

Arbitration, Open Data, Justice and Artificial Intelligence: a New Step Forward

Kluwer Arbitration Blog

April 16, 2020

Antonio Musella (CastaldiPartners)

Please refer to this post as: Antonio Musella, 'Arbitration, Open Data, Justice and Artificial Intelligence: a New Step Forward', Kluwer Arbitration Blog, April 16 2020, <http://arbitrationblog.kluwerarbitration.com/2020/04/16/arbitration-open-data-justice-and-artificial-intelligence-a-new-step-forward/>

The Report on Online Dispute Resolution platform for consumers issued by the European Commission on 2 October 2019 concludes that *"the ODR framework is underused and has yet to reach its full potential"*.

Against this background, the French legislator has taken a strong stance to promote the use of artificial intelligence and online dispute resolution, in particular for small and repetitive cases. At the same time, the French approach reveals the intention to regulate the use of technology in order to avoid abuses.

One of the biggest reforms during Mr. Macron's presidency, the Loi de Programmation de Justice 2018-2022 ("**LPJ**"), tackles also the issue of the relationship between arbitration and artificial intelligence.

This law issued on 29 March 2019 entered into force - notwithstanding a strong opposition of lawyers and judges - on 1st January 2020.

Amongst other things, the LPJ contains a number of important provisions aiming at modernizing the French justice and at updating the judiciary services to the most recent technological developments.

First, the LPJ pursues the development of the open data of the judicial decisions,

started by the Law 2016-1547 on modernization of justice, by significantly widening the access to judicial decisions. However, in order to preserve confidentiality and to avoid the misuse of personal data, it provides for the redaction of the names of the parties, the judges and clerks. Interestingly, the name of the lawyers will not be redacted. It is to be noted incidentally that this intensive redaction process will be handled the tribunals, which in some cases are already overburdened.

Second, the LPJ contains a number of provisions related to the online arbitration (and mediation) platforms: it expressly authorizes the possibility to have online arbitration and mediation services. In addition, these platforms providing such services can be implemented by physical or moral persons free of charge or not. These online arbitration providers can notify an award by e-mail (unless one party objects) without having to issue the hard copy.

Another important development is the online arbitration platform certification. A decree n°2019-1089 published on 27 October 2019 has specified for the online arbitration and mediation platforms the modalities to obtain the certification from one of the approved institutions (such as the Cofrac). The conditions to fulfil in order to obtain the certification have not been specified yet.

The decree is not yet in force but it will enter into force on 1st January 2021 at the latest and the list of the certified platforms providing online arbitration services will be published on the website of the Ministry of Justice (www.justice.fr).

However, to obtain such a certification, the LPJ sets already out one specific condition: these platforms cannot use exclusively artificial intelligence to render decisions. Therefore, a platform exclusively based on algorithms or automatic data processes would not receive the certification.

In other words, the presence of a human arbitrator is still required.

Also, if algorithms or automatic data processes are used as a support, the users must be explicitly informed and provide their consent to the utilization of such technology. To this end, the rules and specifications of the technology used by the platform will be transmitted to the parties upon their request.

In the same vein, the platform provider must ensure the *“control of the process and of all its evolutions in order to explain, in details and in a comprehensible*

manner” how the technology works (« Le responsable de traitement s’assure de la maîtrise du traitement et de ses évolutions afin de pouvoir expliquer, en détail et sous une forme intelligible, à la partie qui en fait la demande la manière dont le traitement a été mis en œuvre à son égard », Article 4 of the LPJ).

Such caution is more than welcome in a highly sensitive sector to avoid any abuse.

The position of the French legislator is clearly a reaction to the huge investments that have been made by Legaltechs on predictive justice and algorithm abilities to render a decision in small and repetitive cases. Just to mention one of them, Jusmundi has started to process all the ICSID decisions in investment arbitration and thousands of awards have been converted from PDFs files to text-searchable documents. It also allows to access statistics on arbitrators’ reasoning which will contribute to building an “*arbitral case law*”.