



The New Edition of the CEPANI rules

Belgian Center for Arbitration and Mediation (“CEPANI”) was founded in 1969 for the purpose of studying and promoting International arbitration. CEPANI is a national, cross-sectoral, independent body whose members are business leaders, corporate counsels, lawyers, notaries, and university professors.

Since then, CEPANI has extended its purview to include other forms of dispute resolution. Today - as a recognized arbitration and mediation Centre – it strives to offer businesses and private individuals efficient and competent means for resolving disputes. To this end, it has drafted various sets of rules, including rules of arbitration. It also closely monitors those proceedings in which it is involved, supervising their quality, speed, and efficiency.

In 2012, CEPANI adopted new arbitration rules which came into force on 1 January 2013, replacing the previous set of rules in force since 2005.

The new edition of the CEPANI rules reflects the evolution in alternative dispute resolution rules, taking into account the rules of other national and international arbitration and mediation institutions – and particularly the ICC – while ensuring compliance with relevant Belgian law. CEPANI also took stock of its own experience in arbitration and mediation. Finally, the new rules aim to respond to issues identified by legal professionals with regard to the old rules.

The new regulation also aims to meet a number of challenges that the old text may have caused among legal professionals. This revision was also used to introduce provisions in Regulation innovative example regarding taking interim and conservatory measures before the establishment of the arbitral tribunal, plurality of parties and contracts, application to be joined to proceedings and joining procedures, confidentiality of the arbitration, responsibility of intervener involved in arbitration proceeding or settlement of matters not covered by the Regulation.

All proceedings initiated after the entry into force of the new “CEPANI Rules” (1 January 2013) will be subject to the new rules, unless otherwise agreed by the parties.

The main innovations of the 2013 CEPANI Rules are briefly described below:

- (1) Claims arising out of various contracts or in connection with another one may be made in a single arbitration (art. 10 (1)). Claims arising under contracts with separate arbitration clauses may be adjudicated in a single arbitration, so long as the parties have agreed to arbitration under the CEPANI Rules and to have their claims decided in a single procedure.



Differences in the applicable law or the language of the proceedings do not automatically result in incompatible arbitration agreements (art. 10(2)).

- (2) A third party may request to intervene in the proceedings and any party to the proceedings may seek to have a third party joined (art. 11(1)). The intervention may be allowed when the third party and the parties to the dispute have agreed to have recourse to arbitration under the CEPANI Rules. Such joinder is not possible past the appointment or confirmation of the tribunal, unless the parties and the intervening third party agree otherwise (art. 11 (2)).
- (3) The 2013 CEPANI Rules put emphasis on the arbitrators' independence, at the time of and until the end of their appointment (art. 14 (1)). In addition, the arbitrator must be impartial and be available. Once appointed or approved, the arbitrator shall undertake to fulfill its mission to its conclusion. The Appointment Committee and the president of CEPANI have broad discretionary powers in the appointment, approval and replacement of an arbitrator. The grounds for their decision are not disclosed (art. 14 (4)).
- (4) Rather classically Regulation 2013 provides that where the arbitral tribunal is in place, it establishes a mission act and « as soon as possible thereafter », shall establish in a separate document a procedural timetable that it intends to follow for the conduct of the arbitration and shall communicate same to the parties. The provisional procedural timetable may be drawn-up at any « conference with the parties organized by Arbitral Tribunal ». The purpose of the conference shall be to consult with the parties on the procedural measures required as well as on any other measure capable of facilitating the management of the proceedings.
- (5) Regulation provides *expressis verbis* the confidentiality of the arbitration proceeding “unless it has been agreed otherwise by the parties or there is a legal obligation to disclose” (art. 25). Regulation 2005 was limited to providing that hearings are not public.
- (6) While Regulation 2005 provided the opportunity to apply for interim and conservatory measures to the Arbitral Tribunal (art. 18), Regulation 2013 also provides for the possible granting of provisional and conservatory measures before the arbitral tribunal is established (art. 26). This is a quick measure to obtain the appointment of an arbitrator which parties cannot await the constitution of the Arbitral Tribunal. The Appointments Committee or the President appoints an arbitrator who shall provisionally decide on the measures urgently requested. The said appointment shall take place in principle within two working days of the receipt of the request and in principle, the arbitrator deciding on the interim and conservatory measures renders his decision at the latest fifteen days of his receipt of the file. This procedure is implemented upon receipt of payment in the amount of € 15,000 including € 3,000 for administrative costs of CEPANI (s. 27 (11)). This amount may be revised if necessary.



- (7) The award may be corrected or interpreted (art. 33). Especially where the jurisdiction refers to the Arbitral Tribunal his award for possible adaptation, « CEPANI may take all necessary measures in order to allow the Arbitral Tribunal to comply with the decision to remit ».
- (8) Regulation 2013 for the first tie contains a provision on the « limitation of liability » (art. 37). This provision provides that « 1) Except in the case of fraud, the arbitrators shall not incur any liability for any act or omission when carrying out their functions of ruling on a dispute. 2) For any other act or omission in the course of an arbitration proceeding, the arbitrators, CEPANI and its members and personnel shall not incur any liability except in the case of fraud or gross negligence. »
- (9) While Regulation 2005 referred to any matter not regulated by the Regulation in the sixth part of the Belgian Judicial Code (art. 28), the new paper provides that « unless otherwise agreed by the parties, for all issues that are not that are not specifically provided for herein the Arbitral Tribunal and the parties shall act in the spirit of the Rules and shall make every reasonable effort to make sure that the award is enforceable at law” (art. 38).

This provision takes into account such as arbitration to the rules of CEPANI take place abroad and it is therefore not possible to apply some rules of judicial code example when they involve the Belgian Judge on the seat of the arbitration.

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