

Association For International Arbitration

IN TOUCH



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Issue # 01

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Arbitration and Mediation in the ACP (African, Caribbean and Pacific) Countries – EU Relations Conference



The past May 21st of 2008 the Association for International Arbitration AIA hosted the Arbitration and Mediation in the ACP –EU Relations Conference. The event held at the ACP secretariat in Brussels attracted a very diverse group of people, African, Caribbean, Pacific as well as EU regions' delegates were either present or involved in the organization of this conference.

The President of the Association, Mr. Johan Billiet a known Arbitrator and Mediator and attorney at law, partner of Billiet & Co, took the initiative of creating a pool for discussion regarding arbitration issues in the commercial relations between the group of countries of the ACP group and the EU nations. The conviction and good management of his proposal resulted in a wonderfully put together blend of ideas in a variety of interests.

The event was graced with the intervention of many who collaborated in the preparation of an extensive number of presentations posing different topics that surrounded the issues affecting trade and commerce among a wide range of cultural and economic backgrounds. Furthermore, the attendance of some of the members of the association was the highlight of its achievement, given AIA's intent to be responsive to members' interest in arbitration and mediation matters.



A brilliant moderator, Mrs. Chitra Radahuski, guest from the United Nations Conference on Trade and Development UNCTAD, whose expertise wrapped around the thought-provoking presentations in a responsive and harmonic atmosphere, provided a key element to the success of this ambitious project of AIA.

The conference panel of speakers was filled with expert interventions and a high level of knowledge from personalities in the field such as Mr. Justice Duke E. Pollard, Mr. Srilal Perera, Mr. Paul-Jean Le Cannu, Mr. Aloysius Gng, Mr. Colin Brown, Ms. Mahnaz Malik, Mr. Charles

Call for papers

on arbitration and mediation subjects to be included in CIETAC's coming journal to be published by August 2008.

Deadline for submission: 15th of August 2008.

Please contact AIA to submit your article.

Claypoole, Dr. Emmanuel Awuku, Dr. Gaston Kenfack Douajni; who joined this event from several places in the area of focus of the conference.

The contributions of the speakers were collected in a book published by AIA, which can be purchased through the AIA's website. This conference also brought together a great number of questions and new ideas contributed by the attendees. The panel and the attendees interventions has been collected a text of conclusions made available as well



Altogether, the Arbitration and Mediation in the ACP- EU Relations Conference was, certainly a day with a busy agenda in a full program of sessions and the social lunch and cocktail gatherings.

New EU directive promoting Mediation

Creating an area of security, freedom and justice. This directive aims to provide a key element for access to justice which should include alternative dispute resolution methods, which moreover releases the pressure on the Member States Courts.

In May of 2000 the Council adopted conclusions on alternative methods of settling disputes in civil and commercial law matters intending to create basic principles to facilitate a suitable development and process of dispute settlement outside court; as well as facilitating and advancing the access to justice.

A Green Paper on Alternative Resolution in civil and commercial matters was presented in the year 2000, determined to take a stand in regard with Alternative Dispute Resolution methods in the European Union and prompt consultations with Member States in order to promote the use of mediation.

The European Parliament and the Council have published a directive on certain aspects of mediation and civil and commercial matters, dated May 21st of 2008 on the official Journal of the European Union.

The directive's objective is the promotion of mediation and the introduction of a legal framework attempting to particular key aspects of civil matters.

The terms of the directive are intended to apply only to cross border mediation disputes, however not preventing their application to internal mediation processes. It is directed to two or more parties to a cross-border dispute pursuing to reach an amicable agreement with the assistance of a mediator in civil and commercial matters, they should not apply to family and employment law or to pre-contractual negotiations, adjudicatory or processes administered by persons or bodies issuing a formal recommendation.

The directive should apply to cases where the national law prescribes mediation or where the court refers parties to mediation. The directive should also apply to

Call for Arbitrators

with a professional background and interest in China, to be part of a Chinese Panel of Arbitrators.

Your data will be recorded in the arbitrator database and submitted to Arbitrator Qualification Review Committee. Subject to approval, your name will be listed in one of the Chinese Panel of Arbitrator to be selected by the parties or appointed by the Director of the Commission.

Please contact the Association for International Arbitration for more details.

mediations conducted by a judge who is not responsible for the judicial proceedings relating to the matter of dispute, in the case that a judge may act as a mediator under national law. Furthermore, the directive should not extend to the effort made by the judge or court within the context of trial procedures concerning the dispute.

The directive provides that Member States should encourage training of mediators by the necessary means to ensure mutual trust with respect to privacy, effect on restriction and prescriptions periods and enforcement, as well as the provision for introduction of effective quality control mechanisms. The Member States should define these mechanisms and they may include resource of market-based solution and should not be required to provide any funding for that matter.

The mechanisms to promote mediation should ensure the flexibility of the mediation process and the total autonomy of the parties and the assuring that the mediation is conducted impartial and effectively.

The directive also provides, that Mediators should be made aware of the existence of an European Code of Conduct for mediators, and this should be made available to the public. Also, the directive provides for a consumer protection criteria; regarding this matter, the commission has adopted a Recommendation establishing a minimum quality protection criteria, which out-of-court bodies should adopt and should be used and respected by the mediation or organization involved in the consensual resolution of consumer disputes.

The mediation directive also establishes that mediation should not be regarded as a poorer resource to juridical proceedings but rather as an alternative, thus the Member States must ensure that the parties' written agreement can make this enforced. The written agreement resulting from mediation should also be recognized and declared enforceable by the other Member States according to the Community or national law.

The Member States should ensure that their rules on prescription and limitation do not prevent the parties from going to court or arbitration, in the case that the attempt for settling the matter through mediation should fail.

The directive will come into force 20 days posterior to its publication in the Official Journal of the European Union. Once the directive comes into force, the Member States have three years to implement the directive in to their internal national law.

Regarding the directive of certain aspects for mediation in civil and commercial matters, the nationality of the parties subject to the dispute, remains very important, because as it is mentioned the directive applies to cross-border disputes within the European Union, with the exception of Denmark who has not adopted of this directive. If one of the parties to the dispute is a national of a country other than a EU Member States, the European party or parties should not take for granted that the principles of the European Union directive are the same as those of the legal order of the national outside the European Union, so this should be considered before opting for a legal forum outside the EU.

Various material and general considerations, which are not expressedt in the directive's text, are to yet be analyzed, in order to pursue its fair application and the use of the right methods.

NEWS AIA

AIA's new alliances

AIA announces its new alliance with Shenzheng, Guangzhou, Wuhan, Xian and Huizhou Arbitration Commission. In its efforts to create an environment for the access to information, services and partnership relations with arbitrators around the world, AIA continues to look for ways of promoting ADR around the globe.

AIA, is also pleased to announce, that the China International Economic and Trade Arbitration Commission (CIETAC), which is one of the most important permanent arbitration institution in China issues a trimester English journal, and they have chosen one of the articles from our last conference publication "Arbitration and Mediation in the ACP-EU Relations" to be included in their last issue. They have requested members of AIA to present their unpublished articles to be introduced to the next journal edition to be issued in September. The articles should be sent to AIA by August 15.

For more information
please visit:

<http://www.arbitration-adr.org>

Published by:
The Association for
International Arbitration

