

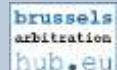


November 2022

#160

Editors in chief: Guillaume Croisant, François Cuvelier, Iuliana Iancu and Sander Van Loock

acolad.



AGENDA

19 January 2023

Save the Date – 3rd edition of CEPANI40's "Meet the Experts", 19 January 2022, 6-9pm

16 February 2023

Save the Date - "CEPANI40's webinar on virtual hearing", 16 February 2023, noon-1pm

SERIES: Stories from a Young Arbitrator

» THIRDTEENTH EPISODE, "PREPARATION AND ANTICIPATION!" (BY KAREN PARIDIAEN)

REPORTS

- » REPORT ON CEPANI'S ANNUAL COLLOQUIUM ON DEFAULT IN INTERNATIONAL ARBITRATION (BY LILY KENGEN)
- » REPORT ON VPG-CEPANI SEMINARIEREEKS OVER ADR & ARBITRAGE (BY WANNES VANDENBUSSCHE)
- » REPORT ON "BRUSSELS, THE HEART OF THE LEGAL WORLD" AT IBA CONFERENCE (BY ALEXANDER HANSEBOUT)

NEWS

» CEPANI40, Meet the Experts!

CEPANI SUPPORTS

» RÉTROSPECTIVE DE LA JOURNÉE DES JURISTES D'ENTREPRISE / DAG VAN DE BEDRIJSJURISTEN, EEN TERUGBLIK

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 13 – PREPARATION AND ANTICIPATION!



Karen Paridiaen
Senior Associate,
NautaDutilh, Brussels

The first thing that popped up in my mind when asked to write this piece might be pushing on an open door, but I found that sitting as an arbitrator influences – for the better – the way you think and act as counsel. It is the difference between knowing something and actually living and experiencing it. For instance, I knew that it is important to present your case in a structured and logical way, making it easy for the court to understand and rule on (often complex) facts, legal issues and arguments. But it was not before having sat as a sole arbitrator, that I fully realized and felt how paramount this really is. As arbitrator, you want to perfectly understand the facts, the validity of the legal arguments and whether there is (sufficient) proof. This, I find, is all the more so when you sit as a sole arbitrator, especially in one of your first cases. The idea of having to take up a leading role in an arbitration and take the ultimate decision can seem quite impressive, especially when the counsels and parties are twice your age, stakes could be important for the parties, emotions can run high and some difficult legal issues have to be addressed. And the last thing you want to do, is make a mistake (particularly if you intend to put one party entirely in the wrong). You want to find all the answers that you need to make your decision, in a well-documented, structured and convincing way in the briefs, the exhibits and during the pleadings. And this made me realize that as counsel, you should not only carefully structure your briefs, but you must think ahead of what an arbitral tribunal (or judge) needs as tools to make its decision: what will the tribunal require to award your claim or defense? Which core factual and legal elements and which proof? The arbitrator experience makes you more conscious that as counsel, it is your job to proactively provide them with these answers and to give them the comfort they need to follow your argument. Interestingly, sitting "on the other side" also makes you realize that it is not always that easy to decide and that there is a real threshold you need to cross, because as an arbitrator you need to be very critical and make sure you are getting it right and are not being misled.

Another point I would like to touch upon from my experience, might be a cliché, but nevertheless truly important: in-depth study of the case before the hearing. As arbitrator, a timely thorough examination of the case helps you to identify the possible routes that you can take in your decision-making, which in turn allows you to test the parties at the hearing in an appropriate way. It helps you to put a finger on certain blind spots or (legal/factual) issues that you consider relevant for the discussion and want to see better explained. Because, after the hearing, you are on your own and you will have to do with what is on the table. Reopening of the proceedings is always possible, but should remain exceptional.

In this respect, I find it very useful when defending a case as counsel, that the arbitral tribunal flags before the hearing that there are certain factual or legal questions that it explicitly wants you to deal with in your briefs. In one case I was involved (as counsel), this concerned a question on "le criminel tient le civil en état" and the influence of an already pending civil claim relating to the same facts on the arbitration. By indicating that certain issues might be important for the decision-making, the arbitral tribunal helps both itself and the parties and it is also beneficial for the general efficiency of the proceedings (as it might for example prevent that the tribunal finds itself forced to reopen the proceedings). In the same vein, a list of pre-trial questions based on the reading of the briefs, is very productive. This not only allows the parties to (duly) prepare for these specific questions (and avoid surprises at the hearing), but also gives comfort to the arbitral tribunal that the questions and their reply have been given due consideration. It might again also limit the occurrence of reopening the proceedings or (extensive) post-hearing briefs.

And this brings me to a final experience I thought might be interesting (or recognizable) for young arbitrators: the difficulty of coming up yourself with a legal argument or infer a legally relevant fact from the exhibits that is not discussed or invoked by the parties, but might nevertheless be relevant for the case. I find it a sometimes difficult line between the arbitrator's duty to judge the case according to her or his insights and the duty not to violate the rights of defense. Where it is more or less clear that you can for example further substantiate the existing legal reasoning of a party, it is much more difficult to feel whether you can infer your own arguments from existing exhibits and apply your own legal reasoning. In practice, this might present a (young) arbitrator with a bit of a challenge. Again, proper preparation before the hearing reduces this problem because you can submit questions and hear the parties.

To conclude this post, I would like to say that sitting as an arbitrator is a very enriching experience, from both a professional and from a human perspective. My (practical and modest) hint for other young arbitrators would be to prepare well, don't feel intimidated by the fact that you are young and don't hesitate to ring up a colleague (or someone from Cepani) to ask for a bit of advice. Finally, yes, you are spending too much time on your first cases, but that is a fair price to pay to gain this experience.

REPORTS

Report on CEPANI's ANNUAL COLLOQUIUM ON DEFAULT IN INTERNATIONAL ARBITRATION

25 November 2022



Lily Kengen
Associate
Tossens Goldman Gonse

On 25 November 2022, CEPANI held its long-awaited Annual Colloquium on “*Default in International Arbitration: Striking the balance*” in Brussels. This all-day event, which gathered around 120 participants from Belgium and abroad, interestingly touched upon a range of topics and challenges related to the situation where one of the parties is not participating in the entire arbitration proceedings.

Prof. Benoît Kohl (President of CEPANI) first gave a word of welcome to all participants. He highlighted that the absence of a party from the arbitral proceedings is one of the most difficult tasks arbitral tribunals and institutions may face, which is why the conference aims at studying this complex issue, in line with CEPANI’s mission to promote and examine current and sensitive topics in arbitration.

The formal introduction of the day’s topic was then given by **Mr. Dirk De Meulemeester** (Honorary President of CEPANI, DMDB Law), who essentially stressed that, when facing default, an arbitral tribunal cannot be expected to act as the defaulting party’s advocate or counsel *ad litem*. However, at the same time, he raised the point that arbitrators should not turn a blind eye when this may be detrimental to the integrity of the arbitration, especially when public policy is at stake. Mr. De Meulemeester also underlined that, importantly, even when facing a defaulting party, arbitral tribunals should have regard to their duty to conduct the arbitration proceedings in an expeditious and cost-effective manner.



The word was then given to the next speakers, **Ms. Catherine Schroeder** (Schroeder Arbitration) and **Ms. Christina Mangani** (Simmons & Simmons LLP) whose presentation on “*Default at the*

pre-arbitration stage” captivated the audience. Ms. Schroeder first examined the consequences of a party’s default in the specific case of emergency arbitration. She notably highlighted that such situation may render emergency proceedings of less interest, considering that there is little chance the defaulting party will comply with order, if granted. She also raised the question whether, when a defaulting respondent suddenly appears in the proceedings at a later stage, that party should — for the sake of due process – be able to intervene or, as the case may be, be granted an extension to present its case, as that would potentially affect the very purpose of emergency proceedings, which is to have the case settled (more or less) urgently. Overall, it was concluded that default in emergency arbitration did not seem to have a different impact on the conduct of the proceedings than in regular arbitration, in the sense that it would in principle not prevent the emergency proceedings from continuing. Ms. Schroeder nonetheless highlighted that eyes should remain open to the practice of the parties before emergency arbitrators in that respect, and that should issues of the sort become more frequent, this conclusion may have to be revisited. Ms. Mangani then went on to present the consequences, on the subsequent arbitration proceedings, of default in mandatory pre-arbitral mediations or negotiations (ADR). It was raised that, in case claimant disregards the mandatory pre-arbitral stage and immediately proceeds with the filing of its request for arbitration, the subsequent arbitration may be impacted as certain courts’ general practice is to declare claimant’s claims filed in that context inadmissible. However, Ms. Mangani stressed that forcing the parties to negotiate as an alternative remedy may give rise to surprisingly positive outcomes. Such a practice is found to be more and more adopted by national courts (e.g. Swiss courts) and may therefore be an interesting option to consider. On the contrary, a defaulting respondent at the pre-arbitral stage would not prevent the arbitration proceedings as such from going forward. If the arbitral tribunal finds that claimant has in fact taken all appropriate steps to invite respondent to participate in the pre-arbitral ADR, Ms. Mangani argued that such default would, at worst, only delay the final decision on claimant’s claims. Finally, it was suggested that, in such a case, one could envisage making respondent bear the arbitration costs considering that such costs might not have been supported at all, should respondent have taken part in the pre-arbitration stage in the first place.

After a deserved coffee break, the possibility to render a “*Default Award*” in the situation where a party does not show up in the proceedings was remarkably tackled by **Ms. Ulrike Gantenberg** (Gantenberg Dispute Experts) and **Ms. Lisa Reiser** (Baker McKenzie). Their presentation took the form of an interactive session where participants were notably asked to take a stance on different scenarios related to default in arbitration. Ms. Gantenberg and Ms. Reiser also gave insight on where the arbitration community and arbitration institutions stood with respect to certain sensitive issues, including on how and on the basis of which criteria institutions should appoint an arbitrator when one party fails to do so itself, or what should arbitrators do when facing a defaulting party at the (pre-) hearing stage. Interestingly, it was also stressed that, according to institutions, it was in fact very rare that a request for arbitration could not be served at all to respondent. Ms. Gantenberg and Ms. Reiner further highlighted the importance of transparent and open communication by the arbitral tribunal when a party is defaulting in the proceedings, and encouraged an “outside the box” thinking in that respect. This was in line with the overall view of the arbitration community that such defaulting party should still be notified of, and

invited to participate in, each stage of the proceedings as much as possible.



Ms. Niuscha Bassiri (Hanotiau & van den Berg) then brilliantly met the challenge to keep the audience focused before lunch break, by sharing her views on whether an arbitrator should be the “devil’s advocate” in cases where a party is defaulting in the arbitration proceedings. She explained her view that one may think a bit more positively about the devil’s advocate. Neither is the defaulting party a devil, nor is the arbitral tribunal an advocate for the defaulting party when it follows the mandatory laws and rules to conduct the proceedings in a procedurally fair manner. Ms. Bassiri notably shared her personal experience as an arbitrator facing a defaulting party, and recalled that there is in fact a shared role to play. On the one hand by the arbitral tribunal which needs to assert the facts and the law of the case, and on the other hand by the claimant, whose interest may lie in proactively anticipating the defaulting party’s potential counter-arguments to assist the arbitral tribunal. Ms. Bassiri also stressed that the task of an arbitrator is to test the participating party’s case. In default proceedings, that may entail taking a limited role as the devil’s advocate, in its role as guardian of the proceedings and due process (e.g. putting forward certain clarifying questions of facts or law), in order to protect the award from later challenges which, ultimately, she is convinced, may well be for the best of the participating party anyway.



The participants were subsequently invited to gather around a tasty walking lunch, after which the floor was given to **Ms. Anne K. Hoffman** (Hoffmann Arbitration). Ms. Hoffman addressed the burning question of whether an arbitrator or a judge is entitled to consider the

law beyond the submissions of the parties, or the so-called “*iura novit arbiter*” principle, which is especially relevant where a party is defaulting. After having pointed out that arbitration rules and laws are mostly silent on that topic, Ms. Hoffman showed that, in practice, tribunals regularly refer to the principle and confirm its applicability, particularly in commercial and investment arbitration. In the course of her presentation, Ms. Hoffman notably raised that, while tribunals are not generally obligated to apply the said principle in commercial arbitration, the same cannot be said in the case of investment arbitration. Finally, Ms. Hoffman expressed her view that the “*iura novit arbiter*” principle seemed to have found its way in modern international arbitration, but was not necessarily boundless as its application is *de facto* limited by considerations of due process, fairness and of enforceability of the award. Practically, and as a conclusion, Ms. Hoffman deemed necessary that arbitrators try to keep a balanced approach. As the LCIA guidance puts it, arbitrators “[...] should rather show more caution (rather than be more audacious) than the courts before substituting their legal arguments for those of the parties”, by being notably careful not to seem partial when raising their own legal arguments.



Mr. Hakim Boularbah and **Ms. Anaïs Mallien** (Loyens & Loeff) pursued the afternoon by impressively tackling the specific subject of the impact of default on post-arbitration proceedings. Ms. Mallien first analysed the Belgian and French laws on the setting aside of arbitral awards, as well as the New York Convention, and examined the extent to which a defaulting party may rely on these rules to oppose further recognition and enforcement of the award before national courts, on the ground of its own absence in the arbitration proceedings. It was found that a defaulting party could try to argue, for example, a breach of (international) public policy or due process, a failure to notify procedural acts or an inability to defend its rights. However, Ms. Mallien explained that courts generally adopt a non-

formalistic approach with respect to such claims, thus setting a high threshold for a defaulting party to succeed in obtaining the annulment or the non-enforcement of an arbitral award rendered against it on that basis. Mr. Boularbah then concluded that it was key to ensure notification of all acts and procedural steps to the defaulting party and that one cannot stress enough that it is not recommended to take the risk of not (or only partially) participating in arbitration proceedings as a strategy or tactic in anticipation of annulment or setting aside proceedings, or as a defence at the enforcement stage, considering the approach taken by domestic courts.



A panel of eminent representatives of arbitration institutions, chaired by **Mr. Willem van Baren** (NAI), finally discussed the consequences of default on the different procedural steps of arbitration proceedings. Ms. **Estelle Brisson** (LAA), Mr. **Marc Henry** (AFA), Mr. **Rouven Bodenheimer** (DIS), Ms. **Friederike Schäfer** (former counsel ICC) and Ms. **Emma Van Campenhoudt** (CEPANI Secretary General) each shared their own experience of dealing with defaulting parties

and raised some interesting questions. Notably, the panelists discussed the interplay between the obligation to pay the arbitration costs and the right to access to justice, and the potential solutions arbitration institutions could put forward to guarantee a better access to arbitration proceedings, in particular in presence of an impecunious party. The level of scrutiny to be applied by arbitration institutions to default awards was also debated. The audience was subsequently invited to take part and raise questions, which gave rise to instructive exchanges of views, notably on whether an arbitral award that could not be served to a party should be kept... for 100 years!

Fortunately, as confirmed by **Prof. Benoît Kohl** in its concluding remarks, we will not have to wait that long for attending the next edition of CEPANI's Annual Colloquium which was already announced for November 2023. See you there!



**VPG-CEPANI Seminarieeks
over ADR & Arbitrage**

14 en 28 Oktober 2022



*Wannes Vandebussche
Ass. Prof. Ghent University
Linklaters (Brussels)*

Het domein van de buitengerechtelijke conflictafhandeling staat niet stil. Hoewel ADR en arbitrage er nog niet in geslaagd zijn (en misschien nooit in zullen slagen) om de klassieke rechtbankprocedure te verdringen als leidend paradigma voor de oplossing van geschillen, neemt hun belang wel stelselmatig toe. Dat blijkt vooreerst uit de opbouw van ons Gerechtelijk Wetboek, dat in zijn oorspronkelijke versie eindigde met het vijfde deel over beslag en executie. Daar is naderhand een zesde deel over arbitrage, een zevende deel over bemiddeling en recent een achtste deel over collaboratieve onderhandelingen aan toegevoegd. Ook bestaat er een toenemende tendens om rechtszoekenden (weliswaar nog steeds op voorzichtige wijze) te duwen richting alternatieve methoden van conflictantering. Iedere advocaat is thans verplicht om zijn cliënt te informeren over de mogelijkheid tot bemiddeling, verzoening en elke andere vorm van minnelijke oplossing van geschillen (art. 444, tweede lid Ger.W.). Voorts kan de rechter tegenwoordig zelfs ambtshalve een bemiddeling bevelen, behalve indien alle partijen daartegen gekant zijn (art. 1734, tweede lid Ger.W.). Ten slotte heeft de COVID 19-crisis ervoor gezorgd dat de digitalisering van ADR en arbitrage in een stroomversnelling zijn gekomen, wat nieuwe vragen doet rijzen op het vlak van cybersicuriteit en gegevensbescherming.

Het thema van de buitengerechtelijke conflictafhandeling vormde dus een uitermate geschikt en actueel onderwerp voor een tweeledige hybride seminarieeks, waarvoor het Vlaams Pleitgenootschap bij de balie te Brussel en CEPANI de krachten hebben gebundeld. Op 14 en 28 oktober 2022 vonden er tijdens de middagsessies plaats in het KBC-auditorium in de Havenlaan in Brussel, die ook steeds via livestream te volgen waren.

Gedurende de eerste sessie, die georganiseerd werd tijdens de *mediation week* van de Federale Bemiddelingscommissie, stonden bemiddeling en de minnelijke oplossing van geschillen centraal. **Mr. Caroline Daniels** beet de spits af met de uiteenzetting “*Wegwijzer: de advocaat en alternatieve vormen van geschillenoplossing*”. Na een korte heropfrissing van de krachtlijnen van de Wet van 18 juni 2018 (de zgn. “Waterzooiwet”), gaf Mr. Daniels in volgelvlucht een overzicht van de verschillende ADR-mechanismen. Zij besteedde daarbij ook aandacht aan de Consumentenombudsinstelling, een instantie die vaak over het hoofd wordt gezien in de traditionele lijstjes. Ten slotte vestigde Mr. Daniels de aandacht op een verborgen voordeel van de schikkingskamers in de ondernemingsrechtbanken. Die kamers laten soms sneller dan een pleitkamer toe om een tussenvennis te verkrijgen waarin een onderzoeksmaatregel wordt bevolen.

Als tweede spreker kwam **Mr. Charlotte De Muynck** aan bod met haar presentatie over “*E-mediation*”. Hoewel online bemiddelen ontzettend veel voordeelen biedt (zoals het vermijden van fysieke confrontatie, de snelheid en flexibiliteit en de efficiëntie), zijn er op dit moment in België weinig concrete richtsnoeren voor

bemiddelaars die daartoe willen overgaan. Er is enkel artikel 7 van de deontologische code. Luidens deze bepaling mag “de bemiddelaar ook virtuele sessies organiseren”. Mr. De Muynck wees dus op meerdere caveats waarmee rekening moet worden gehouden bij een online bemiddeling. Verder deelde zij een aantal handige tips en tricks met de toehoorders.



Mr. Fleur Goister en **Drs. Anna Wilmot** namen de derde presentatie voor hun rekening over de “*basisbeginselen van de collaboratieve onderhandeling*”. De spreeksters beperkten zich niet tot een loutere juridisch-technische uiteenzetting van de ADR-methode. Zij lichtten ook de mindset toe die nodig is om aan tafel te gaan en het traject dat moet worden doorlopen. Daarbij valt ook de aangepaste terminologie op (zoals andere partij in plaats van tegenpartij en collega in plaats van tegenstrever). Wat betreft de juridische knelpunten, onthouden wij vooral het gebrek aan homologatiemogelijkheid van het collaboratief akkoord. Dit kan eventueel op kunstmatige wijze worden ondervangen door de zaak aanhangig te maken bij de rechter en te doen alsof er op één punt geen akkoord is.

Tijdens de tweede sessie op 28 oktober 2022 lag de focus op de alternatieve geschillenbeslechting, met name op bindende derdenbeslissing en arbitrage. Hoewel het praktisch belang van de bindende derdenbeslissing niet te onderschatten valt, zijn actuele besprekingen over dit thema eerder schaars. **Mr. Alexander Hansebout** bracht daar op uitstekende wijze verandering in. Bovendien was er ook een goede aanleiding om het onderwerp van onder het stof te halen. In maart 2020 gaf de raad van de Nederlandse Orde van advocaten bij de balie te Brussel goedkeuring aan een nieuw Reglement bindende derdenbeslissing. Bovendien geeft het nieuw verbintenisrecht ook erkenning aan de figuur (art. 5.49 BW). Mr. Hansebout behandelde zowel de voor- als nadelen van de methode alsook een aantal juridisch-technische aspecten (zoals de overeenkomst, de procedure en de afdwingbaarheid). Hij sloot af met een oproep om de nodige creativiteit aan de dag te leggen om de bindende derdenbeslissing in te passen in een meerlagig systeem van geschillenbeslechting.

Vervolgens behandelde **Mr. Flip Petillion** het uitdagende thema van GDPR in arbitrage. De naleving van de Algemene Verordening Gegevensbescherming is vanzelfsprekend niet het eerste waar de verschillende actoren aan denken bij het initiëren van een arbitrageprocedure. Niettemin moeten partijen, advocaten, arbiters en arbitrale instanties de vereisten inzake GDPR naleven wanneer er gegevens van natuurlijke personen in het spel zijn. Mr. Petillion gidsde de toehoorders op een overzichtelijke en begrijpelijke wijze doorheen de vele vragen die hieromtrent rijzen (o.m. wat iedere deelnemer moet doen om GDPR-conform te zijn, welke problemen er zich

kunnen voordoen en hoe persoonsgegevens buiten de grenzen van de EER gedeeld kunnen worden). Ten slotte wees Mr. Petillion op het bestaan van een *ICCA-IBA roadmap* voor gegevensbescherming in internationale arbitrage die heel wat checklists en voorbeelddocumenten bevat. Een volgende uitdaging zou erin bestaan om deze te reduceren tot toegankelijke en makkelijk te hanteren *best practices*.

Afsluiten gebeurde in stijl met een tweeluik dat gebracht werd door **Mr. Maarten Draye**: enerzijds over urgenterarbiters en anderzijds over de vernietiging van arbitrale sententies. Centraal in het betoog van Mr. Draye stond de rol van urgenterarbitrage als een nuttig wapen om tot een snelle beslissing te komen. In België bestaat er met het klassieke kort geding weliswaar een waardig alternatief, maar dat is in andere rechtstelsels niet altijd het geval. Daardoor bestaat er in België ook een zeker spanningsveld tussen beide mechanismen. Mr. Draye is er echter van overtuigd dat geen van beide voorrang moet krijgen. Partijen moeten in dringende gevallen de mogelijkheid hebben om de meest efficiënte weg te kiezen. Ten slotte kon Mr. Draye de toehoorders boeien met een stelselmatige besprekking van de vernietigingsgronden, die doorspekt was met praktijkvoorbeelden.



Het VPG en CEPANI kijken met voldoening terug naar de tweevoudige seminariereeks. In het voorjaar verschijnt het boek "Buitengerechtelijke conflictafhandeling: vandaag en morgen" met de schriftelijke neerslag van de verschillende presentaties. Dit boek zal ongetwijfeld een meerwaarde betekenen voor de Belgische literatuur inzake ADR en arbitrage.

Brussels, the Heart of the Legal World (Miami)

31 October 2022



Alexander Hansebout
Partner
ALTIUS (Brussels)

The International Bar Association's 2022 Annual Conference in Miami (USA) was the occasion for hub.brussels to organise an event promoting Brussels as a legal hub and to sell the Brussels legal offering to the international market. Hub.brussels teamed up with CEPANI, the Nederlandse orde van advocaten bij de balie te Brussel (NOAB), l'Ordre français des avocats du barreau de Bruxelles and EDPO for a seminar on "*Brussels, the Heart of the Legal World*" at the Surfcomber Hotel (Miami Beach).

The presentations were held under the auspices of the Consul General of Belgium in Atlanta, Mr. Michel Gerebtzoff, and the hub.brussels team. The 73 attendees, which included 36 US and 28 Belgian participants, were warmly welcomed and were presented with an overview of hub.brussels' mission, network and activities. NOAB President, Mr. Bernard Derveaux, explained the conditions under which non-Belgian lawyers are allowed to practice in Brussels under their home title and through an establishment in Belgium. He discussed the registration conditions for the Brussels Bars' 'tableau', 'EU list' and 'B list' and the respective advantages of being enrolled on these lists. He welcomed lawyers to settle in Brussels and to consider Brussels as the location for centralising their activities.

Former NOAB President, **Mr. Patrick Dillen**, gave 10 reasons why Brussels should be one's gateway to the European legal market. In addition to the important Brussels-based European Institutions and the Brussels legal market being an open market, he also referred to the quality of the city's lawyers and institutions (including CEPANI) and its multilingual environment at the 'cultural crossroads' of northern and southern Europe. Finally, Mr. Dillen emphasized

Brussels' standard of living and high-quality, varied and affordable cuisine.



On behalf of CEPANI, **Mr. Pascal Hollander** (Hanotiau & van den Berg) set out six reasons to arbitrate in Brussels. Readers will not be surprised that Mr. Hollander stressed (i) the city's openness, cultural and linguistic diversity, its sensitivity to the needs of international business, and Brussels' rule of law tradition as the 'capital of Europe'. He dwelled on (ii) Belgian's modern arbitration law and CEPANI's new arbitration rules (effective since 1 July 2020) and (iii) focused on the elements of the Brussels' legal environment that make it attractive for international arbitration. The latter include Belgium's monistic and liberal approach to arbitration, e.g. regarding the appointment of arbitrators, the organisation of the proceedings, the possibility to agree on waiving setting aside proceedings, etc. Mr. Hollander referred to (iv) CEPANI's 50-year long tradition of excellence, and (v) Brussels being a top venue for arbitral hearings. He finished by (vi) stating the reasons why parties should consider choosing a Belgian arbitrator for their case, many of which were illustrated by his very own presentation.

Ms. Jane Murphy (EDPO) explained why it is important for non-EU companies to remember their GDPR obligations when offering goods or services to individuals in the EU or when monitoring individuals' behaviour in the EU. An important obligation could be the appointment of a GDPR representative. Ms. Murphy stressed that one should not confuse this with the obligation to appoint a Data Protection Officer or other types of representatives. She briefly discussed the interplay with the Privacy Shield and any Adequacy decision, and offered some thoughts on appropriate solutions.

The seminar ended with a short presentation of the Brussels lawyers present and with a networking cocktail, including – what else? – famous Belgian beers...



MEET THE EXPERTS !



After the success of the first two editions, CEPANI40 is pleased to invite you to the third episode of "Meet the experts!"

Join us on **Thursday 19 January 2023** at 6pm for an informal and interactive Q&A session with a panel of four experts:

- **Pascal Hollander** (Hanotiau & van den Berg, Brussels)
- **Maude Lebois** (GBS Disputes, Paris)
- **Emma Van Campenhoudt** (Secretary General, CEPANI)
- **Marieke van Hooijdonk** (Allen & Overy, Amsterdam)

The discussion will be moderated by CEPANI40 Co-Chairs, Guillaume Croisant (Linklaters, Brussels) & Katherine Jonckheere (LALIVE, London) and followed by networking drinks kindly hosted by Allen & Overy Brussels.

The panel will endeavour to answer all the questions you ask yourselves as young arbitrators and arbitration practitioners.

[Register here!](#)

CEPANI SUPPORTS

» INSTITUT DES JURISTES D'ENTREPRISE



RÉTROSPECTIVE DE LA JOURNÉE DES JURISTES D'ENTREPRISE

La 33^e Journée des juristes d'entreprise a eu lieu le mardi 15 novembre dernier. Le thème de la journée était « Juristes d'entreprise et les responsabilités de l'entreprise - vers une responsabilité sans fin des entreprises ». Trois panels d'experts (des entrepreneurs, des juristes d'entreprise, des universitaires, des avocats et des magistrats) et un orateur principal ont abordé ce thème central. Près de 400 juristes d'entreprise de tout le pays (une participation record) y ont participé.

Au cours des présentations, les sujets abordés ont été les suivants : La responsabilité croissante des entreprises pèse-t-elle trop lourd ? Quel est l'impact de la réforme du Code civil sur la responsabilité extracontractuelle des entreprises ? Et comment s'armer en tant qu'entreprise contre ces temps particulièrement difficiles ?

En ce qui concerne la responsabilité croissante (panel 1), un intervenant a défendu le principe "Comply or explain" : se conformer à toutes les exigences imposées par la législation ou justifier les raisons pour lesquelles on s'en écarte. Cela nécessite un changement résolu de l'état d'esprit des régulateurs : faire confiance aux entreprises et non à la (sur)réglementation.

Le panel 2 s'est concentré sur les changements à venir dans le Code civil concernant la responsabilité (objective). L'avant-projet n'est déjà pas exempt de critiques. En effet, le texte qui nous est proposé déresponsabilise trop la victime potentielle.

Le dernier panel a abordé la question de savoir comment les entreprises peuvent se préparer à des circonstances imprévues. Une question très pertinente en ces temps incertains de prix élevés de l'énergie, de pénurie de ressources et de l'inflation très élevée. Des contrats soignés (et courts) semblent être une première étape importante à cet égard.

Lire la suite : [IBJ - IJE - Corporate Responsibility: huit leçons pour le juriste d'entreprise](#)



DAG VAN DE BEDRIJFSJURISTEN, EEN TERUGBLIK

Dinsdag 15 november ll. vond de 33^e Dag van de bedrijfsjuristen plaats. Onderwerp van de dag was "Company lawyers and corporate responsibilities – towards an endless liability of companies". Drie expertenpanels (met ondernemers, bedrijfsjuristen, academici, advocaten en magistraten) en een keynotespreker bogen zich over dit centraal thema. Bijna 400 bedrijfsjuristen uit heel het land - een recordopkomst - namen deel.

Tijdens de uiteenzettingen kwam onder meer aan bod: Weegt de toenemende verantwoordelijkheid van bedrijven te zwaar door? Wat is de impact van de hervorming van het Burgerlijk Wetboek op de buitencontractuele aansprakelijkheid van ondernemingen? En hoe je als onderneming wapenen tegen deze bijzonder moeilijke tijden?

Wat betreft de toenemende verantwoordelijkheid (panel 1) breekt één spreker een lans voor het principe van "Comply or explain": voldoe aan alle vereisten die de wetgeving oplegt of verantwoord waarom je ervan afwijkt. Het vraagt wel een resolute mentaliteitswijziging van regulatoren: ga uit van vertrouwen in ondernemingen en niet van (over)regulering.

Panel 2 focuste op de aankomende wijzigingen in het Burgerlijk Wetboek betreffende de (objectieve) aansprakelijkheid. Het voorontwerp is alvast niet vrij van kritiek. De tekst die voorligt neemt immers te veel de eigen verantwoordelijkheid van het potentiële slachtoffer weg.

Het laatste panel boog zich over de vraag hoe ondernemingen zich kunnen voorbereiden op onvoorzienbare omstandigheden. Een vraag die in deze onzekere tijden van hoge energieprijzen, grondstoffenschaarste en torenhoge inflatie, erg pertinent is. Zorgvuldige (en korte) contracten lijken daar een eerste belangrijke stap.

Lees meer : [IBJ - IJE - Corporate Responsibility: acht lessen voor de bedrijfsjurist](#)

» **International Federation of Commercial Arbitration Institutions (IFCAI)**

The Secretariat of IFCI is proud to announce that elections to the offices of the Council took place on occasion of the last Council Meeting, and that were elected, to the offices of:

- President, **Ismail Selim**
- Secretary Treasurer, **Kristin Campbell-Wilson**
- Vice President, **Patricia Shiguemi Kobayashi**
- Vice President, **Niamh Leinwather**
- Vice President, **Camilla Perera-de Wit**
- Vice President, **Eric P. Tuchmann**

You can find the announcement on the following LinkedIn page of IFCAI: <https://www.linkedin.com/feed/update/urn:li:activity:6987763395479396352/>, and the updated list of Councilors on its website: <https://www.ifcai-arbitration.org/ifcai-council-members/>.

The new Council has planned meetings once every two months, and in order to set strategic goals for IFCAI during the course of the next two years, would be happy to hear any suggestions and ideas, which would and will benefit its Member Institutions, as may be directly proposed by its Members.

Any such suggestion is welcome and can be sent to the President of IFCAI Council, or the Secretariat, for its communication to the Council, prior to December 12.

The Secretariat will also shortly pass on from CRCICA, former Secretary-Treasurer Ismail Selim, to SCC, with new Secretary-Treasurer Kristin Campbell-Wilson.

NEWS FROM OUR PARTNERS

» KLUWER ARBITRATION

End of year offer for CEPANI members

Exclusive discount for CEPANI members on ALL Kluwer Law International book publications.

The bespoke promotional code CEPANI2022EOY shall apply a **30% discount on any order*** from the International market segment of our [eStore](#) and is valid until December 31st 2022.

There have been many new and important Arbitration publications this year. Here are some of our latest highlights to inspire you:

New & Popular

1. [So, Now You Are an Arbitrator: The Arbitrator's Toolkit](#)
2. [The Vienna Convention on the Law of Treaties in Investor-State Disputes: History, Evolution and Future](#)
3. [Handbook of Evidence in International Commercial Arbitration: Key Issues and Concepts](#)
4. [Balancing the Protection of Foreign Investors and States Responses in the Post-Pandemic World](#)
5. [International Arbitration in Times of Economic Nationalism](#)
6. [Yearbook Commercial Arbitration, Volume XLVI \(2021\)](#)
7. [Collection of ICC Arbitral Awards 2016-2020](#)
1. [Arbitrating under the 2020 LCIA Rules: A User's Guide](#)
2. [International Commercial Arbitration, Third Edition](#)
3. [International Construction Arbitration Law, Third Edition](#)
4. [Arbitration in India](#)
5. [International Investment Protection of Global Banking and Finance: Legal Principles and Arbitral Practice](#)

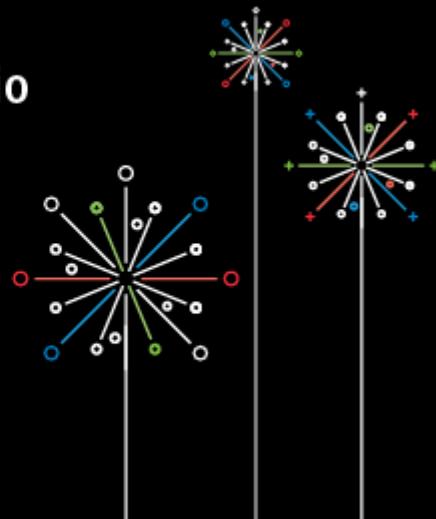
30% off on the entire International Law book portfolio

Use discount code **CEPANI2022EOY** at
check-out

[Shop now →](#)

This offer is valid until 31 December 2022.

 Wolters Kluwer





Best Practices: How to connect lawyers and bailiffs without language borders?

The integration of bailiffs into the legal system has its own challenges and national regulations.

An excellent example how to ease the integration is the Dutch bailiffs partner association Fores Huisdeurwaarders. They don't only ease partnerships among bailiffs, but first and foremost serve as a go-to platform for advocates who need to partner with a bailiff.

As in any other area of life, different languages across parties and documents present a major challenge in this context – even more so as legal correspondence relies on a very sector-specific terminology and overall wording that requires a high degree of subject matter expertise.

Easy communication between lawyers and bailiffs while dealing with complex legal documents demands a multilingual environment.

Read our [new article](#) and discover which factors to consider when looking for a legal language partner to ensure 100% accurate and compliant legal translations.

Read the article

Fast, Reliable and Accurate Legal Language Services

Acolad Legal solves multilingual challenges for legal professionals across all practices, types of documents and areas of law. Our global network of legal language experts will ensure the best quality and the highest level of customer service.

Learn more about Acolad Legal services on our website: <https://www.acolad.com/en/legal.html>