

If you cannot read this newsletter correctly, please open the [online version](#).



## IN THIS NEWSLETTER

- **AGENDA**
- **CEPANI AND NAI ORGANISE A JOINT COLLOQUIUM ON "OPENING THE BLACK BOX OF CONFLICTS OF INTEREST" (9 JUNE 2016, BRUSSELS)**
- **COMPTE-RENDU DE LA MISSION CEPANI À BURSA (21-23 FÉVRIER, TURQUIE)**
- **REPORT ON "EU LAW AND ARBITRATION", COLLOQUIUM ORGANISED BY CLUB ESPANOL DEL ARBITRAJE (CEA) IN COLLABORATION WITH CEPANI, ICC AND DIS, WITH THE SUPPORT OF THE VBO/FEB AND THE BRUSSELS SCHOOL OF COMPETITION**
- **CEPANI40 ET BVBR-ABDC ORGANISENT UNE APRÈS-MIDI D'ÉTUDES "REGARDS CRITIQUES SUR LE RÈGLEMENT DES DIFFÉRENDS DANS LE SECTEUR DE LA CONSTRUCTION" / STUDIENAMIDDAG "KRITISCHE BLIK OP GESCHILLENBESLECHTING BIJ AANNEMING VAN WERK"**
- **CEPANI HAS SIGNED A COOPERATION AGREEMENT WITH BANI ARBITRATION CENTRE (15 MARCH 2016, INDONESIA)**
- **REFERENCES**
- **VARIA**

## AGENDA

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

General Assembly

## NEWS

### CEPANI AND NAI ORGANISE A JOINT COLLOQUIUM ON "OPENING THE BLACK

## BOX OF CONFLICTS OF INTEREST" (9 JUNE 2016, BRUSSELS)



CEPANI and NAI have the pleasure of inviting you to their joint colloquium which will be held on 9 June 2016 (12:00-18:30) in Brussels, on the hot topic of 'Conflicts of Interest'.



The colloquium will be preceded by a light walking lunch during which all participants can begin the discussion in a more informal atmosphere. A book with the written contributions of the presentations held during the afternoon will be handed out on the day of the colloquium. The price of the colloquium includes one copy of the book.

Please find hereunder the unfolding of this exciting afternoon:

12.00 Lunch

14.00 Opening by the President of Cepani – Dirk De Meulemeester (Attorney Lexlitis)

14.10 Conflicts of Interest: Cepani's practice and Belgian case law; Kristof Cox (Senior Manager, Deloitte)

14.55 Conflicts of Interest: NAI's practice and Dutch case law; Gerard Meijer (Attorney, NautaDutilh Amsterdam, Prof. Erasmus University Rotterdam)

15.40 Coffee break

16.00 Conflicts of Interest: International practices and case law from other jurisdictions; Filip De Ly (Prof. Erasmus University Rotterdam)

16.45 Panel: moderator Luc Demeyere (Attorney, Contrast), Members of the panel: Vera Van Houtte (Attorney, Vice-President of the ICC Court of Arbitration), Olivier Caprasse (Attorney, Hanotiau & van den Berg, Prof. ULg, ULB), Melanie van Leeuwen (Attorney, Derains & Gharavi Paris), Bart Groen (former Attorney, Pels Rijcken & Droogleever Fortuijn 's-Gravenhage)

17.30 Closing by the President of NAI - Willem van Baren (Attorney, Allen & Overy Amsterdam)

18.00 Drinks

Members CEPANI/CEPANI40/NAI and NAI Jong Oranje: €150 (VAT excl.) one copy of the book included in the price.

Non-members: €175 (VAT excl.) one copy of the book included in the price.

[Please register online and join us!](#)

## COMPTE-RENDU DE LA MISSION CEPANI À BURSA (21-23 FÉVRIER, TURQUIE)



**Par Philippe LAMBRECHT, Secrétaire-général du CEPANI et Secrétaire général de la Fédération Belge d'Entreprises, Professeur à l'UCL**

A l'instigation du consul général de Belgique à Istanbul, **M. Henri Vantieghe**m, une délégation du Cepani s'est rendue à Bursa, près d'Istanbul, du dimanche 21 février au mardi 23 février. Le but de cette visite était de présenter à une centaine de représentants du monde économique et du monde juridique de Bursa, les avantages de Bruxelles comme place d'arbitrage, ainsi que ceux du règlement d'arbitrage du Cepani.

La délégation était composée du baron **Didier Matray**, vice-président du Cepani, du bâtonnier **Dirk Van Gerven**, vice-président du Cepani, du bâtonnier **Alex Tallon** et du professeur **Philippe Lambrecht**, secrétaire général du Cepani. Après avoir été accueillis par le Consul général et par **M. Aykut Eken**, président de la Chambre de commerce belgo-luxembourgeoise en Turquie, les membres de la délégation ont été conduits à Bursa (Pruse), importante ville industrielle située à deux heures environ d'Istanbul. Place forte de l'automobile, du textile et de l'agroalimentaire, réputée pour la qualité de son enseignement universitaire, Bursa est l'une des plus grandes villes de Turquie. De 200 000 personnes à la fin des années 1980, la population est passée à 4 millions aujourd'hui. Bordée par la mer de Marmara, Bursa est à la pointe de la production automobile turque. Fiat y possède l'usine Tofaş et Renault d'importantes chaînes de montage, au sein d'Oyak-Renault. Elle est également connue pour sa production textile et son industrie alimentaire dont la production de conserves. Elle accueille également la production d'importants groupes mondiaux comme Coca-Cola et Pepsi-Cola.



Le dimanche soir permit de rencontrer une délégation du barreau de Bursa, conduite par son bâtonnier, **M. Ekrem Demiröz**, ainsi que le consul honoraire de Belgique à Bursa, le professeur **Ibrahim Bey**. Quant à la matinée du lundi, elle fut dévolue à la promotion de l'arbitrage à Bursa, avec des présentations conjointes du Cepani et du Centre d'arbitrage et de médiation de la Chambre de commerce de Bursa, représentée par son président, **M. Irmak Aslan** et par sa vice-Présidente, **Mme Bennar Balkaya**.

Le baron Matray présenta un rapport à propos de la loi belge sur l'arbitrage. Le bâtonnier Van Gerven exposa les éléments essentiels du règlement d'arbitrage du Cepani. Le bâtonnier Tallon présenta les règles essentielles concernant la mise en œuvre des sentences arbitrales en Belgique. Le professeur Lambrecht exposa les nombreux avantages de Bruxelles comme « Arbitration hub ». L'assistance marqua beaucoup d'intérêt pour la manière dont l'arbitrage a été modernisé en Belgique et pour l'intérêt de Bruxelles comme place neutre pour des arbitrages internationaux. Le fait que le règlement du Cepani soit disponible en turc fut particulièrement apprécié par l'audience. Certains participants demandèrent également au Cepani s'il serait possible d'organiser une formation destinée à des juristes et avocats de la région de Bursa ou d'Istanbul afin de mieux leur faire connaître le fonctionnement de l'arbitrage international. En réponse à cette demande, l'expérience de la Cepani Arbitration Academy fut mise en avant.

Cette visite montre l'intérêt réel de la Turquie pour l'arbitrage comme mode de résolution des conflits dans le cadre de relations commerciales nationales et internationales. L'action résolue du Cepani envers la Turquie rencontre de plus en plus d'intérêt de nos partenaires locaux et montre le dynamisme de notre Centre. Un grand merci à tous les participants pour leur investissement dans la promotion du Cepani !

## **REPORT ON "EU LAW AND ARBITRATION", COLLOQUIUM ORGANISED BY CLUB ESPANOL DEL ARBITRAJE (CEA) IN COLLABORATION WITH CEPANI, ICC AND DIS, WITH THE SUPPORT OF THE VBO/FEB AND THE BRUSSELS SCHOOL OF COMPETITION**

**by Juan M. SÁNCHEZ PUEYO, Lawyer at the Spanish Bar (NautaDutilh N.V., Amsterdam)**



More than 150 guests gathered at the offices of the Federation of Enterprises in Belgium for the Belgian Chapter of the CEA's inaugural conference.

After welcome speeches delivered by **Emilio Paolo Villano**, President of the Belgian Chapter of the Club Español del Arbitraje, **José Maria Alonso**, Honorary President of the Club Español del Arbitraje and **Dirk De Meulemeester**, President of CEPANI, the first keynote address was made by Stavros Brekoulakis.

In a passionate speech, **Prof. Brekoulakis** addressed some of the critiques and challenges that arbitration is currently facing, after what he described as "40 years of euphoria". The focus of Prof. Brekoulakis's speech was the relationship between the European Union and the arbitration community, especially in the areas of EU Competition Law and Investment Law. In relation to EU Competition Law, Prof. Brekoulakis pointed out that arbitration and EU Competition Law had developed in isolation, until arbitration's popularity exploded during the last decades and it became seen as a useful tool to serve the European integration objectives. This new perception of arbitration made the European Union realize that arbitration ought to be regulated and integrated into the EU Competition Law system. Despite positive developments in this respect, Prof. Brekoulakis said that recent events are threatening what has been achieved in recent years. Regarding Investment Law, Prof. Brekoulakis commented upon the clash between the European Union and Investment Law, and also criticized the EU's proposal for a new Investment Court System, arguing that, for example, a body comprised of judges would not be any more diverse than the current body of renowned international arbitrators usually appointed to deal with investment arbitration cases.

The first Panel, chaired by **Francesca Mazza**, focused on EU Competition Law and commercial arbitration. The first panellist, **Andrea Carlevaris**, addressed the powers and duties of arbitrators in applying EU and national competition law. Mr Carlevaris stated that arbitral tribunals are perfect substitutes for courts in many instances, including for disputes related to EU Competition Law. During his intervention, Mr Carlevaris highlighted the importance of keeping the balance between party autonomy and mandatory law, and he laid out some sensitive situations that arbitrators may face when arbitrating issues with EU Competition Law implications. The next panellist was **Thomas Voisin**, who addressed the potential consequences that the recent landmark judgement of European Court of Justice in the Hydrogen Peroxide v Azko Nobel case may have for the arbitration of issues related to EU Competition Law. After an interesting round of questions and some debate, it was **Damien Geradin**'s turn. He commented on the issue of the public policy exception and the risk of non-enforceability of arbitral awards for violation of antitrust provisions. During his presentation, Prof. Geradin explained the two main approaches that are followed by courts when reviewing arbitral awards for violation of EU Competition Law, i.e., the minimalist and maximalist approaches. Prof. Geradin affirmed that a balance needs to be found between the effective enforcement of competition rules and the core principles of arbitration proceedings. The last intervention on this panel was delivered by **Edurne Navarro Varona**, who offered the audience practical insight regarding the role of the Commission and National Competition Authorities in international commercial arbitrations and the different ways in which both the European Commission and National Authorities can participate in arbitral proceedings.



The second panel, moderated by **Juan Fernández-Armesto**, focused on EU Law and Investment Arbitration. The panelists were **Assimakis Komninou**, **Niuscha Bassiri**, **Tim Maxian Rusche** and **Carmen Martinez Lopez**. Not only the topics, but also the composition of the panel, with Mr Maxian Rusche participating as member of the EU Commission's legal services, generated great expectation among the audience. The panel lived up to the expectations, and the result was an intense and constructive debate in which

the views of the arbitration community and the Commission on topics such as intra-EU Bilateral Investment Treaties (BITs) and the Commission's proposals to create international investment courts were put to the test. Ms Martinez Lopez commenced the debate by addressing her concerns as to the Commission's Investment Court System proposal for resolving investment disputes. The Commission's antagonism towards Investment Arbitration and the perceived reduction of investors protection as a result of the proposed TTIP text were the initial focus of Ms Martinez Lopez's intervention. Thereafter, Mr Maxian Rusche explained his views as to the TTIP proposal, and defended the diversity among European judges that could potentially be part of the Investment Court System's. As the intensity of the debate grew, the moderator, Mr Fernández-Arnesto, highlighted that the friction between the Commission and the arbitration community mostly focused on a few controversial investment arbitration cases, which represent a small fraction of the total numbers of investment arbitration proceedings. The debate on the Commission proposal ended after Ms Bassiri highlighted that the proposal is a missed opportunity to implement lessons already learned under the current system. For example, she expressed her concerns as to the selection process for judges and their impartiality.

The next topic discussed by the panelists was the future of the intra-EU BITs. Mr Maxian Rusche, after explaining the Commission's stance, argued that the intra-EU BITs are in violation of EU Law. On the other hand, Mr Assimakis, after defending EU Law as part of our legal patrimony rather than just international law, stated that on the basis of current EU Law one cannot say that intra-EU BITs are void. Mr Assimakis and Mr Maxian Rusche also had opposing views as to the applicability of the Energy Charter Treaty between two European Union members. The final highlight of the debate was Mr Maxian Rusche's explanation of the different circumstances in which the Commission intervenes in arbitral proceedings. Mr Maxian Rusche stated that the Commission has had both good and bad experiences with arbitration tribunals, and that, as an example of bad experiences, it is of note that some arbitral tribunals have ordered the Commission to pay their own costs as well as the parties' costs in relation to the Commission's intervention.

The conclusive remarks to this stimulating day were given by **Mr Joachim Knoll**, who gave an inspiring speech encouraging the audience to set aside the established antagonist positions that the arbitration community and the Commission have been taking toward each other, and to focus on improving collaboration.

## CEPANI40 ET BVBR-ABDC ORGANISENT UNE APRÈS-MIDI D'ÉTUDES "REGARDS CRITIQUES SUR LE RÈGLEMENT DES DIFFÉRENDS DANS LE SECTEUR DE LA CONSTRUCTION" / STUDIENAMIDDAG "KRITISCHE BLIK OP GESCHILLENBESLECHTING BIJ AANNEMING VAN WERK"



Le 21 avril 2016, l'association Belge en Droit de Construction (BVBR-ABDC) et CEPANI40 s'unissent pour organiser cette après midi d'étude à ne pas manquer consacrée aux différends en matière de construction, sous la présidence de Benoît Kohl et Marco Schoups.

Op 21 april 2016 slaan de Belgische vereniging voor bouwrecht (BVBR-ABDC) en CEPANI40 de handen in elkaar en organiseren een niet te missen studienamiddag gewijd aan geschillen in aannemingszaken, onder voorzitterschap van Benoît Kohl en Marco Schoups.



**Programma/ Programme:**

**12:00** Broodjesbuffet/ Buffet Sandwiches

**13:00** Wat is er mis? (NL/FR)

Klassieke rechtbanken, Expertise en Arbitrage door Meester Marco Schoups, co-voorzitter BVBR

**13:15** Alternative Dispute Resolution (ADR) Aperçu de ce qui existe (NL/FR)

Cepani, Commission de conciliation, ICC, VZW KRID, ASBL CCAI, Ombudsman - Divers par Meester Geert De Buyzer et Prof. Benoît Kohl, co-président ABDC

**14:00** Internationale Arbitrage in aannemingszaken (NL/FR)

Analyse van diverse mogelijkheden door Meester Vera Vanhoutte, Vice Voorzitter ICC International Court of Arbitration

14:30 Het Nederlands Arbitrage Instituut (NL)

Voorbeeld uit het buitenland door Dhr. Klaas E. Mollema

15:00 Pause café / Koffie met gebak

15:15 De lege ferenda (NL/FR)

Regards vers l'avenir: suggestions de modifications législatives par Maître Herman Verbist et M. Luc Imbrechts

15:45 Dispute Adjudication Board (NL)

door Prof.dr. ir. Didier De Buyst

16:15 Inzichten van de uitvoerende macht & Gecover (NL)

door M. Bart Gheysens

16:45 Le point de vue du pouvoir judiciaire (FR)

par Mme Fabienne Bayard, Présidente Trib. Comm. de Liège

17:15 Questions-Réponses et Conclusions (NL/FR)

par Maître Dirk De Meulemeester, Président du Cepani

Panel:

Maître Wim Goossens

Mr Geert Coene, Commission de conciliation construction & Test-Achats

Mme Elke Van Overwaele, Directeur Jur. Conf. Construction

18h00 Réception & Netwerking

Locatie: Huis van de Automobiel, Woluwe (Brussel)

INSCRIPTION/ INSCHRIJVING

Avant le 15 avril 2016 via le site web / Vóór 15 april 2016 via de website <http://www.bvbr-abdc.be/>

## **CEPANI HAS SIGNED A COOPERATION AGREEMENT WITH BANI ARBITRATION CENTRE (15 MARCH 2016, INDONESIA)**

On Tuesday 15 March 2016, in presence of HRH Princess Astrid of Belgium, Pieter De Crem, Jean-Claude Marcourt and Cécile Jodogne, CEPANI has signed a collaboration agreement with the BANI Arbitration Centre (Indonesia). The collaboration agreement was signed at the issue of the Arbitration seminar held the same day. The cooperating institutions seized the opportunity that CEPANI president, Dirk De Meulemeester, was accompanying the Princely Mission to Indonesia from 12-19 March 2016, to meet and sign a promising collaboration agreement. Dirk De Meulemeester has signed the agreement on behalf of CEPANI and Mr. Umar Husseyn, president of BANI Arbitration Center, has signed the agreement on behalf of BANI.

President of CEPANI, Dirk De Meulemeester said, "The Agreement will provide both Indonesia and Belgium a fair chance to open a wide range of possibilities for cooperation, active promotion, exchange of information and the development of new partnerships."

The partnership is based on mutual useful exchange of information to ensure the continuous promotion of alternative dispute resolution mechanisms which contribute to common approaches for actively promoting arbitration.

The text of the collaboration agreement is available on the CEPANI website.



▲ TOP

## REFERENCES

### Case Law

- Court of Appeal Liège 12 March 2015, *DAOR 2015*, afl.116, 137

Clause d'arbitrage – Validité – Organisme d'arbitrage désigné par le contrat n'existant plus – Clause inapplicable - Quand les parties au contrat désignent un organisme d'arbitrage, il faut, pour que la clause puisse être applicable, que ce- lui-ci existe réellement.

Arbitrageclausule – Geldigheid – Arbitrageorganisme dat door het contract wordt aangeduid bestaat niet meer – Niet-

toepasbaar beding - Indien de contractspartijen een arbitrageorganisme aanstellen, dan is vereist dat dit werkelijk bestaat opdat de clausule uitwerking zou kunnen hebben

Arbitration clause - Validity - Arbitration body appointed by contract no longer exists - Non applicable clause - When contracting parties appoint arbitration body, that arbitration body must exist for the clause to be applicable

- Court of Appeal Liège 25 February 2015, *T.B.H.* 2016/1, p.99

Convention - Incompétence - Indivisibilité

Overeenkomst - Rechtsmacht - Onsplitsbaarheid

Agreement - Jurisdiction - Indivisible

- Court of Appeal Liège 12 May 2015, *NJW* 2016/339, p.261-264

Cantonnement - art. 1404 C.Jud. - art 21. C.Jud. - art.1712 C.Jud. - art. 1722 C.Jud. - Voie de recours extraordinaire - Tierce opposition contre sentence arbitrale d'accord parties déclarée exécutoire - saisie-arrêt exécutoire

Kantonnement - art. 1404 Ger.W. - art 21. Ger.W. - art.1712 Ger.W. - art. 1722 Ger.W. - Buitengewoon rechtsmiddel - Derdenverzet tegen uitvoerbaar verklaarde arbitrale schikkingsuitspraak - Uitvoerbaar beslag onder derden

Consignation - art. 1404 Jud.C. - art 21 Jud.C. - art.1712 Jud.C. - art. 1722 Jud.C. - Exceptional remedy - Institute third party proceedings against an arbitral award by consent declared enforceable - Enforceable attachments

## Doctrine

### Articles

- K. COX, noot onder Luik 22 januari 2015, *T.B.H.* 2016 afl.1, p.99
- J. WAELKENS, "Geen kantonnement mogelijk bij derdenverzet" noot onder Luik 12 mei 2015, *NJW* 2016, afl. 339, p.264
- H. VERBIST, Recensie, G. KEUTGEN en G.-A. DAL, "L'arbitrage en droit belge et international - Tome I, Le droit belge, 3e ed.", *R.W* 2015-2016, p. 1039-1040



## VARIA

- **YAWP (Young ArbitralWomen Practitioners) launch event and conference on "The Future of International Arbitration: Building Your International Arbitration Career" (7-8 April 2016, Zurich)**

On 7 April 2016 ArbitralWomen celebrates the launch of YAWP (Young ArbitralWomen Practitioners).

The conference on 8 April 2016 on "The Future of International Arbitration: Building Your International Arbitration Career" welcomes high level speakers among whom Ms. Vera Van Houtte.

For more information on the event, please consult [the programme](#).

- **The International Centre for the Settlement of Investment Disputes (ICSID) bi-annual statistics release**

The International Centre for the Settlement of Investment Disputes (ICSID) released its bi-annual statistics on 31 December 2015. The figures show that 52 new cases were registered at ICSID in 2015 (38 new cases in 2014) with 50 registered under the ICSID Convention Rules and a further two registered under the Additional Facility Rules. Eastern Europe and Central Asia represent 24 % of the registered cases, South America follows with 24 %, the majority concerned the oil, gas and mining sectors.



For more detail about the 2015 statistics see the [ICSID Caseload Statistics publication](#).

- ICC YAF conference on "International Energy Investments and the ECT-a Focus on Investments and Renewables" (8 April 2016, Milan)

This ICC YAF Conference will focus on the role of the ECT in the protection and promotion of energy investments and will give an overview of some of the ongoing renewable energy disputes. The Conference will consist of two roundtable discussions with practitioners who have significant experience in energy disputes or are currently involved in the renewable energy claims.

For more information, please consult [the programme](#).

\*\*\*

Responsible publisher  
D. De Meulemeester

Editorial board  
S. Van Rompaey

M. Berlingin, P. Callens, G. Coppens, V. Foncke, M. Dal, M. Draye C. Price, E. Stein, P. Wautelet

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](mailto:newsletter@cepani.be). CEPANI may publish and/or edit contributions at its discretion.

 **TOP**

If you do no longer want to receive this email, please [unsubscribe](#).