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## AIA Upcoming Events

- New AIA postgraduate degree program at the VUB University of Brussels in International Business Arbitration. Registration is now open for the 2010-2011 Academic year. More information can be obtained from our official brochure, which you may download at [www.arbitration-adr.org](http://www.arbitration-adr.org)
- Conference on The Most Favoured Nation Treatment of Substantive Rights in Brussels on October 22, 2010

For further information on conferences organized by the Association for International Arbitration in Brussels, Belgium, please visit our web site

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

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### *Sempra v Argentina: State of Necessity and Manifest Excess of Powers*

*Sempra v. Argentina* has been a highly debated case. The recent decision on the Argentine Republic's Request for Annulment of the Award made on June 29<sup>th</sup> 2010 is not an exception. In fact, this decision will be at the center of debate for a while. The Committee found that the Award must be annulled in its entirety on the basis of manifest excess of powers (Article 52(1)(b) of the ICSID Convention) in respect of the failure to apply Article XI of the USA-Argentina BIT. The approach to the state of necessity and the role of international customary law were of great importance in the final decision. The basics of the case and some of the most relevant arguments of the decision are important to consider.

#### Background of the Case

In 1989 Argentina introduced a privatization program in order to revitalize its economy and put an end to an ongoing economic crises. An important facet of this program was the introduction of a legal and regulatory framework by way of the Convertibility Law, introduced in 1991, together with an implementing decree, fixing the Argentine peso (ARS) to the US Dollar (USD) at the exchange rate of one to one.

In 1991, the natural gas industry was restructured, and the government-owned company Gas del Estado was privatized. A number of companies were formed for the purpose of distributing gas to residential and commercial users. Sempra invested in two of these gas companies by acquiring an indirect shareholding in Sodigas Pampeana's and Sodigas Sur's shares, which are the holders of two Argentine companies that had been granted licenses for the distribution of gas.

In December 2001 a financial crisis erupted in Argentina, and in the period 2001-2002 the Government of Argentina undertook a number of measures, which, in the view of Sempra, constituted a wholesale abrogation and repudiation of significant rights and entitlements under the licenses and other entitlements under the regulatory environment that had been established within the framework of the Argentine privatization program. Essentially, these rights concerned the licensee's entitlement to the calculation of tariffs in USD and their semi-annual adjustment on the basis of the US Producer Price Index (PPI). In January 2002, the Emergency Law was enacted, the currency board system was abrogated, the Argentine economy was pacified – including public service agreements and licenses – and all contracts and relationships then in force were, according to the Emergency Law, to be adapted to the new context.











The Scientific-Methodological Center for Mediation and Law

the training of professional mediators, boasting a comprehensive course offering, including school mediation among more general courses. This was novel four years ago, but now the Center enjoys name recognition within the academic press, having partnered with MCUPK Publishing to produce its specialized series, "Mediation and Law," featuring many works by international authors.

The Association of International Arbitration is excited to profile a growing leader in the global mediation community. The Scientific-Methodological Center for Mediation and Law in the Russian Federation was founded in 2005 with support from the state, legal community, and public organizations. Since then, the Center has become a leading organization in the promotion and development of mediation in the legal sphere and beyond, facilitating panels with mediation centers around the globe, and strategically partnering with some of the most expert voices in the field.

Its message on how mutual understanding provides a "modern environment" for growth, and can aid in successful public-private partnerships has found a growing audience. The Center's network of academics, professionals, and policy advisors has attracted attention in other countries of the former Soviet Union with its magazine, the only of its kind published in Russian. Founded in 2006, the magazine targets what the Center calls "a wide readership," geared towards the professionals influencing international policy, specifically "lawyers, businessmen, politicians, public servants, social workers."

In the development of the Center's growth, it has come to encompass professionals in a diverse range of specialties. The Center deals with commercial, corporate and intercorporate disputes, but also with family relations and public law, in addition to some less discussed aspects of ADR, like tourism and travel. The broadness of this range has allowed them to get involved in the creation of Russia's legislative framework for mediation. This legislature is going to be adopted next January, potentially priming Russia for ascent to the forefront of ADR in Eastern Europe. If the legislature is successful in its comprehensive undertaking, it will be thanks to the enormous research and energies of the Center.

While its accomplishments within Russia and Eastern Europe are formidable, it is the Center's smooth facilitation of global partnerships that has made its research more global than its tremendous resonance with Russian-speaking countries alone might suggest. It calls the U.S.'s Center for Mediation in Law a partner, creating a flow of ideas spanning over 2,500 professionals and three continents. In recent events, like last May's Russian-Dutch project on judges, the Center brought experts to Moscow, making it home to some of the newest scholarship in the field. September's Family Mediation training, for example, boasts the U.K.'s Lisa Parkinson. We look forward to watching the Center as it grows in global influence and excellence in education of dispute resolution.

Before working on national legislation, the Center developed training programs for professional mediators. These courses placed the Center at the vanguard of ADR education within legal academia years before the movement gained legislative momentum. It launched this education campaign for budding professionals in 2006, bringing its own course "Introduction to Mediation," into law schools all over Russia. It also developed government-licensed programs for

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#### EUROPEAN ENERGY OMBUDSMEN GROUP

AIA would like to showcase a new and exciting ADR organization, whose members resolve disputes, in last resort in their organizations, in the energy sector in Europe. The European Energy Ombudsmen Group (EEOG) is the first and only independent, not-for-profit body of ombudsmen and mediators from Europe's leading utility companies. The EEOG was initiated two years ago to promote mediation in the energy sector. Its main objective is to ensure that consumers' rights are efficiently safeguarded by promoting mediation between companies and consumers in the energy sector while fostering good customer service practices, and to contribute to the improvement of relationship with consumers.

well as the continuous sharing of information relevant to the energy sector and relating to consumer protection on a voluntary basis, whilst respecting commercially sensitive information that is legally protected in compliance with European legislation. The EEOG also promotes the creation of new ombudsmen positions in European energy companies and collaboration to enlarge the ombudsmen community.

#### Members

The members of the EEOG represent energy companies with a mandate of impartiality. They have the common desire to resolve consumer complaints from a neutral point of view. Current EEOG members include GDF SUEZ, ENDESA, E.On, Vattenfall, Energy, EDF and all power companies operating in the UK under The Ombudsman Services Ltd.

#### Goal

The EEOG encourages the development of good practices in customer service and procedures in regards to claims, as

#### Why mediation?

The benefits of mediation are numerous and more and more

people are learning first-hand why mediation is so popular and effective. Mediation is particularly well-suited for disputes in the energy sector because of the unique provider-consumer relationship. Mediation is fast (approximately 2 months) and incredibly flexible. It avoids the need for an appeal before judicial authorities, which in comparison, is a long-winded process entailing numerous burdensome formalities that take their toll on each party involved and may damage the contractual relationship. It is affordable. In the EEOG, mediation for the client is free and does not require the presence of a legal representative. The cost of mediation for the organization is significantly less than the usual cost of entering into legal proceedings. Mediation in the energy sector helps to protect the consumer by resolving disputes that are unlikely to be handled by the Courts on account of the disproportion between the claim value and the cost of entering into legal proceedings. Generally-speaking, consumers who participate in the mediation process show high levels of satisfaction with the agreed solution. It is a fair, efficient and free process which helps to avoid unnecessary litigation procedures. Mediation is particularly appropriate and beneficial in the energy sector because it affects two parties united, in general, by a long-term ongoing supply agreement and adapts to the fact that both parties, subsequent to the mediation process, probably seek to re-establish mutual trust and maintain a harmonious contractual relationship. AIA looks forward to watching EEOG grow as ADR becomes more and more widely used and appreciated in the energy sector and beyond.

#### Brussels I Regulation News

AIA would like to bring to your attention new advancements in commercial arbitration that were discussed on the side at our conference on the UNCITRAL Model Rules in June. After the release of the Green Book in the spring of 2009, the Commission of legal affairs of the European Parliament adopted a report on the implementation and the revision of Regulation Brussels I on June 23, 2010. The report says there is no current need to revise the rules because « the question of arbitration is treated adequately by the New York Convention of 1958 and the Geneva Convention of 1961 on international commercial arbitration... ». The Commission of the legal affairs of the European Parliament has acted as proposed in the submission by AIA in relation to the Green Paper released in connection with the review of Regulation 44/2001. To view AIA's submission, please visit [http://arbitration-adr.org/activities/profwork/pdf\\_files/response\\_on\\_green\\_paper\\_Brussels\\_I\\_regulation.pdf](http://arbitration-adr.org/activities/profwork/pdf_files/response_on_green_paper_Brussels_I_regulation.pdf)

The new report proposes removing the power of member state courts to declare arbitration clauses invalid in such

circumstances and would also prevent them from interfering with arbitration tribunals' freedom to determine the scope of their own jurisdiction. The report recommends that, "not only arbitration proceedings, but also judicial procedures ruling on the validity or extent of arbitral competence as a principal issue or as an incidental or preliminary question are excluded from the scope of the Regulation."

An amendment to Brussels I (or, Council Regulation (EC) No 44/2001) which determines which member states courts have jurisdiction to hear civil and commercial cases, is expected next year. The European Commission has appointed a group of experts to examine whether arbitration should be included in **the revised scheme**.

The Chairman of the AIA Conference, Mr. Edouard Bertrand, has commented on this news. For further reading on this matter, please visit Mr. Bertrand's blog: <http://avocats.fr/space/edouard.bertrand>

#### *Alassini, et al. v. Telecom Italia, et al.*: Mandatory Mediation

The Court of Justice of the European Union has for the first time ruled on the application of the statute (Article 34 of Directive 2002/22/EC) that mandates conciliation of disputes prior to submitting the disputes to a court of law. The issue in *Alassini* was whether it is possible to bring judicial proceedings without first attempting settlement.

The decision, laid down on 18 March 2010, said the directive must be interpreted to not preclude "legislation of a Member State under which the admissibility before the courts of actions relating to electronic communications services between end-users and providers of those services, concerning

the rights conferred by that directive, is conditional upon an attempt to settle the dispute out of court." The Court went on to hold that "the principles of equivalence and effectiveness or the principle of effective judicial protection" do not preclude national legislation that imposes prior implementation of an out-of-court settlement procedure either, (provided that the settlement procedure does not result in a binding decision, cause substantial delay or give rise to costs).

See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62008J0317:EN:HTML>