CEPANI
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May 2021

Editors in chief: Guillaume Croisant, Marijn De Ruysscher, Iuliana Iancu and Claire Larue

AGENDA

17 JUN 2021	(10:00 – 12:00)	Webinar Voka-Vlaams netwerk van ondernemingen “Dispute Resolution by Arbitration in International Trade”/ “Geschillenbeslechting in internationale handel via arbitrage”
6 SEP 2021	(16:00 - 18:00)	CEPANI seminar in London in cooperation with hub.brussels and London Court of International Arbitration (LCIA) on arbitration and digitalisation - save the date!

SERIES : Stories from a Young Arbitrator

REPORTS

SERIES - STORIES FROM A YOUNG ARBITRATOR

With the April 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 2 - THE IMPACT OF INSOLVENCY ON (PENDING) ARBITRATION PROCEEDINGS UNDER BELGIAN LAW

Guillaume Croisant
Managing Associate, Linklaters; Lecturer, ULB

Introduction – private international law

With the global economy under stress because of the Covid-19 pandemic, it has become increasingly important for arbitrators (and counsel) to be acquainted with the main impacts of a party's insolvency on (pending) arbitration proceedings.

In an international context, or for a dispute between Belgian parties but where the seat is not located in Belgium, an arbitrator faced with the insolvency of a party will first have to determine the law applicable to this issue.

Under most circumstances (in intra-EU disputes), they will apply Article 7 of the EU regulation 2015/848 of 20 May 2015 on insolvency proceedings (the "Insolvency Regulation"), pursuant to which the law applicable to insolvency proceedings is the law of the EU Member State within the territory of which such proceedings are open (i.e. the place of the debtor's COMI, or centre of main interests, in accordance with Article 3 of the Insolvency Regulation). The law applicable to insolvency proceedings, in the meaning of the Insolvency Regulation, determines – among others – the debtors against which insolvency proceedings may be brought on account of their capacity, the respective powers of the debtor and the insolvency practitioner, the effects of insolvency proceedings on current contracts to which the debtor is party, the claims which are to be lodged against the debtor's insolvency estate and the treatment of claims arising after the opening of insolvency proceedings, and the effects of the insolvency proceedings on proceedings brought by individual creditors, with the exception of pending lawsuit or arbitration.

In accordance with Article 18, of the Insolvency Regulation (see also Article 119(4)(3) of the Belgian Code of Private International Law for situation where the COMI would not be in a EU Member State), the law applicable to the effects of insolvency proceedings on any pending lawsuit or arbitration concerning an asset or right which forms part of the debtor's insolvency estate should be the law of the Member State where the lawsuit is pending or where the arbitration has its seat. As stressed by recital 73, this rule should not affect national rules on recognition and enforcement of arbitral awards.

The below developments will focus on the situations where Belgian insolvency law is applicable (i.e. where, depending on the issues at hand, the seat of the arbitration is in Belgium and/or the debtor's COMI is located in Belgium).

The main questions which may then have to be determined by an arbitrator is (i) the impact of insolvency proceedings on pending arbitrations, (ii) whether a claimant may initiate proceedings against an insolvent respondent and (iii) whether an insolvent claimant may initiate arbitration.

How does a party's insolvency impact pending arbitration proceedings?

As is well known, Belgian insolvency law (Book XX of the Code of Economic Law) mostly provides for two different types of insolvency proceedings in commercial matters: bankruptcy and judicial reorganisation.

Judicial reorganisation does not have an impact on pending arbitration (or court) proceedings. However, during a judicial reorganisation, a temporary moratorium will be imposed during which arbitral awards (and judgments) cannot be enforced against the undertaking's assets.

In case of bankruptcy, all proceedings, including arbitration, or enforcement measures against the debtor are automatically suspended as of the date of judgment declaring it bankrupt. The other party in a pending arbitration is then required to file a notice of its claim with the bankruptcy trustee through a centralised online insolvency register.

The bankruptcy trustee appointed by the bankruptcy judgment has full control over the bankruptcy estate and is required to draw up a list of the bankrupt company's liabilities by a date set in the bankruptcy judgment. In doing so, the bankruptcy trustee must decide whether to accept the claim notified by the creditor. If the claim is accepted, the proceedings are terminated in so far as they are directed against the bankruptcy trustee.

However, if the bankruptcy trustee does not accept the claim or reserves their decision, the arbitration may continue. The bankruptcy trustee is then deemed to act in the arbitration on behalf of the bankruptcy estate.

This means that an arbitrator faced with the insolvency of a party occurring during a pending arbitration should (i) verify that this party's counsel is instructed by the bankruptcy trustee and (ii) stay the proceedings until the bankruptcy trustee accepts the claim against the bankruptcy estate (leading to the termination of the proceedings) or refuses such claim and continue the proceedings.

In a case unrelated to insolvency proceedings, the Supreme Court (Cour de cassation/Hof van Cassatie) ruled on 7 November 2019 (Case No. C.19.0048.N), that an arbitration clause may be disregarded if it imposes a manifestly unreasonable financial burden on a party, thereby breaching the party's right of access to justice. To date, no published ruling has applied this reasoning in the context of insolvency proceedings. However, one could expect bankruptcy trustees to argue that significantly high arbitration fees (which the other party is unwilling to pay) constitute an unreasonable financial burden on the bankruptcy estate, thereby allowing them to disregard the arbitration clause in favour of state courts. In Belgium, court fees are indeed marginal compared to arbitration costs.

Can one initiate arbitration against an insolvent entity?

A judicial reorganisation does not affect a party's ability to initiate arbitration against a party subject to reorganisation proceedings.

Where the potential respondent has been declared bankrupt, in principle, legal proceedings cannot be brought directly against it. Rather, all creditors are required to file a notice of claim with the bankruptcy trustee. Setting-off between a claim arising out of the insolvency procedure and a claim unrelated to the insolvency (i.e. arising out of agreements concluded before the insolvency) are possible where both claims are closely related.

If the bankruptcy trustee rejects the creditor's claim in their final report, the concerned creditor may bring the matter before the Enterprise Court. The Enterprise Court will either rule on the dispute or decline jurisdiction in favour of another court, or an arbitral tribunal in the presence of an arbitration agreement.

Bankruptcy trustees are generally bound by arbitration agreements that have validly been entered into before the bankruptcy. Arbitration may therefore be initiated against a bankrupt debtor only to the extent that the bankruptcy trustee contests the underlying claim, and only after the matter has been brought before the Enterprise Court.

The only exception is when claims which would not have arisen but for the bankruptcy, and which are closely related to it, fall within the exclusive jurisdiction of the Enterprise Court (such as, for instance, the claims of the bankruptcy trustee challenging the debtor's transactions because they are deemed fraudulent or occurred after the taking over of the administration of the bankruptcy estate by the bankruptcy trustee). Given that the Enterprise Court's jurisdiction is considered to be a matter of public policy (see also Article 6 of the Insolvency Regulation), arbitration agreements relating to claims falling under this category will not be enforceable.

In case claimant initiates arbitration proceedings against an insolvent respondent, an arbitrator will thus have to verify (i) that claimant's claims were rejected by the bankruptcy trustee, (ii) that the Enterprise Court declined jurisdiction and (iii) that respondent's counsel is instructed by the bankruptcy trustee.

Can an insolvent entity commence arbitration?

An insolvent party may initiate arbitration proceedings through the bankruptcy trustee acting on its behalf. The bankruptcy trustee has the obligation to liquidate the bankruptcy estate's assets in order to be able to pay the creditors. If the bankruptcy estate has claims against a third party that are subject to an arbitration agreement, the bankruptcy trustee may commence arbitration proceedings.

In Belgium, it is generally accepted that where an arbitration agreement applies to claims of the bankruptcy estate, the bankruptcy trustee is bound by that clause. Hence, these claims may only be resolved by arbitration.

The arbitration agreement may nevertheless be challenged if (i) it was entered into with a view to prejudicing the other creditors and/or (ii) it was entered into during the so-called "suspect period", i.e. a period of time prior to the bankruptcy, determined by the Enterprise Court, during which the actions taken by the debtor may be declared null and void.

In practice, it remains uncommon for bankruptcy trustees to initiate arbitration proceedings, barring exceptionally large bankruptcy estates. Trustees usually have limited funds at their disposal to liquidate and manage the bankruptcy estate and will therefore shy away from costly (arbitration) proceedings.

In case an insolvent claimant initiates arbitration proceedings, an arbitrator will thus have to verify (i) the validity of the arbitration agreement and (ii) that claimant's counsel is instructed by the bankruptcy trustee.

As indicated, it remains to be seen whether the Supreme Court's 2019 decision will lead bankruptcy trustees to attempt to avoid enforcing an arbitration agreement on the basis that the arbitration fees would impose a manifestly unreasonable financial burden on the bankruptcy estate.

REPORTS

CEPANI 40 WEBINAR:

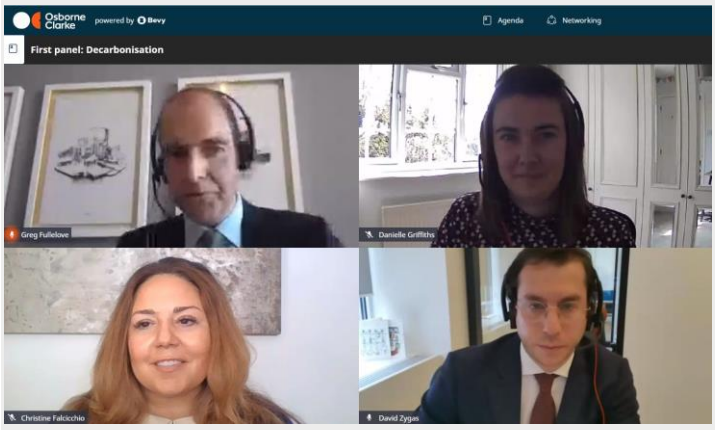
EMERGING TRENDS IN ARBITRATION: DECARBONISATION AND DIVERSITY

WEBINAR, 6 MAY 2021

Zoe HUGHES-NIND
Trainee solicitor (Osborne Clarke)

Pre-2020, decarbonisation and diversity were already emerging trends within international arbitration. Yet last year travel bans, enforced virtual hearings and a heightened global awareness of issues of diversity renewed the focus on these topics.

To discuss the ways in which these trends will shape arbitration in the years to come, CEPANI40 joined with Osborne Clarke to host a virtual conference on 6 May 2021. The event comprised two panel discussions, one on decarbonisation and another on diversity, moderated by UK-based Osborne Clarke partners Greg Fullelove and Jane Park-Weir. CEPANI40 co-chairs Sophie Goldman (Partner, Tossens Goldman Gonne) and Sigrid Van Rompaey (Partner, Matray, Matray & Hallet) opened and closed the event and Marie Canivet (Partner, Osborne Clarke Belgium) delivered the keynote address.



Danielle Griffiths (Senior Associate, Osborne Clarke UK) started the first panel by reminding the audience of the importance of decarbonisation to arbitration. Thanks to various factors including the European Green Deal, a Biden presidency and the post-Covid drive to 'build back better', a reduced carbon footprint is now a key goal for many governments and organisations. The result: over the next 30 years, businesses across sectors will have to engage with new regulation, technological innovation and alternative business models. The legal and commercial risk involved will provide fertile ground for disputes to be arbitrated.

Alongside Ms Griffiths was David Zygas (Senior Associate, Osborne Clarke Belgium). He discussed the types of disputes decarbonisation may lead to. Whilst there are currently many renewables arbitrations, comprising both investor-treaty and international commercial disputes, the multi-sector reach of decarbonisation will generate an influx of disputes across a range of subjects. On the other hand, countries falling behind on their net zero targets agreed under the Paris Agreement may be required to take ambitious action. Companies affected by such action – for example, by the early closure of a coal plant – may seek compensation from the relevant country. The prevalence of this type of dispute is therefore also likely to increase.

Christine Falcicchio (Founding Principal, Sopra Legal) then spoke about the other aspect to decarbonisation: the climate footprint of arbitration itself. Ms Falcicchio spoke about the 'Green Pledge', founded by arbitrator Lucy Greenwood, and the need for increased use of online pleadings and virtual hearings to limit the environmental impact of arbitration. The success of virtual hearings throughout the pandemic in particular offers evidence of the potential for greener, more sustainable arbitrations.

On diversity, the panel began by explaining the reasons that greater diversity in tribunals and external counsel is needed. Gaëlle Filhol (Partner, Betto Perben Pradel Filhol) presented evidence that diverse groups produce better outcomes. Ravi Aswani (Barrister, 36 Stone) raised the fact that, where a natural resource of a developing country is the subject of the dispute, there may be questions about the legitimacy of a tribunal comprised entirely of persons who bear no connection to that country. Patrick Baeten (General Counsel, Engie) highlighted that currently there is very little diversity, particularly in tribunals.

Ms Filhol then considered the obstacles to greater diversity in arbitration, such as the tendency of clients and counsel to seek only arbitrators with whom they are familiar and/or who have prior experience. This is a common practice, even though, as Mr Aswani explained, this 'safe bet syndrome' is often based on perception rather than reality. Mr Baeten provided insight into the constraints faced by in-house counsel. For instance, if the list of arbitrators proposed by external counsel is not diverse, in-house counsel have little room to pick a diverse candidate.

Ms Park-Weir concluded the discussion by asking the panel what steps the industry can take to improve diversity. Mr Aswani pointed out the benefits of virtual conferences, which require neither time away from work or caring responsibilities nor long and potentially expensive flights and accommodation. Mr Baeten emphasised the need for a pipeline of a diverse group of young arbitrators and lawyers, as recommended in the International Council for Commercial Arbitration Report No. 8. Ms Filhol recommended mentoring, spreading awareness and the importance of creating an inclusive culture at the top.

The conference was another online success for CEPANI40 and a timely reminder of two key changes to expect over the coming years.

ICC YAF WEBINAR:

READ BETWEEN THE LINES. THE UNWRITTEN RULES OF A CAREER IN INTERNATIONAL ARBITRATION: THE JUNIOR YEARS

WEBINAR, 14 MAY 2021

Iuliana IANCU
Partner, Hanotiau & van den Berg, Brussels

Emily HAY
Counsel, Hanotiau & van den Berg, Brussels

Vanessa FONCKE
Partner, Jones Day, Brussels

The beginning of a career in any field is seldom straightforward or intuitive. A career in international arbitration is no exception. In addition to the steps one has to take in order to enter this highly competitive field – study in the right programs, get good internships, work hard, network in the right places at the right time, keep learning – there are additional layers of complexity due to its multicultural dimension, the high pressure that comes with the job and the often clashing demands on one's time.

The ICC YAF webinar "Read Between the Lines. The Unwritten Rules of a Career in International Arbitration: The Junior Years", which took place on 14 May 2021, was the first webinar in a series of events focused on the soft skills arbitration practitioners need in order to build a strong career, with an emphasis on practical real-life situations and the strategic approaches one could have in order to meet various challenges.

The webinar was kindly hosted by Jones Day and was very well-attended with more than 250 participants joining live from all continents. In an incredible show of solidarity, the following international associations lent their support to this ICC YAF event: CEPANI40, ArbitralWomen, Club Español del Arbitraje, ACICA45, PT-VYAP Portugal Very Young Arbitration Practitioners, MAD VYAP - Madrid Very Young Arbitration Practitioners, Paris Baby Arbitration, London VYAP - London Very Young Arbitration Practitioners and YRAP - Young Romanian Arbitration Practitioners.

Anna Masser (Partner, Allen & Overy, Frankfurt), Alya Ladjimi (Manager, ICC International Centre for ADR, Paris), Prof. Dr. Mohamed Abdel Wahab (Partner, Zulficar & Partners, Cairo) and Emilio Paolo Villano (Partner, ELEXI, Brussels-Turin) took turns answering the participants' questions about the unwritten rules of the junior years in international arbitration.

The below is a small selection of the answers given to questions raised by the participants who joined the webinar:

(1) The speakers agreed that LL.M. programs are not an absolute necessity, but can be a useful complement in a CV. A U.S. LL.M. is not a necessity and students should also explore educational programs in developing markets, such as in South-East Asia, and Australia, which offer valuable programs for competitive tuition fees.

(2) Depending on the region, law firms may view a lawyer leaving the firm in order to pursue an LL.M. differently. In some jurisdictions, this is perceived as normal, while in others, firms prefer to hire someone after their LL.M. As in many other matters, prior research is key.

(3) A Ph.D. program will not necessarily confer an advantage in terms of employability. Here too, there are important cultural differences which need to be explored.

(4) A good CV is important, but not enough when applying to law firms. Employers will need to see that a candidate's trajectory shows passion for the field, sincerity and for some, a certain degree of humility is important. A bespoke application is also key. A candidate's personal skills and likeability play a major role in any interview.

(5) The fact that a candidate does not come from a traditional arbitration hub jurisdiction is no longer a disadvantage, as the international arbitration market has become larger, more global and more diverse, with disappearing territorial barriers. A candidate should research the work done by firms and find those firms that may be focusing on his/her jurisdiction(s) of interest and/or desired specialization.

(6) Juniors can express an interest in being assigned on particular cases, but they first need to impress through quality work, a good attitude and their ability to fit in a team.

(7) If juniors are overworked, they should be able to bring this issue to the attention of the supervising partner in a professional way. This could even be considered a must since it risks jeopardizing the entire team's deliverables.

(8) In order to build a professional network outside of the firm, juniors should carefully consider the firm's policies and sign up to international organizations for young practitioners. To get the most value from this network, they should get involved in the organization's activities, gradually build relationships from there and, with time, run for leadership positions.

(9) Juniors should keep an open mind when representing a variety of clients. All clients deserve good representation as part of their right to be heard. Moreover, due to the expansion of the arbitration market, there are now opportunities in fields that were previously outside of the remit of arbitration, such as climate change.

The event was organized and moderated by Iuliana Iancu (Partner, Hanotiau & van den Berg, Brussels), Emily Hay (Counsel, Hanotiau & van den Berg, Brussels) and Vanessa Foncke (Partner, Jones Day, Brussels).

Stay tuned for the second event in this series, focused on mid-level associates (3 to 7 years post-qualification experience)!

CEPANI-AIA WEBINAR:

"DOUBLE-HATTING - DO WE NEED A VACCINE?"

WEBINAR, 18 MAY 2021

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Cyro Quinten Vangoidsenhoven
LL.M. Candidate, Queen Mary University of London (School of International Arbitration)

Double-hatting has been a debated topic in the past few years and has recently been brought even more into the spotlight with the release of the first and second drafts of the ICSID and UNCITRAL Code of Conduct for Adjudicators in International Investment Disputes. Double-hatting occurs when an individual acts both as arbitrator and counsel in cases that involve the same or similar legal issues. Article 4 of the most recent draft code of conduct bars arbitrators from concurrently acting as counsel or expert witness in another investment case, unless the parties agree otherwise. The article further proposes a possible limitation on the aforementioned prohibition to cases of the same factual background and at least one of the same parties or their subsidiary, affiliate or parent entity. With regards to double-hatting, three issues arise. Firstly, it can give rise to actual or an appearance of bias. Secondly, it might cause a conflict of interest. The third and final issue does not arise out of double-hatting itself, but rather out of the limitation or prohibition of double-hatting and consists of the risk that this might negatively impact diversity.

On 18 May 2021, CEPANI and AIA (Associazione Italiana per l'Arbitrato) held a joint webinar on this topic. Once the scene was set by Benoît Kohl (President, CEPANI) and Andrea Carlevaris (President, AIA)002C the floor was given to the moderators: Maria Beatrice Deli and Dirk De Meulemeester. They divided the topic into three parts which reflected the issues that arise out of double-hatting. The parts were discussed one by one by Bernard Hanotiau (Hanotiau & van den Berg), Isabelle Michou (Quinn Emanuel Urquhart & Sullivan) and Mélanie van Leeuwen (Derains & Gharavi).

Issue 1: Bias

Bernard Hanotiau stated that the pool of arbitrators for international investment cases consists only of a small group of people, which is caused by the distinct nature of international investment law. Moreover, where commercial arbitration is mainly factual, investment arbitration is mainly legal and very complex. In recent years there has been an enormous increase in international investment cases, which has led to an increase of lawyers acting both as counsel and as arbitrator in investment cases. This raises ethical problems, especially with regards to the independence and impartiality of arbitrators. He then gave the example of a counsel who invokes a certain interpretation of a Most-Favoured-Nation Clause in an investment arbitration. At the same time, the person acting as counsel is also sitting as an arbitrator in an investment case where one of the issues is the interpretation of a Most-Favoured-Nation Clause. In this case, there might be a risk that he or she would try to defend while acting as an arbitrator, an interpretation in line with the one that he or she is submitting as counsel. This can give rise to an appearance of bias in the eyes of a reasonable third person. Mr. Hanotiau then went on to say that double-hatting might give rise to challenges from the parties or that this might put the arbitrator's personal liability at risk for fraudulent conduct, in parallel to an action to set aside the award. He also questioned whether double-hatting adversely affects the reputation of ISDS. The issues are still much debated and so far double-hatting is not yet prohibited unless it is expressly stated so in the relevant treaty or in the rules of the relevant institution, which is for example the case under CETA and in the new ICSID and UNCITRAL draft code of conduct. The current policy in a number of law firms seems to be not to act simultaneously as counsel and arbitrator in investment cases.

Isabelle Michou confirmed that double-hatting is specific to ISDS as, because of the technical nature of ISDS, the potential for issue conflict is huge. This problem does not arise in commercial arbitration, which is reflected by the fact that the draft code of conduct applies only to ISDS.

Mélanie van Leeuwen agreed that it is an issue specific to ISDS, as in investor-state disputes there are mostly the same or similar standards are at stake. The question is whether limitations are the cure as it limits the potential pool of arbitrators.

Issue 2: Conflict of Interest

Isabelle Michou focused on the inherent presence of a conflict of interest in double hatting. In the decision of the ICSID annulment committee in Eiser v. Spain, the committee noted that there are multiple ways in which a conflict of interest can arise when there is double hatting, even when the disputes are between different parties. This dictates caution. Double-hatting gives rise to two specific concerns: conflict of interest and issue conflicts. The former relates to the relationship between arbitrators and counsel, which may give rise to actual or perceived bias. To tackle this issue, the Court of Arbitration for Sports changed its regulation in 2009 to prohibit double-hatting, because they considered that parties were prone to believe that arbitrators would favour counsel before which they were likely to appear in other cases. The same concern was raised with regards to ISDS. Issue conflicts concern the relationship of the arbitrator with a certain issue and the likelihood that an arbitrator will approach an issue with an open mind. This has given rise to challenges of arbitrators and annulment procedures. Attempts to address double-hatting concerns have been made in international treaties and institutional rules. Ms. Michou saw three ways in which the ICSID and UNCITRAL draft code of conduct deals with double-hatting. The first possibility occurs when there is party agreement. In this case, there is no prohibition. The consent of the parties must however be informed, which requires disclosure by the arbitrator. The second option is a full prohibition of concurrent double hatting, which is the default absent party consent to the contrary. The third and final option is a limited prohibition on concurrent double-hatting, limited to cases with the same factual background or with at least one of the same parties or their subsidiary, affiliate or parent entity. This final option is intended to allow newcomers to enter the arbitrator pool for investment disputes.

Bernard Hanotiau commented that in his view, double-hatting should be globally prohibited. There is however still the question of how far double-hatting goes. In the draft code of conduct, it is stated that double-hatting extends to expert work. Mr. Hanotiau stated that while he would not appear as an expert in an investment arbitration case, it should not be prohibited to act as an expert or as counsel in enforcement proceedings.

Mélanie van Leeuwen does not believe that a conflict-free arbitration world can be achieved. Rules and regulations cannot provide for the entirety of practice because practice comes up where the rules do not regulate. She also stated that we must be wary of rules imposing that a required period of time must have passed between acting as counsel and acting as arbitrator, as you cannot expect professionals to take a five-year break from counsel work if they ever want to be appointed as an arbitrator in investment treaty cases.

Issue 3: Diversity

Mélanie van Leeuwen brought up memories about one of the first IBA arbitration days in the late '90s, where she and a colleague were the only two women in the room. A lot has changed since then and now there are both men and women in the arbitration world. This change was brought about by the Equal Representation in Arbitration Pledge of 2015, which was signed by law firms, arbitral institutions and frequent users of arbitration. The goal of the pledge was to increase the number of women appointed as arbitrators. Besides this, there was also a call for transparency in arbitration that a number of institutions picked up on. The result is a significant increase of female arbitrators. While some progress has been made regarding gender diversity, more is to be done. Gender diversity is of course not the only form of diversity, there is also regional diversity. The arbitration community has launched REAL (Racial Equality for Arbitration Lawyers), which aims to promote racial equality amongst counsel and arbitrators and aims to combat racial bias and discrimination. This initiative is as much needed as gender diversity, as most of the conflicts in Africa, South America and Asia are being decided by white professionals from the western world. The obvious solution here is to enlarge the arbitrator pool with people who have their roots in the relevant jurisdictions. To achieve this goal, affirmative action by the arbitration community is needed. Despite this, REAL seems to get much less traction than the Pledge did in 2015.

Finally, there is also the issue of age diversity, in which arbitral institutions play an important role, as many young lawyers are granted their first appointments by institutions. Therefore, institutions must continue to give opportunities to young lawyers with ambition and proven qualities. Affirmative action might not be an appropriate solution for the age diversity problem, as some qualities that arbitrators need to possess come with age.

Overall, we can see that after 100 years since the institutionalisation of arbitration, the arbitration community has started to diversify. Banning double-hatting would do away with this progress. The saying "No one lives of arbitration alone" is still true for young arbitration lawyers and counsel from emerging jurisdictions. They cannot be expected to wait by the sidelines after their first appointment. As a result, double-hatting should only be applied where it is an issue, namely in ISDS. Nonetheless, the reality remains that in ISDS you will not be appointed if you do not have experience as counsel. We should be very cautious not to kill the enlargement of the pool that we have just managed to establish by banning double-hatting.

Bernard Hanotiau stated that while diversity is certainly important, institutions must remain careful to appoint competent arbitrators. Moreover, reasons of diversity cannot legitimise double-hatting. In Mr. Hanotiau's view, the first point is competence, whatever the nationality or gender.

Isabelle Michou agreed that competence should always be the primary criterium.

NEWS

» WERKGROEP "DIVERSITEIT & INCLUSIE" - GROUPE DE TRAVAIL "DIVERSITÉ & INCLUSION"

De Raad van Bestuur heeft het initiatief genomen om een werkgroep “Diversiteit en Inclusie” op te richten, onder co-voorzitterschap van Sophie Goldman en Werner Eyskens. De werkgroep stelt zich als doel om de huidige diversiteit binnen de verschillende werkingsdomeinen van CEPANI in kaart te brengen, om deze te analyseren in vergelijking met andere organisaties, en om concrete voorstellen te formuleren om de diversiteit binnen CEPANI waar nodig te verbeteren.

Le conseil d'administration a pris l'initiative de créer un groupe de travail “Diversité et Inclusion”, coprésidé par Sophie Goldman et Werner Eyskens. L'objectif du groupe de travail est de dresser un état des lieux de la diversité au sein des différents domaines d'activité du CEPANI, de l'analyser en comparaison avec d'autres organisations et de formuler des propositions concrètes pour améliorer la diversité au sein du CEPANI, si nécessaire.

» CEPANI RECOMMENDS

Webinar: Roundtable on the position of the European Union on the Singapore Convention on Mediation

Organized by the European Law Institute - Slovenian Hub and the Forum for international conciliation and arbitration

Date: Friday 18 June 2021 - 11:00 - 13:00 CET

For more information: click here

To access the webinar use this link: https://vuw.zoom.us/webinar/register/WN_hSFTXym_SrKRCTIsZ7NgLQ

Please email herman.verbist@everest-law.be if you have any questions.

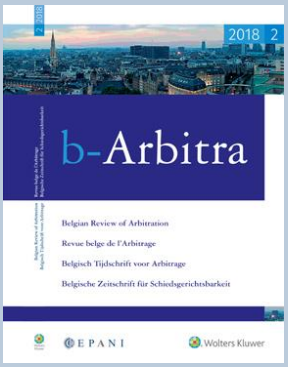
» B-ARBITRA 2020/2 AVAILABLE

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.

An annual subcription is included in the membership fee of CEPANI. Click here for more information on becoming a member.



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