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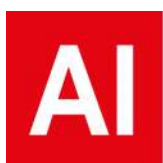
(for more information, see **below** in this newsletter)

UPCOMING EVENTS 2015

- **FMB** ([click for more info](#)) ([click for the registration form](#))
- **An overview of dispute resolution methods and their commercial benefits** ([click for more info](#)) ([click for the registration form](#))
- **ISDS : A Way Forward** ([click for more info](#)) ([click for the registration form](#))
- **Negotiation training** ([click for more info](#)) ([click for the registration form](#))
- **Mediation Training** ([click for more info](#)) ([click for the registration form](#))
- **European Mediation Training for Practitioners of Justice 2015** ([click for more info](#)) ([click for the registration form](#))
- **Qualifying Assessment Program approved by the International Mediation Institute 2015** ([click for more info](#))

- [Investment Arbitration Master Class](#) ([click for more info](#)) ([click for the registration form](#))
- [Training transformative mediation for current facilitative mediators](#) ([click for more info](#)) ([click for the registration form](#))
- [How to quantify your damage? – preparing for a negotiation/ mediation/ arbitration/ litigation](#) ([click for more info](#)) ([click for the registration form](#))
- [The art of convincing: tools and strategy](#) ([click for more info](#))
- [AIA Brussels Arbitration School](#) ([click for more info](#)) ([click for the registration form](#))

Partner in the spotlight



ACQUISITION INTERNATIONAL

The Voice of Corporate Finance

We are pleased to announce that the Acquisition International Arbitration Guide 2015 became an official partner of AIA.

With a circulation of 108,000 subscribers, 360,000 page views and 40,000 visits per month, AI is more than just a magazine; it is an established global publishing platform with an audience of thousands in need of arbitration advice.

Over the course of the next month, they will be developing content for the 2015 Arbitration Review, which will feature comment, opinion, insight and analysis from across a global network of experts on the current trends and developments significant to the field of International arbitration.

As a member of AIA, they would like to invite you to take advantage of an exclusive promotional opportunity to feature as your industry's sole representative within your country. To discuss the packages available and to find out more about how you can contribute, please contact Robert Watson on 0044 2037256840 or via [Email](#)

AIA, the Stockholm Chamber of Commerce and the Brussels Diplomatic Academy are proud to present the following event: [ISDS: A Way Forward](#)

Investor-State Dispute Settlement (ISDS) usually takes form of international arbitration, which is a well-established neutral legal method for resolving cross-border conflicts. ISDS has had a history of depoliticizing investment disputes.

The recent international debate surrounding investment protection and ISDS has been characterized by misconceptions and confusion, typically driven by a small number of undecided cases.

The aim of this joint event is to explain the basis and functioning of ISDS and to have a more fact-based debate. To this aim, the event offers insights from arbitration practitioners and experts.

The seminar is jointly organized by the Association for International Arbitration (AIA), the Arbitration Institute of the Stockholm Chamber of Commerce (SCC) and the Brussels Diplomatic Academy (BDA).

Curious about ISDS? [Read more about it on the ISDS-Blog.](#)

Seminar topics:

- * The role of ISDS in a developed world: why it was here and why it should still be here.
 - * Brief introduction to arbitration and EU arbitration.
 - * Procedural development: Emergency arbitrator in ISDS cases.
 - * ISDS and sustainable development.
 - * Transparency in ISDS.
 - * Conflict of law and choice of arbitrator.
 - * Private adjudication and the public interest.

[Access the full seminar agenda and speakers list.](#)

Date: 27 May 2015

Time: 14.00-18.00h

Location: Vrije Universiteit Brussel (VUB University), Pleinlaan 2, B-1050, Brussels, Belgium, Conference room `Rome` (level -1)

Language: English

Price: 250 EUR (VAT excluded).

To register please fill out the [registration form](#) and send it to <mailto:events@arbitration->

adr.org?subject=ISDS%20event

Seminar on an overview of dispute resolution methods 19 May 2015

This seminar will take place at the Vrije Universiteit Brussels and is designed to provide its participants with an overview of the various existing dispute resolution methods (e.g. med-arb, arb-med, arb-med-arb, conciliation, mediation, arbitration, baseball arbitration, etc). It is specifically aimed to provide knowledge to those who are interested in dispute resolution. Please find the registration form [here](#).

Participants will receive a participation certificate.

Time schedule: 14.00-17.00h

Professional/Private practice/Company Standard

Full package - 60 EUR*

*excl. VAT

Please send an [email](#) for details. Seats are allocated on a first come, first served basis.

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Clients look to Billiet & Co
Lawyers for excellence, a creative
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understanding of Belgian and
European law.

Membership of AIA takes the form of yearly subscriptions. All members benefit from a number of advantages available on the website!

The annual membership fee is 200 EUR, or 150 EUR for members under 40 years of age (VAT excluded). Fill in our online form at the bottom of our Membership page by clicking the signup button below.

AIA recommends

Events

- Diplomacy meets Business Summit on 20 May 2015. For more information click [here](#)
- OHIM IP Mediation Open Day takes place on June 15. The Open Day is aimed at everyone with an interest in mediation, and how it is used in IP. It takes place in OHIM's headquarters in Alicante, and full registration details and information are available [here](#).
- Strengthening Energy Transition In Ukraine and Europe's Eastern Neighbourhood: Addressing the Region's Challenges Through Good Governance Practices - Event organised by Energy Charter Secretariat the 5 - 8 May. More details are available [here](#).
- The Union Internationale des Avocats with the support of Mediatorsfederatie Nederland (MfN) organises the World Forum of Mediation Centres on the 5th and 6th of June in Amsterdam. More information and the program can be found [here](#).
- Expedited Arbitration and fast track procedures on Thursday the 4th and Friday the 5th of June- Riga-Latvia

Study

- The Parliament has released the following interesting [study](#) on legal instruments and practice of arbitration in the EU

In partnership with:



BLOG on future of mediation in Belgium

The FMB initiative is an initiative that aims to provide a joint communication platform to all mediation stakeholders, thereby offering them the opportunity to contribute to identifying best practices (including legal amendments) and setting out a common action plan for the enhancement and promotion of Mediation in Belgium. The FMB Committee got an assignment of the **Belgian Ministry of Justice** to identify existing initiatives related to mediation. Please fill in the [form](#) and [send](#) it back to the AIA team.

To read the first FMB report [click here](#).

To read the second FMB report [click here](#).

The FMB project was created with the support of AIA IVZW (www.arbitration-adr.org). [Click here](#) for a word of the chairman.

The new FMB session will take place **[15 May 2015 at the Palais de Justice, Brussels](#)**
[The Belgian minister of Justice will be present.](#)

European Mediation Training for Practitioners of Justice (EMPTJ): training for certified cross-border mediators

EMTPJ 2015 Session

Now Open For Registrations - 25% early bird discount!



On the 17th-28th of August 2015, the [European Mediation Training for Practitioners of](#)

[Justice](#) (EMTPJ) session will run for its 6th consecutive year. For more information about the EMTPJ please visit our [website](#).

The European Mediation Training for Practitioners of Justice is an 11-day intensive training course on cross-border mediation in civil and commercial matters. The training is unique because it is tailored to cover both theoretical and practical elements of mediation with a European perspective. Establishing such a training represented an important milestone for mediation as it allows participants to apply for accreditation in many jurisdictions, thereby creating truly '**European Mediators**'.

Don't miss this opportunity and register now! Please, send the AIA team an [email](#) for preliminary registration. Please find the registration form [here](#). Click [here](#) for a word by the AIA manager on EMTPJ.

We encourage mediators who can demonstrate 200 hours of mediation experience and 20 mediation cases, to apply for the [AIA's Qualifying Assessment Program \(QAP\)](#) which will take place at the end of the EMTPJ 2015 session on the 30th of August 2015. Please visit our [website](#) for details.



Recommended Articles written by AIA Fellows:

'**ISDS in Need of Reform**' by Mrs. Polina Gryganska (LL.M., University of Konstanz, Master of International Law, IIR of the Taras Shevchenko National University of Kyiv), coming from Ukraine, is currently pursuing her first state exam degree at the University of Konstanz. The participation in the Frankfurt Investment Arbitration Moot Court awakened her interest in the ISDS world that she continues to follow. Contact her [here](#).

'**Arbitration and Mediation in Belgium and Greece**' by Mrs. Eleni Papanikolaou, Lawyer. LL.M.in Transnational Commercial Law and Alternative Dispute Resolution, coming from Greece, is currently pursuing her PhD from Geneva School of Diplomacy and International Relations while interning for the Association of International Arbitration. Contact her [here](#).

ISDS in Need of Reform by Mrs. Polina Gryganska

The Investor-State Dispute Settlement (ISDS) is a unique model of the so-called “diagonal arbitration”^[1] that combines two types of dispute settlement – state-to-state and commercial dispute settlement. It provides an opportunity for investors to file claims against states hosting their investments for alleged breaches of investment protection rules without the need for them to go to domestic courts. ISDS is actively practiced with around 3000 bilateral and multilateral investment treaties that have given rise to over 600 disputes to date.^[2] Investment Arbitration Law is regarded as „possibly the fastest-developing area of international law“.^[3] However, its popularity boom over the last two decades has also brought some strong deficiencies to light. It seems especially important to analyse them with regard to the on-going negotiations between the EU and the U.S.A concerning the Transatlantic Trade and Investment Partnership (TTIP).^[4]

I. Challenges of the ISDS mechanism

Foreign investors have frequently challenged measures adopted by States in public interests, if policy changes were deemed to affect their profits,^[5] as policies to promote social equity or to foster environmental protection. Not only were governments forced to sometimes water down their public policy measures in the fear of facing investment protection charges, some countries have faced ISDS claims of up to \$ 114 billion and awards of up to \$ 50 billion.^[6] This led a number of states to withdraw from the ISDS system in the future.^[7] A salient example is Vattenfall’s already second claim against Germany, now on the ground of the breach of its investment protection because of its nuclear phase-out decision.^[8] Often frivolous claims are brought by investors in order to reach the desired settlement by scaring governments into submission.^[9] Eventually, such cases are dismissed, but they take up time and money for the state concerned and do not encourage its government to pursue any public policy objectives that could have adverse effects on investors.

II. Possible solutions to ISDS critics

One of the ‘easiest’^[10] solutions that could be pursued on the individual state basis is introducing a number of restrictions for investor access to ISDS. These restrictions would put significant restraints on investors in order to prevent them from overloading the ISDS system with their claims.^[11] An additional requirement that was also discussed and criticised, especially with regard to TTIP, is the “loser pays” principle.^[12] It would directly address the problem of an investor bringing multiple or frivolous claims and require the losing party to be obliged to pay all litigation costs.^[13] Other solutions include increasing transparency in proceedings,^[14] creating an Appellate Body in the ISDS mechanism,^[15]

adopting a Code of Conduct for Arbitrators^[16] or even creating a standing investment court.^[17]

The ISDS system, unique in its own way, has reached the peak of its development, when essential changes are being required. The European discourse on the need to improve and revise the currently practiced ISDS addresses the main concerns, circulating around the world and coming from different actors, governments, experts and private parties.

[1] Liebeskind (2002), „*State-Investor Dispute Settlement Clauses in Swiss Bilateral Investment Treaties*“, 20 *ASA Bulletin* 1 at p. 27, et seq.

[2] As of 15 October 2014 [12th *Report on G20 Investment Measures*, p. 3]

[3] Lalive/UNITAR (2012) *Introduction to Investment Arbitration* (2012).

[4] http://trade.ec.europa.eu/consultations/index.cfm?consul_id=179 [24/04/2015].

[5] Corporate Europe Observatory and the Transnational Institute (2012), *Profiting from injustice. How law firms, arbitrators and financiers are fuelling an investment arbitration boom*, P. Eberhardt and C. Olivet at p. 7.

[6] *Yukos Oil Company v. Russia: Hulley Enterprises Limited (Cyprus) v. The Russian Federation, PCA Case No. AA 226; Yukos Universal Limited (Isle of Man) v. The Russian Federation, PCA Case No. AA 227; Veteran Petroleum Limited v. The Russian Federation, PCA Case No. AA 228*. This was a combined award of three claimants, as referred to in Rn. 8, constituting the majority shareholders of former Yukos Oil Company. In the history of investment arbitration this is the highest known award by far.

[7] UNCTAD (2012) *World Investment Report 2012*, p. 86; UNCTAD (2014) *World Investment Report 2014*, p. 114 (Rn. 52).

[8] *Vattenfall AB & Others v. Federal Republic of Germany*, ICSID Case No. ARB/12/12.

[9] European Commission (2013) *Investment Protection and Investor-to-State Dispute Settlement in EU agreements*, Fact sheet, Executive summary, Nov. 2013, at p. 7, 8.

http://trade.ec.europa.eu/doclib/docs/2013/november/tradoc_151916.pdf [25/04/2015].

[10] „Easy“, because unlike the following proposals this one would not require significant support from a number of states or their common action.

[11] UNCTAD (2013), *Reform of investor-state dispute settlement: in search of a roadmap*, IIA Issues Note at p. 7.

[12] European Commission (2015) *Report. Online public consultation...* (Rn. 14), at p. 22.

[13] European Commission (2013) *Investment Protection and Investor-to-State Dispute Settlement in EU agreements*, Fact sheet, Executive summary, Nov. 2013, at p. 2.

[14] The UNCITRAL Rules on Transparency (in Treaty-based Investor-State Arbitration) and the reviewed UNCITRAL Arbitration Rules that had both been adopted in 2013 came into effect on 1 April 2014.

[15] UNCTAD (2013), *Reform of investor-state dispute settlement: in search of a roadmap*, IIA Issues Note at p. 8.

[16] European Commission (2014) *Investment Provisions in the EU-Canada Free Trade Agreement (CETA)*, Nov. 2013, at p. 3, 4 http://trade.ec.europa.eu/doclib/docs/2013/november/tradoc_151918.pdf [26/04/2015].

[17] UNCTAD (2013), *Reform of investor-state dispute settlement: in search of a roadmap*, IIA Issues Note at p. 9.

Arbitration and Mediation in Belgium and Greece by Eleni Papanikolaou

This Article is a short description of commercial, investment, energy arbitration and mediation regimes in Belgium and Greece[1]. Although arbitration and mediation mechanisms are two radically increased preferable choices for the resolution of disputes worldwide, it is noted that Belgium and Greece are not greatly chosen as arbitral and mediation forums. This happens despite the fact that both countries have already incorporated into their legislation some of the most salient features of these methods, such as neutrality, confidentiality, authenticity and virtuosity. Such features make these mechanisms more suitable for the resolution of disputes as opposed to the ordinary means of resolution such as litigation. It is also recognised that the fast speed of rendering an arbitral award or a decision, as well as their enforcement procedures outweigh the long-lengthy court-proceedings. This leads such countries among others to opt for alternative dispute resolution. For these and numerous other reasons, arbitration and mediation are more appropriate for the energy sector, for which time and not-losing face really matter. In addition, and practically speaking, it could be considered that the delayed and interminable resolution of the dispute might be equal to a non-resolution, since over time the effectiveness of the legal protection of the parties loses its value.

I Non-litigation in Belgium

Arbitration

Belgium modernised its legislation on arbitration[2] with the replacement of the sixth part of the Belgian Code of Civil Procedure through the bill of no. 53-2743 of 2013. This reform depicts closer the UNCITRAL Model Law. With this reform Belgium reinforced its position on arbitration, while one of notable improvements being made is the removal of disadvantages that influence arbitration-related proceedings. It is worth to be noted that the new rules apply to arbitration requests that have been made after the entry into force of the reformed law. In this way the European capital, Brussels, has proper advantages in order to be chosen as an arbitral forum. Fast speed, fixed fee scales, customized procedure and expert arbitrators are some of the reasons to settle disputes in Belgium.

As an arbitral institution, Belgium proceeds with the rules of CEPANI which is a centre for assistance of the parties.[3] Some other distinctive arbitral institutions are the Institute of Arbitration and the Chamber of Arbitration and Mediation. As an example, a case that involves Belgium is *Ping An life insurance Company of China, Ltd v. Kingdom of Belgium*[4]. The case relates to Chinese investors who brought an Investor-State Dispute Settlement claim against Belgium regarding to that government's treatment of Fortis, a Belgian-Dutch financial institution, in the midst of the financial crisis. The claimants reportedly allege damages of USD 2.3 billion. The claim was made on the basis of China-Belgium BIT. This is the first investor-state dispute settlement claim that Belgium has faced. Moreover, Belgian investors have joined in investor-state arbitration procedures. [5]

Mediation

In Belgium mediation[6] is not obligatory and is categorised as a court-instigated type and

mediation outside the courts. The Belgian Law on Mediation of 21 February 2005 clarifies that this method might occur after a court order only if it is agreed by both of the parties. As to the accreditation of mediators,^[7] it is offered by institutions such as bMediation^[8] and by training providers such as CEPANI and the Association of International Arbitration and Mediation.(AIA). Any possible combined process such as med-arb or arb-med is not publicly used in Belgium.

Energy Mediation

In Belgium, energy disputes^[9] could be solved through the service of the Energy Ombudsman which is a federal and autonomous service with legal personality, responsible for the allocation of the application and complaints concerning the operation of the electricity market and natural gas for the treatment of any dispute between a customer and an electricity and gas company. The mediation service is responsible for the evaluation and investigation for all the customers' complaints and the facilitation of an amicable settlement.

II. Alternative Dispute Resolution in Greece

Arbitration

Despite the numerous privileges of the mechanism, arbitration^[10] in Greece is not widely chosen. This mainly indicates that there is lack of acclimatizing with the mechanism and generally the mentality of the Greek practice and market, which has to be synchronised with the arbitration practice in Europe and worldwide. However, and although with some delay, arbitration was introduced in Greece 25 years ago and has been chosen now by major companies for the conclusion of an agreement or for the dispute resolution with evenness. Certainly, there is hope and likelihood that the upcoming years arbitration will be amplified in Greece.

Some of the Greek Arbitral Institutions that are based under the articles 867-903 of the Code of Civil Procedure are the Athens Chamber of Commerce and Industry (ACCI)^[11] and the Institute of Arbitration and Alternative Dispute Resolution^[12].

Greek law protects the domestic arbitration in the Ch.7 of the Code of Civil Procedure and the international arbitration in Law 2735/1999. Apart from these there have been established arbitral institutions as for instance, the Athens Chamber of Commerce and Industry from 1979 until today. Recently, the first ICSID investment arbitration cases against Greece were initiated. The cases are based on the Greece-Cyprus BIT. One relates to claims of foreign (Czech and Cypriot) holders of Greek state bonds that suffered losses following the country's debt restructuring programme in 2012. ^[13] The other case relates to claims of Cyprus Popular Bank involving losses on Greek state bonds following the 2012 debt restructuring programme and losses, as the bank was excluded from the Emergency Liquidity Assistance facility for Greek Banks.^[14]

Energy Arbitration in Greece

In Greece there has been a Permanent Arbitration Body in Greek Regulatory Authority for Energy (RAE) established. RAE responds to a complaint within 3 to 6 months if it is necessary, and so after the conclusion of a writing agreement between both parties through which they authorise RAE to proceed with arbitration. Its tasks include disputes between companies or between companies and consumers. Concerning the procedural issues, there are two arbitrators and one co-arbitrator

nominated. The duration of the procedure is a publication of the award after 6 months from the commencement of the procedure. If this period is not sufficient, a possible extension can be offered by the President of RAE. The decision is being taken by majority if a consensus is not possible and it has a binding effect on both parties.

Mediation

Mediation^[15] in Greece is certified by the Law. 3898/2010 which integrated the European Directive of 2008/52 EC on Mediation in civil and commercial matters. The Hellenic Centre for Mediation and Arbitration was established in 2006 and contributed to the development of the mechanism. Another institute for mediation is the Centre of Mediation in Pireus^[16].

In conclusion, one could argue that Belgium and Greece need to reinforce and boost their attractiveness as forums for international arbitration practice. A modernisation and aligning of Greek Arbitration Acts with the international arbitral standards, and Belgium which already modernised its Arbitration Law, will open the path for them to be chosen by parties and to compete with the most widely chosen arbitral forums such as London and Paris. By the realisation of conduct between Greek or Belgian enterprises and the admission of the foreign enterprises there will be visible results of the update information on arbitration or other means of alternative dispute resolution.

[1] The choice of Belgium and Greece for the purposes of this piece is accidental and it is based on the evidence that both of their legal framework is not widely chosen as *lex arbitri*.

[2] More information on: <http://www.cepani.be/en>

[3] G. Wegen and S. Wilske, 'Arbitration in 60 jurisdictions worldwide', Getting the deal through, 2015

[4] ICSID, no. ARB/12/29

[5] Antoine Goetz and Others and SA Affinage des Metaux v Republic of Burundi (ICSID Case no. ARB/01/2), Electrabel SA, Transportes de Cercanias SA an Autobuses Urbanos des Sur SA v The Argentine Republic (ICSID Case no. ARB/07/26)

[6] J. Billiet and D. Nigmatullina, 'Mediation in 16 jurisdiction worldwide', Belgium, Getting the deal through, 2013

[7] European Mediation Training for Practitioners of Justice, A guide to European Mediation, Association for International Arbitration (ed.)

[8] More information on: www.bMediation.eu

[9] More information on: <http://www.mediateurenergie.be/>

[10] G. Wegen and S. Wilske, 'Arbitration in 60 jurisdictions worldwide', Getting the deal through, 2015

[11] See also: <http://acci.gr>

[12] See also: <http://www.idemed.gr/>, Π.Δ. 31/12-1-79

[13] The case is available on ICSID website: *Postova banka a s and Istrokapital SE v Hellenic Republic*, ICSID Case no. ARB/13/8

[14] The case is available on ICSID website: *Cyprus Popular Bank Public Co Ltd v. Hellenic Republic*, ICSID Case no. ARB/14/16

[15] More information: www.hellenic-mediation.gr; and www.diamesolabisi.com

[16] More information: <http://kedip.gr/>, Π. Δ/ροç 123/2011

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