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## A Q&A with the Secretary General of the Vienna International Arbitral Centre

Upon invitation from the International Arbitration Group, Alice Fremuth-Wolf, the Secretary General of the Vienna International Arbitral Centre (VIAC) joined us for an informal chat. Heidrun Walsh conducted the interview during which she provided insights into the history of the VIAC, the VIAC Rules and her role as Secretary General in one of the major arbitral institutions in Europe. It was a great opportunity to speak to Alice and to learn more about the VIAC, her work and ambitions. We have therefore summarized the interview below.

**Can you tell us about the history of the Vienna International Arbitral Centre (VIAC) – how old is the VIAC and how did it develop?**

VIAC is the premier international arbitration institution in Central and Eastern Europe with a long-standing tradition. It was established by the Austrian Federal Economic Chamber (AFEC) in 1975, and will celebrate its 45th birthday in 2020. Initially, its main purpose was to facilitate trade between the former Eastern bloc and the West, as a neutral forum for the settlement of disputes arising out of East-West trade. Since then it has had a steadily-increasing caseload from a diverse range of parties with a strong focus on the CEE/SEE-region (a third of our parties stem from this region), but also from Western Europe, the Americas and Asia. We are thus not focusing on a particular type of dispute but rather on a particular region. The disputes handled by us are from a broad variety of topics, post M&A, Energy, commercial contracts, construction etc. (see our statistics for further details <https://www.viac.eu/en/service/statistics>).

**You have been the Deputy Secretary General for 6 years before becoming Secretary General of the VIAC in 2018, what have been the biggest changes since you joined the VIAC?**

There was a change in the legal environment, which included the revision of the of the VIAC Rules in 2013 and 2018 and the reform of Austrian Arbitration Act, which established the Supreme Court as first and only instance for setting aside arbitral awards rendered in Austria. This was an important amendment, as previously, parties had to run through three court instances in challenge proceedings before they could get a final decision from the Supreme Court. The legal change clearly boosted Austria's attractiveness as arbitral seat.

The VIAC also introduced Mediation Rules in 2016 as a second pillar and further option for parties (arb-med-arb proceedings).

We completely overhauled the VIAC's corporate ID and its face and turned it into a fresh and innovative institution with a modern website, social media account, proper marketing strategy and media presence.

We also introduced greater transparency by publishing statistics of arbitrator appointments and arbitrator names. We have now five female members on the VIAC Board instead of one.

**What is the role of the Secretary General? What are your daily tasks?**

My current role is to oversee the case management, to represent VIAC at conferences and promote arbitration and mediation as a peaceful means for the resolution of international disputes. One of my personal goals is to promote diversity in arbitration and break-up old structures (if you want to read more on my personal drivers, please see my contribution in *Women Pioneers in Arbitration*, 2<sup>nd</sup> ed, p. 65 *et seq.*<sup>1</sup>)

**Who appoints arbitrators if the parties cannot find an agreement?**

It is a job of the VIAC Board, which convenes every 6 weeks in Vienna to deliberate on appointments of arbitrators (and as of 1 January 2016 also of mediators or other neutrals). Prior to the meeting, the Secretariat prepares a case summary for each case, containing a note about the criteria that a potential candidate should fulfil or is requested to fulfil by the parties. Based on this, each Board member may propose persons for the case, which leads to a short list of candidates. The Board members then take a vote.

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<sup>1</sup> <https://s3.amazonaws.com/cdn-arbitralwomen/wp-content/uploads/2019/02/Women-Pioneers-second-edition-Feb-2019.pdf>

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This task is taken very seriously, and there are lengthy discussions in the Board meetings weighing pros and cons for each proposal. Although VIAC does have a list of practitioners on its website for reference purpose (<https://www.viac.eu/en/arbitration/list-of-practitioners>), it is important to stress that the Board is not bound in its appointment to choose candidates displayed on that list.

I also emphasize that for each appointment, there is a goal to have short-listed both male and female candidates. In general, VIAC tries to support young arbitrators in that it appoints (almost exclusively) young arbitrators for smaller amounts in dispute in order to give young practitioners a chance to build up their career and gain experience. I have to admit that the younger generation of arbitrators are very diligent, efficient and deliver very good awards.

**Do you have a black list for arbitrators?**

Yes, but only in my mind.

**What would you advise young arbitration practitioners to do in order to get their first arbitrator appointment?**

Make yourself visible! Apply for the list of practitioners at VIAC so that users (and the institution) may see your profile. Be proactive and do not hide your light under the bushel.

In general, it is a good idea to be present on the market, attend conferences and seek speaking opportunities so that decision makers for appointments become aware of you. Networking is important and so is the publishing of articles.

I want to add that a first appointment is usually realistic after you have gained some experience as party representative, and/or a secretary of a tribunal. An internship or even post in an arbitral institution often helps in getting to know more people and seeing files, procedural orders and arbitral awards. VIAC offers each year four internship positions – so we encourage everyone to apply and obtain some more experience!

**What distinguishes VIAC from other international arbitral institutions e.g. the ICC or LCIA?**

VIAC is a boutique arbitration centre with personal touch and particular regional experience. We have got and always had a strong focus on and knowledge of East/West trade, in particular the CEE/SEE and CIS countries. The LCIA is more oriented towards common law jurisdictions, but with a stronghold in Russia. The VIAC is a much smaller institution than e.g. the ICC with less administrative hurdles, which enables us to react much quicker to enquiries. We are a small team, but we are very efficient and I am personally available to speak to parties and arbitrators in urgent matters.

One of our big advantages in comparison to other institutions (e.g. the LCIA) is that we provide the parties with certainty of their administrative costs and arbitrators' fees. We will collect the entire advance of costs at the outset of the proceedings to cover the administrative costs and arbitrators' fees incurred in the course of the proceedings. We have a cost calculator (<https://www.viac.eu/en/arbitration/cost-calculator>) on our website where parties can easily get an idea of the expected arbitrators' and administrative fees for a particular amount in dispute. Please be aware that the actual advance on costs will, however, be higher as the Secretariat considers not only the administrative fees and the arbitrators' fees as reflected in the cost calculator, but estimates and adds any applicable value-added tax on arbitrators' fees, expenses for oral hearings as well as other expenses. The advance on costs requested from the parties will thus be higher than the amount calculated by this cost calculator.

When determining the arbitrators' fees at the end of the matter, the Secretary General has got the discretion to increase or decrease the arbitrators' fees by a maximum of 40%. Whether this happens depends on the arbitrators' excellent or bad performance in conducting the proceedings. The threat of a financial penalty at the end of the proceedings has certainly contributed to the arbitrators' efficiency in VIAC arbitrations.

We are also fortunate that our Board consists of very experienced and highly renowned national and international arbitration practitioners, academics, a Supreme Court Judge as well as a member of the Austrian Ministry of Justice in order to ensure the integrity and high quality of our decisions.

**Mishcon de Reya**

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**One of the main tasks of the Secretary General is the determination of costs. Can you explain the costs regime at the VIAC – do parties get an understanding of how much the arbitration will cost at the outset?**

According to the VIAC Rules, there is no choice between ad valorem or hourly rate as we have a fixed fee schedule and the arbitrators are remunerated depending on the amount in dispute. The arbitrators cannot engage in a fee arrangement with the parties and modify their fees under the VIAC Rules. Therefore, costs of VIAC arbitration are calculated and transparent to the parties before starting an arbitration.

**Why did the VIAC decide against the incorporation of emergency arbitrator proceedings in the Vienna Rules?**

First, emergency arbitrator proceedings are very expensive. Courts very often are able to offer the same service cheaper and are vested with coercive powers to enforce the interim measures issued. Second, we know that that most courts in the regions where the VIAC is chosen as arbitral institution are competent and willing to render interim and conservatory measures in support of arbitral proceedings. Third, - as mentioned - the question of enforceability. There is still uncertainty in many jurisdictions as regards the enforceability of such decisions rendered by an EA. For these reasons, we have decided - for the time being - to work without the emergency arbitrator. But, we are obviously closely observing UNCITRAL's Working Group II aiming to improve the efficiency of arbitral proceedings (including emergency arbitrator proceedings), and the experiences of other arbitral institutions which have incorporated such provisions. If deemed necessary, we will reconsider to offer the emergency arbitrator also under the Vienna Rules.

**Arbitration has seen an increased call for transparency – not only in investor state arbitration, but also in commercial arbitration. What is the VIAC's position and how does the VIAC find a balance between transparency and confidentiality?**

There seems to be an intrinsic tension between transparency and confidentiality. One of the main advantages of commercial arbitration has always been its confidential nature with disputes being settled in a private arena. However, especially in the case of investment arbitration where decisions are being rendered that impact the fate not only of the parties involved, but of a larger group of people or even nations, transparency is needed. In commercial arbitration, there is no such subordinate public interest that requires private disputes to be publicly debated.

The VIAC Rules contain strict confidentiality provisions for arbitrators, Board members and VIAC's members of the Secretariat ensuring that all information acquired in the course of their duties is kept confidential, while parties are recommended to conclude an explicit confidentiality agreement, be it in a separate document or as part of the arbitration agreement.

Following the call for more transparency in the appointment process of institutional arbitration, VIAC has decided to publish the names of arbitrators. The list is updated regularly. It provides information on the appointment method, i.e. if the arbitrator has been appointed by the VIAC-Board or nominated by the parties/co-arbitrators and the date when the case file was handed over to the respective arbitrator.

**You are on the Steering Committee of the ERA Pledge, would you mind explaining what triggered the birth of the Pledge (which is now in its third year)?**

The birth of the pledge was triggered by the under-representation of women on international arbitral tribunals. In 2015 members of the arbitration community drew up a pledge to take action (the Pledge). Something needed to be done in order to raise awareness.

The Pledge seeks to increase, on an equal opportunity basis, the number of women appointed as arbitrators in order to achieve a fair representation as soon practically possible, with the ultimate goal of full parity.

**What has the VIAC done in terms of implementing the Pledge?**

We have started to publish the names of the arbitrators appointed in VIAC proceedings. We have also made sure that the Board has on its shortlist an equal number of female arbitrators when making their appointments. I am making sure that we have always women speaking at conferences that are organised or co-organized by the VIAC. As there are so

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many great female arbitration practitioners out there, we have found that often we had more women than men on the panel!

While the VIAC Board has made great progress on the increase of female arbitrator appointments, the statistics are still disappointing. The lack of female representation as arbitrators is down to the parties' nominations or by the co-arbitrators when appointing a chairperson. We have got some way to go, but I am confident that the ERA Pledge as well as the efforts with respect to diversity will bring further changes.

### **What would you like to see done by other actors in the arbitration community?**

Parties (in particular in-house counsel) have to put in place an internal policy that any proposal for arbitrator appointments submitted to them by their counsel contains an equal number of female candidates. If not, they will reject it. Parties can insist on female chairpersons.

I am also suggesting a top-down approach: law firms should make more females a partner; make this an internal policy. We need more role models.

### **What is your vision for the VIAC?**

For international trade and trade in goods, arbitration will remain the important cornerstone to guarantee fair trial and equal treatment of the parties as well as enforceability of cross-border contracts through the New York Convention of 1958.

Any form of alternative dispute resolution must be enhanced in order to prevent escalations of conflicts, foster trade, which is essential for our common well-being, and ensure peace on a wider scale. It is the task and duty of dispute resolution centres such as VIAC to offer such services, create trust in resolving disputes -- that inevitably arise -- in a civilized way, and in that to contribute to a better world for all of us.

My vision for VIAC is to contribute to this greater goal and provide parties from CEE/SEE and CIS region with a reliable institution where quality administration, service orientation and user friendliness is at the top of priorities.

### **What do you like most about your job?**

I simply love the field I am working in and the people I am working with, the openness of the arbitration community and that I am at the forefront of developments, being able to create new ideas and visions. This comes with a great responsibility but also with the conviction that with my work I can make a difference.

The field of international arbitration is constantly developing and we have to keep up with the needs of the market. It never stands still and so do I, always on the go!