needs of Brussels and only increases its attractiveness, professor Behrendt examined the interaction between the BIBC and the constitution. He discussed the constitutionality of the BIBC, and the fact that the proceedings before the BIBC will be conducted in the English language. The Council of State has validated this approach in its advice, provided that only truly international disputes are submitted to BIBC and that English is the language which is normally used between the parties. As far as opposition proceedings by a third party against the judgments of the BIBC are concerned, these will be conducted in the Dutch, French or English language. Likewise, any appeal before the Court of Cassation or preliminary reference proceedings before the Constitutional Court will need to be conducted in one of the official languages.

The next speakers, Mr. Philippe Lambrecht, Secretary-General of the VBO/FEB and Mr. Ivan Verougstraete, examined in further detail the particularities of the draft law. Mr. Lambrecht discussed the proposed organisation of the BIBC, with two alternating presidents belonging to different language roles within the Markets Court of the Brussels Court of Appeal. The President is to be a Belgian magistrate, designated by an independent selection committee within the Superior Council for Justice, based on his knowledge of English and international commercial law. The layman judges will be Belgian or foreign specialists in international commercial law who will likewise be appointed by an independent selection committee for a renewable mandate of five years. As an enterprise court, the BIBC will be competent to resolve international disputes between enterprises (within the meaning of the Code of Economic law) who have elected to submit their dispute to its jurisdiction. The international nature of the dispute between the parties is assessed based on various criteria, notably (i) the fact that the parties are established in different states, (ii) that the place of performance of their obligations or of

the object of their dispute is located outside of their place of establishment and (iii) that the relevant elements for the resolution of their dispute are to be found in foreign law. One common condition is that the language used by the parties cannot be Dutch, French or English. The BIBC will assess its own competence and will in principle be free to determine the rules governing the proceedings, subject to certain limits in order to safeguard the rights of due process. The rules of the Judicial Code are in principle disapplied. The procedure will be partly electronic and partly in writing, with certain aspects (such as notably notifications, docket duties, judgments in absentia, provisional measures, usage of languages, judicial costs and appeals) being regulated specifically.

Mr. Baeten, deputy general counsel of Engie, subsequently discussed the challenges in terms of legal risks which a group such as Engie faces all over the world. Arbitration is the preferred adjudication method in international business, however with a few weaknesses. Subject to a few questions which arise in relation to the neutrality of the forum, and the swiftness of the proceedings, he concluded that the BIBC may offer a good alternative to arbitration in terms of enforceability of the award in the European Union, and in terms of assurances on the independence, impartiality and competence of the tribunal and regarding the rigorousness and equitable nature of the proceedings.

Mr. Dirk Demeulemeester, president of CEPANI, then entertained the audience with a more in-depth analysis of the differences between arbitration and the BIBC. He emphasised that the BIBC was not perceived by CEPANI as a "competitor" to arbitration but is just another means of dispute resolution. Arbitration proceedings and proceedings before the BIBC are alike in that they are based on the consent of the parties. For arbitration, the arbitrability of the dispute is key, whereas the nature of the parties and the dispute are of paramount importance for the BIBC. Both arbitration and BIBC proceedings will be based on the UNICTRAL model law, with the parties having a certain autonomy in terms of the usage of languages and their communication. This autonomy is however more important for arbitration,

which, contrary to BIBC proceedings, is also confidential. Disputes can in both cases be dealt with by experts, their nationality not being an issue. Whereas an arbitral panel can be composed by the parties, this will not be the case for the composition of the BIBC. The parties will bear the costs and the proceedings are intended to be self-sustaining both in case of arbitration and BIBC proceedings. Appeals against a final arbitral award can only be based on limited grounds, and for BIBC rulings are limited to a Cassation appeal on legal grounds. The recognition and enforcement of rulings rendered by the BIBC will be based on the Brussels Ibis, the Hague and Lugano regulations/conventions, whereas for arbitration the Convention of New York applies.

The representatives of the French-speaking bar association, Mr. Jean-Pierre Buyle, and the Dutch-speaking bar association, Mr. Edward Janssens, then presented the audience with their views on the draft law. Both speakers stressed that they had been advocating the creation of an international court for trade law disputes for some time. The BIBC is regarded as an opportunity, even if some open questions and potential issues remain. Mr. Jean-Pierre Buyle notably deplored the lack of prior concertation with the bar associations on the draft law. He raised doubts about the fact that the BIBC will be a commercial/enterprise court within the Court of Appeal, which is already overburdened. The President also questioned whether the creation of the BIBC would not create a certain inequality between citizens having access to it and those who do not and whether the appointment of judges would offer sufficient guarantees in terms of their independence. He concluded that the BIBC will need to take its place in Europe and will need to become known abroad to be successful, the publication of its judgments and the confidence in the outcome of the proceedings being key. Mr. Janssens stressed that the independence and impartiality of the judges, and their knowledge and experience in trade law are of paramount importance. It will not be an easy feat to determine objective and quantifiable quality criteria for this and the question is whether sufficient manpower will be found for each

sector, as there tend to be different practices and standards between e.g. the energy, telecoms and capital goods sectors. One important distinction between the two bar associations' positions is that, whereas the French-speaking bar association welcomes the opportunity for lawyers to apply to become a judge in the BIBC, the Dutch-speaking bar association considers that lawyers should not be layman or temporary judges.

The session was closed by Mr. Lipszyc, justice adviser to Mr. Charles Michel, who emphasised that the draft law is no doubt still imperfect and was not subject to extensive prior consultation with certain interested parties, but that it is to be considered an accomplishment that the draft law has been approved by the government and submitted to parliament. It is now up to parliament to do its work, taking into account the comments and concerns of the relevant actors. Let the fine-tuning of the draft law begin!

- **On September 7, 2018 : ICC Belgium conference on "Challenges brought by Economic Sanctions in International Arbitration".**

On 7 September 2018, ICC Belgium organised a conference on the topic of Challenges brought by Economic Sanctions in International Arbitration at the Federation of Enterprises in Belgium.

Four distinguished speakers addressed these challenges from the parties', the arbitrators' and the arbitration institutes' perspective. Niuscha Bassiri (Partner, Hanotiau & van den Berg, Brussels) chaired the session and led a Q&A with Clemens Heusch (Head of European Litigation, Nokia, Munich) after each presentation, offering the audience a real insight of what the consequences of the coexisting different sanctions regimes really are in practice.

Marco Padovan (Partner, Studio Legale Padovan, Milan) introduced the key concepts of Economic Sanctions to the audience. He started by defining Economic Sanctions as one of the two sorts of "restrictions on movement of persons, services, goods, capitals due to international policy reasons", the other

being made of export control provisions. He then explained the difference between multilateral International Sanctions (i.e. pursuant to United Nations Charter Chapter VII Art. 41) and unilateral (autonomous) International Sanctions (the most famous being the US autonomous sanctions) before comparing the US and the EU sanctions regimes. On 8 May 2018, Donald Trump issued a National Security Presidential Memorandum ceasing US participation to the Joint Comprehensive Plan of Action (JCPOA). That triggered the resuscitation of the Council Regulation (EC) No 2271/96 protecting against the effects of extra-territorial application of legislation adopted by a third country. This so-called "blocking Regulation" provides that giving effects to US extraterritorial sanctions is prohibited and sanctioned in the EU for the persons referred to in Article 11 Reg. No 2271/96. Taking the ICC Institute, incorporated under French law, as an example, this gives rise to the question whether the ICC Institute can provide its services if a party is accused of non-performance on the basis of US extraterritorial sanctions listed under Reg. No 2271/96. By this example, Marco Padovan demonstrated that not only arbitral institutes, but also arbitrators and parties can be directly affected by Economic Sanctions.

At this point, Niuscha Bassiri and Clemens Heusch discussed how companies try to conduct business in this conflicting legal environment, as it illustrated perfectly how contradicting laws can trigger difficulties for companies and trouble contractual relationships.

Next, Mathias Audit (Law professor Université Paris 1 Panthéon-Sorbonne and Partner, Steering Legal, Paris) guided the audience through the contractual implications of Economic Sanctions. He started with the following presupposition: an international contract subject to an arbitration clause falls within the scope of a sanctions program. Then, he analyzed first the impact of the sanctions regime on the arbitration clause and second on the contract.

First, the impact on the arbitration clause must be assessed on the basis of the applicable domestic law. From the

US case-law perspective, a contract containing an arbitration clause falling within the scope of a US sanctionprogram can be submitted to arbitration (BelshipNavigation Inc. v Sealift Inc, 1995 U.S. Dist.). This contrasts with the decision of the Italian Court of cassation which ruled that an agreement governed by French law and ICC arbitration in Paris was inarbitrable "because of the embargo declared against Iraq" and that "weather the clause was invalid was an issue for the court, not the arbitrators, to decide" (Governement and Ministries of the Republic of Iraq v. Armamenti e Aerospazio SpA et al (2015) Case no 23893). In light of these contrasting decisions, Mathias Audit stressed that the location of the seat of arbitration is crucial considering the impact of the domestic applicable law on the arbitrability issue.

Turning to the impact of the sanctions regime on the contract, Mathias Audit distinguished the scenarios where a sanctions regime belongs to the applicable law, meaning that the arbitrators must apply the sanctions as their regime belongs to the lex contractus, and the situations where a sanctions regime does not (i.e. EU or domestic regimes). Under this second scenario, one can ask what the possible legal basis for the arbitrator to apply a sanctions regime could be, as it does not belong to the applicable law. Treating the sanctions as mandatory rules, or as part of the transnational public order or even a force majeure exception were contemplated as solutions.

The following question put by Niuscha Bassiri to Clemens Heusch reminded us that one difficulty is added on top of these legal variations: during the drafting phase of a contract, the contracting party with more bargaining power will only focus on applying the substantive law it wishes. However, one thing remains crucial for both parties to the contract: it will very often be crucial for them to choose a place of

arbitration which is relatively unaffected by Economic Sanctions.

In his presentation, Emmanuel Jolivet (General Counsel, ICC International Court of Arbitration, Paris) focused on practical impediments and gave the audience a concrete insight of the ICC's approach to the issue, and more specifically on procedural issues that may arise. For example, when a payment is affected by a sanctions regime, a formal clearance must be obtained from the relevant authorities. To identify such issues, the ICC has created the ICC Dispute Resolution Services Compliance System which "is bound to operate in conformity with applicable sanctions regulations such as those imposed by the United Nations (UN), European Union (EU) and Office of Foreign Assets Control (OFAC)." The Compliance System aims to review all cases from a compliance perspective. When necessary, administrative measures are implemented to avoid breach of compliance for companies involved in a contract and having opted for ICC arbitration. The Compliance System is accompanied by transparent communication to parties and arbitral tribunals on the measures taken to ensure compliance with obligations imposed on ICC by the relevant authorities.

During Q&A, it emerged that the so-called "blocking regulation" could very easily conflict with the applicability of an OFAC sanctions regulation. Another key thought was that the arbitrator's task to issue an enforceable award, everywhere or in one specific country (taking into account the Economic Sanctions applicable), remains difficult to assess at the start of the arbitration process. Most of the time, the practicalities of enforcement only arise after the award has been issued. The discussion therefore illustrates perfectly how difficult International Economic Sanctions are to manage because of their inconsistent and changing nature.

- **<u>On September 13, 2018 : 2018 International Arbitration Survey Launch.</u>**

On 13 September 2018, White & Case Brussels hosted the launch of the 2018 International Arbitration Survey, entitled "The Evolution of International

Arbitration". A diverse panel analysed a number of important results of the Survey, expertly moderated by Nathalie Colin of White & Case Brussels. Dirk De Meulemeester, Chairman of CEPANI, brought the institutional perspective; Patrick Baeten, Deputy Group General Counsel at ENGIE, represented arbitration users; Niuscha Bassiri, Partner at Hanotiau & van den Berg spoke on behalf of arbitrators; and Dipen Sabharwal represented the point of view of counsel, also drawing on his insider involvement with the Survey.

The speakers were not let off the hook lightly. Faced with the result that cost continues to be seen as arbitration's worst feature, and lack of speed another downside, Dirk De Meulemeester was asked about the institutional role in improving these perceived drawbacks. He noted that most of the costs relate to counsel and not the institution or the arbitrators, which is not within the institution's control. Nonetheless, the institute can play a role in terms of timing by following up the case.

Panelists debated the evolution of most preferred seats, with Dipen Sabharwal bringing our attention to the fact that Singapore overtook Hong Kong as third most preferred (after London and Paris) since the previous Survey. Conversation inevitably turned to efforts to promote Brussels as a seat of arbitration, in particular given the perceived opportunity to benefit from any post-Brexit impact on London (70% of respondents think that Paris will most benefit from Brexit). While Dirk De Meulemeester emphasised that commitment at government level has been crucial to Singapore's success, Patrick Baeten also highlighted the challenge of overcoming user habits in concluding contracts, where the instinct to stick with the devil you know prevails.

Since 26% of Survey respondents felt that more publicly available information about arbitrators would be one of the factors having the most significant impact on the future evolution of international arbitration, the panel discussed a number of new initiatives to give greater access to such information. While welcoming these innovations, and in particular the gathering of reports by parties on arbitrators, Niuscha Bassiri doubted whether they could ever fully replace the traditional and less

transparent methods of gathering information on potential arbitrators.

As for the confidentiality of arbitral proceedings, which was rated as "very important" by 40% of respondents and "quite important" by a further 33%, Patrick Baeten cautioned against overstating its importance for users, given the potential need to disclose aspects of the arbitral proceedings in corporate filings and court proceedings both during and after the arbitration.

Another topical issue raised was progress made, and still to be made, in terms of diversity in international arbitration. The Survey reports a wide spread of responses to the question whether diversity in a tribunal has an effect on the overall quality of its decision-making. Noting this divergence of opinions, Niuscha Bassiri was skeptical whether the impact of diversity on decision-making could be measured among the many other factors coming into play in a tribunal's decision.

Looking to the future, Nathalie Colin queried whether arbitral institutions should take the lead in shaping the future of arbitration. Niuscha Bassiri's view was that institutions play a fundamental role in standard-setting and spearheading new developments, highlighting also the impact of increasing competition between institutions to attract cases. On the other hand, Dipen Sabharwal argued that we should not underestimate the role of other actors who shape the system, including parties themselves and external counsel.

As this lively debate and the many follow-up questions to the panelists demonstrated, the International Arbitration Survey gives practitioners, users and institutions plenty food for thought, and will certainly serve as inspiration for many more conversations about the future of international arbitration.

- **<u>On October 18, 2018 : Mediation Week 2018 – CEPANI & bMediation Workshop.</u>**

Dans le cadre de la semaine de la médiation, de nombreuses activités visant à promouvoir le recours à la médiation se sont tenues à travers le pays du 15 au 20 octobre 2018. Parmi celles-ci, la journée centrale de la médiation, qui s'est ouverte par un exposé sur les initiatives de la médiation par Monsieur le Ministre Koen Geens, a été un point de rencontre pour de nombreux médiateurs agréés. Combinant des sessions plénières et des ateliers pratiques plus ciblés, cette journée a permis aux praticiens d'échanger leurs expériences et leurs techniques de médiation, ainsi que d'entamer une réflexion sur des modes alternatifs plus récents comme le droit collaboratif (reconnu désormais par la nouvelle loi sur la médiation).

Le CEPANI et bMediation organisaient un des ateliers de cette journée centrale, intitulé « Caucus : le médiateur et le secret obtenu derrières portes closes ». Cet atelier, animé par Charlotte De Muynck (NautaDutilh) et Patrick Van Leynseele (DALDEWOLF), a exploré la technique particulière du caucus, à savoir des réunions au cours du processus de médiation auxquelles toutes les parties ne sont pas présentes et qui sont confidentielles de sorte que le médiateur ne peut révéler les informations reçues lors du caucus aux autres parties sans l'accord préalable de la partie concernée.

Les deux orateurs ont souligné l'importance primordiale pour le médiateur de veiller à conserver la confiance des parties lors du recours à cette technique, notamment en informant les parties au début de la médiation sur la possibilité de caucus, en respectant le principe de symétrie (c'est-à-dire en donnant également aux deux parties l'occasion d'avoir un caucus avec le médiateur et, dans la

mesure du possible, de consacrer un temps similaire aux deux parties) et en informant l'autre partie de la tenue d'un caucus lorsque celui-ci s'est fait en dehors d'une session plénière (par exemple, par téléphone).

Patrick Van Leynseele a également exposé la raison d'être du caucus et la façon dont un caucus peut aider à faire aboutir le processus de médiation. Cette technique permet, en effet, notamment d'obtenir des informations supplémentaires des parties, d'explorer les intérêts et les besoins des parties, de changer la dynamique de la médiation, d'avoir un contact plus personnel avec les parties et d'établir ainsi une relation de confiance et de traiter des divergences d'opinions au sein d'une même partie lorsque cette dernière est représentée par plusieurs personnes.

Enfin, la difficile question du traitement de l'information reçue confidentiellement lors du caucus a été abordée. Il a notamment été question de l'abus par une partie du processus de médiation et de la nécessité d'obtenir l'accord de la partie afin de pouvoir partager l'information avec les autres parties à la médiation.

- **On October 11, 2018: Seminar & Brussels Reception @ IBA 2018 by HUB.Brussels "Brussels, place of arbitration".**

Towards the end of the successful IBA-meeting in Rome, the Belgian delegates and some selective guests of Roman society were invited to attend a reception hosted at the private residence of His Excellency the Belgian Ambassador to the Italian Republic.

The Residence is a superb Rome Palazzo located near the Roman Forum, in the very heart of the eternal city of Rome.

It is in this prestigious setting with a terrace overlooking the ruins of ancient Rome, that the preeminent Belgian arbitration Centre CEPANI was offered the opportunity to promote its activities as the Belgian Arbitration Centre.

After introductory remarks by the Ambassador and by Dirk De Meulemeester, Chairman of Cepani, two distinguished Belgian arbitrators, the President of the Brussels Flemish Bar, Me Peter Callens, and Me Pascal Hollander, partner at Hanotiau & van den Berg, expressed their views on Brussels as seat

of arbitral proceedings, respectively for national and international arbitration.

Mr. Ludo Deklerk, intervening in his capacity of chairman of the Belgian Association of Legal Counsel, Vereniging van Bedrijfsjuristen/Institut des Juristes d'entreprises, shared the opinion on the attractiveness of Brussels as an arbitration hub and an interesting alternative to the traditional places of international arbitration.

This roadshow was followed by an exquisite reception, combining elegance and ample opportunities for networking.

A truly exceptional night.

Wat betreft het jaar 2019, vonden reeds onder andere en op niet-exhaustieve wijze volgende evenementen plaats:

- **On February 26, 2019: Lunch debate with Pascal Hollander and Christoph Liebscher on "The "Prague" Rules on the Efficient Conduct of Proceedings in International Arbitration: a(n) (R)Evolution or Much Ado About Nothing?";**
- **On March 21, 2019: Joint Colloquium NAI – CEPANI on "Do Arbitral Awards reveal the truth?";**
- **From 4 to 5 April, 2019: Brussels Pre-Moot;**
- **On June 5, 2019 in Antwerp: Evening Conference with ICC Belgium and CEPANI on "Appropriate conflict resolution in major EPC projects and engineering challenges".**

Et la suite de l'année 2019 réserve encore beaucoup d'événements très intéressants tels que le :

- **On June 6, 2019 : CEPANI General Assembly 2019;**
- **On June 6, 2019: Keynote speech of the Deputy Prime Minister and Minister of Foreign Affairs and European Affairs Didier Reynders;**
- **On June 28, 2019: Symposium 70-jarig bestaan van het Nederlands Arbitrage Instituut (NAI);**
- **October 2019: The Mediation Week;**
- **From 13 to 15 November 2019: CEPANI's 50th Anniversary!**

Restez connectés, les informations suivront !

CEPANI40

CALENDRIER D'ACTIVITES

Le CEPANI40, créé en 2004, sous les auspices du CEPANI, est spécialement pour les jeunes professionnels intéressés par l'arbitrage. Le CEPANI40 met à leur disposition un forum où ils peuvent nouer des contacts et échanger de manière informelle des points de vue, des idées et des expériences concernant l'arbitrage.
Pour ce faire, le CEPANI40 organise des réunions périodiques dans le cadre desquelles les questions et problèmes pratiques sont abordés et examinés avec l'aide d'experts. Les membres du CEPANI40 peuvent ainsi débattre spontanément des différents aspects de la pratique de l'arbitrage. Ils peuvent également approfondir les questions particulières qui les intéressent.

Het jaar 2018 vormde voor CEPANI40 tevens de gelegenheid om de volgende evenementen te organiseren:

- **On January 25, 2018, the CEPANI Lunch Debate on « Security for Costs ».**

On 25 January 2018, CEPANI 40 organised a lunch conference during which renowned arbitration practitioner (and CEPANI member) Dr. Michaël Bühler of Jones Day in Paris shared his thoughts on security for costs in arbitration.

Where a claimant is or threatens to become insolvent or otherwise unable to cover the likely (share of) the respondent's arbitration and legal costs in case of dismissal of the claim, the respondent may try and request that the claimant would provide security for the costs of arbitration to be allocated by the tribunal in its final award.

Dr. Bühler pointed out that, unlike most arbitration rules, the CEPANI rules actually contain some language on security for costs, and makes the application for such security subject to the requesting party having paid its

share of the advance for the costs of arbitration.

In some instances, as an alternative to not paying one's share of the advance on costs, requesting security for costs could therefore be a powerful weapon to cross the claimant's case. This will be even more so in jurisdictions (such as England and Wales) in which the arbitration act provides that failing to comply with an order of the tribunal (e.g. on providing security), may lead to a dismissal of the claim, as opposed to a mere stay of proceedings.

The CEPANI Rules also clarify what is generally admitted, i.e. that a measure ordering security for costs must be seen as an interim measure. Dr. Bühler, however, explained that an interim measure on security for costs should be assessed in the light of conditions slightly different than those applying to other interim measures. One of these conditions being a preliminary assessment of the strength of the claimant's claim, this explains – among other things – why arbitral tribunals are reluctant to grant security for costs, especially in situations in which the alleged impecuniosity of the claimant is not a new element.

- **On March 24, 2018 the CEPANI40/Lydian event organized at the 25th annual Willem C. Vis International Commercial Arbitration Moot in Vienna.**

Style, class and elegance; adjectives that well describe both the suggestive location of Planter's house - a colonial greenhouse bar that have been the first address for American Cocktail Bars in the Viennese city centre for over 20 years - and the international environment that was created in Vienna on the evening of March 24th, thanks to CEPANI40 and Lydian.

Planter was chosen in line with the tradition of last year, and represented the perfect venue; especially for its well-

known effort into the creation of new cocktails. And a new 'cocktail' was created thanks to this event. There could not be better occasion than the 25th Annual Willem C. Vis International Commercial Arbitration Moot, to organize a networking drink that created a space for talks, debates and growth for students, among academics, arbitrators and counsel from all over around the world.

For Lydian, Yves Lenders - leading partner in the law firm's Commercial and Litigation department and heads the Transport & Logistics team - Marijn De Ruysscher and Samuel Delcominette made it at the reception. On behalf of CEPANI, Emma Van Campenhoudt, Secretary General and Audrey Goessens, counsel, and of course Sigrid Van Rompaey and Sophie Goldman, co-chair of the CEPANI40, were present and greeted every single guest.

Sophie and Sigrid thanked Lydian for the invaluable support and already invited everyone to next year's event. The aim of CEPANI40 to promote and make arbitration accessible to younger practitioners, in Belgium and abroad, comes through these always more internationally representative 'cocktails' and events. And looking at the premises of style, class and elegance reproduced in this wonderful event, there is a bright future to come.

- **Le 19 juin 2018: "Du neuf en matière de MARC ! / Nieuwigheden op het gebied van ADR".**

Le Cepani40 a organisé le 19 juin 2018 une nouvelle présentation-débat, qui portait cette fois sur la nouvelle loi sur la Médiation, ainsi que sur les règlements « ADR » récemment révisés du CEPANI.

L'attrait pour l'évènement a été tel que la présentation a eu lieu à l'hôtel Steigenberger Wiltcher's, où les participants ont pu profiter d'un cadre magnifique.

Dans un premier temps, Monsieur Patrick Van Leynseele nous a brillamment présenté les dispositions touchant à la médiation de la loi fraichement adoptée du 18 juin 2018 (M.B. 2 juillet 2018). La loi apportera de nombreuses modifications au Code Judiciaire, en faveur de la médiation, à partir du 1er janvier 2019.

On retiendra notamment que le juge aura l'obligation de favoriser en tout état de la procédure un mode de résolution amiable des litiges, et qu'il entrera dans sa mission de concilier les parties.

Parmi les mesures les plus innovantes, on notera que le juge pourra interroger les parties sur leurs tentatives de règlement amiable de leur litige, informer les parties sur les MARC, remettre l'affaire pour permettre aux parties d'analyser la suggestion de recours aux MARC, ou encore ordonner la comparution personnelle des parties. Le juge disposera même du pouvoir d'ordonner d'office une médiation, même sans l'accord des parties, mais après les avoir préalablement entendues.

Dans un deuxième temps, Messieurs Herman Verbist et Benoit Kohl nous ont offert de très belles présentations des règlements « ADR » récemment révisés du CEPANI, à savoir les règlements organisant les procédures (i) de médiation, (ii) de mini-trial, (iii) d'expertise technique et (iv) d'adaptation des contrats. Pour recevoir un aperçu des nouveautésdans ces règlements, je me permets de vous renvoyer à la note de Monsieur Herman Verbist dans la précédente Newsletter.

Enfin, les présentations ont été suivies d'une très belle réception offerte par le cabinet Daldewolf.

- **<u>On September 14, 2018: Young ICCA & CEPANI40 skills training on "Cross-examination in International Arbitration".</u>**

On 14 September 2018, Young ICCA and CEPANI40 jointly organized a Skills Training Workshop on Cross-examination in International Arbitration, which was hosted by Jones Day at its Brussels offices. The Workshop was organized by a Steering Committee composed of Audrey Goessens, CEPANI, Brussels;

Sophie Goldman, Tossens Goldman Gonne, Brussels, and CEPANI40 Co-President; Sigrid Van Rompaey, Matray Matray & Hallet, Brussels, and CEPANI40 Co-President; and Kevin Ongenae, Ghent University, Belgium, under the guidance of Nhu-Hoang Tran Thang, LALIVE, Geneva, and Young ICCA Co-Chair, and Panos Chalkias, Hanotiau & van den Berg, Brussels, and Young ICCA Global Events Director. The Workshop was generously sponsored by Jones Day, Hanotiau & van den Berg, Liedekerke Wolters Waelbroeck Kirkpatrick, and Quinz, and was kindly supported by ICCA.

The Workshop was structured in two parts: the morning session hosted experienced practitioners who presented and discussed the essentials of cross-examination in international arbitration, while the afternoon session featured a mock cross-examination exercise, in which participants, divided into eight teams, put their newly-learned skills to the test.

The morning panel on cross-examination of witnesses, moderated by Vanessa Foncke, Jones Day, Brussels, gathered four experts in the field of international arbitration. Matthias Kuscher, De Brauw Blackstone Westbroek, Amsterdam, shared an introduction to the witness hearing process presenting the five Ws of cross-examination; Michelle Glassman Bock, Wilmer Cutler Pickering Hale, Brussels, listed and commented on the DOs and DON'Ts of cross-examination; Sean Aughey, 11KBW Chambers, London, explained how to conduct a cross-examination; and Lorraine de Germiny, LALIVE, Geneva, advised the audience on the role they could play, as junior lawyers, in preparing a cross-examination.

The presentations shared real-life examples on how the speakers dealt with challenging situations that can potentially arise in a cross-examination context and were followed by a lively discussion involving the participants. The dialogue touched upon the topics of the fundamental purpose of cross-

examination, the importance of questioning whether cross-examining a certain witness would be truly useful in a certain case, the difference in ethical rules between US- and UK-trained lawyers, the use of contradicting or supporting documents, and the role of industry experts as witnesses. Before closing the session, the panellists addressed the order of questions, the value of psychology – both in maintaining a calm attitude when cross-examining, and getting to know the witness' temperament, the function of flexibility, the emphasis produced by silence, the defences against difficult witnesses, the essence of timing, and the importance of volunteering to gain a more solid experience in cross-examination.

After the coffee break, Panos Chalkias, Hanotiau & van den Berg, Brussels, announced the division of participants into eight teams of 4/5 lawyers each, while both speakers and organizers offered to coach the teams in preparation of the cross-examination exercise.

The mock cross-examination exercise took place in parallel sessions: the first Arbitral Tribunal was composed by Maarten Draye, Hanotiau & van den Berg, Brussels; Katherine Jonckheere, Three Crowns LLP, London; and Alexander G. Leventhal, Quinn Emanuel Urquhart & Sullivan, LLP, Paris; and the second Arbitral Tribunal was formed by Nadja Al Kanawati, Schellenberg Wittmer Ltd, Zurich; Valentine Chessa, CastaldiPartners, Paris; and Jan Spangenberg, Manner Spangenberg, Hamburg.

The witnesses, masterfully performed by Guillaume Croisant, Linklaters LLP, Brussels and London; Bruno Hardy, Liedekerke Wolters Waelbroeck Kirkpatrick, Brussels; Benjamin Jesuran, Hanotiau & van Berg, Brussels; and Marine Koenig, Meyer Fabre Avocats, Paris;, have tested the dexterity and

preparedness of the teams before the patient ears of the Arbitral Tribunals.

At the end of each session, the Members of the Arbitral Tribunals carefully analysed the performance of the speakers of each team, assessing their level of preparation and quick thinking, providing personalized advice on how to improve their line of questioning in future occasions, and recalling the crucial points to focus on both while preparing and performing.

The Workshop ended with the closing remarks by the organizers and panellists, which marked the moment to leave for the cocktail reception at Kwint Brussels, on top of the scenic Mont des Arts.

- **On October 18, 2018: CEPANI40 Half-Day Academic Conference on "The issues of annulment and enforcement of Arbitral Awards in various jurisdictions".**

On 18 October 2018, CEPANI40 organized a half day and interactive seminar on the issues of annulment and enforcement of arbitral awards in various jurisdictions. Under the chairmanship of Gerard Meijer (the Netherlands; Partner at NautaDutilh in Amsterdam), Caroline Verbruggen (Belgium; Judge of the Brussels Court of Appeal), Detlev Kuehner (France; Partner at BMH Avocats in Paris), Catherine Anne Kunz (Switzerland; Counsel at Lalive in Geneva), Remy Gerbay (United Kingdom; Counsel at MoloLamken in New York) and Simon Manner (Germany; Partner at Manner Spangenberg in Hamburg) gave a general overview of the legal framework governing the annulment and enforcement of arbitral awards in their local jurisdiction.

While these jurisdictions shared several similarities, many praised the Swiss system for its speed and efficiency. The financial risk associated with the lodging of unsuccessful annulment proceedings of an award serves as a deterrent to such proceedings. The United Kingdom stood out by allowing the English judge to review questions of law in the framework of annulment proceedings, unless such possibility has been excluded by the parties themselves. In the Netherlands, the annulment

proceedings could be tried in English by the recently introduced Netherlands Commercial Court, if the parties so decide, thereby reducing the need for translation in case the arbitration proceedings were conducted in English.

The colloquium then continued on the interplay between annulment and enforcement proceedings of an arbitral award. Particularly, the members of the panel debated whether an international arbitral award annulled at the seat where it was rendered could be enforced in their local jurisdiction. France stood out on this issue, allowing the annulled award to be enforced. Germany's position appears to be much stricter, as enforcement will normally be refused if the international award has been set aside in annulment proceedings. Other countries such as Belgium and the Netherlands took a more nuanced approach and would allow enforcement only if the judgment setting aside the award would not be recognized in the local jurisdiction (e.g. for breach of public policy or the right to be heard).

Next, the members of the panel discussed the concept of public policy in enforcement and annulment proceedings . In all jurisdictions, it appeared that annulment or refusal to grant exequatur of the arbitral award would be more easily granted on the basis of the violation of procedural public policy (i.e. due process) than on the basis of the violation of substantive (international) public policy..

Finally, the panel turned to the possibility or even the duty for arbitrators to raise questions of law ex officio. Panel members noted that such issues were not always clear cut and raised the difficult balance between the need to render a valid award (and hence, compliant with public policy), the respect of the right for the parties to be heard and the risk for the arbitrators to appear biased.

Professor Gerard Meijer concluded by pointing out that the comparative approach highlighted by this enriching and interactive afternoon is often a great tool for counsel to argue for new solutions in their local jurisdiction. However, he called for greater harmonization of the interpretation of the New York Convention and the Model Law and suggested the setting up of a supranational instance (at the Benelux or EU level) to ensure such harmonized interpretation.

Pour le CEPANI40, l'année 2019 a déjà permis d'organiser:

- **On February 15, 2019 in Amsterdam: Joint Conference CEPANI40 – NAI Jong Oranje – DIS40 on Battle of jurisdictions, seats and arbitral institutions? Young perspectives on comparing arbitration in the Netherlands, Belgium and Germany;**
- **On April 3, 2019 : White & Case Seminar on "oral advocacy" in International Arbitration Brussels' Vis Pre-Moot;**
- **On April 13, 2019 in Vienna: Networking drink on the occasion of the 26th Annual Willem C. Vis International Commercial Arbitration Moot ;**
- **On May 8, 2019: Van Bael & Bellis event on EU law and Investment Arbitration.**

Et se poursuivra avec d'autres évènements toujours aussi intéressants pour les praticiens de l'arbitrage et de nombreuses opportunités de networking tels que:

- **November 13, 2019: Networking event at Vertigo Bar, Brussels;**
- **November 15, 2019: CEPANI's 50th Anniversary! Morning debate on "Artificial Intelligence, Blockchains and International Arbitration - what to expect?"**

WERKGROEPEN

REVISION CEPANI ARBITRATION RULES

PRESIDENT OF THE STEERING GROUP:

Dirk DE MEULEEESTER

STEERING GROUP:

Benoît ALLEMEERSCH

Olivier CAPRASSE

Benoît KOHL

MEMBERS:

Marc DAL

Werner EYSKENS

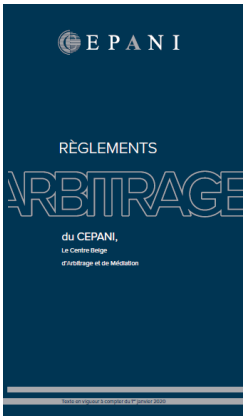
Didier MATRAY

Jean-François TOSSENS

Emma VAN CAMPENHOUDT

Patrick VAN LEYNSEELE

Herman VERBIST



In 2020 CEPANI will launch a revised version of its Arbitration Rules.

As from 2017, the CEPANI Secretariat, frequent users of the CEPANI Arbitration Rules, as well as recognized experts in the field of international commercial arbitration were thereby given the opportunity to comment upon the CEPANI 2013 Arbitration Rules.

A Steering Group was constituted to revise each article of the CEPANI 2013 Arbitration Rules in detail. The Members of this Steering Group were Mr Dirk De Meulemeester, Mr Benoît Allemeersch, Mr Olivier Caprasse and Mr Benoît Kohl.

Generally, the changes proposed by Steering Group find their explanation in one of the following grounds:

- Troubleshooting: certain provisions in the CEPANI 2013 Arbitration Rules could cause needless discussions on their exact meaning; various changes proposed by the Steering Group were proposed specifically so that such discussions could be avoided;
- Modernizing: the Steering Group proposed to change certain provisions in the CEPANI 2013 Arbitration Rules so that these provisions would be in line with the trends and developments in the international commercial arbitration community (e.g. article 33 - scrutiny);
- Consistency: certain changes are proposed so that the use of certain terms throughout the Arbitration Rules would be more consistent;
- Aligning different language versions.

This proposal of CEPANI Rules of Arbitration by the Steering Group was to be considered as a 'work in progress' and a starting point for the Working group constituted by the CEPANI Board of Directors (Mr. Didier Matray, Ms. Emma Van Campenhoudt, Mr. Marc Dal, Mr. Jean-François Tossens, Mr. Herman Verbist and Mr. Werner Eyskens and the members of the Steering Group).

DIGITAL ARBITRATION

VOORZITTER:

Dirk VAN GERVEN

LEDEN:

Tom HEREMANS

Camille LIBERT

Mathieu MAES

Kevin ONGENAE

Flip PETTILLION

Maud PIERS

Tijs PLANCKAERT

Emma VAN CAMPENHOUDT

Herman VERBIST

Sebastien VERCRUYSSE

Etienne WERY

De nieuwe werkgroep *digital arbitration* werd door de Raad van Bestuur van CEPANI opgericht met als doel na te gaan op welke manier arbitrage op digitale wijze naar de toekomst toe kan georganiseerd worden. De eerste vergadering van de werkgroep vond plaats op 9 mei 2019, waarbij uit een boeiende discussie een aantal actiepunten werden vastgesteld. In het licht van de inwerkingtreding van het herziene CEPANI arbitragereglement, zullen eventuele obstakels voor digitalisering in het reglement geanalyseerd worden. Voorts, zal onder meer onderzocht worden hoe men de domeinnaamprocedure integraal via een online platform kan laten verlopen.

U ziet, CEPANI stoomt zich klaar voor een nieuwe digitaliseringsgolf!

PROMOTIE VAN ARBITRAGE

VOORZITTER:

Philippe LAMBRECHT

LEDEN:

Patrick BAETEN

Sarah DE GEYTER

Quentin DECLEVE

Ludo DEKLERCK

Benoit FERON

Michel FLAMEE

Audrey GOESSENS

Damien HIZETTE

Françoise LEFEVRE

Gautier MATRAY

Mathieu MAES

Emma VAN CAMPENHOUDT

Dirk VAN GERVEN

L'année 2017 et le début de l'année **2018** ont permis au groupe de travail Promotion de l'Arbitrage de réaliser, parmi leurs nombreux travaux et grâce à l'aide précieuse de LDV Production, une vidéo explicative sur l'arbitrage. Cette vidéo s'adresse à toute personne peu ou pas encore familière avec l'arbitrage et explique très simplement ce qu'est l'arbitrage et ses nombreux avantages.

N'hésitez pas à regarder la vidéo sur notre site internet www.cepani.be ou sur youtube !

Surtout restez connectés, un autre projet est également en cours…

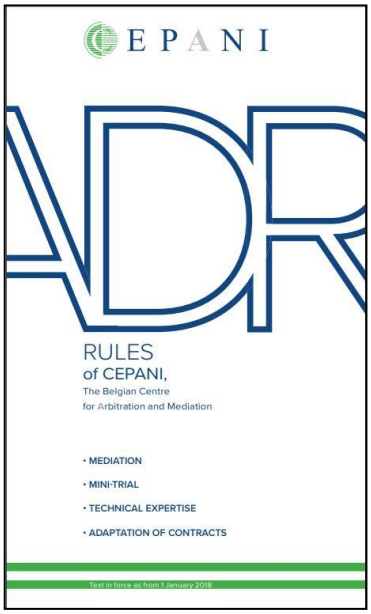
… le résultat sera bientôt à découvrir !!!

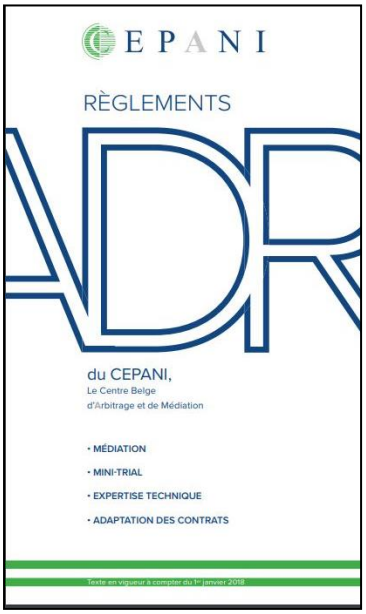
HERZIENING MINI-TRIAL, TECHNISCHE EXPERTISE, AANPASSING VAN CONTRACTEN

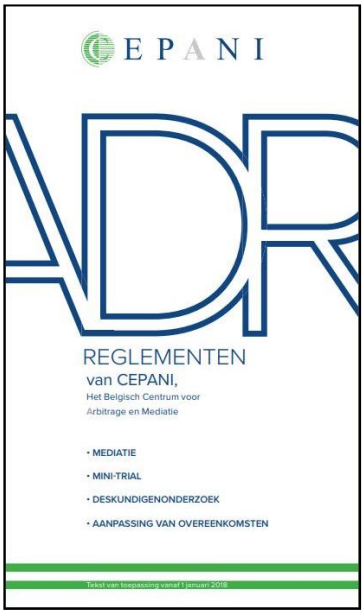
VOORZITTER:	Guy KEUTGEN
Herman VERBIST	Charles PRICE
LEDEN:	Piet TAELMAN
Olivier CAPRASSE	Emma VAN CAMPENHOUDT
Filip DE LY	Patrick VAN LEYNSEELE
Johan ERAUW	Francis WALSCHOT

CEPANI offers a set of rules for different methods for settlement of disputes. Arbitration is one of them. Other methods are: **Mediation**, **Mini-trial, Technical Expertise** and **Adaptation of Contracts**.

The CEPANI Rules for Mediation, Mini-trial, Technical Expertise and Adaptation of Contracts were recently revised by this Task Force. The new CEPANI rules for ADR entered into force as from the **1st of January 2018**.







EFFECTIVE CASE MANAGEMENT

VOORZITTER:

Dirk DE MEULEMEESTER

LEDEN:

Marc DAL

Luc DEMEYERE

Ralph DE WIT

Pascal HOLLANDER

Guy KEUTGEN

Philippe LAMBRECHT

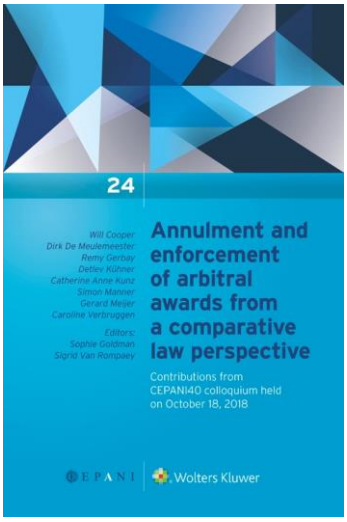
Emma VAN CAMPENHOUDT

Vera VAN HOUTTE

Herman VERBIST

PUBLICATIONS

OUVRAGES SCIENTIFIQUES



Annulment and enforcement of arbitral awards from a comparative law perspective

Will Cooper, Dirk De Meulemeester, Remy Gerbay, Detlev Kühner, Catherine Anne Kunz, Simon Manner, Gerard Meijer, Caroline Verbruggen,

Editors: Sophie Goldman, Sigrid Van Rompaey

This book on "enforcement and annulment of arbitral awards from a comparative law perspective" provides a practical reference guide for international arbitration practitioners confronted with such proceedings in Belgium, France, Germany, Switzerland, England and The Netherlands.
Five arbitration experts, including representatives of private practice, the judicial system and academia, have accepted to share their insight on how their legal systems deal with the challenges that may arise in enforcement and annulment proceedings. These reports provide both a practical and a critical analysis of the state of affairs in each of the selected jurisdictions. For comparative purposes, every report follows a similar structure, covering the relevant issues in enforcement and annulment proceedings: I) A general overview of the enforcement and annulment proceedings; II) The interaction between annulment and enforcement of awards; III) The concept of "public policy" in enforcement and annulment proceedings; and IV) The grounds relating to the power of the arbitral tribunal. A world renowned arbitrator has provided for the concluding remarks to the impressive exchange of ideas presented by the authors on the various chapters, while, at the same time, presenting to the reader the main features of the arbitration framework in his own jurisdiction with regard to the issues listed above.

By putting together the legal background of the countries listed above, with a particular focus on these specifi c bottleneck issues inherent to enforcement and annulment proceedings in arbitration, this book is a

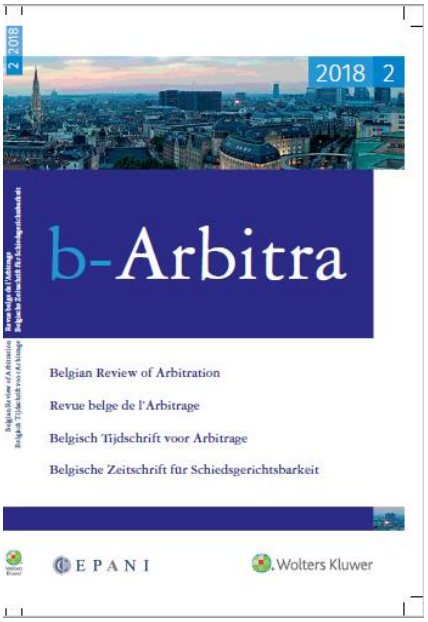
must have tool for every arbitration practitioner with a practice that stretches beyond its national border.

NEWSLETTER

CEPANI publiceert maandelijks een nieuwsbrief met korte informatieberichten omtrent arbitrage en CEPANI. Deze nieuwsbrief wordt elektronisch gepubliceerd en is beschikbaar op onze website.

Veel dank aan Maxime Berlingin, Maarten Draye, Sophie Goldman en Sigrid Van Rompaey die er elke maand voor de publicatie van instaan.

B-ARBITRA



b-Arbitra, la revue belge pour l'arbitrage, est une initiative du CEPANI, le Centre belge d'arbitrage et de médiation. La revue semestrielle comprend des contributions en anglais et dans les trois langues officielles de la Belgique, qui sont le français, le néerlandais et l'allemand. Chaque article est accompagné d'un résumé en anglais. Les contributions qui y sont publiées sont soumises à une relecture

scientifique, suivant la procédure du peer-review.

b-Arbitra entend soutenir la recherche scientifique sur des questions fondamentales en relation avec l'arbitrage et promouvoir une analyse critique et innovatrice de ces questions ainsi que des thèmes plus concrets qui sont importants pour le public de l'arbitrage. La revue veut également engager un débat sur de nouvelles questions dans le domaine de l'arbitrage et constituer un forum pour l'échange d'information en

Europe, à la lumière de l'internationalisation de l'arbitrage et de l'accroissement des litiges transfrontaliers.

STATISTICAL OVERVIEW

INTRODUCTORY NOTE

This yearly report provides a statistical overview of **CEPANI** arbitration in **2018** and the evolution in comparison with past years.

In this report, you will find information about proceedings administered by **CEPANI** such as the origin of the Parties, the language, the constitution of Arbitral Tribunals, women in arbitration and more.

The 2018 statistics show that, regarding the geographical origin of the Parties, the challenges of Arbitrators, or the average duration of proceedings, the trends mostly remain the same as in previous years.

However, other parameters such as language, nature of the dispute and the constitution of the Arbitral Tribunals have evolved slightly in 2018 as compared to 2017.

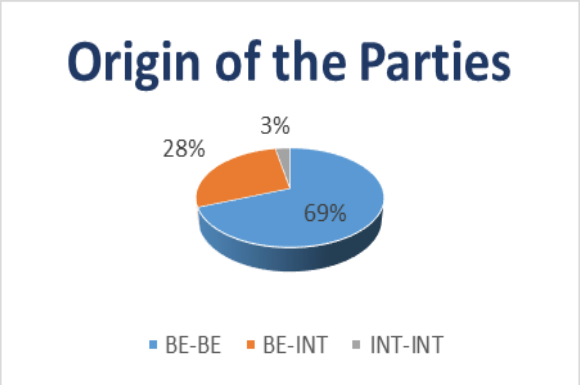
CEPANI continues its commitment to ensure that each case is handled with the requested efficiency, rapidity, and efficacy, and in accordance with the specific needs of the Parties.

PARTIES

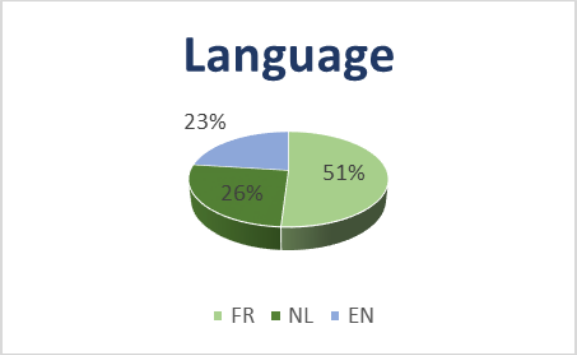
GEOGRAPHICAL ORIGIN

Bahrein	1
France	1
Italy	2
Iran	1
Luxembourg	5
Netherlands	5
Switzerland	1
United Kingdom	2

In 2018, 69 % of the cases were introduced between Belgian Parties, 28 % between at least one Belgian and an International Party, and 3% of the cases were introduced between only International Parties.

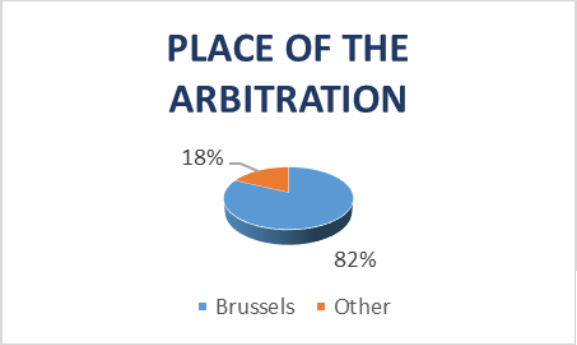


LANGUAGE



In 2018, there has been an increase of French cases compared to 2017. Indeed, 51% of the cases were introduced in French, 26% in Dutch and 23% in English.

PLACE OF ARBITRATION

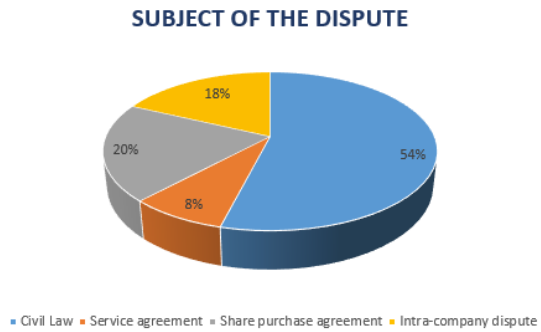


Brussels as place of arbitration is a steady trend.

In 2018, 82% of the cases had Brussels as seat of arbitration and 18% of the cases had their seat in another city.

In comparison to 2017, 70% of the cases had Brussels as seat of arbitration and 30% of the cases had their seat in another city

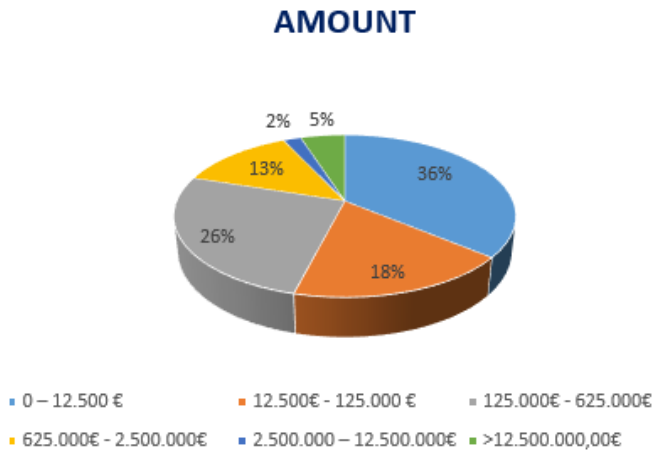
NATURE OF THE DISPUTE



In 2018, 54% of the cases concerned general issues of contract law.
8% related to a service agreement.
20% related to a share purchase agreement.
18% related to an intra-company dispute.

In comparison to 2017, general issues of civil law and intra-company related disputes cases have increased even more.

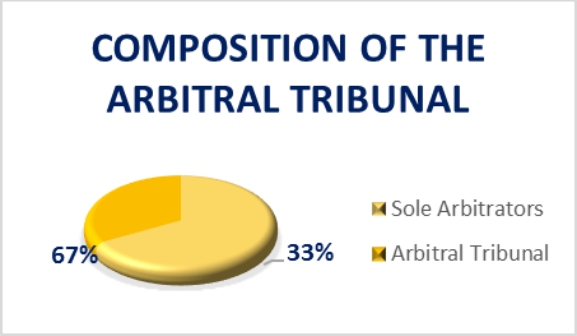
AMOUNT IN DISPUTE



0 – 25.000 €	36%
25.000€ - 125.000 €	18%
125.000€ - 625.000€	26%
625.000€ - 2.500.000€	13%
2.500.000€ – 12.500.000€	2%
> 12.500.000€	5%

ARBITRAL TRIBUNAL

CONSTITUTION



The majority, i.e. 67%, of the Arbitral Tribunals were composed of a Sole Arbitrator. 33% of the Tribunals were composed of three Arbitrators.

The trend marks an important change when compared to 2017, when a majority of the Arbitral Tribunals were composed of three Arbitrators.

	Proposed and appointed by the Appointment Committee	Proposed by the Parties / confirmed by the Appointment Committee
Chairman of the Arbitral Tribunal composed of three arbitrators	43 %	57 %
Arbitral Tribunal composed of a sole arbitrator	93 %	7 %

In 2018 one emergency Arbitrator was appointed.

WOMEN IN ARBITRATION

In 2018, 23% of the Arbitrators appointed by CEPANI were women, 87,50% of which were nominated by CEPANI and 12,50% by the Parties.

CHALLENGES AND REPLACEMENTS OF ARBITRATORS

In 2018, no arbitrator was challenged nor replaced.

AVERAGE DURATION OF CEPANI PROCEEDINGS IN 2018

In 2018, as in 2017, an arbitration procedure administrated under the CEPANI Rules lasted an average **15 months**, calculated as follows:

- Introduction to the constitution of the Arbitral Tribunal = 2 months.

The CEPANI Rules normally provide for a one-month deadline. The delay in practice is generally due to delays in the payment of the provision for arbitration costs by the Parties. Under CEPANI Rules, the Appointment Committee shall only appoint the Arbitral Tribunal when the provision for arbitration costs is paid in full.

- Constitution of the Arbitral Tribunal to the Terms of Reference = 2 months.

- Terms of Reference to the Award = 11 months.

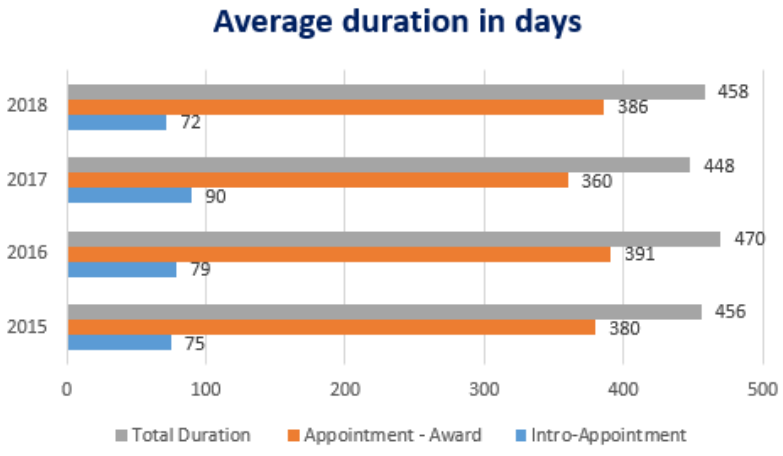
When drawing up the Terms of Reference, or as soon as possible thereafter, the Arbitral Tribunal will organize a case management meeting between the Arbitral Tribunal and all Parties involved in the proceedings. This meeting may take place in person or via telephone or video conference. After having consulted the Parties, the Arbitral Tribunal will draw up in a separate document the Procedural Timetable.

It is recommended that the Parties not only send their Counsel to attend this meeting, but to also be present themselves. This may positively influence the time limits agreed upon. In any case, the Parties themselves are likely to have a better understanding of the arbitration process and to be in a better position to estimate what time limits are realistic.

The CEPANI Rules grant the Arbitral Tribunal a deadline of six months to render its Award as from the signature of the Terms of Reference. The average time limit of 11 months is due to the fact that, with the Parties' consent, Arbitral Tribunals often establish procedural timetables exceeding – and thus extending – the six month deadline provided for in the CEPANI Rules.

Constitution of the Arbitral Tribunal to the Award = **13 months**

Total average duration of CEPANI arbitrations in 2018: **15 months**



BEHEER VAN CEPANI

Dirk De Meulemeester

Voorzitter

(06.2014 - …)

Philippe Lambrecht

Vice- Président

(09.2017-…)

Didier Matray

Vice- Président

(06.2014-…)

Maud Piers

Vicevoorzitter

(06.2017-…)

Dirk Van Gerven

Vicevoorzitter

(06.2014-…)

Lydie Roulleaux

Attachée juridique

(02.2019 - …)

Emma Van Campenhoudt

Secrétaire – Générale

(09.2017-…)

Camille Libert

Juridisch attaché

(03.2015 - …)

LEDENAFDELING

In **2018** viel ons de eer te beurt om als leden te mogen verwelkomen:

Filip De LY

Bart VOLDERS

Karel SCHULPEN

Hans VAN GOMPEL

Patricia CAPPUYNS

Olivier VAN HULST

Olivier RALET

Marc HENRY

Jan KLEINHEISTERKAMP

Alexandre HUBLET

Andréa CARLEVARIS

Pierre VERMEIRE

Dorothée VERMEIREN

Yves DELACOLETTE

Guillaume CROISANT

Julien FOURET

Ilse SAMOY

Jean-François VAN DROOGHENBROECK

Herlinde BUREZ

Marijn DE RUYSCHER:

Claire Morel DE WESTGAVER

Dodo Chochitaichvili

Sébastien Champagne

Géraldine Sauvage

Robbie TAS

Thalia KRUGER

Roel NIEUWDORP

Louis DERWA

Alain COSTANTINI

Els VAN POUCKE:

Hilde DE JONGE:

Frederiek BAUDONCQ

Michael WARSON

Olivier VAN WOUWE

Roger RITZEN

Steve GRIESS

Elias J. GHANEM

Michel COPPENS

Hoe lid worden?

Eénieder met belangstelling voor arbitrage of bemiddeling, ongeacht zijn/haar nationaliteit, kan lid worden van CEPANI.

De leden van CEPANI genieten de volgende voordelen:

- Een verminderde inschrijvingsprijs voor alle activiteiten van CEPANI;
- Een verminderde prijs voor de boeken en tijdschriften die CEPANI publiceert;
- Vermelding in de ledenlijst op de CEPANI-website;
- Vermelding in het repertorium van de CEPANI-leden.

Let wel: lidmaatschap van CEPANI biedt geen garantie of recht op een benoeming tot arbiter.
Iedere aanvraag tot lidmaatschap dient via het online formulier te worden bezorgd aan de voorzitter van CEPANI.

De aanvraag wordt op de eerstvolgende vergadering voorgelegd aan de Raad van Bestuur, die vervolgens beslist of de voorgelegde kandidatuur wordt aanvaard.

Overeenkomstig de statuten moet een kandidatuur steeds worden ondersteund door twee bestaande leden van CEPANI.

Vervolgens vragen wij u een recente versie van uw Curriculum Vitae te sturen aan info@cepani.be.

Tot slot dient u de twee bestaande leden te vragen hun ondersteuning van uw kandidatuur bekend te maken in een schrijven gericht aan de voorzitter van CEPANI, op het adres Stuiversstraat 8, 1000 Brussel.

In 2018 bedraagt de prijs voor het lidmaatschap 250,00 EUR excl. BTW (302,50 EUR incl. BTW).
Het lidmaatschapsgeld omvat een jaarabonnement op het Belgisch tijdschrift voor arbitrage b-Arbitra.

Wij danken u alvast voor uw interesse in CEPANI en kijken er naar uit u te mogen verwelkomen op onze activiteiten!

BERICHT

ACADEMIC PRIZE

CEPANI ACADEMIC PRIZE 2018

One of CEPANI's goals is to actively promote the knowledge and use of arbitration a.o. by encouraging the study of arbitration on a national and international level. Without a doubt, our young professionals take up a central spot in the elaboration of this mission. To support this young talent in particular, CEPANI takes great pride in organizing an **Academic prize** which rewards an **outstanding paper** in the field of national or international **arbitration**. The goal of this competition is to offer young professionals with an interest in the field the chance to gain recognition among their

peers. CEPANI's Academic Prize, which amounts to € 5.000, is awarded every three years. The competition is open to anyone who is **under** the age of **40** on the 1st of September of the year in which the prize is awarded, i.e. **1st of September 2018**.

The CEPANI Academic Prize edition 2018 will be awarded during CEPANI's annual General Assembly held on **June 6, 2019.**

CEPANI SIGNED COOPERATION AGREEMENT WITH ARGENTINEAN BUSINESS MEDIATION AND ARBITRATION CENTRE

On June 26, the Belgian Centre for Arbitration and Mediation (CEPANI) and the Argentinean Business Mediation and Arbitration Centre (CEMA) signed an international cooperation agreement at the Alvear Hotel in Buenos Aires. The ceremony occurred within the framework of the official visit of Princess Astrid, who arrived in Argentina accompanied by 137 businessmen in order to promote the commercial relationship between the two countries.

Representatives of both institutions participated in the signing ceremony, along with Princess Astrid of Belgium and a large part of her delegation.

The signed commitment establishes the exchange of resources, sharing infrastructure to hold hearings or meetings in both countries, arbiter lists and also the results of investigation works. In addition, it contemplates the organization of conferences and events looking forward to promote both centres in Europe and Latin America.

Dirk Van Gerven, vicepresident of CEPANI, highlighted the importance of joining forces to achieve greater visibility: "We need to work together in order to make ourselves more noticed and make sure companies and businesses know about us so that they more easily go for arbitration."

"The agreement signed with CEPANI provides us a tool to incorporate foreign criteria and experiences in the administration of mediation and arbitration. It should be noted, the special importance of adding a new international extension that allows us to expand even more", concluded Paul Richards, secretary of the Argentinean Business Centre for Mediation and Arbitration.

DANKBETUIGING

Geachte collega's, zoals u weet, heeft Audrey Goessens sinds 1 april 2019 afscheid genomen van CEPANI.

Gedurende 8 jaar heeft Audrey, vooreerst als juridisch attaché en later als adviseur, aanzienlijk bijgedragen aan de ontwikkeling van onze organisatie. Zij behandelde meer bepaald nauwgezet alle Franstalige dossiers, en stond in voor de organisatie van de verschillende evenementen georganiseerd door zowel CEPANI als CEPANI40. Audrey heeft tevens gedurende een aantal jaren haar steentje bijgedragen aan de organisatie van de Brussels Premoot. Tot slot, en als kers op de taart, stond Audrey in voor de ontwikkeling van de nieuw opgefriste website van CEPANI.

Zij verrichtte dit alles zeer talentvol, met doorzettingsvermogen en visie. Om deze redenen, wensen wij in naam van een unanieme Raad van Bestuur, onze dank te betuigen aan Audrey, aan wie wij het beste toewensen met haar nieuwe professionele uitdaging.

Het ga je goed Audrey!

Dirk De Meulemeester, Voorzitter van CEPANI
Emma Van Campenhoudt, Secretaris-Generaal van CEPANI
Camille Libert, Juridisch attaché van CEPANI

PARTNERSHIPS

Le CEPANI faisant office de voie d'accès à la communauté belge de l'arbitrage, de nombreuses entreprises ont manifesté leur intérêt.

Le CEPANI a décidé d'accéder à ces demandes, tout en appliquant des normes strictes.

En tant que centre d'arbitrage, le CEPANI estime que l'indépendance, l'impartialité et l'intégrité constituent des exigences primordiales et cruciales pour assurer son bon fonctionnement et inspirer la confiance auprès de ses utilisateurs.

Par conséquent, les partenaires du CEPANI doivent être des entreprises qui

appliquent elles-mêmes des normes strictes, jouissent d'une réputation sans faille et figurent au premier plan dans leur domaine.

Partners van CEPANI mogen op geen enkele manier betrokken partij zijn bij arbitrageprocedures die CEPANI leidt.

Aangeslotenen of personeelsleden van CEPANI-partners mogen geen functies uitoefenen in de bestuursorganen van CEPANI en mogen evenmin worden aangesteld of bekrachtigd als arbiter, mediator, scheidsrechter of expert.

Partnerships worden aangegaan met het oog op een langdurige relatie en kunnen alleen op een niet-opzichtige en esthetisch verantwoorde manier in beeld komen op de CEPANI-website, in de CEPANI-newsletter en tijdens conferenties waarvan CEPANI of CEPANI40 de hoofdorganisator is.

* * *

Op 15 november 2016 is CEPANI een partnership aangegaan met Wolters Kluwer Belgium voor een aanvangsperiode van vijf jaar. Wolters Kluwer Belgium biedt informatie, software en diensten aan juridische, tax, accounting, finance en HSE professionals en bedrijven. Ze helpen hun klanten efficiënter en effectiever te werken en vol vertrouwen beslissingen te nemen.

CEPANI en bMediation hebben een samenwerkingsovereenkomst gesloten.

Pierre Schaubroeck, Ere-Voorzitter bMediation: "*CEPANI en bMediation zijn belangrijke actoren op het gebied van de buitengerechtelijke geschillenbeslechting. CEPANI legt zich in hoofdzaak toe op arbitrage, terwijl bMediation zich op bemiddeling concentreert. Een samenwerking tussen beide organisaties ligt dan ook voor de hand.*"

Dirk De Meulemeester, Voorzitter CEPANI: "*De samenwerking is het samenbrengen van expertise en is een belangrijke stap om de versplintering in het landschap van buitengerechtelijke geschillenbeslechting te remediëren.*"

Door samen te werken willen beide organisaties actief bijdragen tot een doorbraak van duurzame effectieve methodes van geschillenbeslechting in burgerlijke en commerciële zaken.

Zowel bMediation als CEPANI onderschrijven daarmee het plan van de Minister van Justitie om onder meer bemiddeling een volwaardige plaats te doen verwerven in het Belgische justitielandschap.

Hun samenwerking zal zich o.a. uiten in informatie en overleg aangaande wetgevende initiatieven en inzake lezingen, colloquia, studiedagen en opleidingen. Zo werd de jaarlijkse Business Mediation Summit op 26 januari 2017 voor het eerst gezamenlijk georganiseerd door bMediation, het Instituut voor Bedrijfsjuristen en CEPANI .

Beide organisaties behouden hun eigen structuren en hun bestaande samenwerkingsverbanden, maar zullen zich thans samen inzetten voor de realisatie van een waarachtige cultuur van duurzame geschillenbeslechting in België. Ze staan evenzeer open voor samenwerking met andere organisaties die deze doelstelling van algemeen belang nastreven.

NOTES

TABLE DES MATIERES

FOLLOW US ON LINKEDIN!!

CEPANI npo

Stuiversstraat 8 Rue des Sols
Brussel 1000 Bruxelles
tel +32-2-515.08.35
info@cepani.be www.cepani.be