

EUROPEAN - CENTRAL ASIAN WORKING GROUP MEETS IN TASHKENT TO ENVISAGE NEW INVESTOR-STATE DISPUTE SETTLEMENT RULES



The EU - Central Asia Rule of Law Platform jointly organised with the Ministry of Justice of Uzbekistan [a regional seminar on “States and international arbitration”](#), in Tashkent, on 19 May 2017.

The [seminar](#) was attended by 80, including representatives of the Ministries of Justice of Kazakhstan, the Kyrgyz Republic and Uzbekistan, and other ministries and state agencies of Uzbekistan, arbitrators, lawyers and academics.



Lawyers from the Ministries of Finance, Justice, Agriculture and Water Resources, the State Customs Committee, State Tax Committee, State Committee for Investments and other line state agencies exchanging experience on ISDS

The seminar also constituted a third meeting of the working group on Investor-State Dispute Settlement (ISDS) set up by the Platform, which already met in Bishkek ([30 September 2016](#)) and Dushanbe ([6-7 October 2016](#)).



Ms Aida Kurmanbaeva and Mr Aikek Amangeldin, Heads of Division on legislation, Ministries of Justice of Kyrgyzstan and Kazakhstan

Promoting and retaining international investment is key for sustained economic growth. The relevance for countries and businesses of clear investment rules and efficient investment dispute settlement is reflected by the steady increase of

international investment treaties: over 3200 currently. The number of investment disputes has increased commensurate with the tremendous growth in international investment flows.



Representatives of leading Uzbek companies, including Uzbekneftegaz, Uztransgaz, Asakabank, Uzpromstroybank, National Bank for Foreign Economic Activities, etc.

Yet, in recent years, there has been growing questioning of current ISDS rules resulting from the backlash in certain parts of the world following a number of high profile ISDS cases. These have involved challenges to the public policy in sensitive areas such as health, safety or the environment, which have resulted in growing scepticism regarding the benefits of trade and investment agreements. In parallel, the search of balance in investment protection and public interest led to discussions on the adequateness of the current system of investment dispute settlement and the need for new rules different from those applying to traditional commercial arbitration.



Mr Daniel Segoin, Legal advisor at the French Ministry of Foreign Affairs and International Development and Mr Ainars Meisters, Prosecutor's General Office of Latvia

The mechanisms commonly used for resolving commercial disputes between private entities stem from a particular set of reciprocal obligations : contract-based arbitration is characterised by the confidentiality of proceedings and the appointment of *ad hoc* arbitrators (the parties individually chose their adjudicators and financial incentives for those may have an impact on the decision-making processes). Yet, investment agreements regulate the obligations of the governments towards a multitude of investors and can have an important impact of public budgets while cases often challenge public policy decisions of governments.



Dr Jean-Pierre van Cutsem, Member of the Brussels Bar, Mr Lai Kamara, International Arbitrator, Mrs Françoise Kamara-Ribettes, Counselor-Dean to the First Civil Chamber of the French Cassation Court

The current system of ISDS is extremely fragmented and the absence of appeal against ISDS decisions (or limited grounds of appeal of arbitral awards) is problematic when public policy choices are challenged. Moreover, the absence of coherent case-law results in lack of predictability and incoherence for the users of the system.



Mr Daniel Segoin and Mr Serge Vlaar, Member of the Bar of The Hague, Honorary Judge (The Netherlands)



Deputy Minister of Justice of Uzbekistan Akbar Tashkulov and EU Ambassador Eduards Stiprais

The most promising and effective way for interested governments would be to agree on a multilateral framework for resolving investment disputes that would be open to adherence by all interested countries and which could be applied to existing investment treaties. Reforming ISDS could be pursued by creating a new fully inclusive multilateral investment dispute settlement mechanism, with all necessary guarantees of institutional legitimacy, legal correctness, transparency, predictability and efficiency. This would ensure more consistency and predictability in the interpretation of identical or similar investment rules across different investment agreements. Moving towards more permanent structures (such as full-time employed adjudicators) would also have a beneficial impact on costs.



Young scholars from the Tashkent State University of Law debating the merits of the possible options for reforming ISDS at the outset of the seminar

While a multilateral reform of the substantive standards is difficult to envisage at the moment, the process could also lead to discussion of further reforms of the international investment regime.



The working group discussed current arbitration procedures involving states and private investors in the light of the Belgium, Dutch, French, Kazakh, Kyrgyz, Latvian and Uzbek practices. The issues of third-party financing and fraud in international arbitration were presented, as well as specific cases of enforcement of arbitration sentences against states in France, the UK and the USA, with attention to the integration into national law of the UN Convention on Jurisdictional Immunities of States and Their Property of 2 December 2004. The benefits brought by the Permanent Court of Arbitration in The Hague were presented. The project to establish a multilateral investment court was discussed and a [set of recommendations](#) was adopted.



French Ambassador Violaine de Villemeur and German Ambassador Neithart Höfer-Wissing expressed support to a new system of ISDS

The EU DG Trade has analysed the current system of ISDS and its possible reform, with the support of France and Germany, the Coordinators of the EU Rule of Law Initiative for Central Asia. Resulting from these efforts, the [Enhanced Partnership and Cooperation Agreement between the EU and Kazakhstan](#), signed on 12 May 2016, provides for specific dispute settlement procedures for trade and business.