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IN THIS NEWSLETTER

- **AGENDA**
- **THE CEPANI STATISTICS FOR 2015**
- **BRUSSELS INTERNATIONAL ARBITRATION HUB: EXCHANGING IDEAS ON INTERNATIONAL ALTERNATIVE DISPUTE RESOLUTION (15 MARCH 2016, JAKARTA)**
- **B-ARBITRA 2015/2 OUT NOW!**
- **REPORT ON THE 64TH SESSION OF THE UNCITRAL WORKING GROUP II (ARBITRATION AND CONCILIATION) IN NEW YORK**
- **REPORT ON THE CEPANI40 LUNCH DEBATE WITH MR. RUTGER METSCH ON THE 2015 INTERNATIONAL ARBITRATION SURVEY: "IMPROVEMENTS AND INNOVATIONS IN INTERNATIONAL ARBITRATION"**
- **CEPANI40 NETWORKING DRINK ON THE OCCASION OF THE WILLEM C. VIS MOOT (19 MARCH 2016, VIENNA)**
- **REFERENCES**
- **VARIA**

AGENDA

10 MARCH 2016 (13:00-19:00)

[CEPANI Arbitration Academy - "International" Level: Class 1 Investment Arbitration](#)

14-15 MARCH 2016

[2016 Brussels Pre-Moot](#)

19 MARCH 2016 (16:30-18:00, VIENNA)

[CEPANI40 Networking drink, Café Landtmann, Vienna](#)

12 APRIL 2016 (13:00-19:00)

[CEPANI Arbitration Academy - International Level: Class 2 Aspects of International Arbitration \(I\)](#)

21 APRIL 2016 (13:00-18:00)

Joint conference ABDC-BVBR & Cepani40: Critical views on dispute resolution in the construction sector

3 MAY 2016 (13:00-19:00)

[CEPANI Arbitration Academy - International Level: Class 3 Aspects of International Arbitration \(II\)](#)

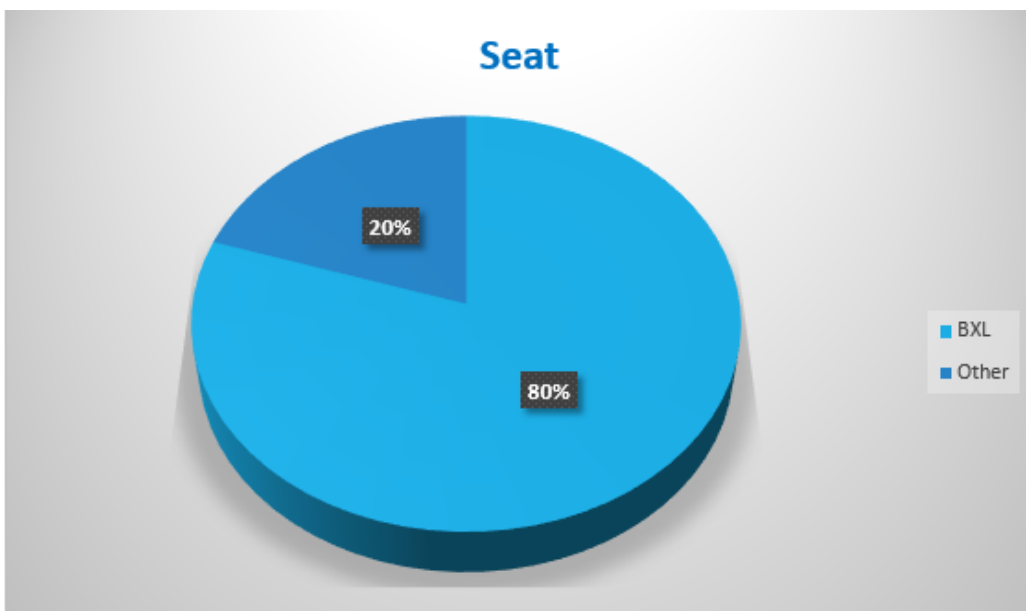
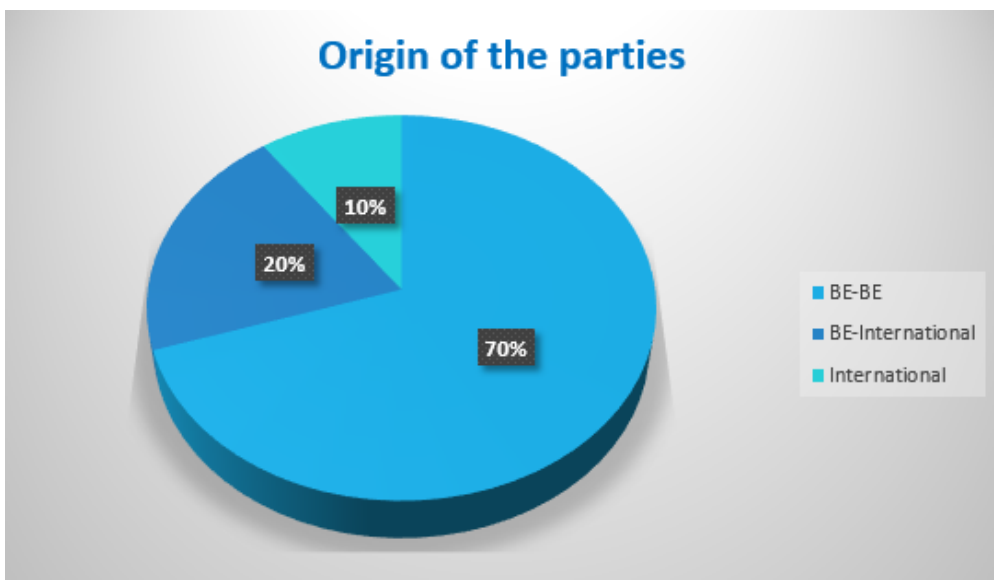
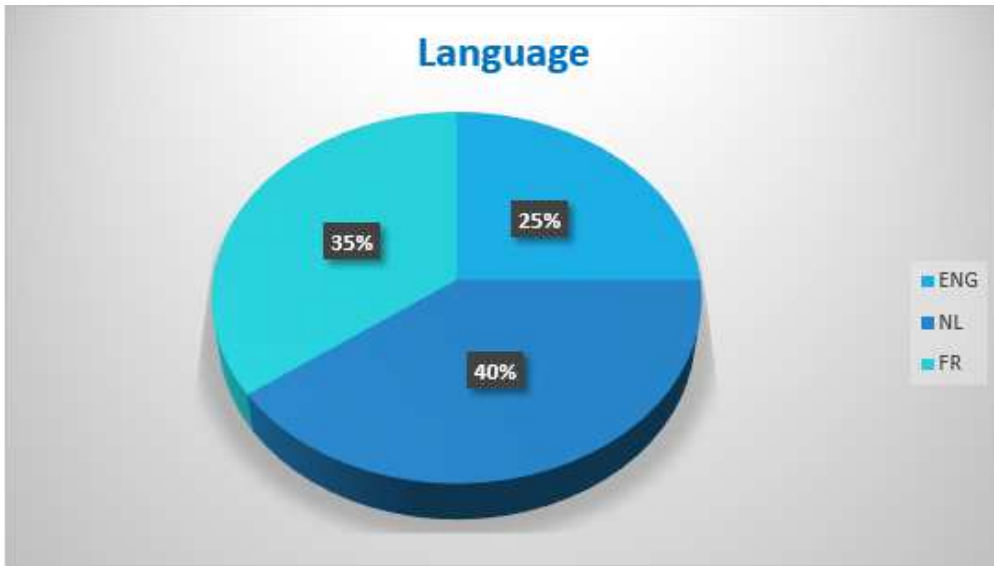
09 JUNE 2016 (12:00-18:30)

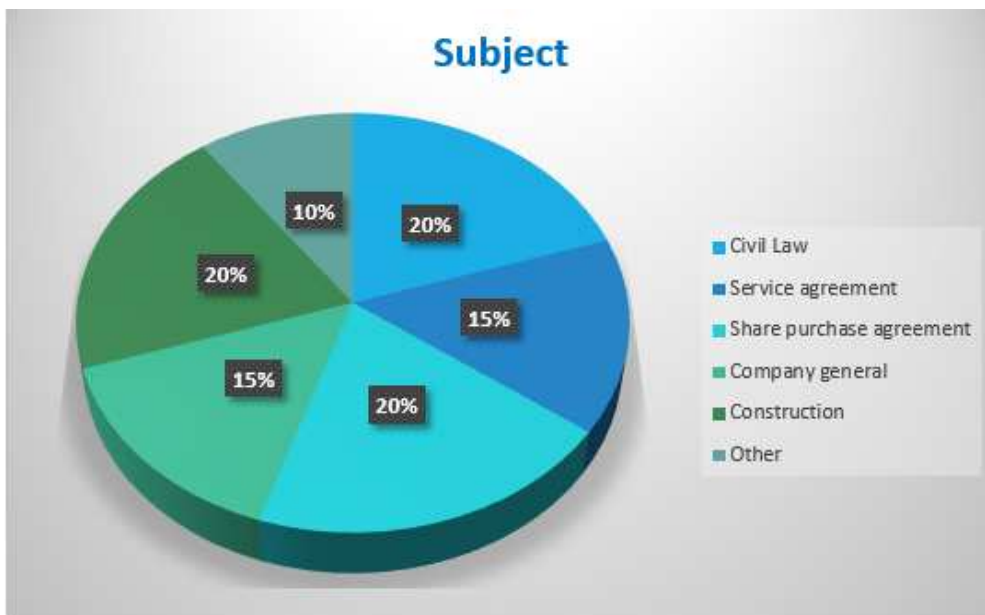
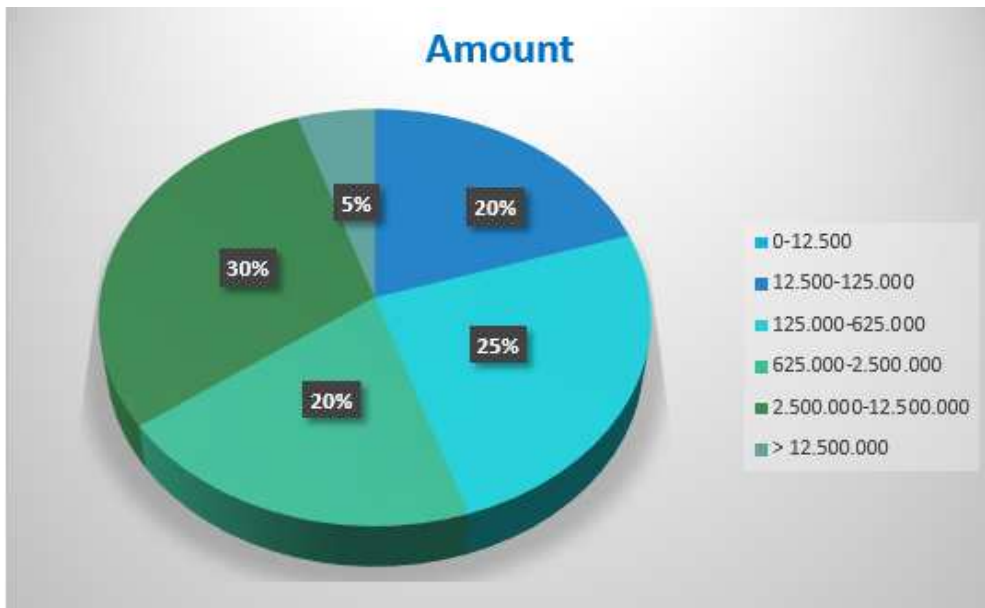
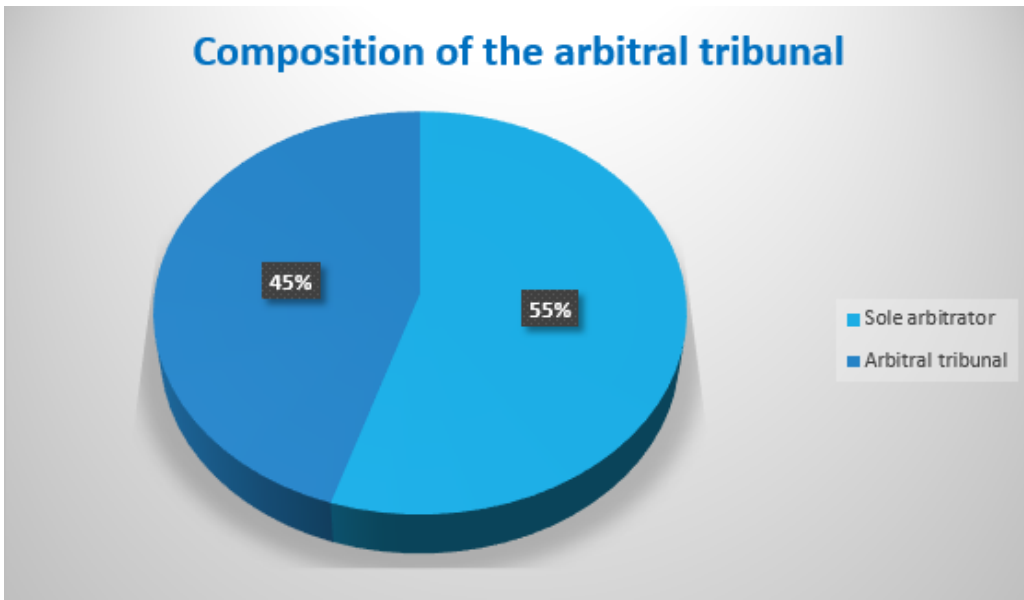
[Joint colloquium CEPANI and NAI on: "Opening the Black Box of Conflicts of Interest"](#)

21 JUNE 2016

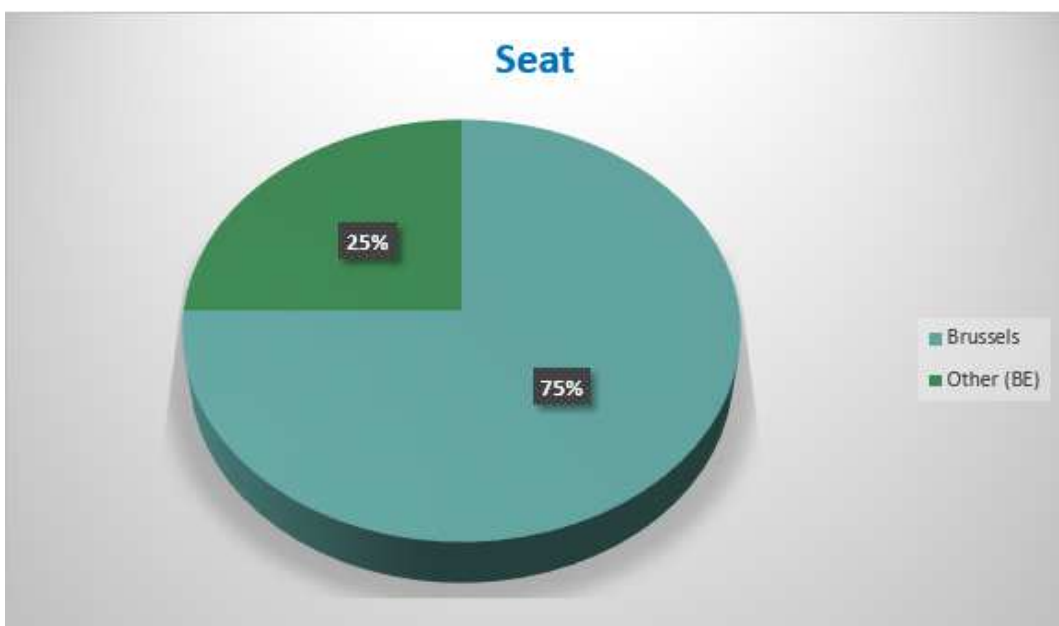
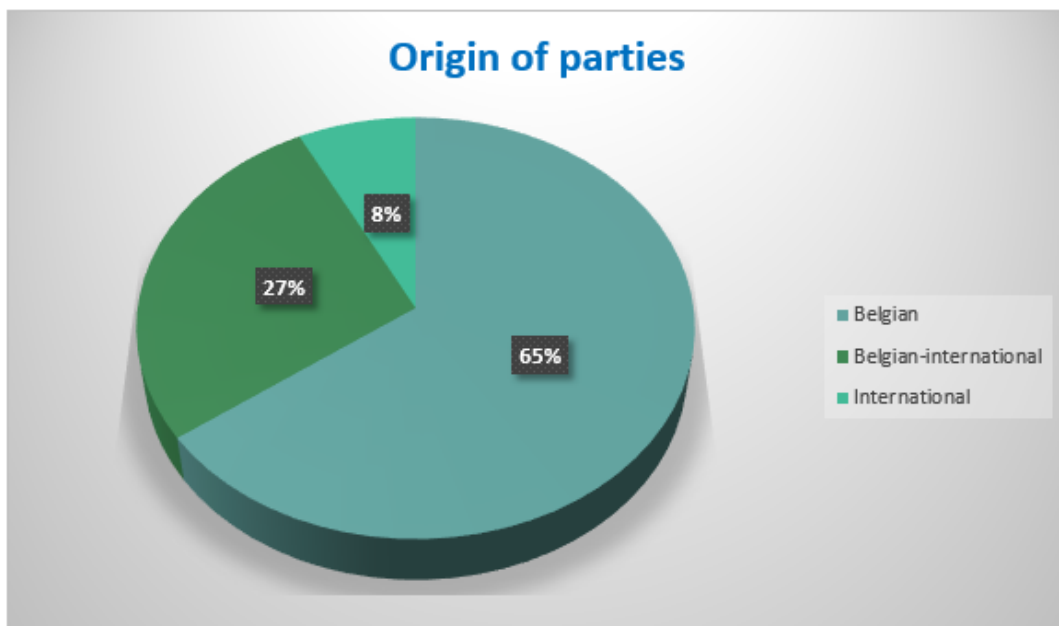
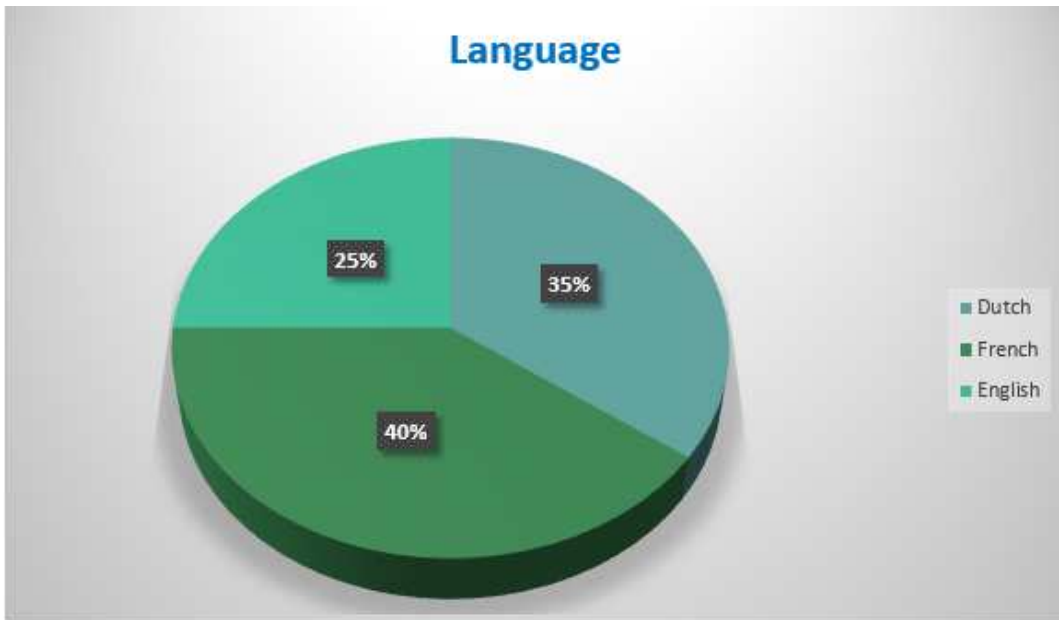
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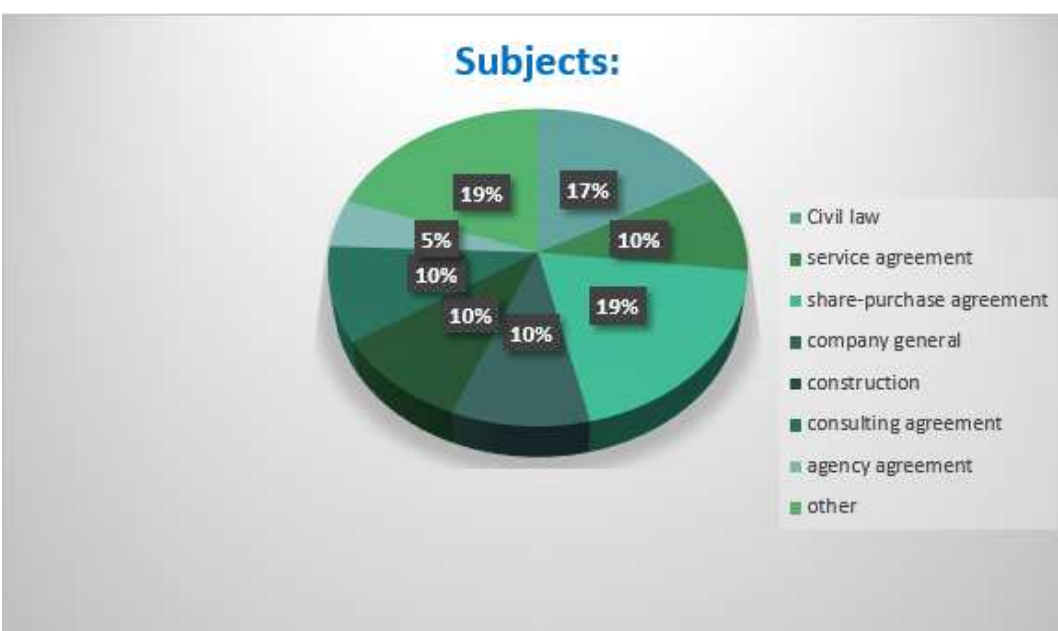
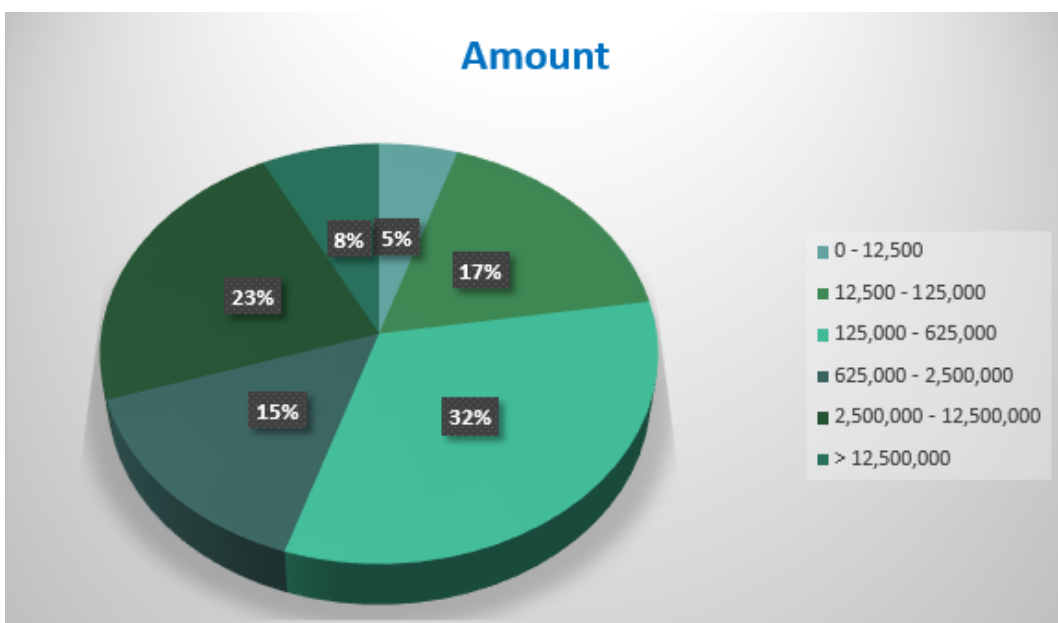
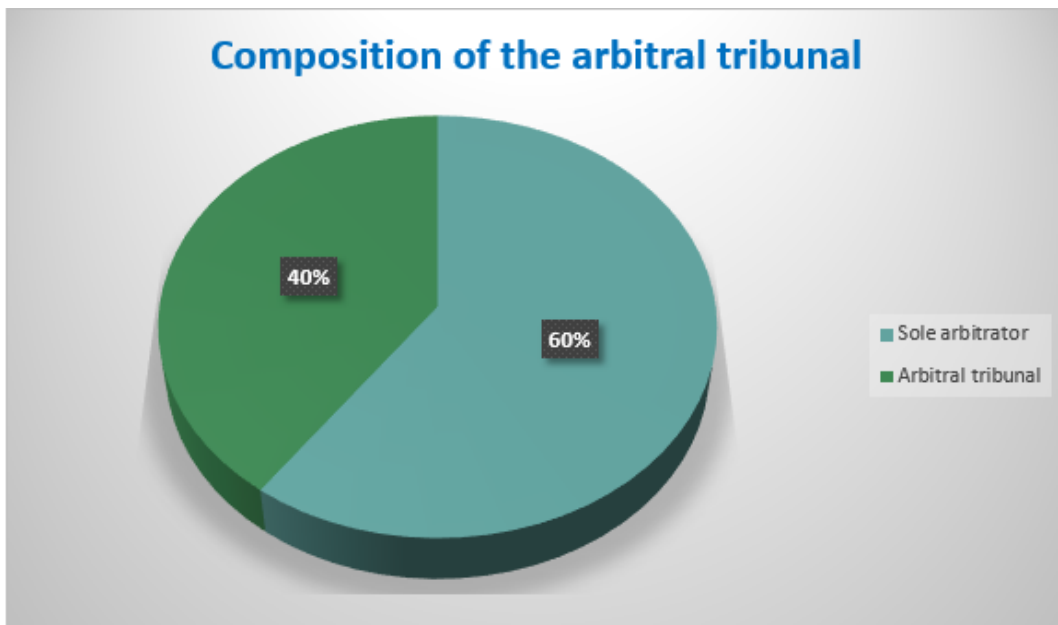
THE CEPANI STATISTICS FOR 2015





Files closed in 2015





For the complete statistics report, please consult the link below

BRUSSELS INTERNATIONAL ARBITRATION HUB: EXCHANGING IDEAS ON INTERNATIONAL ALTERNATIVE DISPUTE RESOLUTION (15 MARCH 2016, JAKARTA)



On 15 March 2016, CEPANI co-organises a seminar on Brussels: International Arbitration HUB at the Pullman Hotel in Jakarta.

In our 21st century economy, where trade contacts reach across the globe and where time is of the essence, commercial conflicts require efficient solutions. More and more, parties in dispute are therefore turning to arbitration.

As a means of dispute resolution, arbitration offers all the usual legal guarantees, but offers in addition a greater flexibility and time efficiency, avoiding extra costs and delays. At the heart of Europe, Brussels stands out as a seat for international arbitration.

The European capital offers some unique advantages and meets all the requirements for an efficient, secure and accessible resolution of your commercial disputes in an atmosphere of trust, confidentiality, open-mindedness and multilingualism.

As Indonesian companies are more and more engaged in global trade, efficient and effective solutions to commercial conflicts will also become more important in their day-to-day business.

This seminar provides an insight into what Brussels can offer Indonesian companies and business lawyers when it comes to alternative dispute resolution.

Program

1:30 PM Registration & seating

2:00 PM Start of the seminar - Welcome by **HE Cécile Jodogne**, Secretary of State for Foreign Trade & Investment for the Brussels-Capital Region and Minister of the French Community Commission in charge of Civil Service and Health Policy

2:10 PM Welcome by **Mr. Umar Husseyn**, Chairman BANI Arbitration Center

2:20 PM Trends in ASEAN – EU trade relations Speech by **Mr. Axel Goethals**, CEO European Institute for Asian Studies

2:30 PM Brussels : International Arbitration Hub Keynote speech by **Mr. Dirk De Meulemeester**, President of Cepani, Attorney at Law

3:05 PM Q & A

3:20 PM Closing remarks by **HE Didier Reynders**, Federal Deputy Prime Minister and Minister of Foreign Affairs and European Affairs (TBC)

3:30 PM Networking event and closing cocktail in presence of **HRH Princess Astrid of Belgium** (TBC)

For more information, please contact rvanhullebus@gob.brussels

B-ARBITRA 2015/2 OUT NOW!



b-Arbitra est une revue semestrielle qui se veut la principale source d'information et de recherche belge sur l'arbitrage. Les contributions qui y sont publiées sont soumises à une relecture scientifique, suivant la procédure du peer-review.



b-Arbitra est une initiative du CEPANI. La revue entend soutenir la recherche scientifique sur des questions fondamentales en relation avec l'arbitrage et promouvoir une analyse critique et innovatrice de ces questions ainsi que des thèmes plus concrets qui sont importants pour le public de l'arbitrage.

b-Arbitra is een halfjaarlijks tijdschrift dat de voornaamste bron van informatie en hét forum voor onderzoek inzake arbitrage vormt in België. De gepubliceerde bijdragen worden onderworpen aan een wetenschappelijk nazicht volgens de peer-review methode.

b-Arbitra is een initiatief van CEPANI. Het tijdschrift ondersteunt het wetenschappelijk onderzoek omtrent fundamentele problemen in verband met arbitrage en promoot een

kritische en innovatieve analyse zowel als meer concrete thema's van belang voor het arbitragepubliek.

b-Arbitra is a biannual peer-reviewed journal that is the leading source of information and for research on arbitration in Belgium.

b-Arbitra is an initiative of CEPANI. b-Arbitra subscribes to the objective of CEPANI to promote edifying debate and in-depth research in the field of arbitration, to provide a valuable source of pertinent information to lawyers involved in arbitration, and to bring new developments to the policy makers' attention in order to further the quality of the arbitration law and practice.

[Table of Contents / Table de matière / Inhoudstafel 2015/2](#)

[Click here to order / Klik hier om te bestellen / Cliquez ici afin de commander](#)

REPORT ON THE 64TH SESSION OF THE UNCITRAL WORKING GROUP II (ARBITRATION AND CONCILIATION) IN NEW YORK



By the CEPANI delegation for UNCITRAL composed of Dirk DE MEULEMEESTER, Marc DAL, Jean-François TOSSENS, Vanessa FONCKE and Sigrid VAN ROMPAEY

The Sixty-fourth session of the Working Group II (Arbitration and Conciliation) was held in New York from 1 until 5 February 2016. On behalf of CEPANI, Marc Dal, Prof. Jean-Francois Tossens, Vanessa Foncke, Sigrid Van Rompaey and Dirk De Meulemeester were present. The Belgian observer seat was taken by Mr. Antoine Misonne (first secretary of the Belgian permanent representation), Mr. Jean-Christophe Boulet (advisor at the Belgian Ministry of Justice), Prof. Olivier Caprasse, Prof. Benoît Kohl and Prof. Benoît Allemeersch.

The first one and a half day was dedicated to finalizing the Revision of the UNCITRAL Notes on Organizing Arbitral Proceedings. The first UNCITRAL Notes were drafted in 1993 and finalized in 1996. The Notes on Organizing Arbitral Proceedings cover the whole arbitral procedure and contain the practice of arbitration experts from all over the world. So, while not exhaustive, the Notes cover a broad range of situations that may arise in arbitral proceedings.

The Notes are non-binding and thus do not impose any legally binding requirement on the parties or the arbitral tribunal. The parties and the arbitral tribunal may use or refer to the Notes at their discretion and to the extent they deem so appropriate. The purpose is to list and briefly describe the issues relevant to the organization of arbitral proceedings. Their focus is international and intended to be used in a general and universal manner, regardless whether the arbitration is administered by an arbitral institution. Given that procedural styles and practices in arbitration vary widely, the Notes do not seek to promote any best practice.

The Notes also stress that arbitration is a flexible process to resolve disputes, whereby the autonomy of the parties is crucial, especially in international arbitration. The parties should be able to select and tailor the procedure according to their specific wishes and needs, unimpeded by possibly conflicting legal practices and traditions. Although this seems obvious for any arbitration practitioner, every opportunity is good to repeat this essential feature of arbitration.

After the last input of the Working Group in New York, the Notes are expected to be adopted by the Commission in 2016.



The Working Group II then turned to a more sensitive topic, namely the preparation of a convention on the enforceability of international commercial settlement agreements resulting from conciliation. During previous working groups (New York and Vienna in 2015) a number of questions and concerns were expressed, but it was generally felt that they could be addressed through further work on the topic.

The aim is to promote conciliation as a time and cost efficient alternative dispute resolution method. The underlying idea is that an instrument in favor of easy and fast enforcement would further contribute to the development and promotion of conciliation. The lack of a harmonized enforcement mechanism is considered by some as a disincentive for businesses to proceed with conciliation. Others take the position that such instrument would have a negative impact on the flexible nature of arbitration. In addition, concerns were expressed whether it would at all be feasible to provide a legislative solution on enforcement. The reason is that procedures for enforcing settlement agreements vary largely between legal systems and do not lend themselves easily to harmonization.

The instrument would envisage international commercial settlement agreements (cfr. Art. 1(4)(a) of the Model Law). Settlement agreements involving consumers should be excluded from its scope, as would certain matters such as family or employment law. Furthermore, a large discussion emerged as to how the additional requirement that the international commercial settlement agreements must result from conciliation should be filled in. It was proposed that conciliation should be described as a process whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person or persons lacking the authority to impose a solution upon the parties to the dispute. An important part of this discussion pertained to the extent of the required involvement of the conciliator in the drafting of the settlement agreement, notably by including specific mentions aimed at providing evidence of the conciliator's involvement in order to fall under the scope of application of the instrument.

Other significant discussions pertained to the issue whether the application of an instrument would be left to state and/or party autonomy and whether a (double) opt-in mechanism should be provided for. As concerns the possible defenses to enforcement, a lively debate took place on the concept of public policy and notably as concerns the concept of procedural public policy when it would be established that the conciliator intervened notwithstanding a conflict of interest or other impartiality concerns. Some delegates emphasized in this regards

that the concept of procedural public policy as regards conciliation is not to be assimilated to the one applicable to arbitration.

Several key issues and obstacles remain to be further discussed: should the enforcing authority be responsible for assessing the validity of the settlement agreement; what would be the law applicable to that determination; what would be the possible legal consequences of that determination; what if the conciliation procedure did not comply with the law of the State where the conciliation took place; what if the settlement agreement was amended or terminated afterwards by the parties without the involvement of a conciliator; how would such instrument deal with situations where the obligations to be performed are conditional or have been partially performed by the parties; what if the parties provided for a dispute resolution clause in their settlement agreement; how a direct enforcement mechanism could be envisaged in relation to settlement agreements as compared to judgments and awards; etc.

Discussions will be continued in Vienna in September 2016 during the Sixty-fifth session of the Working Group II.

REPORT ON THE CEPANI40 LUNCH DEBATE WITH MR. RUTGER METSCH ON THE 2015 INTERNATIONAL ARBITRATION SURVEY: "IMPROVEMENTS AND INNOVATIONS IN INTERNATIONAL ARBITRATION"



Maarten DRAYE, Lawyer at the Brussels Bar (Hanotiau & van den Berg), Member of the CEPANI40 Steering Committee

For a decade now, the School of International Arbitration at the Centre for Commercial Law Studies of Queen Mary University of London (the SIA) has been conducting critically acclaimed empirical studies on international arbitration. In October 2015, the SIA released its sixth survey on *Improvements and Innovations in International Arbitration* (the 2015 Survey). As White & Case Research Fellow at the SIA, Mr. Rutger Metsch was closely involved in the research for this 2015 Survey: he took part in the analysis of questionnaires completed by more than 760 arbitration practitioners from all around the globe and conducted over 100 follow-up interviews.

In light of CEPANI40's mission to give young arbitration practitioners a discussion forum, Mr. Metsch was therefore an excellent fit to take the stage for the ultimate lunch debate of 2015. After introducing the methodology behind the 2015 Survey, Mr. Metsch discussed a number of selected findings of the 2015 Survey and responded to the many questions from the audience, drawing not only from the 2015 Survey itself, but also from the various interviews he conducted.

Mr. Metsch first pointed to the call for insight and transparency in the arbitral process. Many respondents to the survey criticized the fact that parties are left in the dark about the timing for rendering the award. To improve the insight into arbitrators' efficiency, most respondents appear to be looking to arbitration institutions. Suggested solutions include an increased level of pre-appointment scrutiny of prospective arbitrators' availability and different ways to give publicity to the behaviour of particular arbitrators in prior cases. Respondents further identified the involvement (and possibly also identity) of third party funders and tribunal secretaries as areas in need of further transparency.

The main source of criticism on arbitration remains the issue of cost, often mentioned together with the lack of effective sanctions during the arbitral process. In this connection, the 2015 Survey focused *inter alia* on the role of the conduct by the various actors in arbitration in increasing such costs of arbitration. The 2015 Survey identifies a growing concern that arbitrators too often showed reluctance to take effective decisions out of "due process paranoia". A majority of respondents favoured the possibility for arbitrators to sanction dilatory conduct by parties or their counsel, for example in cost decisions, as one of the most effective procedural tools to increase efficiency. Arbitration counsel, on the other hand, should seek to work together with opposing counsel to narrow issues and to limit document production. In terms of procedural innovations, the 2015 Survey revealed that many respondents favoured mediation as a possible solution, even after arbitration proceedings have commenced. Mr. Metsch, however, pointed out that the "*mediation appetite*" in theory was not matched by the actual use of mediation to solve disputes in practice. Most respondents further viewed simplified arbitration procedures for claims under a certain value and emergency arbitrations in a positive manner.

Finally, Mr. Metsch addressed what he refers to as the "regulation paradox". Most respondents have a positive perception of arbitration guidelines and soft law instruments in international arbitration and a wide majority considers that an adequate amount of such soft law and guidelines is currently available. Some differences, however, could be identified between different actors in the arbitration process, both on the point of whether more regulation would be desirable and, in the affirmative, who should issue such regulation.

The excellent lunch debate ended with a lively Q&A session. As always, those who were absent are in the wrong, but in this case, they can at the very least consult the 2015 Survey online [here](#).

CEPANI40 NETWORKING DRINK ON THE OCCASION OF THE WILLEM C. VIS MOOT (19 MARCH 2016, VIENNA)



On the occasion of the 23rd Annual Willem C. Vis International Commercial Arbitration Moot, CEPANI40 and Lydian have the pleasure of inviting you to a networking drink in the famous Café Landtmann in the heart of the historical city centre of Vienna at 3' walking distance from the Juridicum.

The event will take place on Saturday 19 March 2016 from 4:30 to 6:00 PM at the Café Landtmann, Universitätsring 4, 1010 Vienna.

The event is free of charge thanks to the kind contribution of Lydian. However, since places are limited, CEPANI40 kindly asks you to send an email marking your participation to ago@cepani.be. All registrations will be confirmed a few days prior to the event.

CEPANI40 looks forward to welcoming you in Vienna!



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Articles

O. CAPRASSE, "Mesures provisoires et conservatoires en présence d'une convention d'arbitrage: conditions de l'intervention du juge des référés" (note sous Tribunal de première instance d'Arlon 31 juillet 2014), *b-Arbitra* 2015/2, p.343-348

O. CAPRASSE, "Tierce opposition contre l'exequatur d'une sentence arbitrale" (note sous Cass. 4 octobre 2013), *b-Arbitra* 2015/2, p.355-356

O. CAPRASSE, "Recours en annulation et exequatur des sentences: questions diverses" (note sous Civ. Bruxelles 19 juin 2014), *b-Arbitra* 2015/2, p. 367-373

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F. DE LY, "Herschikking van de EEX-Verordening en arbitrage –deel I", *TvA* 2015/67, p.101-112

M. DRAYE, ""How did it get so late so soon?" - The arbitral tribunal's duty to timely render an award - Reflections on Court of First Instance of Antwerp 24 June 2014", *b-Arbitra* 2015/2, p.285-307

R. DUPEYRÉ, "Le règlement des conflits en matière hôtelière: l'industrie hôtelière est-elle un terrain hospitalier pour l'arbitrage?", *b-Arbitra* 2015/2, p.255-284

M. NIOCHE, "Arbitrage "Tapie": la Cour d'appel de Paris accueille le recours en revision" (note sous Cour d'appel de Paris 17 février 2015), *b-Arbitra* 2015/2, p.329-337

H. VERBIST, "New mediation rules of the International Chamber of Commerce of 2014", *Nederlands-Vlaams tijdschrift voor mediatie en conflictmanagement* 2015/19, p.26-38

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H. VERBIST, E. SCHÄFER and C. IMHOOS, *ICC Arbitration in practice, second edition*, Alphen aan den Rijn Kluwer, 2016, 606p.

A.J. VAN DEN BERG, *ICCA (International Council for Commercial Arbitration) Yearbook Commercial Arbitration Volume XL 2015*, Alphen aan den Rijn, Kluwer, 2016, 765p.

Case Law

Belgian Supreme Court of 28 November 2014, R.W. 2016/23, p. 897

Arbitrage - Vordering tot vernietiging - Strijdigheid met openbare orde - Taak van de rechter die over de vordering tot vernietiging moet oordelen - Motiveringsverplichting - Omvang - Interpretatie - Beoordelingsbevoegdheid annulatierechter

Arbitrage - Demande en annulation - Contrariété à l'ordre public - Rôle du juge autorisé à juger sur l'annulation - Obligation de motivation - Portée - Interpretation - Pouvoir d'appréciation du juge d'annulation

Arbitration - Application to set aside - Contrary to public policy - Duty of the Judge assessing the claim for annulment - Obligation to state reasons - Scope - Interpretation - Discretionary power of the Judge before which a request for the setting aside is brought

Ghent Court of Appeal of 14 April 2014, DAOR 2014, afl. 111, 120; P&B 2015/5, p. 214-217

Rechtsmacht - Exceptie van arbitrage - Tijdstip van beoordeling - Onsplitsbaar geschil - Geldsomveroordelingen zijn in de regel splitsbaar - Gezamenlijke tenuitvoerlegging van vonnis en scheidsrechterlijke uitspraak materieel niet onmogelijk

Jurisdiction - Exception d'arbitrage - Moment de l'examen - Litige indivisible - Les condamnations à une somme d'argent sont en principe divisible - Exécution conjointe d'un jugement et d'une decision arbitrale matériellement pas impossible

Jurisdiction - Referral to arbitration - Time of assessment - Indivisible dispute - Decisions of national courts and tribunals ordering payment of money are in principle divisible - Joint enforcement of a court ruling and an arbitral award materially not impossible



VARIA

ICC Court adopts Guidance Note on conflict disclosures by arbitrators

The ICC International Court of Arbitration has adopted a Guidance Note for the disclosure of conflicts by arbitrators. The Note was adopted unanimously by the Bureau of the Court on 12 February 2016. The President of the Court, Alexis Mourre, says that it "aims at ensuring that arbitrators are forthcoming and transparent in their disclosure of potential conflicts". For more information, please consult <http://www.iccwbo.org/News/Articles/2016/ICC-Court-adopts-Guidance-Note-on-conflict-disclosures-by-arbitrators/>

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The CEPANI Newsletter always appreciates receiving interesting case law and legal doctrine concerning arbitration and alternative dispute resolution. Any relevant articles, awards, events and other announcements can be sent to newsletter@cepani.be. CEPANI may publish and/or edit contributions at its discretion.

 **TOP**

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