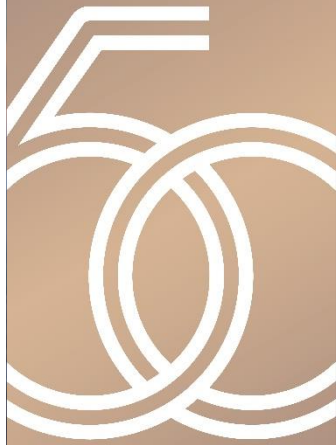


CEPANI



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February 2020

Editors in chief: Guillaume Croisant, Marijn De Ruysscher, Maarten Draye and Olivier van der Haegen



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AGENDA

1 APR 2020	(08:30 - 10:00)	What's the Seat got to do with it? (CEPANI40/CFA40/ASA40 joint event Paris Arbitration Week)
4 JUN 2020	(16:00 - 19:00)	CEPANI General Assembly
5-6 JUN 2020	(00:00 - 00:00)	Co-Chairs' Circle Global Conference
26 NOV 2020	(09:00 - 16:00)	CEPANI Colloquium Arbitrage en Fraude / Colloque CEPANI Arbitrage et la Fraude

REPORTS

- » [REPORT ON THE 71ST UNCITRAL WORKING GROUP II MEETING](#)
- » [REPORT ON THE CEA -40 EVENT ON "JURISDICTION AND EVIDENCE IN SPORTS ARBITRATION"](#)
- » [REPORT ON THE CEA EVENT ON "A NEW LANDSCAPE FOR EU LAW AND ARBITRATION"](#)

**REPORT ON THE 71ST
UNCITRAL WORKING GROUP
II MEETING**

NEW YORK, 3-7 FEB 2020



Emma VAN CAMPENHOUDT
Secretary General CEPANI

For a number of years, CEPANI has participated as an observer to the activities of Working Group II of the United Nations Commission on International Trade Law (UNCITRAL). From the 3rd to the 7th of February 2020, the seventy-first session of this Working Group took place in New York, which was attended by a CEPANI delegation consisting of CEPANI President **Dirk De Meulemeester**, Secretary-General Ms **Emma Van Campenhoudt** as well as CEPANI members Mr. **Maxime Berlingin**, Mr. **Maarten Draye** and Ms. **Vanessa Foncke**.



At its fifty-first session, the UNCITRAL Commission decided to mandate Working Group II to take up issues relating to expedited arbitration. Accordingly, at its sixty-ninth session in New York and its seventieth session in Vienna, the Working Group commenced its consideration of issues relating to expedited arbitration. During these sessions, the Working Group agreed on focusing on establishing an international framework on expedited proceedings, without any prejudice as to which form this would take (set of rules, model clauses, guidance texts, or other). Following these two sessions, the UNCITRAL Secretariat was requested to prepare [draft texts](#) on expedited arbitration, bearing in mind that the decision to determine the final presentation of the expedited arbitration provisions ("EAP") would be taken at a later stage.

During the seventy-first session Working Group II, chaired by **Mr. Andrés Jana** (Chile) proceeded with the consideration of the draft EAP as prepared by the Secretariat.

The main discussions related to the scope of the EAP, the notice of arbitration and the designating and appointing authority.

Regarding the scope of the EAP, it was agreed that for the EAP to apply, an express agreement of the parties would be required. Express consent is retained as sole criterion for EAP to apply.

With respect to the notice of arbitration, the question was raised whether it should be treated as a statement of claim. The Working Group agreed that the notice of arbitration and the response thereto as well as the statement of claim and defense should be examined taking into account the time frames in the EAP and the need to ensure an expedited process. The Secretariat was requested to provide possible options for further consideration.



Another point raising particular questions relates to the appointment of the arbitrator and the designating and appointing authority. The Working Group agreed that parties should jointly agree on a sole arbitrator in expedited arbitration, if possible. The Working Group generally felt that a short time period should be provided to allow the parties to reach an agreement. In the absence of an agreement by the parties, an appointing authority would become involved at the request of one of the parties. After lengthy discussion, the Working Group agreed that the EAP should provide that, if the parties were not able to agree on the choice of an Appointing Authority within a fixed time period, any party could make the request to the Secretary General of the PCA to either designate the appointing authority or to act as Appointing Authority. Lastly, it was agreed that considering the importance of the parties agreeing on an Appointing Authority in Expedited Proceedings, the Working Group would consider how that aspect could be further emphasized in the model arbitration clause.

At the end of the session, the Secretariat was requested to prepare a revised draft of the EAP as an appendix to the UNCITRAL Arbitrations Rules without prejudice to the decision of the Working Group on the final presentation of the EAP. The Secretariat was further requested to address the interaction between expedited arbitration provisions and the UNCITRAL Arbitration rules, and to provide an overview of the different time frames that would be applicable in expedited proceedings.

Tentative dates for the seventy-second meeting in Vienna are 21 to 25 September 2020.

JURISDICTION AND EVIDENCE IN SPORTS ARBITRATION

BRUSSELS, 21 FEB 2020



Iuliana IANCU
Partner, Hanotiau & van den Berg

Emily HAY
Senior Associate, Hanotiau & van den Berg

On Friday, February 21st, 2020, Brussels welcomed a CEA-40 event, titled “Jurisdiction and Evidence in Sports Arbitration”.

The event was organized by **Ms. Iuliana Iancu** (Partner, Hanotiau & van den Berg, Brussels) and **Ms. Emily Hay** (Senior Associate, Hanotiau & van den Berg, Brussels), and was sponsored by ALTIUS. ArbitralWomen, CEPANI40, DIS40 and TDM offered institutional support. The CEA-40 event preceded the V Annual Conference of the Belgian Chapter of the CEA later the same day.

The CEA-40 event opened with the keynote speech of **Mr. Wouter Lambrecht** (Attorney at law, FC Barcelona), who set the scene with a brief historical overview of the Court of Arbitration for Sport and an introduction to the main features of sports arbitration.



The event then continued with a panel on jurisdictional issues superbly moderated by **Ms. Carmen Nuñez-Lagos** (Independent Arbitrator, Núñez-Lagos Arbitration). The speakers, **Mr. Maarten Draye** (Partner, Hanotiau

& van den Berg, Brussels), **Mr. Tomás Navarro-Blakemore** (Associate, Froriep, Geneva), **Mr. José Carlos Páez** (Partner, Nebot & Páez Abogados, Madrid) and **Mr. Hannes D’Hoop** (Chief Legal Officer, Club Brugge), explored, based on questions from Ms. Nuñez-Lagos, issues such as: whether sports arbitration can be deemed voluntary arbitration in light of the athletes’ options; whether first instance disciplinary proceedings by sports federations can ever be independent; the participation of third parties (in particular WADA) to sports arbitration proceedings; and whether doping cases, employment cases, disciplinary proceedings or proceedings raising ethical issues fit neatly into the category of arbitrable disputes.



The second panel, expertly moderated by **Mr. Giulio Palermo** (Partner, Archipel), dealt with evidentiary issues in sports arbitration. **Dr. Annabelle Möckesch** (Senior Associate, Schellenberg Wittmer) analysed the burden and standard of proof in doping cases, highlighting particular issues with doping cases involving minors. **Mr. Alexander Vantghem** (Associate, ALTIUS) covered evidence gathered by disciplinary prosecutors from parallel criminal investigations and proceedings, in light of parallel match-fixing proceedings in Belgium. **Ms Giulia Vigna** (Associate, Coccia De Angelis Vecchio & Associati) followed up with the admissibility of illegally obtained evidence, including the particular balance of public and private interests that have been found to apply. Finally, **Ms. Olga Hamama** (Partner, V29 Legal) addressed the restrictions associated with the hearing of anonymous or protected witnesses. She also discussed evidence to prove match-fixing using detection systems which analyse irregular betting movements with mathematical models and algorithmic analysis.

A NEW LANDSCAPE FOR EU LAW AND ARBITRATION

BRUSSELS, 21 FEB 2020



Guillaume CROISANT
Associate, Linklaters
Lecturer, ULB

After the morning session on sports arbitration, the capital of Europe also welcomed a CEA’s Belgian Chapter-CEA mujeres event on EU law and arbitration, hosted by Van Bael & Bellis.

The seminar was the occasion to discuss the two most topical subjects in this respect, namely dispute resolution at the time of EU Bilateral free trade agreements, and competition law damages claims in arbitration.

After a warm welcome by **Paul Lefebvre** (Partner, Hanotiau & van den Berg), **Philippe de Baere** (Partner, Van Bael & Bellis) and **Urquiola De Palacio** (President of the Corte de Arbitraje de Madrid and of the CEA Mujeres), **Patricia Shaughnessy** (Stockholm University) brilliantly set the scene of the afternoon’s discussions by presenting the main recent

developments of EU law and arbitration, and the main challenges and opportunities thereof.



The first panel, moderated expertly by **Erica Stein** (Partner, Dechert Brussels), joined with brio by **Nikos Lavranos** (Secretary General of EFILA, Amsterdam) as special discussant, dealt with dispute resolution at the time of EU free trade agreements, in the wake of the CJEU's *Achema* case and Opinion 1/17. Before a lively discussion with the audience, each panellist focused on a specific issue. **Isabelle Van Damme** (Counsel, Van Bael & Bellis) started with a thorough presentation of the DR's shift from WTO to bilateral FTAs, followed by **Gisèle Stephens-Chu** (Counsel, Freshfields Paris) who convincingly defended the position that ICSID was still very much at the agenda despite the EU's push towards a multilateral investment court. **Colin Brown** (Deputy Head of Unit, European Commission) then very bravely entered the lion's den, presenting the EU's criticisms to the current traditional ISDS mechanisms and the EU's proposal for reform. Finally, **Urquiola De Palacio** (President of the Corte

de Arbitraje de Madrid and of the CEA Mujeres) gave interesting food for thought to the participants, by offering further reflections on the EU's proposal.

In between the two panels, **Philippe Pinsolle** masterfully summarised the essence of the discussion, and the key questions that lie ahead.

Edurne Navarro Varona (Partner, Uría Menéndez Brussels) moderated with brio the second panel, on competition law damages claims in arbitration. **Françoise Lefèvre** (Partner, Linklaters Brussels) first introduced the general relationship between arbitration and competition law, and presented some of the CJEU's landmark cases, including *Mitsubishi* and *Eco Swiss*. She was followed by interesting presentations of **Carlo Edoardo Cazzato** (Lipani Carticalà & Partners, Rome) on leniency programme in the context of follow-on actions and **Elena Gutiérrez García de Cortázar** (EGGC arbitration, Madrid and Paris) on the private enforcement directive's tools in arbitration. The panel was concluded by **Gian Marco Solas** (Omni Bridgeway) and **Enrique Andreu** (Compass Lexecon Europe), who discussed with enthusiasm, respectively, the third party financing of cartel damages claims and the quantification of damages of such claims.



NEWS

» GLOBAL CO-CHAIRS CIRCLE ON LEGITIMACY *IN AND OF* ARBITRATION (5-6 JUNE 2020)

CEPANI40 is delighted to host the Fourth Global Conference of the Co-Chairs' Circle (CCC).

The CCC Conference is organized as a joint effort by 38 groups of young arbitration associations from around the world and aims to bring the future generation of arbitration practitioners together.

The first three editions of the CCC Global Conference proved to be a tremendous success, with attendance by more than 150 practitioners.

The full programme, registration form and all other practical information are available [here](#).



Global Conference of the Co-Chairs' Circle Legitimacy *in and of* Arbitration

This conference is hosted by **CEPANI40**.

Keynote speech by Prof. Bernard Hanotiau, *Hanotiau & van den Berg*.

An informal get-together will be organised on Thursday evening.

An informal get-together will be organised on Thursday evening.

Keynote speech by Prof. Bernard Hanotiau, *Hanotiau & van den Berg*.

This conference is hosted by CEPANI40.

» **CEPANI 50TH ANNIVERSARY EVENTS PICTURES ONLINE!**

The pictures of the 50th anniversary events are now available through [this link](#):



A **video report** of the 14 November 2019 academic sessions and of the Gala Dinner can still be accessed through [this link](#).

The **video of CEPANI's history** – which was showcased during the academic session and during the Gala Dinner – is also still available through [this link](#).

» **2019 CEPANI STATISTICS**

The 2019 statistical report of CEPANI is now available and shows that CEPANI arbitration is becoming more international. There is also a clear trend that the overall duration of a CEPANI arbitration decreases.

The report can be consulted through [this link](#).



» **B-ARBITRA 2019/2 AVAILABLE**

The latest edition of the Belgian Review of Arbitration b-Arbitra is out now.

The table of contents can be consulted [here](#).

Subscriptions are available at [Wolters Kluwer](#) and the review can be consulted on Kluwer Arbitration as well.



VARIA

- » CEPANI recommande le **cycle de formation de base et spécifique de la médiation civile et commerciale**, organisé par BECI et **b-Mediation à Bruxelles**. Cette formation s'adresse à toute personne, quelle que soit sa profession (avocat, comptable, expert-comptable, fiscaliste, juriste d'entreprise, notaire, ingénieur, huissier de justice, médecin, responsable ressources humaines, manager, chef d'entreprise, psychologue, ombudsman,...). Pour plus d'informations, contactez info@bmediation.eu.
- » CEPANI beveelt de **opleiding tot erkend bemiddelaar in burgerlijke & handelszaken** aan, georganiseerd door BECI en **b-Mediation te Hasselt**. Deze opleiding richt zich tot iedereen, ongeacht zijn/haar beroepsactiviteit (advocaat, boekhouder, fiscalist, bedrijfsjurist, notaris, ingenieur, gerechtsdeurwaarder, medicus, personeelsverantwoordelijke, manager, bedrijfsleider, psycholoog, ombudsman,...). Voor meer informatie en inschrijvingen, zie [hier](#).
- » On 13 March 2020 ICC YAF organises the '**BXL DebateFest**' in Brussels, which is an event to encourage young arbitration practitioners to debate topical and recurring issues in international arbitration. More information and registration via [this link](#).
- » On 2 April 2020, at the occasion of Paris Arbitration Week, **FieldFisher** organizes an event "**Arbitral Institutions – Looking into the crystal ball of arbitration**". This event will bring together representatives of five major arbitral institutions, including CEPANI, for an open discussion about the future of international arbitration, the challenges faced by arbitral institutions today and the role that arbitral institutions should play in the current arbitration landscape. For more information and registration, [click here](#).

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