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25 November 2022	CEPANI Annual Colloquium on "Default in International Arbitration – Striking the

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NEWS FROM OUR PARTNERS

SERIES - STORIES FROM A YOUNG ARBITRATOR

With the April 2021 edition of the Newsletter, the Editors introduced a new series of short, topical posts written by young arbitrators. The authors will be sharing practical tips and insights from their experience as arbitrators, from dealing with defaulting parties or with non-represented parties to managing multi-language proceedings, from addressing falsified evidence and the interplay between the burden of proof and the standard of proof, to deciding jurisdictional challenges and evaluating the credibility of witnesses.

We hope you will enjoy this new series and, please, do not hesitate to reach out should you wish to participate.

EPISODE 11 – WALKING ON THIN ICE WHEN ADDRESSING CORRUPTION AS AN ARBITRATOR



Julie Spinelli
Partner,
Le 16 Law, Paris

"I know it when I see it...". This is what I had been told about identifying corruption when acting as an arbitrator, by reference to the well-known line of Supreme Court Justice Potter Stewart in his concurring opinion in the 1964 *Jacobellis v. Ohio* case related to the detection of pornography. On that basis, I had understood that when I would have to deal with corruption as an arbitrator, it would be somehow manifest. Except that when corruption crossed my path as a sole arbitrator, I found myself in the troubling situation where allegations of corruption were merely insinuated by a party without however being substantiated nor formally pleaded as a legal defense. As a result, I found myself wondering to what extent I could or should investigate suspicions of corruption where a party had simply insinuated corruption but made little effort to substantiate its allegations. On the one hand, further investigating allegations of corruption based on mere insinuations could be seen as a lack of impartiality and neutrality toward to party accused of corruption. On the other hand, not addressing the suspicions of corruption could make me complicit in the parties' wrongdoing (if any) and/or lead me to render an unenforceable award. Between the two, although I felt caught between a rock and a hard place, I erred on the side of caution and chose the proactive approach of investigating further the allegations of corruption.

Setting the scene

The issue arose in a Paris-seated ICC arbitration relating to a dispute opposing a Korean-based consulting company providing strategic support to global defense contractors (the *Consultant*) and a major European company specializing in optronics, avionic and electronic systems for civil and military applications in the naval, aeronautical and space sectors (the *Company*).

The dispute related to the non-payment of commissions allegedly due to the Consultant after the Company had entered into several supply contracts with a Korean submarine shipbuilder. While the Company acknowledged that the Consultant had been instrumental in the conclusion of the supply agreements, it nevertheless refused to pay the commissions in full because the Consultant had suddenly disappeared at the implementation stage of said agreements.

The Company had not formally argued that the Consultant's CEO had engaged in corruption in the context of the disputed contracts. Nor did it advance a proper corruption defense to justify the non-payment of the commissions by invoking, for instance, multiple red flags that would prevent it from paying the commissions, as I had encountered in other cases where I acted as counsel. Nevertheless, the Company's insinuation inevitably raised a red flag, to which I could not turn a blind eye.

Addressing corruption *sua sponte* without making a party's case: a delicate exercise

It is uncontroversial that the arbitral tribunal should examine allegations of corruption when raised by a party. The more difficult question is to what extent the tribunal can and should investigate suspicions of corruption where a party has pleaded, or simply insinuated, corruption, but made little effort to substantiate its allegations. As once explained by Domitille Baizeau and Tessa Hayes ("The Arbitral Tribunal's Duty and Power to Address Corruption *Sua Sponte*", in Andrea Menaker (ed), International Arbitration and the Rule of Law: Contribution and Conformity, ICCA Congress Series, Volume 19, pp. 225 – 265), in this particular scenario, the tribunal ought to determine whether such allegations have been raised in good faith but suffer from a lack of available evidence or whether they have been raised in bad faith simply to "taint" the other side's case. In turn, the tribunal must decide whether to investigate or simply to rule that the party has failed to make its corruption case.

It is widely admitted that corruption entails public interests beyond those of the parties. Corruption allegations are thus different from standard legal arguments which, unlike corruption, can easily be disregarded by the arbitrator when a party fails to raise or prove them. To the extent arbitrators are administering justice with a large autonomy being granted by national courts, international arbitrators, like state courts, have a moral and political interest in taking part in the battle against corruption. Apart from that, there is a more pragmatic reason for deciding to investigate corruption allegations: arbitrators have a duty to render an enforceable award.

In France [the author's jurisdiction], state courts regularly set aside arbitral awards when they consider that there are sufficiently serious, precise, and converging indicia that enforcing the award would contravene international public policy. To make such determination, French courts do not hesitate to perform a *de novo* review. French courts may completely re-evaluate the evidence or revisit previously decided issues that corruption touches on (although the court will not re-examine the merits of the award itself). When performing such review, French courts will have little regard for the arbitral tribunal's prior findings, including where no allegation of corruption was submitted by the parties during the arbitration and/or addressed by the arbitral tribunal (eg, Court of Cassation, civ 1, 23 March 2022 (*Belokon*), Court of Cassation, civ 1, 7 September 2022 (*Sorelec*); Paris Court of appeal, 5 April 2022 (*Santullo vs Gabon*) and Paris Court of appeal, 28 May 2019 (*Alstom*)).

Against this backdrop (and although the *Belokon* and *Sorelec* decisions were not yet rendered), I decided to adopt a proactive approach and inquire about the insinuations of corruption made in my case to ensure the enforceability of my arbitral award. I made this decision even though the Company had not formally raised a corruption defense.

There was a certain discomfort in taking the initiative to follow up with requests for evidence and explanations about the corruption insinuations being made. This is because the arbitral tribunal's role is to remain impartial, ensure that due process is respected by not making a party's case and avoid ruling *ultra petita*, although arguably the arbitral tribunal's basic mandate is to assess the parties' claims under the applicable law, which includes public policy provisions.

In this case, while making sure that the principles of due process were respected, I felt empowered to seek evidence on my own initiative. French law was applicable to the merits and Paris was the seat of the arbitration. The 2021 ICC Arbitration Rules gave me broad powers "to establish the facts... by all appropriate means" (Article 25(1)) and to "summon any party to provide additional evidence" at any time (Article 25(4)). Likewise, French law provides that "the arbitral tribunal shall take all necessary steps concerning evidentiary and procedural matters", "may call upon any person to provide testimony", and "may enjoin" a party to produce any item of evidence in its possession (Article 1467 of the French Code of Civil Procedure).

Seeking additional factual evidence turned out to be the right approach in the present case

Following the Company's insinuations that the Consultant's CEO had been prosecuted and convicted for bribery, the Consultant replied that while his CEO had been convicted for bribery in relation to unrelated contracts by the first instance court, the decision was subsequently reversed by the appellate and the Supreme Court. However, the Consultant failed to substantiate its argument and notably to provide any documentary evidence of the reversal of charges.

I thus requested that the Consultant produce all documentary evidence establishing that its CEO was acquitted, in particular the court decisions (with full translations). In addition, I summoned the Consultant's CEO, who had filed a witness statement but whose appearance was not requested by opposing counsel, to appear at the hearing on the merits where I was able to conduct my own inquiry as to how he assisted the Company in obtaining the supply agreements and why he should be entitled to the payment (at least in part) of the commissions under the disputed agreement.

Eventually, I was convinced that I had sufficient elements to dispel the accusation of corruption in my case, which might have improperly affected my decision-making process had I not conducted factual investigations on my own motion.

Allegations of corruption are sensitive as they imply criminal wrongdoing by one or both parties and difficult evidentiary questions will almost inevitably arise. Nevertheless, in view of the recent developments related to the control of public policy by national courts (especially French ones), arbitrators should no longer shy away from investigating suspicions of corruption *sua sponte* and, to the contrary, get clarity as to the existence (or lack) of corruption.

INTERVIEW

INTERVIEW WITH THE NEW CEPANI40 CO-CHAIRS, KATHERINE JONCKHEERE AND GUILLAUME CROISANT

INTERVIEWED BY IULIANA IANCU

1. CAN YOU BRIEFLY INTRODUCE YOURSELF?

Katherine: I am an associate with LALIVE based in London, specialising in international commercial and investment arbitration.

Guillaume: I have been part of the Brussels Linklaters dispute resolution practice since the end of my studies in 2014. Like many arbitration practitioners, I also have a foot in academia (I teach at the Université libre de Bruxelles and I am the co-editor in chief of the *Revue de droit commercial belge/Tijdschrift voor Belgisch Handelsrecht*).

2. CAN YOU TELL US SOMETHING ABOUT YOU THAT IS NOT ON YOUR CV?

Katherine: I was born in and grew up around Ghent.

Guillaume: I'm afraid you will not be able to find the mention of a driving license anywhere on my CV.

3. WHAT SPARKED YOUR INTEREST IN INTERNATIONAL ARBITRATION?

Katherine: I have always wanted to be the kind of lawyer that goes to court. I also wanted to live and work abroad. While I was completing my stage at the Brussels Bar, I fortuitously came across an international arbitration which made me realise I could do both. After my stage, I went to the US to do an LLM and qualify as a New York attorney, and then to Singapore to work as a legal counsel at the Singapore International Arbitration Centre (SIAC). I finally ended up in London, working for Three Crowns and then LALIVE.

Guillaume: Like Katherine, during my legal studies in Belgium it became clear that I wanted to be a "proper" avocat/advocaat (hopefully I can say it in this forum!), wear the gown and plead cases. My LL.M. in the UK, Françoise Lefèvre (back then global head of arbitration at Linklaters) as maître de stage and a one year secondment in our London international arbitration team convinced me to focus on international arbitration and related court litigation.

4. WHAT IS YOUR FIRST MEMORY REGARDING CEPANI40?

We acted as arbitrator (Katherine) and witness (Guillaume) in a cross-examination workshop a few years ago in Brussels which was co-organised by CEPANI40 and Young ICCA. That's also where we met! We are working on the organisation of a similar event.

5. WHAT DO YOU APPRECIATE MOST ABOUT CEPANI40?

There is a sense of community among the members, and a supportive, positive atmosphere.

6. WHAT MOTIVATED YOU TO APPLY TO BECOME ONE OF THE CEPANI40 Co-CHAIRS?

Katherine: I wanted to actively contribute to the Belgian arbitration landscape and connect with my peers.

Guillaume: same here! I would add that I very much like organising (social) events and that the "managerial" aspect of the role is a nice addition to our daily "blackletter law" work.

7. HOW DO YOU SEE CEPANI40 EVOLVING DURING YOUR MANDATE? WHAT IS YOUR VISION FOR THIS NEXT CHAPTER?

We will follow the long-established tradition of presenting any new project based on not one or two but three pillars (or three words, see our answer to your last question):

- 'opening up' to a broader circle, which means connecting not only with (international) arbitration practitioners but also students, in-house counsel, lawyers with different specialties, etc.;
- international outlook, by taking CEPANI40 abroad as well as attracting practitioners based abroad to Brussels; and
- diversity and inclusion, which is an area that CEPANI40's previous co-chairs, Sophie and Sigrid, took the lead on and we want to ensure those efforts are continued. We of course have the benefit of being able to build upon the incredible work of Sophie and Sigrid in each of these three areas.

8. CAN YOU TELL US WHAT IS THE FIRST PROJECT THAT CEPANI40 WILL EMBARK ON DURING YOUR MANDATE?

We are preparing the third edition of "Meet the Experts!", which was introduced by Sigrid and Sophie, and offers young (aspiring) arbitrators the opportunity to ask questions to seasoned arbitrators. We hope to be able to hold an in-person event, after the first two online editions, to combine the discussion with a social event.

9. DO YOU EXPECT TO WORK TOGETHER WITH OTHER UNDER-40 ORGANIZATIONS ACROSS THE REGION?

Yes, certainly! In line with our "international outlook" pillar, we are keen to continue fostering international cooperation with foreign under-40 organisations. CEPANI40 is part of the Co-Chairs Circle (CCC), an informal organisation gathering the leading below40 organisations. We are keen to build on the success of the CCC's fourth global conference hosted by CEPANI40 in Brussels this year (under the previous co-chairs Sigrid and Sophie's leadership).

10. HOW WOULD YOU DIFFERENTIATE CEPANI40 FROM THESE OTHER ORGANIZATIONS?

As a Belgian organisation, we benefit from our multi-lingual and diverse cultural background as well as being situated at the heart of Europe. In addition, having the opportunity to offer chocolate, speculoos and beers to foreign speakers and participants give us a clear competitive advantage (we will

refrain from naming the specialities of some of our neighbours).

11. DO YOU HAVE ANY ADVICE FOR THE NEW MEMBERS OF CEPANI40?

Attend one of our events – you will be warmly welcomed to the community!

12. HOW WOULD YOU DESCRIBE CEPANI40 IN THREE WORDS FOR OUR READERS WHO ARE NOT YET MEMBERS BUT COULD BE INTERESTED TO JOIN?

Engaging, inclusive, fun!

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We wish you lots of success in this new adventure, Kath and Guillaume!

In the picture: Guillaume and Kath (foreground), joined by CEPANI Secretary General Emma Van Campenhoudt (third row from the top, left hand side) and by three previous generations of CEPANI40 Co-Chairs: founders Dirk De Meulemeester and Olivier Caprasse (top row, from left to right), Vanessa Foncke and Benoît Kohl (second row from the top, from left to right), Sophie Goldman and Sigrid Van Rompaey (third row from the top).



NEWS



LE CEPANI CHERCHE UN(E) MI-TEMPS (F/H) BILINGUE (FR/NL) (BRUXELLES) 2 à 3 j/semaine

Le Centre Belge d'Arbitrage et de Médiation cherche un(e) collaborateur/trice enthousiaste et méticuleux/se pour venir renforcer son équipe.

DESCRIPTION DE LA FONCTION:

En tant qu'attaché juridique du CEPANI, votre mission principale consiste à gérer en équipe les dossiers nationaux et internationaux qui sont pendants au CEPANI. Vos clients sont les parties concernées, leurs avocats et les arbitres nommés. Vous contribuerez également à divers projets visant à améliorer la qualité des services du CEPANI et à renforcer sa position sur le marché.

Les tâches attribuées se développent autour de deux activités principales:

» **La gestion et le suivi de procédures alternatives de règlement de différends: Arbitrage – Médiation – Noms de domaine .be – Mini-trial – Adaptation de contrats – Expertise technique**

Le travail quotidien comprend: le suivi des dossiers de A à Z, de son introduction à sa clôture; le traitement de la correspondance et de son envoi; un suivi administratif rigoureux (suivi des délais, prolongations, notifications, etc.); réponses téléphoniques et électroniques aux questions pratiques des arbitres, avocats et parties; organisation et suivi des réunions,...

» **La promotion de l'arbitrage et du Centre.**

Organisation de colloques et de séminaires:

- Création de mailing et d'invitations
- Gestion des inscriptions
- Organisation pratique (réservation de salle, catering, matériel, ...)

Support des groupes de travail actifs

La rédaction de contributions écrites pour le site internet, la newsletter ou d'autres supports,...

CE QUE NOUS ATTENDONS DE VOUS:

- Vous disposez d'un Master en Droit;
- 0 à maximum 5 ans d'expérience professionnelle;
- Vous êtes bilingue (NL/FR) et vous avez une très bonne maîtrise de l'anglais. (les dossiers doivent pouvoir être gérés dans ces trois langues);
- Un juriste avec de bonnes capacités d'analyse;
- Une personne multitâche, avec un sens du détail;
- Un esprit d'équipe, avec le sens des responsabilités;
- Vous êtes organisé(e), conscientieux, vous travaillez méticuleusement et avez le sens de l'ordre et de la ponctualité;
- Vous êtes dynamique et prenez des initiatives si nécessaire;
- Vous savez facilement et professionnellement rédiger des e-mails, courriers, notes, memo's ...
- Vous avez une bonne connaissance de MS Office (Word, Excel et Powerpoint), et savez faire des recherches efficaces;
- De bonnes compétences en communication verbale;
- Apparence soignée.

COMMENT POSTULER?

Envoyez une lettre de motivation avec votre Curriculum Vitae à info@cepani.be à l'attention d'Emma Van Campenhoudt. Vous pouvez également envoyer vos questions éventuelles au sujet du poste à cette même adresse.



CEPANI ZOEKT EEN DEELTIJDSE JURIST (NL/FR) JURIST(E) (V/M) (BRUSSEL) 2/3 dagen per week -BRUSSEL

Het Belgisch Centrum voor Arbitrage en Mediatie is op zoek naar een enthousiaste en nauwgezette medewerk(st)er om haar team te komen versterken.

FUNCTIEOMSCHRIJVING:

Als juridisch attaché van CEPANI, is je belangrijkste taak het in teamverband behandelen van nationale en internationale zaken die aanhangig zijn bij CEPANI. Jouw cliënten zijn de betrokken partijen, hun advocaten en de benoemde arbiters. Daarnaast lever je een bijdrage aan verschillende projecten om de kwaliteit van de dienstverlening van CEPANI te verbeteren en de positie van CEPANI op de markt te versterken. Dit laatste omvat projecten op het gebied van innovatie, marketing en kennisdeling.

De toegewezen taken zijn ontwikkeld rond twee hoofdactiviteiten:

» Beheer en opvolging van vertrouwelijke alternatieve geschillenbeslechtingsprocedures: Arbitrage, Mediatie, .bedomeinnamen, Mini-Trial – Aanpassing van overeenkomsten - Deskundigenonderzoek

Het dagelijkse werk omvat: opvolging van de dossiers van A tot Z, vanaf de inleiding tot de afsluiting; het verwerken en verzenden van correspondentie; een strikte administratieve opvolging (opvolging van termijnen, verlengingen, kennisgevingen, enz.); telefonisch en elektronisch beantwoorden van praktische vragen van arbiters, advocaten en partijen; organisatie en opvolging van vergaderingen,...

» Promotie van arbitrage en het Centrum

Organisatie van colloquia en seminars:

- Creëren van mailings en uitnodigingen
- Inschrijvingsbeheer
- Praktische organisatie (zaalreservering, catering, uitrusting, enz.)

Ondersteuning van de actieve werkgroepen

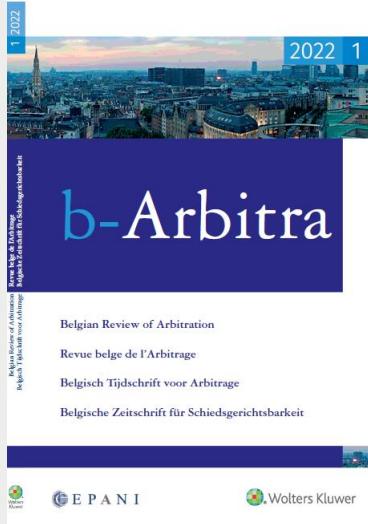
Het schrijven van bijdragen voor de website, de nieuwsbrief of andere media,...

HETGEEN WIJ VAN U VERWACHTEN:

- U beschikt over een Master in de Rechten;
- 0 tot maximaal 5 jaar werkervaring;
- U bent tweetalig (FR/NL) en beschikt over een goede beheersing van het Engels. (de dossiers dienen in deze drie talen te kunnen worden beheerst)
- Een jurist met sterke analytische vaardigheden;
- Een professional die goed kan multitasken en oog heeft voor detail;
- Een teamspeler met gevoel voor verantwoordelijkheid;
- U bent georganiseerd, consciëntieus, u werkt nauwkeurig en u hebt gevoel voor orde en punctualiteit;
- U bent dynamisch en neemt indien nodig initiatieven;
- U weet gemakkelijk en professioneel hoe e-mails, brieven, notities, memo's,... op te stellen;
- U heeft een goede kennis van MS Office (Word, Excel en Powerpoint), en weet hoe effectief onderzoek te doen.
- Goede verbale communicatieve vaardigheden;
- Verzorgd voorkomen.

HOE SOLICITEREN?

Stuur een motivatiebrief samen met je Curriculum Vitae naar info@cepani.be ter attentie van Emma Van Campenhoudt. Tevens kunt u via dit adres vragen stellen over de vacature.



b-Arbitra is the Belgian Review of Arbitration, issued biannually, with publication of judgments, notes and commentaries on arbitration related topics.

We are happy to inform you that **b-Arbitra 2022/1** will shortly be released [on paper](#), at **Jura** and at **Kluwer Arbitration**.

In keeping with b-Arbitra's mission to foster the debate on key questions in current arbitration law, edition 2022/1 kicks off with an article by **Erica Stein** and **Quentin Muron** focusing on the latest judgments of the Court of Justice of the European Union on intra-EU investment arbitration following the milestone decision *Achmea* in 2018. The authors raise the question whether, with its *Komstroy*, *PL Holdings* and *Micula* latest judgments, the Court of Justice did – this time for good? – close the door entirely to Intra-EU investment arbitration, notwithstanding the attempts of various arbitral tribunals to restrict the reach of the *Achmea* judgment.

In the case-law section, we publish excerpts from two landmark decisions by the UK Supreme Court in *Enka Insaat Ve Sanayi AS v OOO Insurance Company Chubb* and *Kabab-Ji SAL v Kout Food Group*, which address the issue of the governing law of an arbitral agreement. The Supreme Court ruled that, as a general rule, the choice of law in the main contract will govern the arbitration agreement. However, in the absence of a choice of law, the law of the seat will apply. **Claire Morel de Westgaver** and **Katherine Jonckheere** comment on these two decisions and will also analyse the question of the law governing the arbitration agreement under Belgian law.

Next, we publish excerpts from two decisions by the Brussels Court of Appeal rendered in the framework of a longstanding *Stati v/ Republic of Kazakhstan* dispute. The first decision, rendered on 29 June 2021, addresses issues of attachment and sovereign immunity, with a

commentary by **Frederic Dopagne**, **Julien Fouret** and **Camille Dupuy** comment on the second decision of 16 November 2021, in which the Court finally refused enforcement of the arbitral award rendered in Sweden on the basis of fraud.

We also publish excerpts from the decision rendered by the Paris Court of Appeal on 22 June 2021, which addresses the issue of the competent court to decide a civil liability suit against an arbitrator, with a note by **Pascal Hollander** and **Maureen Martins**. The authors also address this question from a Belgian law perspective.

Finally, we publish two judgments of the Court of first instance of Brussels (French-speaking), rendered on 2 April 2021 and 27 January 2022. In both cases the Court was asked to set-aside the award and to refuse its enforcement; in the first case, which relates to a domestic award, the Court refused to grant exequatur to the award for breach of substantive public policy. In the second case, the Court upheld both the award and the exequatur order, recognizing an arbitral tribunal's power to decide on issues on the taking of evidence within the limitations imposed by rules of due process.

In the document section, **Gaëtan Zeyen** addresses the use of arbitration as a tool for settling international tax disputes.

Finally, we are pleased to have **Marco Schoups** reviewing the recent book edited by M. Shrerer, N. Bassiri and M.S. Abdel Wahab on *International arbitration and the COVID-19 revolution*, whereas **Andrea Carlevaris** shares his thoughts on the *Guide to the CEPANI Arbitration Rules* – the first of its kind – authored by B. Allemersch, O. Caprasse, D. De Meulemeester, B. Kohl and E. Van Campenhoudt. For more details, please see the table of contents [here](#).

We invite Belgian arbitration practitioners to reach out with interesting arbitration related cases. We further encourage anyone who is interested in contributing to b-Arbitra or has comments or suggestions to get in touch at b-Arbitra@wolterskluwer.com.

The Editors-in-Chief
Caroline Verbruggen and **Maarten Draye**

REPORTS

2022 NAI ANNUAL GENERAL MEETING (THE HAGUE)

8 SEPTEMBER 2022



Koen Van den Broeck
Partner, Fieldfisher

The Peace Palace in The Hague hosted the 2022 NAI annual general meeting. More than 200 practitioners were present during a lively and well-organized event.

1.

Keynote speaker Brian King (independent arbitrator in New York) dealt with the topic of "The party-appointed arbitrator – Is justice blind enough?".

During his speech, Mr King highlighted the two risks of bias when appointing arbitrators, namely (1) the "selection bias", caused by the perceived predisposition of the arbitrator to be in favor of the appointing party's viewpoint and (2) the "affiliation bias", whereby an arbitrator appointed by a party might exhibit a tendency to side with the appointing party. Mr King also explained how scientific research seems to confirm to a certain extent the existence of an affiliation bias risk. Indeed, research shows that in 20% of cases, there is a tendency to allocate the costs of arbitration and/or assess damages in a manner more favorable to the appointing party and concludes that there is a "true ethical burden on party-appointed arbitrators to separate themselves from the interests of the appointing party". ICC statistics show that in 46% of commercial cases, arbitrators express a dissenting opinion on at least one item and that such an opinion is almost always expressed by the arbitrator appointed by the party against which the award is rendered.

In order to attempt to remedy these risks of bias, Mr King made an interesting suggestion, according to which one might wish to eliminate the practice of party appointed arbitrators – or at least to provide blind appointments (i.e. arbitrators who ignore which party appointed them). Mr King then proceeded to elaborate on the pros and cons of alternatives means of appointing arbitrators, i.e. selecting all three arbitrators by mutual agreement, having institutional appointments only or reverting to a list procedure (strike and rank), thereby highlighting the requirement for great trust in the institutions.

Finally, Mr King put forward the "screened selection" (or blind appointment) as a modest proposal for eliminating affiliation bias in commercial arbitration. However, for investment arbitration Mr King thought screened selection was not adequate and suggested the use of an institutional list (as with the CAS model) or of an institution-constructed list (as with the NAI model) or – why not – an

"investment court". Needless to say that this interesting keynote speech raised a few eyebrows in the crowd.

2.

The signing ceremony of the Benelux Cooperation Agreement between NAI, DAA, CEPANI, LAA and the Chamber of Commerce of the Grand Duchy of Luxembourg establishing the BeNeLux Arbitration and ADR Group commenced when Prof. Gerard Meijer, president of the NAI, called the newly appointed first president of the BeNeLux Arbitration and ADR Group (Mr Maxim Berlingin – partner at Fieldfisher LLP) on stage. Mr Berlingin presented the goals and strategy for the coming years: jointly promoting Arbitration and ADR and sharing knowledge. The Group shall hold a joint colloquium every two years (the first one having been scheduled for 20 April 2023 in Luxembourg), shall consider organizing joint events during the Paris Arbitration Week, the London International Arbitration Week or the annual IBA meeting, shall exchange information and publications, shall encourage presentations of mutual interest, and shall recommend to each other, upon request, suitable individuals to serve as arbitrators.

3.

In a first panel session on 'Institutional Views – What do users need?', the representatives of 7 different arbitration institutions (Ms Emma Van Campenhoudt, Secretary-General of CEPANI; Mr Gerard Meier, President of NAI Board; Mr Marc Henry, President of AFA; Ms Sanna Kaistinen, Secretary-General of the FAI; Ms Niamh Leinwather, Secretary-General of VIAC; Ms. Korinna von Trotha, Executive Director, Swiss Arbitration Centre; and Ms. Johanna Wirth, Member of DIS Board) shared their experiences on several topics concerning users' needs, such as better communication with the users, efficiency and transparency. Ms Wirth emphasized the continued encouragement coming from arbitrators during the whole process to have the parties seek for a settlement.

Ms Van Campenhoudt stated that speed should not as such be the holy grail to efficiency in arbitration and pointed at CEPANI's focus on specific deadlines, software platform and expedited proceedings. All speakers agreed that transparency on costs can be further improved.

4.

The next panel, composed of Ms Annet van Hooft (independent arbitrator; moderator) and the speakers, Ms Hilde van der Baan (Partner at Allen & Overy), Ms Martje Verhoeven-de Vries Lentsch (Partner at De Brauw Blackstone Westbroek), Mr Niek Peters (Partner at Simmons & Simmons) and Mr Andrew Plump (Counsel at Linklaters) focused on the counsel's point of view in Multi-Party and Multi-Contract arbitrations. Moderator Ms van Hooft put forward the risks related to consolidation e.g. the loss of control over the parties' arbitration, the treatment of and weight given to any evidence obtained in another procedure, the impact on timing of one's arbitration as a result of more parties and matters coming in after consolidation. In addition, the interesting topic of overlapping

arbitrators in several proceedings and parallel appointments illustrated the complexity of the question.

5.

The third panel, composed of Mr Rieme-Jan Tjittes (Partner at BarentsKrans; moderator) and the speakers, Mr John Fellas (independent arbitrator), Ms Melanie van Leeuwen (Partner at Derains & Gharavi), Ms Françoise Lefèvre (independent arbitrator) and Mr Jan K. Schaefer (Partner at King & Spalding) dealt with case management and how to manage time and costs from the arbitrator's perspective. Unsurprisingly the Prague Rules have not yet reached many practitioners, although users could take some good inspiration from them. Ms Melanie van Leeuwen stressed the benefits of the Prague Rules as a set of case management rules and denounced the "due process paranoia" of some arbitrators. Ms Françoise Lefèvre, on the other hand, discussed the pros and cons of requiring frontloading from the parties' counsel. Moreover, Mr Jan Schaefer held a plea for the "German approach" where, at an early stage, the Tribunal steers the arbitration towards an efficient process.

The panel further discussed issues such as how to handle delay tactics of one party. All speakers agreed that if such tactics are to be taken into account by the arbitrators, this should preferably be at the time of the final award.

Other means to improve efficiency were also seen as valuable, namely the continental approach of limiting the number of witnesses, the arbitral tribunal asking the questions and the shift of control over the proceedings towards the tribunal.

6.

Finally, the fourth panel, composed of Ms Bregje Korthals Altes (Partner at Ysquare, moderator) and the speakers, Mr Cyril Dumoulin (Senior Legal Counsel Global Litigation at Shell), Mr Philipp Jäger (Legal Counsel at Gasunie), Ms Fleur Pottier (Litigation Manager at OCI) and Ms Esther-A Zonnenberg-Melllenbergh (General Counsel Europe at Samsung SDS Cello Logistics) dealt with the in-house counsel's perspective. Several members shared their positive experience with a single arbitrator and asked why parties should not provide for a sole arbitrator as the default option. In-house counsel also felt that in general arbitrators could be more proactive.

7.

The traditional wrap-up of the day's session was unlike the usual format. To close off this edition of the 2022 NAI annual general meeting, a stand-up comedian took to the stage to humorously point out some of the "curious statements" he had heard throughout the day.

**CENTER FOR
PROFESSIONAL
TRAINING OF
LIMBURG BAR
ASSOCIATION**



19 SEPTEMBER 2022

Josephine Markopoulos and Kris van der Beek

Junior Associate, and Partner, Monard Law

Op maandag 19/09/2022 organiseerde het Centrum voor Beroepsopleiding van de Limburgse Balie (CBLB), in samenwerking met CEPANI en het advocatenkantoor Monard Law, een studiedag over arbitrage.

De studiedag werd gemodereerd door Erik Monard (Monard Law) en door gewezen stafhouder Luc Vanderputte (Omnius Advocaten). Kris van der Beek (Monard Law) was gastspreker. Camille Libert vertegenwoordigde CEPANI.

De spreektaal werd gebruikt om een concreet antwoord te geven op enkele vraagstukken waarmee de praktijkadvocaat in een arbitrageprocedure in aanraking kan komen. Kan een kortgeding in arbitrage? En beslag? Een expertise? Een getuigenverhoor? Hoe snel kom ik aan uitvoering toe? En de kosten?

De volgende onderwerpen kwamen daarbij nader aan bod: arbitreerbaarheid, arbitragebeding, rechtsmacht, scheidsgerecht, voorlopige en bewarende maatregelen, arbitrale gedingvoering, bewijsvergaring, arbitrale uitspraak, rechtsmiddelen, erkenning en uitvoerbaarheid en kosten.

De 32 aanwezige advocaten kregen uitgebreid de gelegenheid om vragen te stellen, zowel tijdens het seminarie, als tijdens een daaropvolgende lunch, aangeboden door CEPANI.

Wij danken het CBLB, de sprekers en alle deelnemers.

CEPANI SUPPORTS

» BRUSSELS, THE HEART OF THE LEGAL WORLD (IBA MIAMI, 31 OCTOBER 2022)



BARREAU
DE
BRUXELLES
ORDRE
FRANÇAIS



Brussels, the Heart of Legal World

IBA MIAMI 2022

PROGRAM: MONDAY 31 OCTOBER 2022, 5.00 – 7.00 PM

- | | |
|---------|---|
| 4.45 pm | Registration and welcoming drink |
| 5.15 pm | Introduction by the General Consul of Belgium based in Atlanta, Michel Gerebtzoff |
| 5.20 pm | "Why Brussels? 10 reasons to choose Brussels as a legal hub" by Patrick Dillen, Past President Brussels Bar & Bernard Derveaux, President of the Dutch Brussels Bar |
| 5.35 pm | A dispute ? Think about Arbitration : Brussels, the European Arbitration Hub" by the Belgian Centre for Arbitration and Mediation "CEPANI" |
| 5.45 pm | The necessity to have a GDPR representative while making business with an European companies by Jane Murphy, Founder & Chair of the Board EDPO |
| 5.55 pm | Brief presentation of the Brussels lawyers participating at IBA Miami 2022 |
| 6.00 pm | Q & A |
| 6.10 pm | Networking cocktail with famous Belgian Beer |
| 7.00 pm | End |

VENUE: SURFCOMBER HOTEL - Longboard Room - 1717 COLLINS AVENUE MIAMI BEACH, FL 33139

REGISTRATION: Please fulfill this [online form](#) by October 24, 2022

Please register [here](#).



JOURNÉE DES JURISTES D'ENTREPRISE

Les juristes d'entreprise et les responsabilités de l'entreprise
Vers une responsabilité sans fin des entreprises ?

15.11.2022

L'Institut des juristes d'entreprise vous invite à sa 33e **Journée des juristes d'entreprise ayant pour thème « Les juristes d'entreprise et les responsabilités de l'entreprise. Vers une responsabilité sans fin des entreprises ? »**. Cette rencontre sera consacrée aux responsabilités de l'entreprise au sens large, considérées depuis la perspective des juristes d'entreprise.

De nombreuses obligations pèsent, toujours plus, sur les entreprises : lanceurs d'alerte, protection des données (personnelles), rapportages.... Nous ferons le point sur les **(nouvelles) responsabilités découlant de la loi**. Nous nous intéresserons aussi au rôle particulier des juristes d'entreprise dans ce cadre et débattons des risques et opportunités liés à cette tendance croissante touchant les entreprises.

Nous aborderons la question de la **responsabilité** individuelle de l'entreprise dans un cadre **contractuel** ou en **dehors de tout contrat**. Nous aborderons les impacts concrets de la **réforme du Code civil** sur ces questions, afin de partager des bonnes pratiques et de débattre sur l'orientation sociétale où nous mènent ces nouveaux textes. Nous interrogerons aussi l'impact des **crises** (Covid, Ukraine, réchauffement climatique...) sur la manière de prévoir ou revoir les responsabilités dans nos contrats.

Ce programme a pour ambition d'élargir vos horizons au départ d'un thème à la fois intemporel, et d'une grande actualité. Il vous formera aux dernières évolutions juridiques et vous apportera des conseils et idées pour notre pratique quotidienne. Des éclairages et tendances d'experts de différents horizons (**professeurs, chercheurs, avocats, magistrats...**) seront couplés à ceux de la pratique (**juristes d'entreprise, CEO**).

Cet événement sera aussi l'occasion de se revoir dans le cadre magnifique des Musées Royaux des Beaux-Arts de Belgique.

Nous vous invitons à d'ores et déjà noter la date de cet événement. Vous retrouverez bientôt le programme complet et toutes les informations pratiques sur notre site internet (www.ije.be).

Nous nous réjouissons de vous y accueillir !

Plus d'infos et s'inscrire [ici](#).



DAG VAN DE BEDRIJFSJURISTEN

Bedrijfsjuristen en bedrijfsverantwoordelijkheid

Naar eindeloze aansprakelijkheden voor ondernemingen?

15.11.2022

Het Instituut voor bedrijfsjuristen nodigt u uit op zijn 33ste Dag van de bedrijfsjuristen met als thema "Bedrijfsjuristen en bedrijfsverantwoordelijkheid. Naar eindeloze aansprakelijkheden voor ondernemingen?".

We bestuderen de bedrijfsverantwoordelijkheid in de breedste zin van het woord, bekeken vanuit het perspectief van bedrijfsjuristen.

Ondernemingen zijn in toenemende mate onderworpen aan talrijke verplichtingen: klokkenluiders, bescherming van (persoons)gegevens, reporting.... Wij maken de balans op van de **(nieuwe) verantwoordelijkheden die uit de wet voortvloeien**. Wij kijken ook naar de bijzondere rol van bedrijfsjuristen in deze context en bespreken de risico's en opportuniteiten die verbonden zijn aan deze groeiende trend die ondernemingen treft.

We behandelen de individuele **aansprakelijkheid** van ondernemingen **in een contractuele en buitencontractuele context**. Wij maken de balans op van de concrete gevolgen van de **hervorming van het Burgerlijk Wetboek** voor deze vraagstukken, teneinde best practices uit te wisselen en te debatteren over de maatschappelijke impact die deze nieuwe wet teweegbrengt. Wij gaan ook na welke gevolgen de **crisissen** (Covid, Oekraïne, opwarming van de aarde, enz.) hebben voor de wijze waarop wij de verantwoordelijkheden in onze contracten regelen of herzien.

We bieden u een rijkgevuld programma aan met als doel uw horizon te verbreden vanuit een thema dat zowel tijdloos als zeer actueel is. U wordt op de hoogte gebracht van de laatste juridische ontwikkelingen en u krijgt tips en ideeën voor uw dagelijkse praktijk. De inzichten en tendensen van experts uit verschillende werelden (**professoren, onderzoekers, advocaten, magistraten, enz.**) worden gecombineerd met die uit de praktijk (**bedrijfsjuristen, CEO's**).

Dit evenement is bovendien een mooie gelegenheid om elkaar opnieuw te ontmoeten in het prachtige kader van de Koninklijke Musea voor Schone Kunsten van België voor een uniek networkingmoment.

Noteer alvast de datum in uw agenda. Het volledige programma en alle praktische informatie vindt u binnenkort op onze website.

We kijken ernaar uit om u te mogen verwelkomen!

Meer info en inschrijven [hier](#).

» **Conférence annuelle AFA 2022, 18 octobre, 18h30, la Maison du Barreau, 2, rue de Harlay 75001 Paris**

La conférence annuelle de l'AFA du 18 octobre 2022 à 18h30 est donnée par Matthieu de Boisséson sur le thème de « L'évolution de la question morale dans l'arbitrage ».

Inscrivez-vous [ici](#).

» **Droit versus Technologies numériques : une indispensable alliance ? du 30 Septembre au 01 Octobre 2022**

Séminaire présenté par l'UIA avec le soutien du barreau de Bruxelles, en collaboration avec hub.brussels, l'Agence bruxelloise pour l'Accompagnement de l'Entreprise

Nous vivons dans un monde en profonde mutation. Des technologies comme l'Internet des Objets, la robotique, l'impression 3D, les technologies dites 'blockchain' ou encore l'intelligence artificielle modifient considérablement notre environnement et influencent notre mode de pensée en repoussant toujours plus loin et toujours plus vite les limites du possible.

Pour nous, juristes, non seulement cette évolution rapide et constante bouleverse notre vie professionnelle quotidienne, mais pose aussi un défi de taille : comment intégrer ces avancées dans notre système juridique sans en perdre la cohérence et comment bénéficier des opportunités qu'elles offrent sans mettre en péril les droits fondamentaux et l'état de droit ?

Le séminaire mettra en lumière certaines des implications de cette évolution pour nos clients comme pour nous ainsi que les réponses possibles aux problématiques qu'elle soulève.

Inscrivez-vous [ici](#).

» **hub.brussels at IBA Arbitration Day, 30 October to 4 November 2022**

Les conférences et les événements virtuels de l'IBA offrent un forum pour la diffusion d'informations juridiques spécialisées et constituent un excellent moyen de créer des réseaux et de discuter des dernières mises à jour et évolutions dans votre domaine de pratique.

Pourquoi s'inscrire via hub.brussels ?

L'inscription via hub.brussels vous permet d'obtenir plusieurs avantages:

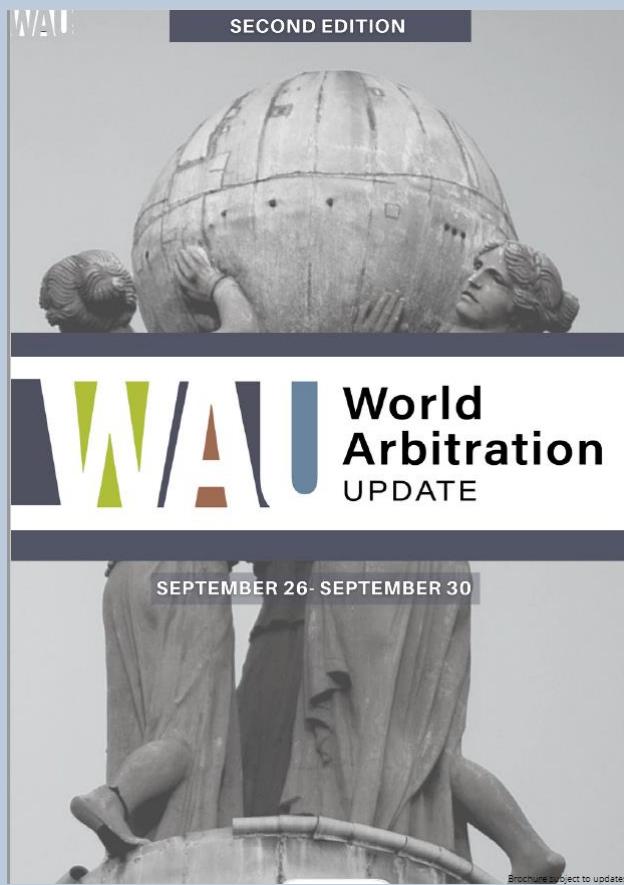
- visibilité et possibilité d'organiser vos B2B sur le stand bruxellois dans le hall des expositions;
- visibilité de votre cabinet d'avocat sur le site de conférence;
- **Soutien financier** : aide de 50% à 75% sur vos frais de voyage.

Le programme complet de la conférence se trouve sur le lien suivant : <https://www.ibanet.org/conferences>. En dehors de ce programme officiel, nous vous proposons 2 activités complémentaires :

- Un séminaire (Bruxelles, place d'arbitrage) suivi du networking en présence des entreprises et cabinets d'avocats bruxelloises avec leurs homologues américains ;
- Des visites d'entreprises ou de cabinets juridiques locaux.

Les informations plus précises concernant ces activités vous seront communiquées ultérieurement.

Attention: Inscrivez-vous le plus tôt possible [ici](#), car les places sont limitées. Nous appliquerons le principe « First In First Served ».



CEPANI supports the World Arbitration Update (WAU).

WAU is the initiative of Racial Equality for Arbitration Lawyers (REAL1), and Washington Arbitration Week (WAW2). The WAU initiative strives for the decentralization and opening up of international arbitration beyond the traditional arbitration centers, connecting into an integrated forum and promoting the many alternatives in Africa, the Americas, Asia, Europe, and Oceania.

WAU updates the global community on key developing topics of investment and international commercial arbitration, and public international law in a manner that recognizes the diverse and widely complex nature of international dispute resolution around the world.

More information about this initiative can be found @ <https://worldarbitrationupdate.com/>



Calendar of Events

TIME	EVENT	HOST
MONDAY 7 NOVEMBER 2022		
8:30am-6:00pm followed by cocktails	2022 International Arbitration Conference	ACICA and CIArb Australia
TUESDAY 8 NOVEMBER 2022		
8:00am-9:00am	The Future of Diversity In Arbitration	Arbitral Women
9:00am for 9:15-10:15am	Across-jurisdictional conversation among experienced arbitrators	Corrs Chambers Westgarth
11:00am-12:00pm	Hot Issues Involving Technology Arbitrations	DLA Piper
12:30pm-2:00 pm	AMTAC Seminar	AMTAC An ACICA Commission
2:30pm-3:30pm	Advocacy In Arbitration In the Pacific	ACICA and Hemmant's List
5:00pm-6:00pm	CIArb Australia Annual International Arbitration Lecture	CIArb Australia
6:00pm for 6:30-8:30pm	Tracing a Construction Claim	Lighthouse Club Australia
WEDNESDAY 9 NOVEMBER 2022		
9:30am-10:30am	Future of Energy Disputes	Pinsent Masons
9:00am-1:00pm	ACICA Arbitrator Roundtable	ACICA
9:00am-12:30pm	ACICA45 workshop	ACICA45
11:00am-12:00pm	How are growing regulations and emerging data sources impacting arbitration disputes?	FTI Consulting
12:00pm-2:15pm	KWM Seminar	King & Wood Mallesons
2:30pm to 3:30pm	CIArb Young Members event	CIArb Young Members
4:30pm-5:30pm	With geopolitics igniting disputes, what is the role for arbitration?	Corrs Chambers Westgarth
5:15pm-6:15pm	Australia-France Entente Cordiale	Australian Disputes Centre
6:00pm for 6:30-7:30pm	Clayton Utz / University of Sydney International Arbitration Lecture	Clayton Utz
THURSDAY 10 NOVEMBER 2022		
8:00am-10:00am	Diversity and Inclusion in arbitrations: the need for professional, cultural and gender diversity in ICC arbitrations	ICC Australia
10:00am for 10:30-11:30am	Pushing boundaries: energy project disputes in Australia and beyond	Three Crowns
12:30pm-13:30pm	Exploring the ACICA Expedited Rules 2021	ACICA
2:00pm-3:00pm	How to effectively present electronic evidence in Arbitration - in person, hybrid, and remote environments	FTI Consulting
3:30pm-4:30pm	Australia's IDS Reform Policy - six months into the election of the new Government	Experts Advisory Committee on Working Group III, UNCCA
5:00pm-6:00pm	A mock arbitration	Level 27 Chambers
6:00pm for 6:30-8:00pm	The Great Debate – Urgent applications in arbitration: emergency arbitration or court relief?	Corrs Chambers Westgarth
FRIDAY 11 NOVEMBER 2022		
9:00am-10:00am	A morning with Banco Chambers	Banco Chambers
10:30am-12:00pm	Arbitrator Workshop: Enhancing Your ACICA Experience	ACICA
12:30pm-1:30pm	Resolution Institute's Expedited Process for Domestic Arbitration	Resolution Institute

For more information, see www.acica.org.au/aawcalendar

SUPPORTING ORGANISATIONS



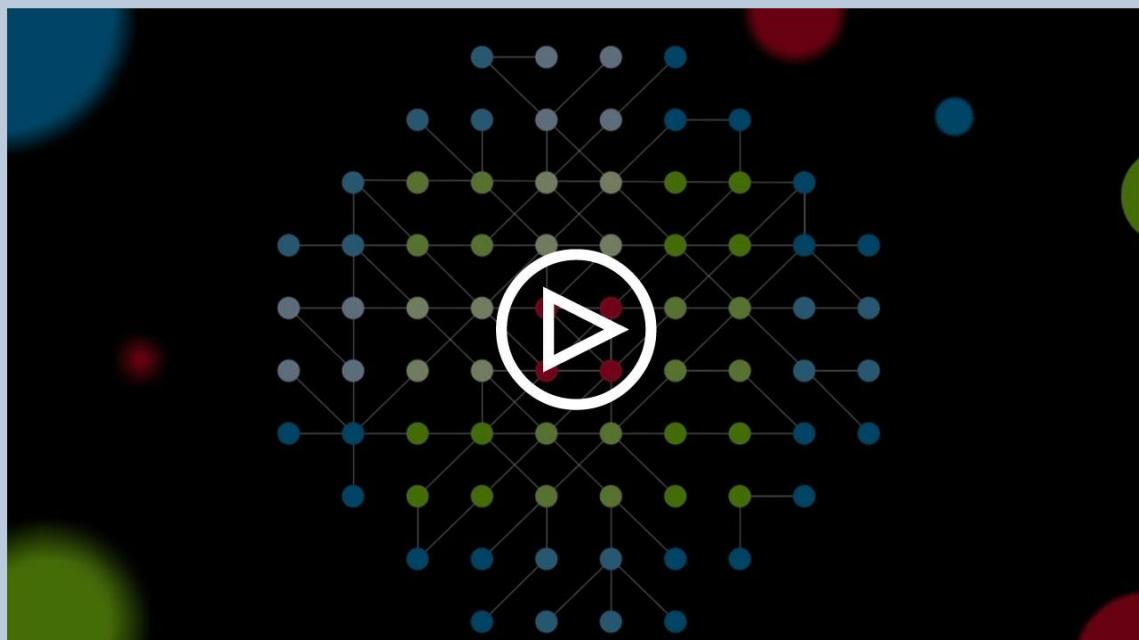
NEWS FROM OUR PARTNERS

» KLUWER ARBITRATION

Coming Soon

New homepage & exciting enhancements to Kluwer Arbitration

In early October Wolters Kluwer will launch a refreshed user interface along with several new features for Kluwer Arbitration. The new interface is modern, user-friendly and easy to navigate, designed to maximize your productivity. Ahead of the official go live date, we would like to provide you a sneak preview of what the new Kluwer Arbitration will look like.



Watch the video (link to [Big Reveal on Kluwer Arbitration - YouTube](#))

Interested to learn more?

Sign up for our online [Kluwer Arbitration User Forum](#) which will be held on 11 October, 4:00 pm CET.
Register now (link to <https://know.wolterskluwerlr.com/LP=2949>)

https://www.youtube.com/watch?v=QS2_qRNzcKY

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