

Paris Court of Appeals: Creation of a Chamber specialized in international commercial disputes

On February 7, 2018, a new Chamber dedicated to international commercial disputes was created within the Paris Court of Appeals.

With the prospects of Brexit and as part of a strategy aimed at re-positioning France on the international economic scene, Paris is increasing its attractiveness for foreign investors.

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Brexit gives Paris the opportunity to become a new venue for the resolution of international commercial disputes that have until now been adjudicated in London. Indeed, by leaving the European Union, the United Kingdom will no longer have access to the EU regime for the mutual recognition of judgments provided for under the so-called “Brussels I recast” Regulation, which means that economic operators will have to file an application for the recognition and enforcement of British judgments in each Member State of the European Union where such judgments are to be enforced.

The will to create a specialized Chamber within the Paris Court of Appeals became apparent as early as in March 2017, through the publication of a report entitled “*Recommendations for the implementation in Paris of specialized Chambers to deal with international commercial disputes*” authored by the High Legal Committee for Paris Finance Marketplace.

The idea is not new as a specialized Chamber for international disputes had already been created within the Paris Commercial Court in 1995. This Chamber was subsequently merged with the Chamber for European Law created in 1997. What is now called the International and European Law Chamber is made up of English speaking judges.

With the creation of a specialized Chamber within the Paris Court of Appeals, the French capital has now a specialized second level of jurisdiction, thereby further strengthening an international offer that was already

quite important as Paris has long been positioned as a leading center for arbitration (in particular with the Court of Arbitration of the International Chamber of Commerce).

It is within this context that the French Minister of Justice, Nicole Belloubet, signed two protocols on February 7, 2018: The first one concerning the Commercial Court of Paris and the second one concerning the Paris Court of Appeals. The overall objective is to define the rules of procedure according to which international commercial disputes will be heard and adjudicated.

The procedure shall be similar in first instance and on appeal, and the judges shall be entitled to apply both French law and foreign laws applicable to the dispute at hand.

The two specialized Chambers will have jurisdiction to adjudicate disputes related to:

- Commercial contracts and termination of business relationships,
- Transport,
- Unfair competition,
- Action for damages for anticompetitive practices,
- And lastly transactions in financial instruments, market framework agreements on financial contracts, instruments and products.

In addition, for Paris to become a true alternative to Anglo-American venues and to attract international economic operators, the procedure allows, under certain conditions, the use of the English language and gives priority to testimonial evidence.

- **The use of the English language**

The Ordinance of Villers-Cotterêts (1539) and the French Constitution require the use of the French language in legal proceedings initiated before French courts. As per these two texts, any procedural documents produced before French courts must be drafted in French and any exhibits drafted in a foreign language must be accompanied by a French translation.

Before the International and European Law Chamber of the Paris Commercial Court and the specialized Chamber of the Paris Court of Appeals, English-language exhibits can be produced without any translation being required. On the other hand, however, procedural documents (summons, submissions, etc.) must necessarily be in French and can be produced with or without a translation in a foreign language.

Pleadings will be in French but can be simultaneously translated by interpreters, at the expense of the party that requires such translation. Pleadings can also be in English, under certain conditions. Lastly, the parties appearing before the judge (witnesses and experts) will be entitled to speak in English.

The judgements will be drafted in French, with a sworn translation in English.

- **Testimonial evidence**



In France, the procedures governing the adjudication of commercial disputes are mainly written procedures. Even if theoretically the procedure before Commercial Courts is oral, in practice the evidence introduced by the parties is primarily set forth in writing. In addition, the procedure before Courts of Appeals is a written procedure.

Another salient feature of the International and European Law Chamber of the Paris Commercial Court and the specialized Chamber of the Paris Court of Appeals is that the procedure will give a large place to testimonial evidence, thereby adopting a common law approach. Hearings will last longer and it will be possible to call witnesses and experts to testify before the court. The parties will also have the possibility to appear in person and ask the court to order the forced production of documents held by the other party or a third-party.

The two protocols will enter into force in March 2018. The recruitment of highly qualified personnel (judges, clerks, assistants) has already begun.

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