"PAN-EUROPEAN MEDIATION PRACTICES"

Survey on the Use and the Practice of b2b Mediation
Year 2012 and 2013
The opinions contained in this Report are only those of the authors and not those of the European Commission.

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WORKSTREAM 4: TOWARDS LARGE SCALE IMPACT
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EXECUTIVE SUMMARY

Background

The project “Go to mediation!” falls within the scope of the so-called Mediation Directive (2008/52/EC of 21 May 2008) and focuses on the promotion of mediation as a means for resolving business-to-business civil and commercial disputes. Under the coordination of Eurochambres, it involves nine project Partners in as many European countries. Workstream 4, in particular, deals with data collection and dissemination on the use of mediation.

Aim

The purpose of this report is to present preliminary information on B2B mediation practices in 2012 and 2013 in the network of project Partners, with a view of encouraging data collection by exchanging experiences and methods. Taking into account the lack of official statistics and sound information on mediation across European countries, the report attempts to provide baseline data to assess the state of the art of Directive implementation in nine sample cases.

Project Partners will share relevant information with legal, judicial and administrative authorities at national and European level, in order to feed policy-making processes related to enhancing access to justice and developing ADR mechanisms.

Key findings

Legislative and administrative frameworks:
- There seem to be an increasing awareness about mediation across EU Member States, and continuous developments in domestic legislations;
- Well endorsed court-annexed mechanisms, mandatory systems and contractual mediation clauses seem to play a relevant role in boosting a "culture of mediation";
- Enforceability procedures, which give authority of judicial decision to mediation settlements, are usually in place;
- Financial and fiscal incentives are often in place to make mediation a more attractive dispute resolution option.

Partners’ experience and practice of B2B mediation:
- The demand for mediation services in civil and commercial matters yet represents a small niche within the larger market of litigation;
- Voluntary mediations still represent the majority of cases but where legal obligations or strong court-annexed mechanisms are in place they represent a relevant quota;
- Mediation procedures are short and inexpensive: if regulatory frameworks usually limit their length to 3-4 months, the practice can halve this period; fees are by far cheaper than "traditional" judicial proceedings;
Mediation is effective: success rates are on average well above 50% of procedures reaching an end; such data does not include many settlements reached before the meeting or after the closure of mediation, but still as a result of it.

The demand for cross-border mediation is still infrequent and very few data are available.

Data collection on mediation procedures:

- Most Partners report difficulties in providing consistent, sound and up-to-date data on B2B mediation practice, as formal monitoring systems are hardly ever in place and vary a lot from country to country;
- Mediation practitioners are keen to set up some sort of data collection mechanisms, deemed useful or necessary even if there is no specific obligation to do so; at national level, however, Member States seem to control little the mediation market and only recently are paying more attention to mediation monitoring;
- A pre-requisite to make data collection easier could be a national system of certification or accreditation for mediators and/or mediation centres. Where such a system exists (67% of Partner countries) it makes it possible to identify mediation practitioners, to contact them by way of surveys, databases and other tools, to aggregate data in an anonymous form, and, thus, to assess the mediation market;
- Case studies show how disputes and conflicts are common everywhere and often similar; thus, they deserve a common system of alternative resolution. By promoting harmonisation in mediation standards and data collection mechanisms, in which Chambers of Commerce may play a most effective role, a EU mediation system can be built which favours business trust and mobility in a safer cross border conflict framework.

Recommendations

1. Member States and the European Commission should be encouraged to monitor legislative changes on mediation in Europe and to progressively harmonise definitions, standards, procedures and regulatory frameworks, also by means of cross-fertilization and international projects.

2. Member States and the European Commission should be encouraged to promote strong incentives to mediate, through contractual clauses, judicial decisions or legal provisions, thus fostering a wider ADR culture among relevant stakeholders.

3. Member States and the European Commission should be encouraged to promote cross-border mediation further in the business community, by developing ad hoc incentives and awareness raising campaigns.

4. Member States and the European Commission should be encouraged to develop common standards for training and harmonised accreditation systems, which could foster trans-national trust in mediators’ skills and facilitate mutual recognition of mediation procedures. This could lead, in time, to a European regulatory scheme for mediation practitioners.
5. Member States and the European Commission should be encouraged to put more emphasis on those features that could **boost trust in mediation** (especially in cross-border disputes), namely financial and fiscal incentives, confidentiality, domestic and international enforceability of settlements, beside cost- and time-savings.

6. Member States and the European Commission should be encouraged to **improve the quality of data collection** on domestic and cross-border mediation, by developing coherent and common standards to gather statistics from mediators and mediation centres.
PREFACE

"Go to mediation!" is a project co-funded by the European Union and implemented by nine Chambers of Commerce and related Mediation centres in Europe, under the coordination of Eurochambres, the European Association of Chambers of Commerce. Partners to the project are:

- Brussels Enterprises, Commerce and Industry, in cooperation with bMediation - Belgium,
- Croatian Chamber of Economy in cooperation with its Mediation Centre - Croatia,
- Cyprus Chamber of Commerce and Industry - Cyprus,
- Centre de Médiation et d’Arbitrage de Paris at the Paris Chamber of Commerce and Industry - France,
- Handelskammer Hamburg Service GmbH (HKS) in cooperation with Hamburg Business Mediation Centre - Germany,
- Unioncamere (Union of the Italian Chambers of Commerce, Industry, Handicraft and Agriculture) in cooperation with Universitas Mercatorum and the mediation centres of the Chambers of Turin, Milan, Venice, Florence and Rome - Italy,
- Latvian Chamber of Commerce and Industry - Latvia,
- IASI Chamber of Commerce and Industry – Romania,
- Barcelona Chamber of Commerce, Industry and Navigation in cooperation with Consolat de Mar – Spain.

The project focuses on the promotion of mediation as a means for resolving business-to-business (B2B) civil and commercial disputes, the improvement of exchanges and networking among mediation practitioners in Europe (quality standards, mutual recognition, best practices), and the development of quality information and statistics on the use of mediation to be shared with policy makers.

The objectives of "Go to mediation!" fall within the scope of Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (hereinafter the Directive), which intends to encourage amicable dispute resolution, particularly through the use of mediation, by ensuring nonetheless a balanced relationship between this institution and judicial proceedings.

In this framework, the project addresses some of the concerns expressed by the European Parliament in its Resolution of 13 September 20111 on the implementation of the Mediation Directive in the Member States, in particular the "need for increased awareness and understanding of mediation" and the call for further promotional action which could, inter alia, encourage mediation uptake by businesses and establish common requirements for access to the profession of mediator. According

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1 P7_TA(2011)0361 Directive on Mediation in the Member States, European Parliament resolution of 13 September 2011 on the implementation of the directive on mediation in the Member States, its impact on mediation and its take-up by the courts (2011/2026(INI)).
to the European Parliament, national authorities should also develop programmes in order to promote “adequate knowledge” of alternative dispute resolution (ADR), focusing on the main advantages of mediation, such as cost, success rate and time efficiency.

The European Parliament reiterated similar concerns in a following report on alternative dispute resolution in civil, commercial and family matters\(^2\), in particular the need for better information about ADR schemes, including their existence, functioning and location, and their advantages in comparison to litigation. The European Parliament called again on the Commission and the Member States to undertake information campaigns aimed at educating and raising awareness about the benefits of mediation, also by collecting and disseminating up-to-date statistics on its use and results. Chambers of commerce and other competent institutions are invited to be at the forefront of such information campaigns and actions on mediation.

On these bases, “Go to mediation!” tackles those issues with cross-fertilisation of experiences and actions in four main domains: awareness raising and communication campaigns (Workstream 1); a clearing house for cross-border B2B disputes (Workstream 2); common training standards and mediators code of conduct (Workstream 3); and data collection and dissemination to impact policy making (Workstream 4).

As regards in particular Workstream 4 (hereinafter WS4), “Towards large scale impact”, it aims at gathering structured data about B2B mediation services provided by the participating Chambers of Commerce and mediation centres, with a view of sharing relevant information with legal, judicial and administrative authorities at national and European level to better support the policy making process and funding programmes related to enhancing access to justice and further developing ADR mechanisms.

This report is one of the main results of WS4: on the basis of the data collected in 2013 and 2014 from the project Partners, it delivers an overview of facts and figures about mediation practices (number of cases, success rate, total cost of the procedure, duration, type of conflict, barriers...) in the network that can feed policy discussion at national and European level. Moreover, it aims at encouraging sound data collection and harmonised monitoring systems on mediation at European level, by exchanging practices and methods.

After a short methodological description, the first section of the Report deals with the legal and administrative framework of mediation in the nine Partner countries in the light of EC Directive 52/2008, with a focus on the experience of mandatory mediation in Italy.

Section 2 looks upon the actual experience of mediation in the network or, when available, in the Partner countries or regions. It analyses facts and figures provided by project partners on number of cases, matter, costs and timing. Section 3 looks at cross-border mediation, whereas Section 4 deals with the issue of data collection and monitoring system, by analysing tools and practices of the project Partners.

Each section includes a short paragraph on concluding remarks and recommendations, which attempt to draw some lessons learned and suggest possible ways forward.

At the end of the report, twelve case studies provided by project Partners, dealing with both domestic and cross-border disputes, illustrates features, characteristics and advantages of B2B mediation.
METHODOLOGY

The purpose of this report is:

- To assess B2B mediation practices in the partner countries/mediation centres in 2012 and 2013, through data on the number and types of cases, duration and costs;
- To identify the main characteristics of partners’ legal systems in accordance with the Directive, focusing on judicial referrals, enforceability and incentives to the use of mediation;
- To collect, when possible, information on cross-border disputes or the lack thereof;
- To include descriptions of relevant case-studies, based on the direct experience of GTM Partners, which illustrate how B2B mediation works in practice in each country/centre;
- To highlight difficulties and shortcomings of existing data collection and monitoring system on mediation and to suggest recommendations for possible improvements.

The study is based on a two-year survey carried out among project Partners under the coordination of WS4 leader (Unioncamere and Universitas Mercatorum), following these steps:

- Two slightly different questionnaires (Annex 1 and 2) were elaborated with quantitative and qualitative questions and distributed to all Partners: one in 2013 (requesting data from 2012) and one in 2014 (requesting data from 2013). The second questionnaire built upon the experience of the first one;
- Project Partners filled out the questionnaires and collected additional material (case studies, national legislation, etc.);
- WS4 leader gathered all relevant information, analysed the questionnaires and related documents provided by project Partners, did some literature review and desk research, and drafted a preliminary version of the report in 2013 and a consolidated version in 2014;
- Project Partners and coordinator jointly discussed survey results and reviewed the draft reports;
- The consolidated version of the report was finalised in November 2014 and submitted to the European Commission.

The Report is also harmonised with the content of “Go To Mediation!” website: www.gotomediation.eu.

Some limitations and a number of difficulties had to be overcome to finalise the Report:

1. As a precondition, the implementation of mediation law in each country is at a different stage and a different maturity among Partners and associated mediation centres is evident.
2. Definitions and frameworks may also somehow diverge from country to country: mediation can be used in different fields and there is not always a clear classification of B2B cases.
As regards the availability of data, one of the main evidence of the survey is a general shortage of sound and consistent statistics on B2B mediation and an extreme difference among European countries in terms of data collection tools and mechanisms employed to monitor mediation procedures. For example:

- Not every country/mediation centre has an official registry or recording system for mediations, leaving it to a voluntary process, which often takes place outside the judicial or associative framework;
- Where a register or monitoring system exists, the way information is recorded may vary from centre to centre (or from country to country), dissimilar categories and classifications (for example as regards the subject matter) may be used, on the basis of different national legislative and regulatory frameworks;
- Sources of information vary considerably: some Partners regularly produce their own internal statistics, other launched an ad hoc survey for this activity, whereas some gather data from national Administration or other large private mediation centres in their country;
- Not all Partners or countries are able to provide specific information for B2B mediations or data strictly from the period under examination (year 2012 and year 2013);
- Cross-border disputes seem particularly difficult to track, especially for centres that do not handle them directly, thus data on international mediations are quite poor.

Section 4 deals in greater detail with features and characteristics of data collection and monitoring tools among project Partners and Member States, and attempts to give some insights on a possible and desirable harmonised system across Europe.
1.1 European legislation and its implementation in Partner countries

At European level the benefits of ADR have been explored from quite some time and there is an increasingly well-documented literature showing the social and economic value of using mediation as a cost-effective and quick extrajudicial means of dispute resolution in civil and commercial matters through processes tailored to the needs of the parties. The work of the mediator, who is a trained professional, is functional to achieve an agreement between the parties before going to court or, for pending proceedings, to facilitate their conclusion without the judge’s decision.

The benefits of mediation, especially in B2B relations, are many and diverse. Just to mention the most evident: it offers an alternative to difficult, lengthy and costly access to justice; parties do not engage in confrontation but rather enter into dialogue, thus favouring social harmony; parties have the control over the outcomes of the conflict and the contents of the settlement, which are never pre-determined and may have a wider scope than the original dispute; agreements resulting from mediation are more likely to be complied with voluntarily; mediation helps preserving an amicable and sustainable relationship between the parties, by furthering a win-win solution to the dispute; the proceedings can be adapted by consensus to the parties’ needs; it preserves confidentiality.

In order to promote further the use of mediation and ensure that parties having recourse to mediation in the European Union could rely on a predictable legal framework, in 2008 the European Parliament and the Council adopted EC Directive 2008/52/EC, introducing a framework and common principles in the field of mediation legislation addressing, in particular, key aspects of civil procedure. Member States were due to comply with the Directive before 21 May 2011. In 2011, the Parliament evaluated the implementation of the Directive in the Member States, and concluded that they were “as a whole, largely on track to implement” the Directive and that “while Member States are using varied regulatory approaches and some states are a little behind, the fact remains that most Member States are not only compliant, but are in fact ahead of the Directive’s requirements”.

The Directive, even if only applicable to mediation in cross-border disputes, set out minimum standards upon which mediation schemes may be based. The aim was to reinforce quality and security of mediation while respecting flexibility, self-regulation and the principles of proportionality and subsidiarity. Moreover, it has functioned as a

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4 For an empirical evaluation of timing and costs of mediation versus court proceedings see also: ADR Center, The Cost of Non ADR – Surveying and Showing the Actual Costs of Intra-Community Commercial Litigation, June 2010.
5 European Parliament resolution of 13 September 2011 on the implementation of the Directive on mediation in the Member States, its impact on mediation and its take-up by the courts, texts adopted, P7_TA(2011)0361.
standard-setting benchmark: most Member States have not only implemented its framework but have also applied similar principles into domestic mediation, thus ensuring a certain degree of harmonisation among national legislations.

This section of the Report focuses on some provisions of the Directive and their transposition into state legislations, in particular regarding the possibility for the courts to suggest mediation directly to the parties (Article 5.1), the possibility for Member States to make the use of mediation compulsory or subject to incentives or sanctions (article 5.2), and the enforceability of agreements resulting from mediation (Article 6).

It should be noted that national legislations are still under a process of consolidation and implementation; during the project several Partners have experienced legislative reforms or judicial decisions on mediation in their countries, either at state or substate level. Details on mediation regulatory system in place in the nine countries of the GTM project are presented in paragraph 1.2. This section is based on Partners’ feedback to the survey and on the legal information included in GTM website (www.gotomediation.eu).

1.1.1 Judicial referral and mandatory mediation

According to Articles 2 and 3 of the Directive, there are three main types of mediation, depending on who initiates the process: the parties themselves may agree on using mediation when a dispute arises (“voluntary mediation”); or it can be suggested or ordered by a court (“judicial referral”); or an obligation to use mediation may arise under the law (“mandatory mediation”).

The Directive, moreover, preserves national legislations which make “the use of mediation compulsory or subject to incentives or sanctions, whether before or after judicial proceedings have started, provided that such legislation does not prevent the parties from exercising their right of access to the judicial system” (Article 5.2), for example “by the expire of limitation or prescription periods during the mediation process” (Article 8).

All nine countries participating in the project have already implemented the Directive in their national legislations, putting in place systems for dealing with voluntary mediation. Last in time is Cyprus, whose Mediation Law was enacted in November 2012, establishing for the first time in the country an official framework.

The possibility for the judge to refer a dispute to mediation, usually only upon parties’ consent (judicial referral), is envisaged in seven out of nine national legislations; only in Croatia and Latvia no specific provision on judicial referral does exist in their legislation; however, Latvian draft mediation law envisages mediation ordered by court.

As regards “mandatory mediation”, that is to say the introduction in the regulatory framework of a legal obligation to refer to mediation under certain circumstances, only two countries – Italy and Romania – have so far tried to implement it. For the purpose of this report, it is thus indicated that two out of nine partner countries have implemented mandatory mediation in their national systems.
Judicial Referral

Judicial referral, as seen above, is quite common among European countries: table 2 specifies some legislative details for each Partner country.

Where judicial mediation exists, it allows the court “to invite” parties to refer to mediation; such an invitation may have a certain degree of persuasive force (as in France, where the judge directly appoints the mediator, always upon parties’ consent) or may be encouraged with incentives but never becomes an obligation, with the exception of very recent amendments to mediation regulations in Romania6 and in Italy7.

In particular, in Romania, Law no. 115/2012, which amended national Mediation Law and entered into force in February 2013, introduced a mandatory information session about mediation prior to the outbreak of a lawsuit or before the deadline given by the judge in this respect; if there is no proof that the parties attended the information session the case may be declared inadmissible by the court. In Italy, starting from September 2013 under certain circumstances the judge may “order” the party to refer the dispute to mediation; in this case parties must attempt mediation (participating at least in the first meeting) before resuming the judicial action, also on appeal.

The role that mediation can play as a court-annexed mechanism, relieving congested tribunals with a high quality, flexible and efficient alternative, is well described in the words of Béatrice Brenneur, Honorary President of the Court of Appeal, in France: “The development of human sciences has shown the necessity of giving to the judge

6 Law 192/2006 as emended by Law 115/2012.
supplementary tools so that the injured being can reconstruct himself, future relations can be preserved, the conflict may be pacified and the parties, who have taken responsibility, find their own solution, as close as possible to their interests and far from the violence and publicity of judicial debates. One of these privileged tools is mediation.\(^8\)

Table 2 – Judicial referral in Partners’ regulatory systems

<table>
<thead>
<tr>
<th>PROJECT PARTNER</th>
<th>MAIN FEATURES OF REGULATORY FRAMEWORK</th>
<th>PROVISIONS ON JUDICIAL REFERRAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chamber of Commerce of Brussels (Belgium)</td>
<td>Parties’ consent is necessary.</td>
<td>✓</td>
</tr>
<tr>
<td></td>
<td>Judicial referral is possible upon request or consent of the parties.</td>
<td>✓</td>
</tr>
<tr>
<td>Cyprus Chamber of Commerce &amp; Industry (Cyprus)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Croatian Chamber of Economy (Croatia)</td>
<td>---</td>
<td>×</td>
</tr>
<tr>
<td>Centre de Médiation et d’Arbitrage de Paris (France)</td>
<td>During a legal proceeding, the judge (or the parties) may propose mediation; if the parties agree, the judge appoints a mediator and decides on mediation fees and its duration.</td>
<td>✓</td>
</tr>
<tr>
<td>Handelskammer Hamburg Service GmbH HKS (Germany)</td>
<td>Parties’ consent is necessary. The new sec. 278a ZPO empowers the court to propose mediation for out-of-court settlement.</td>
<td>✓</td>
</tr>
<tr>
<td>Unioncamere - Chambers of commerce (Italy)</td>
<td>The judge, evaluating the status of the dispute and parties’ willingness, can order them to refer to mediation</td>
<td>✓</td>
</tr>
<tr>
<td>Latvian Chamber of Commerce and Industry (Latvia)</td>
<td>Evisaged in Draft Mediation law: the judge can invite parties to refer to mediation, but it is not mandatory</td>
<td>×</td>
</tr>
<tr>
<td>IASI Chamber of Commerce and Industry, (Romania)</td>
<td>A first information meeting on mediation (prior to proceed to court) can be recommended by the court.</td>
<td>✓</td>
</tr>
<tr>
<td>Barcelona Chamber of Commerce (Cataluña - Spain)</td>
<td>Mediation is never mandatory, judges can only invite parties to refer, but judges can play a great influence on it.</td>
<td>✓</td>
</tr>
</tbody>
</table>

Source: Go to mediation! – Workstream 4, 2013

\(^{8}\) Under the leadership of Brenneur B., *Overview of judicial mediation in the world. Mediation, the universal language of conflict resolution*, L’Harmattan, 2010, page 94.
Mandatory Mediation

As regards "mandatory mediation", in 2011, the European Parliament welcomed Member States that chose to go beyond the core requirements of the Directive by introducing in their legal systems mandatory mediation requirements and financial incentives for participation in mediation, since national initiatives of this type can help to make alternative dispute resolution more effective and reduce the courts’ workload.9

A study published by the European Parliament in 201410 shows that "only a certain degree of compulsion to mediate (currently allowed but not required by the EU Law) can generate a significant number of mediations". Steps in this direction have been in particular undertaken in Romania and in Italy.

In Romania, Law No. 192 on mediation and the organization of the profession of mediators was passed in 16 May 2006 and amended and supplemented from 2006 until 2013, introducing a different type of "obligation": mediation is still a voluntary process but parties are bound to prove that they attended an information meeting regarding the advantages of mediation before submitting the judicial claim.11 However on May 2014, the Constitutional Court admitted unanimously the exception of unconstitutionality, declaring that the provisions of Art. 2 of Law 192/2006 are unconstitutional and that first-meeting in front of a mediator (prior to proceed to court) in order to be informed on the benefits of mediation cannot be compulsory, but voluntary or at the court recommendation. The decision is final and binding and shall be communicated to the two Chambers of Parliament, the Government and the Bucharest Court of Appeal. It is thus probable that in the next coming months Law 192/2006 will be amended.

Italian law introduced a sort of compulsory "pre-trial" mediation in 2010, tested its provisions in 2011-2012 and then reintroduced it with amendments in 2013 (see the Focus below for details): mediation is a pre-requisite to litigation in a number of subject matters, defined by the law, and parties must attempt mediation before resorting to court; such attempt is now satisfied with parties’ participation in at least a "first information meeting", which becomes a pre-condition for admissibility of the subsequent legal action.

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9 Resolution P7_TA(2011)0361.
10 De Paolo G. and others, "Rebooting" the mediation Directive: assessing the limited impact of its implementation and proposing measures to increase the number of mediations in the EU, study commissioned by the EU Parliament’s Committee on Legal Affairs, January 2014.
11 Romanian LAW 192/2006, ART. 2: (1) Unless the law provides otherwise, the parties, natural or legal persons, shall be bound by the obligation to attend the information session on advantages of mediation, including, if necessary, after the onset of a trial before the competent courts, in order to settle this way the conflicts on civil, family, criminal matters, as well as on other matters, under the terms provided by law.
Focus: The experience of mandatory mediation in Italy. Its short life and resumption

Italy was at the forefront in introducing a mandatory approach to mediation with Legislative Decree n. 28 of 4 March 2010 on civil and commercial mediation (Italian Mediation Law). For the first time in Europe, it created a “mandatory pre-trial mediation framework” by identifying certain types of civil disputes that require parties to attempt to mediate before being heard by the court. This means that if a dispute arises in those matters identified by the law, parties have a legal obligation to resort to mediation first; if the claim comes before the court without mediation having been attempted, the defendant or the judge may file an objection and refer to mediation.

Mandatory mediation entered into force in March 2011, triggering an upsurge of mediation requests in the country, totalling more than 215,000 registered applications (B2B, B2C, privates12) between March 2011 and December 2012 (about 155,000 in 2012), and an increasing diffusion of mediation centres (almost one thousand at the end of 2012) and accredited mediators.

From the entry into force of mandatory mediation (March 2011) to the end of 2012, more than 80% of total mediations filed in Italy related to cases mandated by law; only 3% were referred from judges, the rest (about 14%) falling into voluntary mediation. Data show that mandatory provisions enhanced the use of mediation and raised awareness about this instrument but failed to drive a larger culture of mediation among citizens, businesses and - most of all - legal practitioners, despite a variety of other incentives the law provided for (tax credit, financial assistance to people entitled to legal aid, exemption of charges). Its implementation was still far from making up for the notoriously congested Italian courts by reducing caseloads (only in 2012, considering all civil matters, more than four million new civil claims were registered before the Italian courts, and more than five millions were still pending; on 30 June 2013, 5,257,693 were pending before Italian civil courts13).

Moreover, these provisions encountered some opposition, especially from legal practitioners who challenged the decree before the Constitutional Court. In October 2012, a ruling by the Italian Constitutional Court declared the provisions on “mandatory mediation” of Decree 28/2010 unconstitutional for “excess of delegation from the Parliament” and mediation was made again entirely discretionary for all matters. This explains the drop of registered mediations in the last trimester of 2012 and during 2013, as the chart below shows.

In 2013, the Italian Government started studying a possible reform of Mediation Law with the view of reintroducing the compulsory clause in a more consensual way and adjusting some other bottlenecks encountered in the first phase. Thus, Mediation Law was amended by Government Decree-Law n. 69 of 21 June 2013 (“Urgent

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12 Statistics from the Ministry of Justice refer to all mediation proceedings in Italy deposited before a mediation body, including disputes among businesses (B2B), privates and business-to-consumers.

provisions for economic recovery”), converted into Law n. 98 of 9 August 2013 by the Italian Parliament.

The legislator considered again the process of mediation and conciliation as a fundamental instrument of deflation of civil litigation, aiming to increase the efficiency of the judicial system, which is key to appraise the economic performance and international reliability of a country. According to the Ministry of Justice, “mandatory mediation represents an efficient instrument to give back to judicial authoritative decisions their predicate of last resort and to foster a cultural change in the direction of reducing Italian tendency to litigation... After an initial and inevitable period of “settling”, the institute will have positive effects on civil courts’ workload”14.

The 2013 reform reintroduces mandatory mediation in certain civil and commercial disputes** for a testing period of four years, during which its effects will be monitored by the Ministry of Justice.

The reform introduced also some procedural changes, in particular: the maximum duration of the procedure is reduced from four to three months; parties must be assisted by their lawyers who, by signing the mediation agreement together with the parties, may immediately grant enforceability to the settlement. Moreover, in mediation mandated by the law as well as in judicial referrals, parties’ obligation to mediate is satisfied by attending at least a first meeting before the mediator: if parties appear before the mediator but decide not to mediate, a judicial action becomes possible and no mediation fees are due; if parties agree to carry on mediation, the proceeding starts.

With the view of promoting mediation further and making it more effective, the legislator strengthened mediation mandated by the judge: the court, after evaluating the nature of the dispute, status of the case and willingness of the parties, may “order” (not only “invite”) the litigants to refer to mediation with an accredited provider at any phase of the trial.

The reform entered into force on 21 September 2013, producing a quick rise in the number of disputes referred to Italian registered mediation bodies: in the last quarter of 2013, the number of deposited mediation climbed to almost 26.000, from the 5-6 thousands registered in the previous quarters of the year; only in the first three months of 2014, about 60.000 procedures have been entered.

The Italian experience shows how the introduction of some sort of obligation to mediate is an effective measure to boost access to ADR and can have a positive effect also on voluntary mediation. As a matter of fact, in the first quarter of 2014, “mandatory mediations” were by far the majority (about 84% of the total) but voluntary proceedings (13%) were about 7,500, more than the total amount of mediations registered in the previous quarters, when mediation ceased to be mandatory. On the other hand, only 2,3% mediations were mandated by the judge and 0,8% were due to a contractual mediation clause.

1.1.2 Enforceability and incentives

One of the concerns of the Directive is that mediated settlement agreements will be recognised and enforced in one Member State if made in another Member State as if they were court judgments. Article 6 of the Directive requires Member States to ensure that it is possible for the parties of mediation to request that the content of their written agreement be made enforceable by a court or other competent authority in a judgement or decision or in an authentic instrument, in accordance with the law of the Member State. Parties should both agree, by means of an "explicit consent": the practical way to ensure parties' consent is for an enforceability clause to be drafted in the mediation settlement agreement.

Enforceability of mediation settlements is an important step in enhancing both the efficacy of cross border mediation within the EU and the authority of mediation in domestic disputes. Especially for businesses, it increases trust in the other side's good faith and assurance that mediation outcomes will be respected.
The majority of Member States and all nine Partners of "Go to mediation!" have in place procedures that give the mediation settlement agreement the same authority as a judicial decision; usually this is achieved either by submitting it to the court or by having the agreement notarised. More atypical it is for the settlement to be enforceable per se, without any court’s grant or notarisation: in this regard the new Italian mediation law, entering into force in September 2013, makes an attempt by establishing that a mediation agreement signed by both parties and their lawyers, who certify compliance with law and public order, is immediately enforceable.

**Fig. 2 – Number of Partners’ regulatory systems providing for enforceability of mediation agreement and incentives for mediation fees.**

![Figure 2](image)

*Note: There are no incentives reported in Cyprus and in Croatia.*

*Source: Go to mediation! – Workstream 4, 2013*

To make mediation a more attractive dispute resolution option, some European countries have undertaken a number of initiatives to provide **financial incentives** to parties who refer cases to mediation. The Directive seems to encourage such procedures by providing explicitly that its implementation should not prevent Member States to make use of incentives or sanctions (Article 5,2) to further the success of national mediation systems.

National legislations seem to opt mainly for tax incentives (for example exemption from stamp duties and charges or tax credits for mediation use, as in Italy) and reimbursement or reduction of court fees (for example a total or partial refund of court expenses if parties settle a pending legal dispute through mediation, as in Romania, Spain, Latvia). Some countries (France, Italy, Belgium), moreover, foresee that, when "legal aid" would apply to the parties of a corresponding judicial action, some sort of support applies also in the mediation process (for example, no fees shall be paid but mediation services are gratuitous).

In the survey, only two project Partners, Cyprus and Croatia, affirmed that in their countries such incentives are not into force (however, Cyprus legislation foresees that mediation fees are tax deductible for companies).
1.2 Overview of Partners’ national systems

The following nine tables sum up how European countries participating in the Project “Go to mediation!” have implemented the provisions of the EC Mediation Directive, in particular regarding the possibility for the courts to suggest mediation directly to the parties (so-called “judicial referral”, Article 5), the enforceability of agreements resulting from mediation (Article 6), costs and the application of fiscal or legal incentives to promote the use of mediation.

Information is based on Partners’ questionnaires and the "Go to mediation!" website.

**BELGIUM: Main features of mediation**

<table>
<thead>
<tr>
<th><strong>LEGAL FRAMEWORK</strong></th>
<th>The Belgium Mediation Act (<em>Loi modifiant le Code judiciaire en ce qui concerne la médiation</em>) came into force on 21th February 2005 and added a new chapter on mediation to the Judicial Code.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>REGULATORY DURATION</strong></td>
<td>3 months for court-annexed mediation.</td>
</tr>
</tbody>
</table>
| **RULES ON FEES** | The costs of mediation are split in equal shares between each of the parties to the mediation unless otherwise agreed. There is no national standard. The Brussels Business Mediation Centre applies:  
- Administration fees: €125 + VAT per party.  
- The first mediation session is invoiced €500 + VAT per party and covers the preparation of the case and mediation session with the mediator.  
- Second or more mediation session: fees will be calculated on an hourly rate basis of €75/hour + VAT and per party.  
- Extra cost will be invoiced in equal share between parties for location of the room and travel costs when applicable.  
- According to the complexity of the case, an increase of the fees may be foreseen. |
| **JUDICIAL REFERRAL** | The Courts may invite the parties to use mediation, but only upon parties’ consent. |
| **ENFORCEABILITY** | The mediation settlement is enforceable if a mediator certified by the Belgian Federal Mediation Commission conducted mediation. |
| **INCENTIVES** | A large number of mediations are subsidized (family, labour, B2C, neighbourhood). The Region of Brussels also applies:  
- Legal Aid;  
- Under certain conditions, the self-employed/SME can receive “aid for consultancy” in case of mediation (till 50% of the fees of a mediation);  
- IZEO (new movement for self-employed) offers a “legal assistance” which covers mediation in their annual fee;  
- The Centre for company in difficulty (new project in construction). |
### CROATIA: Main features of mediation

<table>
<thead>
<tr>
<th>LEGAL FRAMEWORK</th>
<th>The Mediation Act was published in the Official Gazette no. 163/03 and came into force on 24th October 2003. In 2011 the Rules of Mediation and Decision on Costs in Mediation Proceedings were approved (Off. Gaz. No. 142/2011).</th>
</tr>
</thead>
<tbody>
<tr>
<td>REGULATORY DURATION</td>
<td>According to the Rules of Mediation, mediation is concluded if a settlement is not reached within 60 days from the beginning of mediation, but this time limit may be extended by agreement between the parties.</td>
</tr>
<tr>
<td>RULES ON FEES</td>
<td>Mediation costs of the Centre for Mediation at the Croatian Chamber of Economy comply with the Decision on Costs in Mediation Proceedings. Registration fee: 120 Euros. Mediator fee: 1,200 HRK (about 158 euros) gross for each day of mediation. In more complex disputes, fees may be increased by the President of the Centre in agreement with mediator and parties. The costs of mediation proceedings for average disputes values are about 300.00 EUR.</td>
</tr>
<tr>
<td>JUDICIAL REFERRAL</td>
<td>NO</td>
</tr>
<tr>
<td>ENFORCEABILITY</td>
<td>The settlement is an enforceable document if it contains a statement by the debtor on immediate permission for enforcement (the enforceability clause); the clause may also be contained in a separate document. The settlement and the separate document on enforceability, if adopted, shall be in writing; these agreements shall be enclosed with the minutes signed by the parties and the mediator. The parties may agree for the settlement to be drawn up in the form of a notary public act or in another form prescribed by the Mediation Act in force.</td>
</tr>
<tr>
<td>INCENTIVES</td>
<td>No incentives for mediation fees.</td>
</tr>
</tbody>
</table>

### CYPRUS: Main features of mediation

<table>
<thead>
<tr>
<th>LEGAL FRAMEWORK</th>
<th>Mediation Law in Cyprus (No 159(1)/2012) was enacted in November 2012.</th>
</tr>
</thead>
<tbody>
<tr>
<td>REGULATORY DURATION</td>
<td>According to the Mediation Law in Cyprus, a judicial referral mediation process cannot last more than 3 months unless the parties do not manage to reach a settlement and they request for an extension of another 3 months (i.e. max. duration total of 6 months)</td>
</tr>
<tr>
<td>RULES ON FEES</td>
<td>Fees of the Mediation Centre of the Cyprus Chamber of Commerce and Industry start from € 250 per case for disputes not exceeding €5,000 of value (excluding interest and expenses) and go up to € 2,500 per case where the dispute amount exceeds the sum of € 500,000.</td>
</tr>
<tr>
<td>JUDICIAL REFERRAL</td>
<td>The Cyprus legislation on mediation does include a provision that the court/judge can refer a case that is before a court to mediation upon the request or consent of the parties concerned.</td>
</tr>
<tr>
<td>ENFORCEABILITY</td>
<td>According to Mediation Law, an application for the enforcement of a mediation agreement can be submitted to the court jointly by all parties or by one of the parties with the explicit consent of the others, unless their explicit consent has been given in the mediation agreement.</td>
</tr>
<tr>
<td>INCENTIVES</td>
<td>Neither Mediation Law nor any other legal act provides for incentives in relation to using mediation. Mediation expenses (i.e. mediation fees) will be tax deductible for enterprises.</td>
</tr>
</tbody>
</table>

**FRANCE: Main features of mediation**

| REGULATORY DURATION | 3 months for court-annexed mediations; 2 months for contractual mediations (according to CMAP’s Rules), unless the parties agree otherwise. |
| RULES ON FEES | To be divided among parties. The Rules of Mediation of the Centre of Mediation and Arbitration of Paris apply:  - Case filing expenses for contractual mediation: 250 Euros for disputes up to maximum 30.000 Euros and 500 Euros for higher value; 600 Euros for International disputes;  - Fixed rate: 750 Euros (max. 5 hours) for disputes up to 30.000 Euros;  - Hourly rate based on the value (more than 30.000 Euros) of the dispute: from 300 to 500 Euros for domestic disputes; 400-600 for international disputes; 300 for court annexed mediation (unless otherwise established by the judge). |
| JUDICIAL REFERRAL | During a legal proceeding, the judge - or with the judge’s agreement, the parties – has the power to propose mediation (art. 131 CCP, 1996). With the parties’ consent, courts may appoint a mediator (ad hoc or through a Centre) and decide on the applicable fees and on the duration of mediation, if no extension is asked. |
| ENFORCEABILITY | The court may declare the settlement agreement enforceable if the parties agree. |
| INCENTIVES | The only incentive is that mediation fees are covered by legal aid. |

**GERMANY: Main features of mediation**

| LEGAL FRAMEWORK | The German Mediation Act ("Mediationsgesetz") was enacted on 26th July 2012. |
| RULES ON FEES | The Hamburg Business Mediation Centre charges administrative costs between 100 and 500 Euros per mediation. Mediators agree hourly fees with the parties from 150 to 350 Euros or a daily fee from 1200 to 2800 Euros + VAT, depending on the value of the dispute and the complexity of the case. Other mediators can negotiate different payment details. The costs are usually split between the parties. |
### JUDICIAL REFERRAL
Parties’ consent to go to mediation is in general necessary. Parties should inform the court if they tried an ADR-procedure before filing a claim or if there are reasons that speak against it. The newly introduced sec. 278a ZPO empowers the court to propose mediation or any other proceeding for out-of-court settlement.

### ENFORCEABILITY
A mediation settlement can be enforced by way of recording the agreement before a court or a notary public (cf. sections 796a to 796c and section 794(1)(5) of the Code of Civil Procedure).

Court fees are reduced or dispensed with the event of successful mediation.

There are regional incentives for court mediations. There are also regional incentives when parties agree to interrupt a court proceeding to refer to a mediator (parties pay reduced mediation charges whereas mediators get additional payment from public bodies, for example the regional bar association).

### INCENTIVES
Court fees are reduced or dispensed with the event of successful mediation.

There are regional incentives for court mediations. There are also regional incentives when parties agree to interrupt a court proceeding to refer to a mediator (parties pay reduced mediation charges whereas mediators get additional payment from public bodies, for example the regional bar association).

### ITALY: Main features of mediation

<table>
<thead>
<tr>
<th>LEGAL FRAMEWORK</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legislative Decree n. 28 of 4 March 2010 on civil and commercial mediation (Mediation Law) as emended by Government Decree-Law n. 69 of 21 June 2013 (‘Urgent provisions for economic recovery’), converted into Law n. 98 of 9 August 2013 by the Italian Parliament.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>REGULATORY DURATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maximum duration: 3 months</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>RULES ON FEES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maximum fees and calculation criteria are determined by decree of the Ministry of Justice for public bodies (private mediation providers may have their own table, subject to ministerial approval). Costs of mediation are to be shared equally between the disputing parties.</td>
</tr>
</tbody>
</table>

- Start-up costs: 40 Euros + VAT (may not to be charged in cross-border disputes), to be paid by the initiating party and by the respondents in the moment of acceptance; some particular categories can be exempted (for ex. 2013 standard regulation of the Italian Chambers of Commerce exempt judicial referrals, mandatory mediations, on-line procedures, businesses run by young people and women, etc.);

- Mediation fees (administrative costs and mediator fees): maximum fees vary from 65 to 9,200 Euros + VAT per party based on the value of the dispute. Reduced fees (43 – 4,600 Euros) apply in cases of mandatory mediation and mediation ordered by the judge from September 2013.

- If the respondent is absent, only a nominal fee (50 Euros) is requested from the applicant to obtain certification that a hearing was arranged and the applicant appeared, although the respondent did not.

Some mediation providers, included the Chambers of Commerce, apply promotional fees.
<table>
<thead>
<tr>
<th>JUDICIAL REFERRAL</th>
<th>From September 2013 the judge may order the parties (not only invite them) to refer to mediation. Parties’ legal obligation to resort to mediation is satisfied by participating in the first meeting before the mediator: if parties fail to agree (decide not to mediate) the judicial action can be resumed.</th>
</tr>
</thead>
<tbody>
<tr>
<td>ENFORCEABILITY</td>
<td>The settlement can be validated by the President of the Tribunal, if at least one of the parties requests so. In this case, the settlement agreement acquires the same value of a legal judgement and it becomes enforceable, as a writ of execution, placing a judicial lean on the party’s assets. In addition, the 2013 mediation reform establishes that a written mediation agreement signed both by the parties and their lawyers (who certify that the agreement complies with law and public order) is immediately enforceable, without any grant by the court.</td>
</tr>
<tr>
<td>INCENTIVES</td>
<td>- Tax incentives: all mediation acts, documents and agreements are exempt from stamp taxes and other charges of any kind and nature. The final agreement is exempt from registration taxes up to a maximum value of 50,000 Euros; - Tax credit: parties are entitled to a tax credit towards mediation fees of up to 500 Euros for a successful settlement. In case of failure of mediation, the tax credit is reduced by half. In the cases of mandatory mediation or judicial referrals, parties who have the right to access free legal aid are exempted from the payment of mediation fees; - Gratuity (no mediation fees) for people entitled to legal aid.</td>
</tr>
</tbody>
</table>

**LATVIA: Main features of mediation**

<table>
<thead>
<tr>
<th>LEGAL FRAMEWORK</th>
<th>Latvian Mediation law is still in the stages of the legislative process. On November 2013 Latvian parliament adopted the draft law in the second reading; it is being prepared for adoption in the third and final reading.</th>
</tr>
</thead>
<tbody>
<tr>
<td>REGULATORY DURATION</td>
<td>According to Mediation Rules of the Latvian Chamber of Commerce and Industry, the mediation process cannot be longer than three months, unless the Parties have agreed otherwise.</td>
</tr>
<tr>
<td>RULES ON FEES</td>
<td>Mediation Rules of the Latvian Chamber of Commerce and Industry prescribe that costs are calculated in accordance with the total amount of the dispute. When it comes to non-monetary dispute, the value in dispute is set by the Council of the Arbitration Court. Fees range: - administrative fees start from € 375 per case and go up to charge of € 5,000 per case plus 0,05% from the amount that exceeds the sum of € 5,000.000 (+ VAT); they include registration fee; - mediator’s fee: from € 125 up to € 5,000 (+ VAT). Costs of mediation are usually borne by the parties in equal shares.</td>
</tr>
<tr>
<td>JUDICIAL REFERRAL</td>
<td>Not yet into force. Draft Mediation Law envisages a court-annexed mediation: the judge is obliged to call upon the parties to use mediation to solve disputes, but mediation is not mandatory.</td>
</tr>
<tr>
<td>INCENTIVES</td>
<td>Draft law “Amendments to the Civil Procedure Law” (being reviewed by the Parliament together with the draft Mediation Law) envisages that if court proceedings are terminated due to mediation settlement, 50% of state fees paid in by parties shall be reimbursed.</td>
</tr>
</tbody>
</table>

**ROMANIA: Main features of mediation**

| LEGAL FRAMEWORK | The Romanian Mediation Law (‘Law No. 192 of 16 May 2006 on mediation and organisation of the profession of mediator’) has been amended and supplemented from 2006 until 2013. On May 2014, the Constitutional Court admitted unanimously the exception of unconstitutionality of two articles of Law 192/2006 related to the obligation to attend the information session on advantages of mediation before going to court. |

| REGULATORY DURATION | Maximum 3 months in case a judicial action is suspended. |

| RULES ON FEES | Initiation of mediation fee:  
- at the initiative of one of the conflicting parties is 22 EUR, paid at the time of filing the application;  
- at the initiative of all parties in conflict (joint mediation request) is 44 EUR. Shall be shared equally between the requesting parties, unless the parties agree otherwise.  
Mediation fee, according to the value of the dispute when applicable, is made of:  
A. Mediation fee per session, from 88 to 266 Euros + VAT, to be shared equally between the requesting parties.  
B. Percentage fee, calculated by applying a decreasing percentage (from 1.5% to 0.5%) to the value of the dispute and shall be shared equally between the requesting parties. In case of cross-border disputes, higher fees shall apply.  
If the value of the dispute cannot be monetized, the following fees apply: in domestic disputes: 88 EUR/session; in cross-border disputes: 200 EUR/session.  
Mediator’s payment is equal to the 50% of the fees. |

| JUDICIAL REFERRAL | Law no. 115/2012 established, inter alia, a legal obligation for the parties that, prior to the outbreak of an action in court or before the deadline given by the court, they attend an information session on mediation (preliminary procedure of the court). Art. 60.1: “In litigations which, according to the law, can be subject to mediation or other alternative form of dispute settlement, the involved parties and/or party, as the case may be, are bound to prove that they attended the information meeting regarding the advantages of the mediation”.  
Since August 2013, if parties did not attend the information session the legal action might be declared inadmissible. However, the Constitutional Court’s ruling of May 2014 declared that the first meeting before a mediator (prior to proceed to court) cannot be compulsory, but voluntary or at the court recommendation. |
ENFORCEABILITY

The parties may ask a court to uphold their settlement, rendering the agreement definitive and enforceable without other formalities. If a mediation process takes place during litigation and a settlement is reached by the parties, the court will issue a ruling taking notice of such settlement; such ruling is irrevocable and enforceable without other formalities. The settlement may also be subject to verification of the public notary in order to be authenticated.

INCENTIVES

Exemption from judicial taxes, in case of parties reach a mediation agreement in the following matters:
- consumer rights;
- family law;
- litigation in possession, setting boundaries, resettlement, as well as any other neighbourhood disputes regarding relations if by mediation agreement parties do not agree on the transfer of property or other rights;
- in the area of professional liability, in case of malpractice;
- labour disputes arising from the conclusion, performance and termination of employment contracts;
- civil disputes with a value below 11,111 EUR, excluding litigation that reached an enforceable judgment opening insolvency proceedings, actions relating to the Trade Register and the cases in which parties choose to use the procedures set out in art. 999-1018 of the Code of Civil Procedure and disputes concerning the transfer of ownership of immovable property, other real rights, share and probate cases.

SPAIN: Main features of mediation

Law 5/2012 on mediation in civil and commercial issues, published after the parliamentary passage of Royal Decree-Law 5/2012, of 5 March 2012. In 2014 a mediation Regulation for civil and business activities has been enacted at a national level (Real Decreto 980/2013, 13 December) to implement Law 5/2012. It rules:
- Training requirements and mandatory responsibility insurance in the practice of the mediator.
- The registration in the Spanish Register, which is divided into 3 sections, as follows:
  - Mediators
  - Mediators specialized in business insolvency
  - Mediation Centres.
- Ad hoc proceedings for on line mediation depending on the nature of the conflict, amount and time duration.
The Regulation, Orden JUS/746/2014, 7 May, provides for the implementation of articles 14 and 21 of Real Decreto 980/2013, by establishing a mediators and mediation centres’ register and setting the documentation and information required.
At a regional level, in Catalonia, another regulation is applicable (Orden JUS/245/2014, 28 July), establishing a public-law register of mediators in Catalonia.
### REGULATORY DURATION

No legal deadline or maximum duration.

### RULES ON FEES

Costs depend on the total amount of the dispute and are made of:
- Registration fee (100 euros), a non-refundable amount, which must be paid by the party that submits the request, and shall be deducted from the administrative cost of the preliminary hearing.
- Preliminary hearing (300 euros).
- Hourly fees for service: hourly fees vary from 120.00 - 300.00 € + VAT, depending on the value.

The administrative costs of the preliminary hearing and the mediator fees shall be divided equally between the parties. Mediation centres may apply their own rates.

### JUDICIAL REFERRAL

The Court may invite parties to use mediation as a way of resolving their dispute but mediation is never mandatory.

### ENFORCEABILITY

Agreements arising from mediation proceedings are enforceable before the Court of First Instance of the place where the agreement was signed or by public notary.

### INCENTIVES

Parties attempting mediation are granted a reduction of court taxes up to 60%.

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**Conclusions and recommendations**

Under the aegis of the European Union and the boost given to mediation by the adoption of Directive 52/2008/EC, it seems that Member States are taking mediation more seriously and are working at its further development in their domestic legislations. Among the Partners of “Go to Mediation!”, for example, Latvia is about to implement new mediation law (enacted in 2013), while Cyprus has recently enacted a new legislation related to the appointment and operation of a body handling out-of-court disputes as far as financial conflicts are concerned, whereby financial institutions are obliged to accept Mediation as a conflict resolution method between these institutions and their clients over non-performing loans; Spain is implementing its Mediation Law with new regulations on training and accreditation (2014); Italy and Romania are testing their regulations on court-encouraged mediation and mandatory clauses (2013 and 2014); Croatia, the latest EU Member State, adopted its mediation law before its access to the EU (in 2003, then amended in 2011 to comply with the EC Directive).

**Member States and the European Commission should be encouraged to monitor legislative changes and reforms on mediation across Europe and to progressively harmonise definitions, standards, procedures and regulatory frameworks, also by means of cross-fertilization and international projects.**
SECTION 2. PARTNERS’ EXPERIENCE AND PRACTICE OF B2B MEDIATION

Partners’ experience of mediation vary a lot, from countries such as Latvia or Cyprus which are quite new to it, thus have little or no data to share, to countries or regions which have a longer practice in mediation. Moreover, as section 4 will examine in greater detail, data collection systems and sources of information are very dissimilar, as well as definitions and classifications used in different countries or mediation centres, which makes data collection on mediation very difficult and comparisons across countries impossible.

The survey reflects, of course, this composite situation, as it can be seen in table 1.

Table 1- Number of b2b civil/commercial mediations reported by Partners for 2012 and 2013

<table>
<thead>
<tr>
<th>PROJECT PARTNER</th>
<th>B2B mediations in 2013 (amount)</th>
<th>B2B mediations in 2012 (amount)</th>
<th>SOURCES OF INFORMATION AND NOTES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chamber of Commerce of Brussels (Belgium)</td>
<td>777</td>
<td>490</td>
<td>Survey conducted among Belgian mediators in 2012 and 2014 Mediation Law enacted recently, the Centre is just about to start its activity.</td>
</tr>
<tr>
<td>Cyprus Chamber of Commerce &amp; Industry (Cyprus)</td>
<td>N.A.</td>
<td>N.A.</td>
<td>Mediation Law enacted recently, the Centre is just about to start its activity.</td>
</tr>
<tr>
<td>Croatian Chamber of Economy (Croatia)</td>
<td>25</td>
<td>35</td>
<td>Mediations managed at CCE</td>
</tr>
<tr>
<td>Centre de Médiation et d’Arbitrage de Paris (France)</td>
<td>320</td>
<td>280</td>
<td>Mediations managed at CMAP</td>
</tr>
<tr>
<td>Handelskammer Hamburg Service GmbH HKS (Germany)</td>
<td>82</td>
<td>88</td>
<td>Survey conducted among mediators listed at Hamburg Business Mediation Centre (20% of responses)</td>
</tr>
<tr>
<td>Unioncamere - Chambers of commerce (Italy)</td>
<td>2,553</td>
<td>3,776</td>
<td>Mediations managed at Italian Chambers of commerce mediation centres (87 bodies)</td>
</tr>
<tr>
<td>Latvian Chamber of Commerce and Industry (Latvia)</td>
<td>42</td>
<td>27</td>
<td>Mediations managed by the Association “Mediācija un ADR”</td>
</tr>
<tr>
<td>IASI Chamber of Commerce and Industry, (Romania)</td>
<td>104</td>
<td>N.A.</td>
<td>Mediations managed by a sample of IASI individual mediators. The Superior Council of Magistracy in 2013 recorded 1,749 disputes concluded by mediation, in civil matters (including B2B) at the level of all courts in Romania</td>
</tr>
</tbody>
</table>
All Partners report an **increasing awareness about mediation** in their countries, especially where strong court-annexed mechanisms or mandatory clauses have been put in place. In Catalonia, for example, the role of judges in referring disputes to mediation is well established; In Italy the high number of B2B mediations managed by the Chambers of Commerce largely depends on the introduction of mandatory mediation in 2011 (as seen in the Focus above, in 2013 mandatory mediation was suspended until September and then reintroduced with slight changes. This explains the decrease in the number of B2B mediations in 2013). Other countries, such as Cyprus and Latvia, expect a growing number of cases in the future with the full implementation of new regulatory frameworks. As a matter of fact, by the time this Report is going to print, the Cyprus Chamber of Commerce & Industry received its very first mediation case, dealing with a domestic dispute with €35,000 of amount.

However, despite the “impulse” given by the EU Directive to the use of mediation, it is evident that the business community still makes **little use** of this alternative dispute resolution mechanism, especially if compared with the number of cases annually filed into courts. Directive’s objective “to encourage the use of mediation by ensuring a balanced relationship between mediation and judicial proceedings” has not been achieved yet.

### 2.1 Who asks for mediation?

The diffusion and the practice of mediation depend on a large extent on the subjects who are entitled, by law, to initiate mediation or to refer a dispute to a mediator. The questionnaire asked Partners whether and in which measure mediations are initiated by individuals, companies, courts (judicial referrals) or by law (mandatory mediation).

The survey shows that **judicial referrals** may play a relevant role in promoting the use of mediation. Some countries, such as Germany, Latvia, Romania and Italy, have recently strengthened (or plan to do so) their regulation on court-encouraged mediation: in a medium term perspectives, it will be interesting to monitor how those reforms have an impact on the diffusion of mediation and may act as an incentive for voluntary proceedings too. It is, therefore, necessary to improve data collection and statistics on this indicator.
For 2013 most Partners were able to provide some figures on judicial referrals. They represented 48% of total mediations managed by French CMAP (40% in 2012), 33% in Catalonia\(^{15}\), 22% among Belgian mediators (13% in 2012) and 12% among IASI mediators in Romania.

In Italy, where the mandatory regulation is again in force, in 2013 only 2% (3% in 2012) of mediations were referred by judges; 55% of total procedures\(^{16}\) fall within the mandatory framework, being initiated by reason of the existing legal obligation (mandatory mediations were 83% in 2012, but it should be reminded that from October 2012 until September 2013 mandatory pre-trial mediation was suspended). In Romania, where preliminary information meeting were compulsory, this type of mediation represented about 8% of cases managed by IASI mediators (12 mediations, out of 64 meetings held in 2013)\(^{17}\).

Voluntary mediation still covers the majority of cases, especially where no legal obligations or strong court annexed mechanisms are in place. Very high percentages are reported by Latvian CCI (100%), German HKS (95%), Croatian CCE (88%), Belgian BECI (78%) and Romanian IASI (81%).

Finally, the number of mediations originated by a contractual mediation clause may be significant, as for French CMAP (27%) or Croatian CCE (12%).

**Fig. 1 – Types of mediation reported by Partners. 2013**

15  Data concern all mediations managed in Catalonia, non only B2B cases.
16  Data from the Ministry of Justice, covering all mediations carried out in Italy, not only B2B cases.
17  Preliminary Information Meetings have been recently introduced also in Italy (but not yet monitored) and exist also in Germany, but only for family affairs and not for B2B mediations, and in Catalonia.
As regards private parties recurring to B2B mediation, companies usually represent a larger share compared to individuals or professionals. In particular 100% for French CMAP, 90% for Croatian CCE, 72% for Italian Unioncamere. On the contrary, Romanian IASI reported 85% of individual parties, German HKS 55% and Latvian CCI 100%.

2.2 In which sectors of activity?

The survey asked Partners if in their countries B2B mediation is normally used to settle disputes in a specific field or sector of activity and, if possible, to indicate the number of mediations carried out with regard to a selected list of sectors.

In 2013 almost all Partners attempted to indicate specific percentages; the table below summarises their detailed answers.

Table 2 – B2B mediations according to the sector of the dispute in 2013 (%)

<table>
<thead>
<tr>
<th>TYPE OF DISPUTE (%) OF TOTAL</th>
<th>Brussels BECI (B)*</th>
<th>Croatian CCE (HR)</th>
<th>CMAP (FR)</th>
<th>Hamburg HKS (D)**</th>
<th>UC (I)</th>
<th>LCCI (LV)***</th>
<th>IASI (RO)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Handicraft</td>
<td></td>
<td></td>
<td>11</td>
<td></td>
<td>2</td>
<td>4</td>
<td>8</td>
</tr>
<tr>
<td>Property, ownership</td>
<td>2</td>
<td>4</td>
<td>11</td>
<td>2</td>
<td>2</td>
<td>8</td>
<td></td>
</tr>
<tr>
<td>Trade</td>
<td></td>
<td>20</td>
<td>17</td>
<td>9</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Banking/Finance/Insurance contracts</td>
<td>3</td>
<td>32</td>
<td>25</td>
<td>9</td>
<td>23</td>
<td>8</td>
<td></td>
</tr>
<tr>
<td>Construction</td>
<td>14</td>
<td>14</td>
<td>12</td>
<td>5</td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Service</td>
<td>9</td>
<td>20</td>
<td>8</td>
<td>21</td>
<td></td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>Working relationships</td>
<td>13</td>
<td>5</td>
<td>13</td>
<td></td>
<td>45</td>
<td>62</td>
<td></td>
</tr>
<tr>
<td>Civil liability</td>
<td>2</td>
<td></td>
<td></td>
<td>1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Industry</td>
<td>4</td>
<td>14</td>
<td>20</td>
<td>5</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ICT</td>
<td>2</td>
<td>9</td>
<td>2</td>
<td>30</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td>39</td>
<td></td>
<td></td>
<td></td>
<td>14</td>
<td>42</td>
<td>55</td>
</tr>
</tbody>
</table>

Note: No data available for Cyprus and Catalonia/Spain. According to the Cambra Oficial de Comerç, Indústria, Navegació de Barcelona mediation is mostly used in property rights.

* Other: Consumption 3%, Conflict between partners 13%, Conflicts neighborhood 16%, others 7%.
** Other: medical law 1%, art 1%, Commercial rental 12%.
*** Other: commercial cases.

Source: Go to mediation! – Workstream 4, 2014

It is somehow difficult to make generalisations in order to draw universal conclusions about those fields of activity where mediation seems most often used across countries. First of all, the availability of such information depends on the monitoring system Partners have put in place, if any. Moreover, different legal or juridical definitions among countries may alter the way a dispute is classified;
suggested categories can be subject to different interpretations or include slightly different types of conflict. Finally, each Partner may prefer to monitor some specific sectors because of its own regulatory framework or domestic priorities (Italy, for example, monitors closely only disputes falling within the mandatory framework), with the result that the residual “Other” group is often quite numerous and may incorporate categories included in the question but not specifically monitored by Partners.

Keeping in mind this context, an "experimental" synthetic indicator was built by counting the number of Partners who indicated, for each specific field of dispute, that at least 10% of mediations concerned that sector. The indicator aims at showing in which fields mediation occurs in a significant number of cases (over the threshold fixed at 10% of total number of mediations) across a larger number of Partners.

Having a look at figure 2, “Working Relationships” is the most recurring sector according to project Partners (together with the residual category “Other”), followed by “Banking, insurance and finance contracts”, “Trade” and “Construction”.18

**Fig. 2 – Sectors where mediation recur the most according to Partners, 2013**

![Bar chart showing sectors where mediation recur the most](chart.png)

Note: For each field of dispute, the bar represents the number of Partners who reported at least 10% of mediations in that sector out of 2013 procedures (for example, four Partners indicated that at least 10% of procedures concerned Working Relationships). The figure is based on the answers provided by 8 project Partners (CMAP, Hamburg HKS, CCE, Unioncamere, BECI, LCCI, IASI and Cambra de Barcelona, which did not provide specific percentages but indicated property rights as a recurring field of mediation).

Source: Go to mediation! – Workstream 4, 2014

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18 It is worth repeating that these results are strongly affected by different monitoring systems adopted by Partners and do not necessarily mean that mediations are not carried out in other sectors. Moreover, the category “Other” includes different sectors for each Partner. Since the project “Go To Mediation” deals mainly with business-to-business mediation, information on disputes dealing with family law, succession and inheritance, neighbourhood and similar was not taken into account.
2.3 What does it cost?

Among the main reasons for using mediation in B2B disputes, money and time savings score by far at the top ones. Long procedures and late solutions jeopardise business relationships and investments and costs too much for companies and individuals, who do not always obtain satisfactory settlements19.

The short length of mediation proceedings and their limited costs may represent a strong incentive for companies and individuals as opposed to judicial actions; governments encourage the use of mediation to overhaul their legal system, sometimes choosing to make the use of mediation mandatory by contract, by the judge or by law, as a viable alternative to congested courts and extra-lengthy civil litigation processes; European institutions too usually stress these benefits of mediation in official documents.

As seen in section I, Partners’ regulatory framework for mediation usually provide for the entire procedure to last up to maximum 90 or 120 days; in practice, however, they report a much shorter average length from filing to settlement, which can even halve the legislative timeframe (as a matter of fact, in 2013 the Italian legislator reduced the time limit from 120 to 90 days):

- Romanian IASI and Croatian CCE report that on average mediations are concluded within 30-35 days from application (data from 2013 survey);
- In Italy mediations at Chambers of Commerce last about 42 working days (88 at national level);
- For the French CMAP, mediations are concluded within 120 days (111 for cross-border disputes).20

As regards the procedure itself, the majority of Partners report that an average of up to 3 sessions of 2-4 hours each with the mediator is sufficient to settle the dispute:

- CMAP mediators take up to 10 hours on average to conclude a mediation, and 76% of mediations last less than 20 hours;
- Mediators of the Hamburg Business Mediation Centre take up to 16 hours to settle 77% of mediations;
- In Cyprus, independent mediators report an average of 3 to 5 sessions, of about 2-3 hours each (6-15 hours);
- In Belgium, 80% of mediations last 8 to 12 hours, only 3% need 24-40 hours to be settled;
- In Romania, usually the procedure takes 1 to 3 sessions of 2-3 hours each;
- In Latvia, the mediator is usually appointed in one-month time from filing and most parties prefer to settle within one mediation session.21

From any possible perspective (legal time limit, average life span from filing to settlement, number or hours of session) mediation is by far quicker than a claim before the court: as an example, according to the 2013 World Bank’s Doing Business22 judicial

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19 The literature on this aspect of mediation is copious. See also Tilman 2011, page 7.
20 Data from 2013 survey.
21 Data from 2012 survey.
22 www.doingbusiness.org.
procedures for enforcing commercial contracts last from 390 days in France to 1,210 days in Italy (between 400 and 700 in the other Partner countries).

As far as costs are concerned, each Partner’s rules on fees are reported under Section I above; in most cases costs shall be equally paid by each party. Mediation centres usually ask for fixed start up/registration fees or administrative costs (ranging from 22 Euros in Romania up to maximum 500 Euros in France) and mediation fees, which are often based on the value of the dispute or on hourly/daily rates. In particular:

1. Some Partners report that in their country/region or mediation centre a pro-rata fee based on the value of the dispute is applied: Latvian CCI, Cyprus CCI, Italian Unioncamere, and Romanian IASI (in combination with a fixed sum);
2. In other cases hourly/daily rates apply, sometimes in combination with a fixed sum and related to the value of the dispute: French CMAP, German HKS Hamburg, Barcelona Chamber of Commerce and Belgian BECI;
3. Only the Croatian Chamber of Economy applies a fix rate.

Mediation fees may vary a lot from centre to centre and country to country, as reported under Section I of the Report.

The survey asked Partners an estimate about the average amount of costs charged to parties for mediation, according to their experience. Where available, data are encouraging:

- 5,117 euros according to German HKS;
- 3,200 euros according to French CMAP (2,800 for cross-border disputes);
- About 1,000 euros at the Latvian CCI and at Belgian bMediation;
- For Unioncamere, each party should pay a fix sum of 48,80 euros, an average cost of 600 euros (calculated on the basis of the average value of the disputes in 2013, equal to 82,882 euros), plus VAT23;
- 300 euros at the Croatian CCE and 180 euros at Romanian IASI (300 for cross-border disputes);
- As regards the Barcelona Chamber of Commerce an average fee of 300-500 euros is required, plus the hourly fees agreed with the mediator.

Again, according to the 2013 World Bank’s Doing Business, in Partner countries costs for enforcing a contract, calculated in percentage of the claim, vary from 14% in Croatia and Germany to 30% in Italy.

2.4 With what result?

A study24 commissioned by the European Parliament in 2011 speaks about a “mediation paradox” across many EU jurisdictions: whereas “there is a well-documented high success rate in specific cases where the disputants engaged in mediation, these successes are extremely limited in number. The paradox is that while the use of mediation yields highly successful results, disputants and lawyers rarely use

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23 In 2012, Unioncamere attempted to measure the average cost of mediations carried out by Italian Chambers’ bodies and estimated that in total parties paid about the 3.9% of the value of their dispute.
24 ADR Center, Quantifying the cost of not using mediation – a data analysis, study commissioned by the European Parliament’s Committee on Legal and Parliamentary Affairs, 2011.
mediation in a systematic way. Given this continuing pattern of highly successful but also highly limited mediation use, there should be an extensive publicity campaign to broaden the public’s awareness about the values of mediation.

The survey confirmed such a “paradox”: despite a still limited amount of mediations registered by the Partners, when it comes to success rates numbers step up rapidly.

According to project Partners and the available data, when mediations arrive to an end (meaning that both parties appear before the mediator and decide to engage in the procedure) around two third of times they reach a settlement and a positive conclusion: in 2013, success rates vary from a minimum of 45% reported by the Croatian Chamber of Commerce to a maximum of 90% for Romanian mediators.

![Fig. 3 – Success rates of mediation according to Partners. 2012 and 2013 (%)](image)

Note: Percentage of settled mediation out of total completed procedures. No data available for Cyprus.

Source: Go to mediation! – Workstream 4

In literature it is often stated that “voluntary” mediation proceedings (where parties engage for their own choice) tend to be more successful than “mandatory” instances, judicial referrals or even contractual agreements, where parties attempt mediation because of a legal obligation or an invitation from the judge or court system to do so or a mediation clause included in the contract. However, it would be extremely useful to have specific data on this matter, in order to better target information campaigns and policy-making processes.

The importance of the voluntary component of mediation as a key for its success is also emphasized by many. It has been observed that chances of success in mediation get bigger when the concerned parties attend the meetings and actively participate in the process, instead of completely delegating their lawyers or representatives. The case study number 7 from France, for example, offers a (negative) example of this kind. It is also true, as the Italian experience shows, that the presence of legal representatives at the parties’ side (which has been made compulsory for mandatory mediations since September 2013) may increase confidence and trust in the mediation procedure.

See also ADR Center, The Cost of Non ADR – Surveying and Showing the Actual Costs of Intra-Community Commercial Litigation, June 2010.
It should also be considered that settlement is often reached before the meeting or after the closure of mediation, but still as a result of it (see also case study 9); data on success rates do not capture such cases and, therefore, may be underestimated.

Conclusions and recommendations

Despite the increasingly well-structured domestic legislations on ADR and mediation, and the progressive implementation of EC Directive in Partner countries, survey results show that there still is wide margin to increase the demand for mediation services across Europe, which yet represents a small niche within the larger ‘market’ of litigation, both at national level and in cross-borders disputes.

The economic and social value of using mediation, especially in business-to-business relationships, is well-documented; the survey confirmed the effectiveness and the advantages of this ADR means in terms of reduced time and cost, as opposed to lawsuits, high success rates and extensive coverage of subjects and fields of activity. Case studies show quite clearly other, more “intangible”, benefits for companies that choose mediation, such as the flexibility of the procedure, a non-adversarial process which eases consensual outcomes and preserves commercial relations, confidentiality.

There are a number of mechanisms that governments have or can put in place to foster the use of mediation: where court-encouraged or law-encouraged mediation are strongly endorsed, this may lead not only to an increase in mediation use but also to the promotion of a wider ADR culture among stakeholders (disputing parties, judges, lawyers), overcoming, if necessary, interest groups’ positions for the good of the overriding national and public interest. It is of course necessary to accompany such measures with appropriate training and awareness raising campaigns, but these alone may not be enough to make people and businesses interested in the mediation option: the majority of Partner countries seem to share this point of view, and in their legislation have put the accent on the role of judges in encouraging (even “ordering”, as in Italy’s 2013 reform) parties to attempt mediation. Two countries (Italy and Romania) are, moreover, testing different forms of legal obligations to attempt mediation (at least a first session or preliminary meeting) before resorting to court: the development of these experiences will be of interest for all European countries.

The legal profession is also often reluctant to mediation: lawyers need to be educated and encouraged to promote mediation, with ad hoc incentives. In Italy, for example, the reform of mandatory mediation provide for the necessary presence of lawyers with the parties in front of the mediator.

It is, of course, evident that even those systems, which have adopted a more stringent approach to mediation, can never limit the access to traditional courts: mediation alone may not be the answer to all the current challenges presented by justice and there are always disputes which are inappropriate for mediation.

Thus, it is important not to consider and promote mediation only or mainly as a means to reduce the number of cases at trial or a substitutive and "cheap" mode to traditional courts, imposed by law or by the judge, but as an alternative "Justice of quality". Voluntariness is always a central element of the process, one that leads
successfully to pacification of conflicts and permits the parties to find an agreement consistent with their own interests. For this reason, another mechanism to bolster the use of mediation without “loosing” the voluntary element is the promotion of **mediation clauses** in national and international agreements and contracts.

To make mediation implementation plans successful, governments can also provide for **incentives** of various type, which induce stakeholders to prefer mediation at every stage of the dispute: almost all Partners have established some sort of incentives, from the application of legal aid to the total or partial reimbursement of court fees (once the dispute is settled through mediation), to tax credit.

Finally, another aspect that should be better conveyed and reinforced, in order to increase trust in the effectiveness of mediation, is the possibility of **enforcing the content of the settlement** resulting from mediation, even in another country, as parties would do in case of a court’s sentence: EC Directive requests Member States to ensure this safeguard to parties resorting to cross-border mediation. All nine Partner countries provide for the enforceability of agreements, by means of a notary public or upon verification by the court, both for domestic and international settlements.

**Member States and the European Commission should be encouraged to promote some sort of strong incentive to mediate, through contractual clauses, judicial decisions or legal provisions, by strengthening their regulatory framework.**
SECTION 3. CROSS BORDER MEDIATION

3.1 Globalisation and cross-border litigation

European Directive 52/2008/EC was meant to apply only to cross-border disputes in civil and commercial matters, even if the majority of Member States decided to implement its principles also within the domestic framework. European institutions trust that “legislative measures adopted at EU level would facilitate the implementation of ADR and encourage natural and legal persons to use it more often, especially in relation to cross border disputes, bearing in mind that judicial procedures for resolving such disputes are more complex, expensive and lengthy”\(^{26}\) than domestic disputes.

Over the past years, the exceptional growth of international trade and business the completion of the internal market and the increased mobility of citizens have led to a steady increase of cross-border disputes between citizens and businesses from different Member States. Resolution of conflicts is costly and not only in terms of economic resources. Transnational litigation is even more difficult to settle by means of “ordinary” judicial proceedings: in addition to the practical problem of overworked courts, these disputes often raise complex issues, which involve conflicts of laws and jurisdiction and practical difficulties of finance and language.

This very often results in a judicial system which is not as flexible as it needs to be in order to address the complex demands that globalization has created. European businesses now have clients all around the world and need a method of dispute resolution that is suppler, faster and less expensive than traditional judicial adjudication and that grants easy access to any concerned party.

The problem, as envisaged by the European Commission, needs to be addressed with alternative tools, both for the parties of the dispute to save on these costs and for the country to support the competitiveness of its economy\(^{27}\). However, despite Member States’ implementation of the EU Mediation Directive, there is evidence that the practice of international mediations is yet limited across Europe (“EU Mediation Paradox”), also in the field of B2B disputes.

3.2 Partners’ experience of Cross-border Mediation

The survey carried out for this project shows that the number of cross-border mediation is significant but still a small percentage of Partners’ activity and that it is not yet a priority at national level.

Moreover, according to Partners, information and data on cross-border mediations are not easily available, official statistics are very scarce and in some cases there is still no experience at all with this kind of procedures (see table 1 below for details).

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\(^{27}\) Eurochambres, Position Paper on Mediation as a means to resolve disputes in civil and commercial matters, April 2014.
Thus, not all Partners could give their feedback on this part of the survey, responses were often not exhaustive and mainly based on subjective assessments.

However, it is interesting to note that, from 2012 to 2013, Partners made an extra effort in gathering data on cross-border mediations, wherever possible, and in some cases the number of reported mediations raised significantly.

Table 1 – Cross-border mediations reported by Partners’ for 2012 and 2013

<table>
<thead>
<tr>
<th>PROJECT PARTNER</th>
<th>Cross-Border disputes reported in 2013</th>
<th>Cross-Border disputes reported in 2012</th>
<th>Source of information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chamber of Commerce of Brussels (Belgium)</td>
<td>8.4% (65 cases)</td>
<td>3.8%</td>
<td>Survey among Belgian mediators in the whole country</td>
</tr>
<tr>
<td>Cyprus Chamber of Commerce &amp; Industry (Cyprus)</td>
<td>N.A.</td>
<td>N.A.</td>
<td>Mediation centre is very new, no international cases have been managed yet</td>
</tr>
<tr>
<td>Croatian Chamber of Economy (Croatia)</td>
<td>20% (5 cases)</td>
<td>N.A.</td>
<td>Mediations managed at CCE</td>
</tr>
<tr>
<td>Centre de Médiation et d’Arbitrage de Paris (France)</td>
<td>20% (64 cases)</td>
<td>13% (36 cases)</td>
<td>Mediations managed at CMAP</td>
</tr>
<tr>
<td>Handelskammer Hamburg Service GmbH HKS (Germany)</td>
<td>N.A.</td>
<td>N.A.</td>
<td></td>
</tr>
<tr>
<td>Unioncamere Chambers of commerce (Italy)</td>
<td>21 cases</td>
<td>N.A.</td>
<td>Mediations managed at Chambers of commerce with international mediation services (Milan ad Turin)</td>
</tr>
<tr>
<td>Latvian Chamber of Commerce and Industry (Latvia)</td>
<td>N.A.</td>
<td>18% (5 cases)</td>
<td>Mediations managed by the Association “Mediācija un ADR”</td>
</tr>
<tr>
<td>IASI Chamber of Commerce and Industry, (Romania)</td>
<td>3.8% (4 cases)</td>
<td>N.A.</td>
<td>Mediations managed by a sample of IASI individual mediators</td>
</tr>
<tr>
<td>Cambra Oficial de Comerç, Indústria i Navegació de Barcelona (Cataluña - Spain)</td>
<td>N.A.</td>
<td>N.A.</td>
<td>No official information available</td>
</tr>
</tbody>
</table>

N.A.: not available  
Source: Go to mediation! – Workstream 4

Another indicator that Partners are progressively engaging more on this matter is represented by the agreement signed with other foreign mediation centres in order to strengthen mutual cooperation on cross-border disputes. For example:

- In Spain, Barcelona Chamber of Commerce has recently signed an agreement with Singapore Mediation Centre.
In Italy, the Milan Chamber of Arbitration (CAM), special agency of the Milan Chamber of Commerce, started a partnership with the Istanbul Chamber of Commerce to offer mediation services to Italian and Turkish companies and set up the Italy-China Business Mediation Centre.

In France, CMAP strongly cooperates with the CPR Institute (based in New York City), by sharing a common list of mediators and arbitrators, exchanging best practices, etc. CMAP has also created bi-cultural mediation services (such as a French-German Mediation Service with the Handelskammer Hamburg Service GmbH HKS, or a French-Quebec Mediation Service with the Quebec Bar Association).

Survey results allow few other remarks:

- **Trade** and **Service** seem the sectors of activity where cross-border disputes occur more frequently (these sectors were both indicated twice by Partners);
- Where the information is available, on average transnational procedures tend to **last less**, from application to settlement, than domestic mediations (French CMAP: 111 days against 120; Croatian CCE: 30 days against 35);
- Mediation centres may apply **higher rules on fees**, but the actual cost of mediation usually depends on the value of the dispute. For 2013, Partners reported an average cost ranging from 300 (Romanian IASI and Croatian CCE) to 1,000 (Belgian BECI) and to 2,800 euros (French CMAP);
- Some project Partners estimate that when parties engage in cross-border mediation **success rates** tend to be higher. In 2013, Romanian IASI and Belgian BECI reported a success rate of 100% for cross-border mediations managed by their own centres; Croatian CCE reports a success rate of 20%, French CMAP of 70%.

The case studies no. 8 and 9 from Italy deal with cross-border disputes and illustrate possible uses and tangible benefits of mediation in this field.

**Conclusions and recommendations**

The benefits of mediation become even more obvious in situations displaying cross-border elements:

- mediation is rapid, confidential and not expensive, basic qualities in international commercial relations, which are often more complex because of cultural differences, languages, legal systems;
- mediation gives parties the opportunity to appoint a neutral mediator who they can trust, and it is also possible to choose a bi-cultural mediator;
- mediation allows a much larger scope of dialogue and to explore broader alternative solutions (not only economic demands but also other types of needs), compared to what could happen in an ordinary trial or arbitration, thus increasing the chances of an agreement;
- mediation is not suitable only for small claims: in complex procedures, this tool grants effective protection to situations that would otherwise require a lengthy and difficult judicial and technical process;
in a globalised world, a viable, low-cost and rapid alternative form of justice, as opposed to costly, lengthy and congested courts, is key to attract foreign investments and promote international relations among people and businesses. Why then is mediation not a more obvious choice for relevant stakeholders (businesses, citizens but also judges and lawyers)?

The arguments seen above for domestic mediation are mostly valid for cross border disputes. Mediation should be encouraged in transnational relations, for example by means of a wider diffusion of mediation clauses in private contracts or providing incentives for parties who choose to mediate.

Moreover, the question of trust in mediators’ skills, training and certification may be an obstacle for international business, as well as special attention should be paid on the enforceability of mediation settlements across different countries. The development of European standards related to mediation skills and training could improve the quality of mediation and confidence in third countries’ mediators. The implementation of harmonised accreditation systems at EU level could also facilitate cross-border mediation and mutual recognition of settlements.

One option could be to enhance the role of Chambers of Commerce and Industry as mediation providers, especially for international B2B commercial disputes. European Chambers of Commerce have a long experience in the internationalisation of companies and in commercial partnerships with both European and extra-EU countries. They have built trusted relationship with companies and business operators thanks to the services provided and start having a long experience also on mediation. Many Chambers have already signed mediation agreements with other international Chambers of Commerce.

This is also one of the aim of the Go To Mediation! Project and its European clearing house for cross border B2B disputes (Workstream 2), accessible from the website www.gotomediation.eu.

Member States and the European Commission should be encouraged to promote cross-border mediation further in the business community, for example by developing ad hoc incentives and awareness raising campaigns. They should support the development of common standards for training and the implementation of harmonised accreditation systems, in order to improve the quality of mediation, to foster a progressive convergence of mediator skills and to facilitate mutual recognition of mediation procedures and outcomes.

One option could be to enhance the role of Chambers of Commerce and Industry as mediation providers, especially for international B2B commercial disputes. European Chambers of Commerce have a long experience in the internationalisation of companies and in commercial partnerships with both European and extra-EU countries. They have built trusted relationship with companies and business operators thanks to the services provided and start having a long experience also on mediation. Many Chambers have already signed mediation agreements with other international Chambers of Commerce.

This is also one of the aim of the Go To Mediation! Project and its European clearing house for cross border B2B disputes (Workstream 2), accessible from the website www.gotomediation.eu.
As seen above, the survey highlighted a very diverse pattern of data collection systems and sources of information that each project partner used to fill out the quantitative section of the questionnaire.

In general, most Partners reported a number of difficulties in providing sound, clear and complete data on mediation practice in their country, for various reasons:

- some countries are relatively new to mediation, as it is the case for Cyprus, whose Chamber of Commerce and Industry has recently set its own mediation centre and has no data to share yet;
- in many cases there is no national or regional system to register and monitor mediation practices, thus no official statistics are available. In these cases, either project Partners provided data from their own mediation centre, or collected information from a limited number of mediation providers;
- in a few other countries data are available at national or regional level but they might not always be disaggregated at the level requested by the survey (for example B2B mediation or cross-border disputes may not be explicitly monitored).

The table below summarizes the different sources of information that Partners employed to answer to the survey in 2013 and 2014.

**Table 1 – Sources of data and information used by each project Partner**

<table>
<thead>
<tr>
<th>PROJECT PARTNER</th>
<th>SOURCES OF DATA - 2013</th>
<th>SOURCES OF DATA - 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chamber of Commerce of Brussels (B)</td>
<td>Survey conducted among Belgian mediators at country level</td>
<td>Survey conducted among Belgian mediators at country level</td>
</tr>
<tr>
<td>Cyprus Chamber of Commerce &amp; Industry (CY)</td>
<td>No data available yet since Mediation Law is very recent</td>
<td>No data available yet since Mediation Law is very recent</td>
</tr>
<tr>
<td>Croatian Chamber of Economy (HR)</td>
<td>Data from mediations managed annually by CCE</td>
<td>Data from mediations managed annually by CCE</td>
</tr>
<tr>
<td>Centre de Médiation et d’Arbitrage de Paris (FR)</td>
<td>Data from mediations managed annually by CMAP</td>
<td>Data from mediations managed annually by CMAP</td>
</tr>
<tr>
<td>Handelskammer Hamburg Service GmbH HKS (D)</td>
<td>Survey conducted by HKS among 116 mediators of the Hamburg Business Mediation Centre. Response rate: about 20%</td>
<td>Survey conducted by HKS among 119 mediators of the Hamburg Business Mediation Centre. Response rate: about 20%</td>
</tr>
<tr>
<td>Unioncamere - Chambers of commerce (I)</td>
<td>Observatory on the 87 Mediation bodies of the Italian Chambers of Commerce (it provides official statistics on mediations to the Ministry of Justice)</td>
<td>Observatory on the 87 Mediation bodies of the Italian Chambers of Commerce (it provides official statistics on mediations to the Ministry of Justice)</td>
</tr>
<tr>
<td>PROJECT PARTNER</td>
<td>SOURCES OF DATA - 2013</td>
<td>SOURCES OF DATA - 2014</td>
</tr>
<tr>
<td>--------------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>IASI Chamber of Commerce and Industry, (RO)</td>
<td>No data available since there was no official statistics</td>
<td>In 2013, IASI conducted an ad hoc survey among 20 individual mediators (Response rate: about 60%)</td>
</tr>
</tbody>
</table>

Source: Go to mediation! – Workstream 4

Taking into account the difficulties in data collection reported by Partners during the first year of project activity, it was decided to add a specific focus on statistics and monitoring systems to the questionnaire (see Annex 2) in year two of the survey, with a view of better understanding how each Partner or other institutions in their countries are dealing with this issue and of promoting the development of robust information on the mediation market at national and European level.

A first group of questions concerned the experience of Partners’ Mediation centres, while a second set of questions looked upon national systems. Partners have been asked to give insights on any kind of existing monitoring, assessment or data collection mechanisms or to indicate what they would deem useful, especially where no monitoring system is yet in place.

4.1 The practice and the experience of Partners’ mediation centres

On the basis on the survey, seven out of nine Partners have in place a data collection or monitoring system on mediation. Only Latvian and Cyprus Chambers do not have yet such a system in place, being quite new to mediation; however, the first was able to provide data from a private mediation association in the country and the latter is about to set up such a system, taking also into account Partners’ experiences.

Fig. 1 - Number of Partners’ Mediation Centres with a data collection system in place

![Fig. 1](source: Go To mediation! - Workstream 4, 2014)
Table 2 – Data collection systems set up by each project Partner

<table>
<thead>
<tr>
<th>Project Name</th>
<th>Data Collection Systems Set up by Each Project Partner</th>
</tr>
</thead>
<tbody>
<tr>
<td>CHAMBER OF COMMERCE OF BRUSSELS</td>
<td>Until September 2014, the monitoring system was based on a file with all the requests for mediations and the mediation cases managed by bMediation. From September 2014 onwards, a new tool will be used for all mediation cases: the “mediation report” which is to be filled in by the mediator after each mediation mission for bMediation. The purpose of this document is to provide generic information about mediation and some indication about the process, and to improve the training. Moreover, bMediation carries out a survey among Belgian accredited mediators every 2 years (the first was in 2012 and the second in May 2014).</td>
</tr>
<tr>
<td>CYPRUS CHAMBER OF COMMERCE &amp; INDUSTRY</td>
<td>The Mediation Centre is very new and had no single case yet. The intention is to put in place a monitoring system in order to keep data on number of cases, success rates, length of sessions, cost per case, mediation/co-mediation, dispute themes, etc. To do so, a questionnaire “CCCI Mediation Service Monitoring System” was prepared which the Centre asks its Mediators to fill in at the end of each mediation process.</td>
</tr>
<tr>
<td>CROATIAN CHAMBER OF ECONOMY</td>
<td>Mediation centre at the CCE has its own database (data collection / quantitative and qualitative) and 2 questionnaires for collecting data. Questionnaires are used for gathering opinions of the parties about mediation process of the Centre’s work and work of the mediator.</td>
</tr>
<tr>
<td>CENTRE DE MÉDIATION ET D’ARBITRAGE DE PARIS</td>
<td>CMAP is the only mediation Centre in France who publishes statistics every year. It put in place a collection system in order to have a useful and concrete communication tool.</td>
</tr>
<tr>
<td>HANDELSKAMMER HAMBURG SERVICE GMBH HKS</td>
<td>The Mediation centre carries out an annual survey (number of cases, success rate and sectors). All survey participants are listed mediators at our Mediation centre. The participation in the survey is voluntary.</td>
</tr>
<tr>
<td>UNIONCAMERE - CHAMBERS OF COMMERCE</td>
<td>Unioncamere set up a national “Observatory” on mediation with a digital database, which collects monthly data from all mediation bodies of the Chambers of commerce; the aim is to register trends in relation to legislative changes and over time. The Ministry of Justice carries out the same monitoring process, gathering data from all Italian mediation bodies and centres; thus, data from the Chambers of Commerce merge into the Ministry’s aggregated statistics.</td>
</tr>
<tr>
<td>LATVIAN CHAMBER OF COMMERCE AND INDUSTRY (LV)</td>
<td>At this stage there is no mediation law in Latvia. It is currently reviewed and discussed in the Parliament.</td>
</tr>
<tr>
<td>IASI CHAMBER OF COMMERCE AND INDUSTRY, (RO)</td>
<td>The Chamber has a collaboration agreement with individual mediators, who monitor mediation activities on basic principles: parties, meetings, mediations, agreements, failures etc. as part of their management activity.</td>
</tr>
<tr>
<td>CAMBRA OFICIAL DE COMERÇ, INDUSTRIA I NAVEGACIÓ DE BARCELONA (CATALUÑA - E)</td>
<td>It collects quantitative details (number of procedures; parties’ information; duration; number of meetings, existence of agreement). On a qualitative level, there is no standard system for collecting information but it gathers mediators’ feedbacks.</td>
</tr>
</tbody>
</table>

Source: Go to mediation! – Workstream 4, 2014
As regards the **tools** in use to monitor mediation and collect quantitative or qualitative information, databases are mostly widespread: six Partners already use a database and other two think it would be useful, especially if a national or regional database is built up; qualitative reports or assessments provided by the mediators or the parties to the dispute when the process is concluded are in use or deemed useful by all Partners, even if they may pose problems in terms of confidentiality and can be time-consuming; finally, surveys among mediators are used in three cases and are considered useful by other three Partners.

**Fig. 2 – Tools that Partners use or deem mostly useful to gather data on mediation**

<table>
<thead>
<tr>
<th>Tools in use</th>
<th>Not in use but maybe useful</th>
</tr>
</thead>
<tbody>
<tr>
<td>Qualitative reports / parties’ assessments</td>
<td>4</td>
</tr>
<tr>
<td>Database</td>
<td>6</td>
</tr>
<tr>
<td>Questionnaire/survey among mediators</td>
<td>3</td>
</tr>
</tbody>
</table>

*Source: Go to mediation! – Workstream 4, 2014*

One of the problems with monitoring systems is that they might be time-consuming and costly. Most Partners (4 answers) have opted for an **annual monitoring** process, in one case (Italy) joined with a monthly data collection mechanism. Another possibility is or could be (3 answers) to collect qualitative or quantitative information from mediators and mediation centres on a regular basis, as mediation processes are concluded.

**Fig. 3 – Frequency of Partners’ data collection / monitoring**

*Source: Go to mediation! – Workstream 4, 2014*
One of the aspects of data collection that mostly needs harmonisation, both at national and at European level, is the choice of facts and figures that are monitored, by means of any of the tools seen above. To make comparisons over time and across countries possible, it would be extremely important to set at least a common standard of basic information to collect from mediators and mediation centres. Of course, a standardised classification of definitions is also very important.

The survey shows a number of issues that, according to GTM Partners, are most important to monitor as they represent the principal indicators to assess and evaluate the mediation market:

- Type of mediation and its origin: if it is a voluntary process, a judicial referral, a legal obligation (mandatory mediation) or a result of a mediation clause;
- Location of the mediation process and parties’ residence;
- Outcome of the mediation, if it is positively concluded with a settlement or not;
- Length of the procedure, from deposit to conclusion;
- Subject matter and field of activity related to the dispute;
- Parties to the dispute, which allows the classification between B2B, B2C or private disputes;
- Mediator who conducted the process and its profile;
- Value of the dispute.

**Fig. 4 – Facts that are monitored or would be useful to monitor**

Monitoring the mediation market by collecting data and developing up-to-date statistics helps support advocacy and quality of mediation because it is useful, if not necessary, for a wide variety of purposes, as Partners have pointed out on the basis of their experience. In particular, they find it useful to target communication and awareness raising campaigns, to support policy making and legislative processes and to assess the quality of mediators and mediation centres. It also helps monitor
strengths and weaknesses of mediation and its procedures, carry out studies and researches on this subject and assess the effectiveness of mediation as opposed to “traditional” court proceedings or other ADR mechanisms.

**Fig. 5 – Main purposes of data collection on mediation**

<table>
<thead>
<tr>
<th>Purpose</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>To target communication / awareness raising campaigns</td>
<td>8</td>
</tr>
<tr>
<td>To support policy making / legislative process</td>
<td>8</td>
</tr>
<tr>
<td>To assess the quality of mediators / med. centres</td>
<td>8</td>
</tr>
<tr>
<td>To monitor strengths / weaknesses of med. procedures</td>
<td>7</td>
</tr>
<tr>
<td>To conduct studies and monographs</td>
<td>7</td>
</tr>
<tr>
<td>To assess / improve your daily work</td>
<td>6</td>
</tr>
<tr>
<td>To monitor the impact of legislative reforms</td>
<td>6</td>
</tr>
<tr>
<td>Other (to improve trainings)</td>
<td>1</td>
</tr>
<tr>
<td>Not useful</td>
<td>0</td>
</tr>
</tbody>
</table>

*Source: Go to mediation! – Workstream 4, 2014*

When it comes to **cross-border disputes**, as seen above, the amount and the quality of available information drop dramatically. Only four Partners (French CMAP, Croatian CCE, Brussels BECI, and Romanian IASI) are so far monitoring transnational mediation procedures. Cyprus is envisaging doing so in the next future. In Italy, the database of Chambers of Commerce’ mediation bodies does not classify disputes as cross-border, thus data should be retrieved directly from those centres specialised in international mediation.

This lack of information seems mainly due to the still limited number of cross-border mediations taking place in many countries; mediation centres prefer to use other, more recurrent, indicators (as seen above) to monitor the mediation market and mediators’ activity.

Usually a dispute is classified as cross-border if it involves at least one foreign party but also in this case it would be important to harmonise definitions and classifications; for example, as pointed out by French CMAP, mediation could be between two nationals (thus, based on the geographical origin of the parties it would be classified as a domestic dispute) but it may concern international interests (thus, a cross-border dispute according to its matter).

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28 As regards Italy, the database of Chambers of commerce’ mediation centres does not classify cross-border disputes, thus it is not included on this list; however data can be retrieved from those centres that are specialised in trans-national disputes, which provided the figures presented in Section 3.
4.2 Accreditation and monitoring systems in Partners’ countries

In the last part of the survey, Partners were asked about data collection and monitoring systems on mediation in their country or region.

A recent study ("Rebooting the mediation Directive\textsuperscript{29}"), published by the European Parliament in January 2014 and based on a survey across all 28 EU Member States, significantly concluded that there are no reliable official statistics on the number (and other features) of mediations that occur in each country except in Italy, and that it is only possible to estimate such number.

GTM survey confirmed that only Italy set up an official regulatory system, coordinated by the Ministry of Justice, which collects data from all accredited mediation centres (including those established at the Chambers of Commerce) quarterly through a digitized procedure; aggregated statistics are then published and disseminated through periodic reports, local media and specific communications to policy makers and public institutions.

In the other eight countries participating in the project neither a legal obligation to collect data nor an official monitoring system exists. However, in some cases national institutions are progressively paying more attention to mediation, for example:

- in Romania, the Ministry of Justice and the National Mediation Council started monitoring the mediation market recently, but information are not yet published;
- in Spain, Public-Law registers for mediation are set to collect, manage and publish information both at national and regional level; in Catalonia, the Barcelona University set up the “Observatori de Mediació de Catalunya”;
- in Belgium, bMediation, the largest private mediation centre of the country established by the Brussels Chamber of Commerce, launched a survey among accredited mediators on a two-year basis, with the support of the Federal Commission of Mediation (2012 and 2014), and disseminated the results through ad hoc reports, press communication and notes to public authorities.

\textsuperscript{29} Op. cit.
A number of different reasons may represent an obstacle to establish an official monitoring system at country level and to require mediators and/or mediation centres to provide data on their work. According to the survey, the main obstacles seem to be the lack of economic and human resources and the confidentiality of the mediation process (4 answers), followed by the lack of a national public body in charge with this issue, the limited diffusion of mediation in the country and the fact that it is mainly a voluntary process.

One factor that should certainly be taken into account when dealing with the implementation of monitoring systems on mediation is a balanced relation between input and outcome.
According to project Partners, an institutional monitoring system on mediation at national level would be **very useful**, in order to:

- set up a single, systematic, structured and homogenous model for data collection, accessible to all mediation practitioners. Such a model would allow the elaboration of aggregated results, to the benefit of the whole system;
- assess the development of mediation and its procedures, how different incentives may influence recourse to mediation, in which sector it may need further support, etc.

The main responsibility to gather data and produce reliable statistics on the national mediation market should probably lie in the Ministry of Justice or other public institutions; large private mediation bodies may also play an important role in data collection and monitoring but could easily encounter the reluctance of other private mediation centres in sharing their data, under the claim of confidentiality, unfair competition and sensitive "commercial" data for professionals.

Finally, as indicated by some Partners, a pre-requisite to make data collection feasible and easier is the existence of a national **system of certification or accreditation for mediators and mediation centres**. As a matter of fact, public or private accreditation systems make it possible to identify the number of "registered" mediation practitioners, to contact them by way of surveys, databases and other tools, to aggregate data in an anonymous form, and, thus, to assess the market and the practice of mediation.

Among project Partners, such a system is in place in six countries (Spain, Cyprus, Croatia, Italy, Belgium and Romania). The accreditation may concern only individual mediators or mediation centres, as summarised in the table below.

**Fig. 9 - Number of Partners' countries with an official mediators' accreditation system**

![Pie chart showing 67% YES and 33% NO]

Source: Go to mediation! – Workstream 4, 2014

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30 Within the scope of Workstream 3 of "Go to Mediation!", dealing with standards and training for mediation practitioners in Europe, French CMAP carried out a larger survey among 22 EU Member States asking, inter alia, questions on accreditation systems. It resulted that less than 60% of countries have a national register for mediators (usually at the Ministry of Justice or Mediation Council), but accreditation is not always mandatory or may concern only some categories (for example court-appointed mediators). In more than 60% of countries, the official certification is not a condition to practice as a mediator, even if most mediation centres tend to impose a certification to their mediators and think that an official accreditation system would be necessary or at least useful, in order to give credibility and trust to mediation, to have mediators' lists and to better assess the quality of the mediation process.
Table 3 - Accreditation systems in place and number of accredited mediators/mediation centres

<table>
<thead>
<tr>
<th>PROJECT PARTNER</th>
<th>ACCREDITATION SYSTEM</th>
</tr>
</thead>
</table>
| Chamber of Commerce of Brussels (B)                       | On September 2014, the database of the Federal Commission of Mediation registered: 538 mediators for civil and commercial disputes (labour matters: 165 mediators; family law: 720 mediators).  
In 2014 survey, respondents have mentioned 24 other mediation centres than bMediation (not only civil and commercial by also family related centres). |
<p>| Cyprus Chamber of Commerce &amp; Industry (CY)               | In September 2014, the National Registry of Mediators at the Ministry of Justice and Public Order included 204 registered mediators for civil and commercial disputes.                                                  |
| Croatian Chamber of Economy (HR)                         | In Croatia there are 7 registered Mediation Centres. Each Mediation Centre has its own list of mediators. Mediation Centre at the CCE has 141 certified mediators. Ministry of Justice has 406 certified mediators. |
| Centre de Médiation et d’Arbitrage de Paris (FR)          | In France there is no national system of mediators’ certification. CMAP has 100 accredited mediators.                                                                                                                    |
| Handelskammer Hamburg Service GmbH HKS (D)                | At present, in Germany there is no national system of mediators’ certification. However, the German Federal Ministry of Justice has recently drafted specific provisions on the training for “certified mediators” and standards applicable to training institutions. According to the regulation draft, a certified mediator should complete a 120-hours training course, mediate 4 cases within 2 years and undergo 20 hours of further training every two years. The draft does not provide for an official registration of certified mediators, but during consultations some stakeholders asked to introduce an approved certification body. |
| Unioncamere Chambers of commerce (I)                     | In Italy, only mediation centres accredited by the Ministry of Justice and entered in the official Register can practice mediation. Accredited centres set up their own list of mediators. In order to be placed on the list of a mediation centre, mediators must have the qualification established by the law. They must have specific training acquired at a training institution accredited by the Ministry of Justice. On December 31, 2013 there were 986 mediation bodies registered at the Ministry of Justice (87 at Chambers of Commerce), and 8,695 accredited mediators. |
| Latvian Chamber of Commerce and Industry (LV)             | In Latvia there is no national system of certification of mediators                                                                                                                                                  |</p>
<table>
<thead>
<tr>
<th>PROJECT PARTNER</th>
<th>ACCREDITATION SYSTEM</th>
</tr>
</thead>
</table>
| IASI Chamber of Commerce and Industry, (RO) | At the National Mediation Council, are registered:  
7928 Authorized Mediators  
110 Professional Associations in Mediation  
11 Organizations providing mediation services |
| Barcelona Chamber of Commerce (Cataluña - E) | In Spain, there is an official register for mediators/mediation centres at the Ministry of Justice. In Catalonia, the Mediation Centre of Private Law of Catalonia keeps an official register for both mediators and private mediation services. In 2012 there were 1093 registered mediators. In 2014 an official register for B2B mediators was set up by the General Council of Chambers of Commerce in Catalonia (13 Chambers). Registration in the State’s Official Registry is optional except for mediators acting as official mediators for insolvency proceedings (however the officially recognised training is required). Some institutions (as the Chambers of Commerce) are authorized by law as mediation services providers without the requirement of being registered. |

*Source: Go to mediation! – Workstream 4, 2014*

**Focus: Monitoring systems to the test: the Italian case**

In Italy, Legislative Decree no. 28 of March 4, 2010 established the accreditation system for public and private mediation bodies and a specific Register to be managed by the Ministry of Justice, together with the directory of certified training centres for mediators.

The statistical monitoring of mediation flows meets a specific obligation under inter-ministerial Decree no. 180 of October 18, 2010. According to its article 11, the Ministry of Justice shall carry out the statistical monitoring of the mediation processes managed by the registered bodies themselves.

Subsequently, a number of circulars and ministerial regulations have upgraded and modified the guidelines for mediation monitoring and data collection. The most recent are Decree no. 139 of August 4, 2014, issued by the Minister of Justice in consultation with the Minister of Economic Development, Circular September 18, 2014 on the digitised procedures of the Register of mediation bodies and training providers, and Circular October 22, 2014 on the statistical monitoring of civil mediations.

*The Register of mediation bodies*

In Italy, mediation can take place only at public or private bodies that are entered in the register kept by the Ministry of Justice. These mediation bodies provide mediation services in compliance with the law, ministerial regulations and their own
internal regulations, which shall be approved by the Ministry of Justice. The Register is currently undergoing a process of digitalisation. With effect from November 3, 2014, applications for registration of public and private mediation and training bodies must be submitted only online.

**Monitoring and data collection**

All mediation bodies authorized by the Ministry of Justice have an obligation to collect data on civil mediation proceedings. The General Directorate of Statistics of the Ministry of Justice has taken the responsibility to implement statistical surveys and data collection on mediation procedures managed by all registered bodies. The statistical review of civil mediation started in March 2011.

Data collection refers to all types of mediation - mandatory, voluntary and referred by the court - and covers both quantitative data on the number of mediation procedures and some qualitative information, such as the outcome of the proceedings, the legal status of the parties, the subject matter of the dispute, any compensation paid, etc.

The monitoring system currently in force provides that mediation bodies send their communication of statistical data every three months, not later than the last day of the month following the reference period. The “reference period” is thus one of the four quarters of the calendar year: January-March, April-June, July-September, October-December.

Data collection consists of statistical surveys on civil mediation activity carried out by the organism, to be sent to the Ministry of Justice by on-line compilation or transmission of electronic files. In particular, information recorded concerns:

- concluded mediations and relative information and statistics;
- managed mediations classified by subject matter.

The Ministry of Justice requires two types of form to be filled out:

1) “Quarterly Survey of Mediation Flows”, which detects the overall flow of cases handled by each body in the reference period. In this form, flows are broken down by state of the art (initial, pending, concluded, just registered, etc.) and subject matter of the dispute (rights in rem, division, location, etc.).

2) “Single Form for Concluded Mediation”, which takes note of synthetic information about each concluded proceeding in the reference period, regardless of the outcome.

Mediation bodies have an obligation to transmit such data to the Ministry; failure to notify “will be considered evidence of inactivity of the body and could lead to suspension or, in severe cases, to removal from the register”.

The Ministry of Justice has the power to control compliance with monitoring obligations and to verify the quality of the statistics gathered, since the communication of data by mediation bodies must meet the requirements of accuracy, completeness, and impartiality.

Sources: Observatory of Chambers of Commerce and Ministry of Justice
Conclusions and recommendations

The survey highlights the discrepancy of sources of information and monitoring tools on the mediation market used by project Partners and available at national level. The experience of project Partners shows, on the one hand, that mediation practitioners tend to set up their own data collection mechanisms and agree that some sort of monitoring is useful and necessary, even if there is no specific requirement or obligation to do so; on the other hand, Member States seem to control little the mediation market, maybe because mediation is a voluntary and confidential process, diffusion of mediation cases is still rather low and public statistics have not been involved. As a result, there is an evident difficulty to gather sound and robust data about the number and the practice of mediation in Member States and across the European Union.

"The problem lies in the nature of the mediation process itself. The procedure is confidential and there is generally no obligation to register a mediation process or settlement with any competent authority. The only existing figures are compiled on limited statistical database."

At European level, there is also the question of comparing and harmonising data from Member States, since there are no specific and common requirements in terms of statistics and data collection on mediation. In particular:

- Different definitions: the word "mediation" is used in a wide variety of contexts and takes different meanings across the EU Member States' legal frameworks. This may complicate significantly data collection processes and classification.
- There is no uniform European regulatory scheme governing the practice of mediation unlike other professions, such as law or medicine.
- Accreditation: so far, some Member States and Mediation Centres set forth voluntary or mandatory accreditation systems, but there is no European regulation on this issue.
- There is no specific requirement for Member States as regards data collection and dissemination of information on the use and the practice of mediation in their country.

However, a sound collection, monitoring and analysis of qualitative and quantitative data is key to support policy makers and administrative bodies in making strategic choices in the field of mediation and evaluating the impact of regulations, incentives and promotional measures.

Member States and the European Commission should be encouraged to improve the quality of data collection about domestic and cross-border mediation, by developing coherent and common standards to gather statistics and information from mediators and mediation centres, also in the view of monitoring the implementation of EC Directive and its impact.

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32 See also: Eurochambres, Mediation as a means to resolve disputes in civil and commercial matters, Position Paper, April 2014.
One possibility could be to request all mediators and/or mediation centres to register to a public (or private) body (accreditation system); such institution should bear with the responsibility to foster monitoring and evaluation about the mediation market, for example by conducting periodic surveys or gathering data from registered mediators through a digital database. Certified mediators or mediation centres should also have the obligation to report to this body about the disputes they manage. The same institution could then make available and disseminate aggregated information about the national/regional mediation market.

An agreement on common standards, classifications and indicators to be monitored should be found among the European Commission, Member States and mediation practitioners.
CASE STUDIES
Case studies provided by Project Partners

1. ROMANIA: “Judges going to mediation”
2. GERMANY: “Confidentiality matters”
3. FRANCE: “A long term relation”
4. GERMANY: “A good mediator for good services”
5. BELGIUM: “Time is money”
6. CROATIA: “A good deal”
7. FRANCE: “An expensive website”
8. ITALY: “Mediations without borders”
9. ITALY: “How to get in touch with a heedless partner”
10. ITALY: “A failure that becomes a success”
11. ROMANIA: “All’s well that ends well!”
12. CROATIA: “Usual disputes, easy solutions”
**CASE STUDY 1_ROMANIA: “Judges going to mediation”**

A good example, from the IASI Chamber of Commerce and Industry (Romania), of how judges may play an active role in initiating and promoting mediation when they deem it appropriate. Financial incentives (reimbursement of court fees) also work well for the litigants.

<table>
<thead>
<tr>
<th>PARTIES</th>
<th>A catering Company Alpha (supplier) and a Company Beta (beneficiary).</th>
</tr>
</thead>
<tbody>
<tr>
<td>FIELD OF ACTIVITY</td>
<td>Catering service supply</td>
</tr>
<tr>
<td>SUBJECT MATTER</td>
<td>Overdue payment of invoices</td>
</tr>
</tbody>
</table>

**BEFORE THE COURT**

Company Alpha sued Company Beta because of delayed payment of a considerable number of bills; Beta was satisfied with the service but could not pay until its own operating cost were reimbursed by the Management Authority. Alpha’s requests before the court were the payment of the overdue amount plus delay penalties and court costs. Because of personal animosities generated by a break in the communication, parties are hostile to each other, which materialize in reticence and negativism. On the recommendation of the court, both parties accept to try to solve the dispute by resorting to mediation.

**PROCEDURE**

In a first phase, the mediator reads the parties documents and meets separately with each party, assisted by lawyer/legal advisor, trying to identify alternatives to resolve the dispute. The first common session takes place about 2 weeks after referral. More difficult at the beginning, parties begin to interact and openly discuss possible solutions, which attenuates the level of animosity and reopens channels of communication. After 2 hours, parties agree to meet again in a week. During this week, the mediator discusses with them over the phone and monitors the development of the case, giving suggestions and alternatives. At the second hearing, parties participate without legal assistance, a certain degree of trust having been rebuilt, and outline a possible solution but prefer to consult with their lawyers. The mediator proposes a third meeting in order to present a draft mediation agreement to the parties. The mediator draws up the agreement, outlining the agreed solution and waivers, and he sends it by mail to the parties’ lawyers before the meeting, to increase efficiency.

In the third session, the parties assisted by their lawyers agree on some changes to the agreement and then sign it. The dispute is off a few weeks later, by the time allowed by the court, and the applicant recovers court fees.

| NUMBER OF MEETINGS/DURATION | 3 mediation sessions; from the choice of a mediator to the signing of the agreement the procedure lasted about 6 weeks. |
### SETTLEMENT

Company Alpha accepts to receive the payment over the next three months upon withdrawal of the judicial claim, receiving check guarantee file with monthly maturity and the payment of half of the penalties due to the delay.

### PROS

1. In real terms, none of the parties lost.
2. Mediation offered a concrete plan and simple rules to reach a result, reopened communication channels and created the necessary context to rebuild mutual trust, which ultimately led to an objective negotiation.
3. Mediation gave the parties the opportunity to reach a mutual agreement, which did not come exclusively from one party, thus was deemed acceptable also by their lawyers.
4. Time and cost saving.

### CASE STUDY 2_ GERMANY: “Confidentiality matters”

Another important feature of mediation, though not dealt with in the survey questionnaire, is the confidentiality clause. Article 7 of Directive 52/2008/EC states: “Given that mediation is intended to take place in a manner which respects confidentiality, Member States shall ensure that, unless the parties agree otherwise, neither mediators nor those involved in the administration of the mediation process shall be compelled to give evidence in civil and commercial judicial proceedings or arbitration regarding information arising out of or in connection with a mediation process”. This is a good example, from the Handelskammer Hamburg Service GmbH (HKS), of the importance of confidentiality for the parties.

| PARTIES | A tailoring and curtain shop in Hamburg (X) and an online trading company (business to business sales only) (Y). |
| FIELD OF ACTIVITY | Internet sales and purchase |
| SUBJECT MATTER | Defective supply |

### CASE

X bought 30 sewing machines via Internet from Y, accepted the business terms and conditions of sale, paid via credit card and 10 days after the machines were delivered. Two weeks later the tailor discovered a fault in some machines but according to the contract terms and conditions of sale it was too late for a claim (deadline was within 3 business days after receipt of delivery). After some contacts between the parties, the sales company, which was new in the business and wanted to avoid negative reputation, with the advice of a lawyer decided to try mediation.

### PROCEDURE

Parties agreed to resort to mediation without legal assistance of their lawyers but choosing a mediator with a juridical background, through the mediation service of the Chamber of Commerce. A first session was fixed in a private meeting room in hotel.

### ROLE OF MEDIATOR

At the beginning of the first session the mediator explained the process, including basic rules, his role, the goals of mediation and
the fees. The mediator encouraged the parties to seek advice from attorneys whenever they feel it appropriate, both during the mediation process and prior to signing their mediation agreement. The mediator is neither a judge nor an arbitrator and does not adjudicate or hand down a decision in relation to a dispute, he explained. Then, they signed an agreement to mediate and each party described the nature of the dispute. The mediator ensured that both parties understood the other person’s point-of-view. By seeing both sites of the problem they found out that they were both interested in long-term business relations. During a brainstorming session they started to collect different ideas to solve the situation, focusing on the future, and they found a solution profitable for both.

<table>
<thead>
<tr>
<th>NUMBER OF MEETINGS/DURATION</th>
<th>3 mediation sessions, the first scheduled for 2 hours, the second and the third for 90 minutes.</th>
</tr>
</thead>
<tbody>
<tr>
<td>SETTLEMENT</td>
<td>The tailor committed to acquire goods at least for 30,000 € per year from the online store which, in return, will apply 10% discount on each purchase. Concerning the faulty sewing machines, they were resold to an ironmonger.</td>
</tr>
<tr>
<td>PROS</td>
<td>Confidentiality before, during and after the process is central to the principles of mediation and in this case was very important for one party. Parties strengthened their relationship and kept doing business together.</td>
</tr>
</tbody>
</table>

**CASE STUDY 3, FRANCE: “A long term relation”**

A good example, from the French Centre de Médiation et d’Arbitrage de Paris (CMAP), of how mediation can be successfully used both by SMEs and large companies and helps party staying in business together. “Mediation can also revive a relationship, which is often unimaginable after judicial proceedings. At the end of mediation, relations are much less tense”, in the words of an expert Belgian mediator.

| PARTIES | A SME and a large company |
| FIELD OF ACTIVITY | Supplying and large scale retailing |
| SUBJECT MATTER | Re-negotiation of the commercial supply contract (quantity, price) |
| CASE | The SME was a supplier for a big supermarket since 1995; this client represented 90% of the SME’s turnover. In 2010, the supermarket decides to reduce significantly the number of orders, creating a difficult financial situation for the supplier, which decides to stop the service. Instead of resorting to Court, the SME decides to try mediation (she cannot afford the loss of this client). |
| NUMBER OF MEETINGS/DURATION | 10 hours of mediation |
**SETTLEMENT**

Parties reached an agreement with a reduction of the price (of the SME’s supply services) and a global re-negotiation of the contract.

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**CASE STUDY 4: GERMANY: “A good mediator for good services”**

An example from the Handelskammer Hamburg Service GmbH (HKS) of mediation involving services companies which illustrate the importance of choosing a good mediator.

<table>
<thead>
<tr>
<th>PARTIES</th>
<th>Company X provides cleaning services to Company Y (working in the field of window cleaning services)</th>
</tr>
</thead>
<tbody>
<tr>
<td>FIELD OF ACTIVITY</td>
<td>Cleaning services</td>
</tr>
<tr>
<td>SUBJECT MATTER</td>
<td>Payment of an extra charge for risk surcharges</td>
</tr>
<tr>
<td></td>
<td>The two companies signed a contract for provision of services.</td>
</tr>
<tr>
<td></td>
<td>The contract enabled Y to add risk surcharges. For one year X received and paid monthly invoices, which did not included risk surcharges, then Y asked an extra charge of 12,000 Euros for risk surcharges for the last 12 month. X didn’t want to terminate the business relationship, but would not accept the invoice.</td>
</tr>
<tr>
<td>CASE</td>
<td>To avoid excessive fees and court and the intervention of a lawyer, company X addressed the local Chamber of Commerce, asking for ADR. With the other party’s consensus, the Chamber proposed a high qualified mediator from its list of registered mediators and a first session was organized.</td>
</tr>
<tr>
<td>PROCEDURE</td>
<td>The parties and the mediator signed an agreement to mediate.</td>
</tr>
<tr>
<td></td>
<td>Then the mediator arranged a first confidential meeting in neutral environment, where the mediator explained the process and answered all questions, whereas each party had uninterrupted time to explain its point of view. The first session allowed the parties to understand each other’s perspective and clarify that they both wanted to save the business relationship.</td>
</tr>
<tr>
<td></td>
<td>During the second session the mediator tried to explore possible solutions, with a brainstorming session: the parties should suggest as many ideas as possible, to increase the chance of success, without assessing or critiquing anything that’s been suggested!</td>
</tr>
<tr>
<td></td>
<td>In a second step, all ideas were evaluated and the parties reached a final agreement that was satisfactory to both.</td>
</tr>
<tr>
<td></td>
<td>The mediator didn’t evaluate the rights and wrongs of the case nor directed the parties to a particular settlement, but rather facilitated the conversation and guided the companies towards an outcome of their own.</td>
</tr>
<tr>
<td>NUMBER OF MEETINGS/DURATION</td>
<td>2 mediation sessions.</td>
</tr>
</tbody>
</table>
CASE STUDY 5_BELGIUM: “Time is money”

The mediation approach is primarily aimed at finding a satisfactory solution for all parties involved. While this may take time, the game is worth the candle. “When you enter into a mediation process, you can’t know in advance how long it will last,” says an expert Belgian practitioner. “The shortest mediation I’ve led lasted just two hours”. It concerned a conflict between a garage manager and a salesman, who had already opened three legal proceedings against one another. Finally, the first two-hour introduction meeting led to the resolution of the conflict and the drafting of an agreement.

But sometimes mediation can take longer. “My longest mediation has lasted nearly a year. It was a conflict between the shareholders of two recently merged companies. As none of them could buy out the other and they did not want either to sell to a third party, we had to demerge the new entity. This process takes time, and it is crucial to preserve the agreement throughout the procedure. In a year, we run a large number of meetings: some began at nine o’clock in the morning and ended at three o’clock in the morning. We finally managed to split the company in an acceptable manner, but the parties waived against maintaining trade relations. That said, I do not regret this mediation. If shareholders had brought their case to the Court, the solution would have been significantly less favourable to them, and the process would have taken several years.”

CASE STUDY 6_CROATIA: “A good deal”

A good example, from the Croatian Chamber of Commerce, of how mediation can be an effective, prompt and, why not, cheap means of dispute resolution.

<table>
<thead>
<tr>
<th>PARTIES</th>
<th>Two Companies in the field of construction.</th>
</tr>
</thead>
<tbody>
<tr>
<td>SUBJECT MATTER</td>
<td>Payment of unforeseen costs for the development of technical documentation</td>
</tr>
<tr>
<td>VALUE OF THE DISPUTE</td>
<td>48,000 EUR</td>
</tr>
<tr>
<td>MEDIATOR</td>
<td>1 Judge (Mediator)</td>
</tr>
<tr>
<td>NUMBER OF MEETINGS/DURATION</td>
<td>1 meeting; settlement is signed during the first meeting (duration of meeting about 5 hours). From submission of the mediation proposal until the signing of settlement the procedure lasted 32 days</td>
</tr>
</tbody>
</table>
COSTS

Around 300,00 EUR, that is equivalent to about 0.6% of the value of the dispute.

CASE STUDY 7_FRANCE: "An expensive website"

A negative example, from the French Centre de Médiation et d’Arbitrage de Paris (CMAP), of how mediation can result in a failure if parties do not engage actively in the process. The success of mediation lies in the voluntary approach: “Choosing to be part of a mediation process is already showing willingness to reach an agreement. Obviously, there is a corollary: mediation can only succeed if both parties are in good faith. But if all the conditions are met, mediation is both shorter and less costly than litigation” (words of a Belgian expert practitioner).

PARTIES
An ICT SME and a large hotel company

FIELD OF ACTIVITY
ICT (information technology, website production)

SUBJECT MATTER
Payment of costs non included in the contract

CASE
A big hotel signed a contract with a SME for the improvement of the hotel website. The contract was very general in its content and did not include clearly the creation of an online booking and payment platform, which the hotel requested. The SME asked for additional money for this extra service, whereas the Hotel thought it was included in the original contract and invoice.

SETTLEMENT
The mediation failed because one party never went to the mediation meetings (only the lawyer was there).

CASE STUDY 8_ITALY: “Mediations without borders”

An example from the Chambers of Commerce of Florence of how cross-border mediation can heal stuck international business relationships and is convenient for everyone.

PARTIES
Company X, based in Italy, holder of a European Patent, and Company Y, based in the United Kingdom and licensee.

FIELD OF ACTIVITY
EU Patent Licence Agreement

SUBJECT MATTER
Payment of royalties and unfair competition

CASE
Company X holds a European Patent, awarded in 2007, about a pasta cooking machine. In 2008 X stipulated an exclusive European Patent License Agreement with Company Y, to which the two companies added further terms and conditions with an Addendum in 2010. In 2011 the Company X charged the Company Y for non-payment of royalties. On the other hand, Y disputed the performance of acts of unfair competition from X.

PROCEDURE
The Companies, assisted by their lawyers, filed a joint mediation request at the CCIAA’s Mediation Service of Florence. Legal representatives of both companies attended the first meeting assisted by lawyers. The mediator heard both parties jointly and separately.
Both parties showed a willingness to work immediately to put an end to the dispute; after two meetings some chances of agreement turned up. The parties agreed to meet again a third time to conclude the settlement.

**DURATION**

3 meetings, the first of six hours, the second of three and the third to sign the agreement.

**SETTLEMENT**

In the settlement agreement the parties explicitly declared their willingness to continue the collaboration. Therefore the Companies kept the contract of patent license, but updated and integrated the contract according to the new needs that came up in the course of the mediation procedure.

### CASE STUDY 9: ITALY: “How to get in touch with a heedless partner”

An example from the Chambers of Commerce of Venice of how cross-border mediation can quickly fix an unfair situation and bring “heedless” firms around a table.

**PARTIES**

Design and Graphics firm X, based in France, and Limited Liability Trade Company Y, based in Italy.

**FIELD OF ACTIVITY**

Design and logo creation

**SUBJECT MATTER**

Payment of fees

**CASE**

Prior to mediation, Design firm X had created a graphic image, logo and trademark for Company Y and submitted an estimate to Company Y to be paid in case it would accept the offer. From that moment on, every relationship had broken, as Y did not accept the offer.

Later on, X questioned the use of that logo by Y in several occasions, and sent written statements (also with the involvement of a lawyer) to challenge the fraudulent use of the mark, which went unanswered. The firm X, seven months after the first letter, activated the mediation procedure.

**PROCEDURE AND SETTLEMENT**

The mediation procedure was held in French. The Company Y agreed to participate in the mediation and during the first meeting the parties reached an agreement. The settlement foresaw that Company Y would pay an agreed amount to the Design firm, in return for the creation of the logo and the unconditional right to use and own the image.

**DURATION**

One meeting. The agreement was reached after 34 days from the filing of the mediation request.

**COSTS**

The value of the dispute was about 8,000 euros. The cost to be borne by each party for the mediation procedure was: 400 euro + VAT.
### CASE STUDY 10_ITALY: "A failure that becomes a success"

An example of cross-border mediation from the Chamber of Commerce of Turin, showing how a settlement can be reached after an apparently unsuccessful mediation, but still as a result of it. And without going before a judge.

<table>
<thead>
<tr>
<th>PARTIES</th>
<th>Company X, the client, and Company Y, the subcontractor</th>
</tr>
</thead>
<tbody>
<tr>
<td>FIELD OF ACTIVITY</td>
<td>Subcontracting agreement for the supply of mechanical components for the automotive industry</td>
</tr>
<tr>
<td>SUBJECT MATTER</td>
<td>Deterioration of contractual relationships</td>
</tr>
<tr>
<td>CASE</td>
<td>The subcontracting agreement between the parties lasted for years, for the benefit of both parties. Over time, X starts complaining about supply defects and reduces payments and orders.</td>
</tr>
<tr>
<td>PARTIES’ POSITIONS</td>
<td>Both parties are willing to continue trading: the client appreciates the high quality of previous supplies; the subcontractor wants to keep his client and repay the large investments made in the past to adapt and improve the production cycle.</td>
</tr>
<tr>
<td>PROCEDURE</td>
<td>During the mediation sessions, mediators limited the discussion to the defected supplies and highlighted the advantages of maintaining business relationships. Parties also considered the consequences of a court case, the problems of determining the jurisdiction, the cost to be incurred, also relating to travel and translations.</td>
</tr>
<tr>
<td>DURATION</td>
<td>27 days, one session (for mediation)</td>
</tr>
<tr>
<td>SETTLEMENT</td>
<td>During the mediation session the parties did not reach any agreement on the amount questioned, but they promised to examine more in depth the technical aspects of the dispute. Their lawyers studied together a possible agreement, on the basis of the information and positions emerged during the mediation. After some months the parties informed the mediation centre’s Secretariat that they had reached an agreement.</td>
</tr>
</tbody>
</table>

### CASE STUDY 11_ROMANIA: "All’s well that ends well!"

How to convince businesses that mediation is an effective and efficient way to solve disputes before resorting to court. A model case from the IASI Chamber of Commerce and Industry, Romania.

| PARTIES          | Company Alpha (beneficiary) and construction Company Beta, which signed two works contracts, one for the construction of the building (50,000 RON) and a second for interior finishing (80,000 RON) |

---
<table>
<thead>
<tr>
<th>FIELD OF ACTIVITY</th>
<th>Construction (office building)</th>
</tr>
</thead>
<tbody>
<tr>
<td>SUBJECT MATTER</td>
<td>Breach of commercial contract</td>
</tr>
<tr>
<td>VALUE OF THE DISPUTE</td>
<td>43,000 RON</td>
</tr>
<tr>
<td>CASE</td>
<td>Company Alpha claims that Company Beta did not execute properly the works agreed under the second contract (delays, poor quality, failures, undue charges of material and manual labour, etc.). Moreover, some works had already been executed and paid under the first contract, thus their inclusion in the price of the second contract is deemed incorrect. Alpha has already paid a total of 118,000 RON to Beta: 50,000 RON for the first contract (total amount) and 68,000 RON for the second (out of the 80,000 agreed). As a result, Alpha sues Beta arguing that since the total value of the works executed under both contracts is about 75,000 RON, it was wrongly and unjustifiably charged the amount of 43,000 RON. Alpha asks the defendant to pay damages equivalent to the amount already paid for the unexecuted works and to the works that required remediation. Beta rejects the application and denies, with arguments, any fault.</td>
</tr>
<tr>
<td>BEFORE THE COURT</td>
<td>The dispute lasts about a year before the court of first instance only. In addition to court fees, parties would have to call and pay external expertise to assess the quality of the works, the performance of Beta, the eventual loss due to delays, etc. Both parties risked losing the case and considerable amounts of money. At the initiative of one party, accepted by the other, the dispute is referred to mediation, with suspension of the trial court.</td>
</tr>
<tr>
<td>ROLE OF LAWYERS/MEDIATORS</td>
<td>In this mediation, an important role was played by the lawyers who assisted the parties and negotiated the conditions of the agreement. The mediator was neutral and impartial and facilitated the negotiation in a neutral site, preserving a productive framework and a constructive tone that allowed the parties to engage in dialogue.</td>
</tr>
<tr>
<td>NUMBER OF MEETINGS/DURATION</td>
<td>2 mediation sessions of 3 hours each.</td>
</tr>
<tr>
<td>SETTLEMENT</td>
<td>Parties shall extend the contract for a reasonable period, with Beta executing all missing works respecting high qualitative parameters. In order to compensate the loss of Alpha, for not using the offices at the time scheduled, Beta shall purchase, at its own expenses, the office furniture. The parties also agree that Company Beta shall become Alpha’s services provider for other works contracts. As a result, Alpha withdraws the lawsuit and does not ask Beta to pay the damages.</td>
</tr>
</tbody>
</table>
The mediation agreement is then submitted to the court, which notes the settlement, following the sentencing of expedient (procedural act which puts an end to the judgment, pursuant dealings between the parties). Together with the delivery of the judgment, at the request of the party concerned the court orders the reimbursement of court taxes. The parties have complied with the mediation agreement and as a result established new commercial relations.

**PROS**

1. mediation unlocked the conflict and allowed the continuation of business relationships;
2. parties solved the dispute in few days, after one year of litigation before the court;
3. both parties have recovered value of damages;
4. parties recovered court taxes and did not pay any external expert;
5. lawyers and expert mediators were on the parties’ side to help them negotiate.

**CASE STUDY 12_ CROATIA: “Usual disputes, easy solutions”**

An example from the Croatian Chamber of Commerce of how mediation can solve trade-related disputes.

<table>
<thead>
<tr>
<th>PARTIES</th>
<th>Two domestic Companies in the field of Trade.</th>
</tr>
</thead>
<tbody>
<tr>
<td>SUBJECT MATTER</td>
<td>Non-payment for merchandise due to poor quality of delivered merchandise and quality complaints</td>
</tr>
<tr>
<td>VALUE OF THE DISPUTE</td>
<td>85,000 EUR</td>
</tr>
<tr>
<td>MEDIATOR</td>
<td>1 Judge (Mediator)</td>
</tr>
<tr>
<td>NUMBER OF MEETINGS/ DURATION</td>
<td>1 meeting; settlement is signed during the first meeting (duration of meeting about 5 hours). From submission of the mediation proposal until the signing of settlement the procedure lasted 17 days</td>
</tr>
<tr>
<td>COSTS</td>
<td>Around 300,00 EUR.</td>
</tr>
</tbody>
</table>
GLOSSARY

The following terms and acronyms are referred to throughout the report.

**ADR:** Alternative Dispute Resolution is commonly defined as any process or procedure for resolving a dispute without involving the traditional court system. The consensual nature of either opting for dispute resolution or deciding the outcome of a dispute by the parties is a cornerstone element of ADR. ADR encompasses a large number of different methods and mechanisms for dispute resolution, including mediation and conciliation, normally excluding arbitration proper, which is closer to quasi-judicial procedures.

**B2B:** Business-to-Business refers to commercial relations, transactions and communications between firms.

**Cross-border disputes:** A cross-border dispute is one in which at least one of the parties is domiciled or habitually resident in a Member State other than that of any other party on the date on which a mediation process arises.

**Enforceability:** The enforcement of a judgment or agreement consists of securing compliance with it, if necessary by means of coercion as allowed by the law, including the intervention of the forces of law and order. According to EC Directive 52/2008, Member States shall ensure that it is possible for the parties to request that the content of a written agreement resulting from mediation be made enforceable. The mediation settlement may be made enforceable by a court or other competent authority in a judgment or decision, or in an authentic instrument in accordance with the law of the Member State where the request is made.

**Mediation:** "Mediation" means a structured process, however named or referred to, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a mediator. This process may be initiated by the parties ("voluntary mediation") or suggested or ordered by a court ("judicial referral") or prescribed by the law of a Member State ("compulsory mediation").

**Mediation Agreement:** It is an agreement between the parties and the mediator setting out the terms upon which the parties agree to mediate. It is signed before the mediation.

**Mediation Clause:** A clause included in contracts by which parties agree to attempt to settle any dispute arising out of that agreement by negotiation or mediation.

**Mediation Settlement (Agreement):** It is an agreement two feuding parties arrive at during the mediation process. The mediation process can be formal or informal. The settlement agreement, once signed, is usually binding (see under "enforceability").
**Mediator**: A neutral professional who facilitates negotiations between disputing parties. The mediator does not have power to impose a solution or decision – the parties retain ultimate control over the outcome – but sets the ground rules and may affect the order of the proceedings, the parties’ analyses, and the general dynamic of the settlement discussion. A mediator can be a private judge, facilitator, special master (or referee), neutral advisor or anyone selected by mutual agreement of the parties to the dispute, according to national laws or regulation.
# LIST OF ABBREVIATIONS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>ADR</td>
<td>Alternative Dispute Resolution</td>
</tr>
<tr>
<td>B2B</td>
<td>Business to Business</td>
</tr>
<tr>
<td>B2C</td>
<td>Business to Consumer</td>
</tr>
<tr>
<td>BECI</td>
<td>Brussels Enterprises, Commerce and Industry</td>
</tr>
<tr>
<td>CCCI</td>
<td>Cyprus Chamber of Commerce and Industry</td>
</tr>
<tr>
<td>CCE</td>
<td>Croatian Chamber of Economy</td>
</tr>
<tr>
<td>CMAP</td>
<td>Centre de Médiation et d’Arbitrage de Paris</td>
</tr>
<tr>
<td>EC</td>
<td>European Commission</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>HKS</td>
<td>Handelskammer Hamburg Service GmbH</td>
</tr>
<tr>
<td>LCCI</td>
<td>Latvian Chamber of Commerce and Industry</td>
</tr>
</tbody>
</table>
REFERENCES

ADR Center, *Quantifying the cost of not using mediation – a data analysis*, study commissioned by the European Parliament’s Committee on Legal and Parliamentary Affairs, 2011.


Brenner B. (under the leadership of), *Overview of judicial mediation in the world. Mediation, the universal language of conflict resolution*, L’Harmattan, 2010.


De Paolo G. and others, *“Rebooting” the mediation Directive: assessing the limited impact of its implementation and proposing measures to increase the number of mediations in the EU*, study commissioned by the European Parliament’s Committee on Legal and Parliamentary Affairs, January 2014.


Tilman V., *“Lessons learnt from the implementation of the EU Mediation Directive: the business perspective”*, April 2011, study commissioned by the European Parliament’s Committee on Legal Affairs.

ANNEX 1: WS4 QUESTIONNAIRE 2013

GO TO MEDIATION!

WS4 – Survey on the use of mediation Business-to-Business (B2B) and the experience gained in 2012.

Within WS4, Unioncamere aims at carrying out a preliminary reconnaissance of the disputes resolved by mediation, within the States engaged in this project.

For this purpose, a short questionnaire concerning the experience gained in mediation Business-to-Business or has been drawn up.

COMPLETION DATE ______________________
PARTNER _______________________________

**QUESTIONNAIRE**

**PART I - COLLECTION OF DATA**

**QUESTION 1**

What is the number/average or trend of B2B mediations carried out in your country in 2012? If no data are available please give regional/local data or data concerning your mediation center/s. *If possible and applicable, please give separate answers for domestic and cross-borders disputes.*

**QUESTION 2**

Is mediation normally used to settle disputes in a specific field/sector of activity?

*If available, please indicate the number cases and/or percentage of B2B mediation with regard to types of conflict listed below:*

- Handicraft  
- Property rights and ownership  
- Trade  
- Banking / Finance/ Insurance contracts  
- Construction  
- Service  
- Tourism  
- Working relationships  
- Civil liability  
- Other (please specify) ____________

**QUESTION 3**

Who normally refers a dispute to mediation centers/mediators in your country/region/mediation center?

*If available, please give the relevant percentage.*

<table>
<thead>
<tr>
<th>Category</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individuals</td>
<td>□ ____%</td>
</tr>
<tr>
<td>Companies/corporate</td>
<td>□ ____%</td>
</tr>
<tr>
<td>Judge</td>
<td>□ ____%</td>
</tr>
<tr>
<td>Law</td>
<td>□ ____%</td>
</tr>
</tbody>
</table>
If available, for companies please specify the size of concerned companies as follows:

<table>
<thead>
<tr>
<th>Company category</th>
<th>Employees</th>
<th>Turnover or</th>
<th>Balance sheet total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Micro</td>
<td>&lt; 10</td>
<td>≤ € 2 m</td>
<td>≤ € 2 m</td>
</tr>
<tr>
<td>Small</td>
<td>&lt; 50</td>
<td>≤ € 10 m</td>
<td>≤ € 10 m</td>
</tr>
<tr>
<td>Medium-sized</td>
<td>&lt; 250</td>
<td>≤ € 50 m</td>
<td>≤ € 43 m</td>
</tr>
<tr>
<td>Large</td>
<td>&gt; 250</td>
<td>≥ € 50 m</td>
<td>≥ € 43 m</td>
</tr>
</tbody>
</table>

**QUESTION 4**
How long does mediation last, on average, in your country/region/mediation center?

(Number of days) _______________________________

*If available,*

- Max 10 days □ _____%
- From 11 to 30 days □ _____%
- From 31 to 60 days □ _____%
- More than 60 days □ _____%

**QUESTION 5**
Are any fees, duties and/or costs charged for mediation?

yes □ no □

If so, please give the average amount (if possible):

________________________________________________________________________________________

Are they a fixed sum, hourly rate or on a pro-rata basis according to the value of the dispute (please explain)?

________________________________________________________________________________________

- Fixed sum □ _____
- Hourly rate □ _____
- Based on value □ _____

**QUESTION 6**
(If available) how many cases – handled by mediation in 2012 – have reached a mediation settlement? If no data are available please give the percentage/trend. *If possible and applicable, please give separate answers for domestic and cross-borders disputes.*

________________________________________________________________________________________
PART II - LEGAL / ADMINISTRATION SYSTEM

QUESTION 7
Does a law on mediation ordered by the Court exist in your Country?
yes □  no □

If so, how does it work?

_________________________________________________________________________________________________

If data are available, how many disputes on average (or trend), have been ordered by Courts?

_________________________________________________________________________________________________

QUESTION 8
In your country, is a mediation agreement enforceable?
yes □  no □

(please briefly explain) __________________________________________________________

QUESTION 9
Are there, in your country or region, any taxes, legal or other forms of incentives for mediation fees? If so, what kind?
GO TO MEDIATION!

WS4 – Year II: Survey on the use of Business-to-Business (B2B) mediation in 2013 and on existing monitoring systems.

Within WS4, Unioncamere aims at carrying out an update of 2012 survey on the experience and practice of B2B mediation among project Partners (Part I of the questionnaire, dealing with quantitative data on mediations carried out in 2013). Taking into account the difficulties in data collection reported by Partners last year, we have added to the survey a specific focus on statistics and monitoring systems on mediation, with a view of better understanding if and how your institution or other bodies at regional/national level in your country deal with this issue (Part II of the questionnaire).

COMPLETION DATE ______________________
PARTNER ______________________________

QUESTIONNAIRE
PART I - DATA ON B2B MEDIATION MARKET IN 2013

QUESTION 1: NUMBER OF MEDIATIONS
How many B2B mediations have occurred in 2013 at your centre/in your country? If available, please specify also the number/percentage of cross-border disputes. Please specify in the column “Procedure” if you refer to the number of mediation applications “deposited” in 2013 (preferable) or to the no. of procedures that have been managed or concluded in 2013.

<table>
<thead>
<tr>
<th>YOUR MEDIATION CENTRE/S N°.</th>
<th>COUNTRY (or region, please specify) N°.</th>
<th>Procedure (specify to which type of mediation your figures refer)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Domestic disputes</td>
<td></td>
<td>□ deposited □ initiated /managed □ concluded</td>
</tr>
<tr>
<td>Cross-border disputes</td>
<td></td>
<td>□ deposited □ initiated /managed □ concluded</td>
</tr>
</tbody>
</table>

QUESTION 2: SUBJECT OF THE DISPUTE
2.a Referring to the number of B2B mediation stated above (Q.1), please indicate their distribution with regard to the types of conflict listed below (in percentage):

<table>
<thead>
<tr>
<th>YOUR MEDIATION CENTRE/S %</th>
<th>COUNTRY (or region) %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Banking / Finance/ Insurance contracts</td>
<td></td>
</tr>
<tr>
<td>Civil liability (for medical /healthcare)</td>
<td></td>
</tr>
</tbody>
</table>
malpractice, damages caused by road circulation, etc.)  
Construction  
Handicraft  
ICT  
Industry  
Property rights and ownership  
Service  
Trade  
Working relationships  
Other (please specify)
**QUESTION 4: PARTIES**
Referring to the number of B2B mediation stated above (Q.1), please specify who referred B2B disputes to your mediation center/s and in your country/region in 2013?

<table>
<thead>
<tr>
<th></th>
<th>YOUR MEDIATION CENTRE/S %</th>
<th>COUNTRY (or region) %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individuals (professionals, etc)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Companies/ businesses</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**QUESTION 5: TIMING**
How long does a mediation procedure last, on average, in your mediation center/s and in your country/region?
Please specify the average number of days from the day of the deposit of the mediation request (application/introduction of the case) to the day of its closure (settlement or negative conclusion); do not refer to the duration in hours of mediation sessions or to their number.

<table>
<thead>
<tr>
<th></th>
<th>YOUR MEDIATION CENTRE/S</th>
<th>COUNTRY (or region) Average No. of days</th>
</tr>
</thead>
<tbody>
<tr>
<td>Domestic mediations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cross-border mediations</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**QUESTION 6: COSTS**
Please indicate the average amount charged for a B2B mediation procedure in 2013 by your mediation center/s and in your country/region.
Mediation costs usually include mediator fees and administration costs, to be split by the parties.

<table>
<thead>
<tr>
<th></th>
<th>YOUR MEDIATION CENTRE/S Euros (or other currency)</th>
<th>COUNTRY (or region) Euros (or other currency)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Domestic mediations (average amount)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cross-border mediations (average amount)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**QUESTION 7: SUCCESS RATE**
Referring to the number of B2B mediation procedures completed in 2013, please indicate the success rate (the percentage of mediation proceedings that have reached a successful mediation settlement in 2013, out of total managed).

<table>
<thead>
<tr>
<th></th>
<th>YOUR MEDIATION CENTRE/S %</th>
<th>COUNTRY (or region) %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Domestic mediations (success rate)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cross-border mediations (success rate)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
PART II - MONITORING SYSTEM / STATISTICS
A – YOUR MEDIATION CENTRE/S

QUESTION 8: DATA COLLECTION
Has your mediation centre/s put in place any sort of data collection or monitoring mechanism on mediation procedures?

<table>
<thead>
<tr>
<th></th>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>

8.a If the answer is YES, please briefly describe your data collection / monitoring system, why it was put in place and if it is useful. Please specify if others (mediation centres, public bodies, judges, etc) in your country collect data or monitor mediation:

________________________________________________________________________________________________
________________________________________________________________________________________________

8.b If the answer is NO, please briefly describe which problem you encountered, if you think it would be useful and how you monitor the use and the impact of mediation. Please specify if others (mediation centres, public bodies, judges, etc) in your country collect data or monitor mediation:

________________________________________________________________________________________________
________________________________________________________________________________________________

QUESTION 9: TOOLS
Which tool does your mediation centre/s use to monitor mediation? If your centre does not monitor mediation, please indicate which of the following you would consider useful, if any.

<table>
<thead>
<tr>
<th>YOUR MEDIATION CENTRE/S USE: (Put a cross – more than one answer possible)</th>
<th>YOU DO NOT USE BUT WOULD BE USEFUL: (Put a cross – more than one answer possible)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Questionnaire (survey) among mediators / mediation centres</td>
<td></td>
</tr>
<tr>
<td>Database</td>
<td></td>
</tr>
<tr>
<td>Qualitative Reports / Assessments from the parties</td>
<td></td>
</tr>
<tr>
<td>None</td>
<td></td>
</tr>
<tr>
<td>Other (please specify)</td>
<td></td>
</tr>
</tbody>
</table>
**QUESTION 10: TIMING**
How often does your mediation centre/s collect data / monitor mediation procedures? If your centre does not monitor mediation, please indicate which of the following you would consider useful, if any.

<table>
<thead>
<tr>
<th>YOUR MEDIATION CENTRE/S MONITORS: (Put a cross)</th>
<th>YOU DO NOT MONITOR BUT WOULD BE USEFUL: (Put a cross)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regularly, as mediations occur</td>
<td></td>
</tr>
<tr>
<td>Monthly</td>
<td></td>
</tr>
<tr>
<td>Quarterly</td>
<td></td>
</tr>
<tr>
<td>Annually</td>
<td></td>
</tr>
<tr>
<td>Occasionally / ad hoc basis</td>
<td></td>
</tr>
<tr>
<td>Never</td>
<td></td>
</tr>
<tr>
<td>Other (please specify)</td>
<td></td>
</tr>
</tbody>
</table>

**QUESTION 11: INFORMATION**
Which kind of information, among those listed below, is monitored / registered by your mediation centre/s? If your centre does not monitor mediation, please indicate which of the following you would consider useful, if any.

<table>
<thead>
<tr>
<th>Features of mediation:</th>
<th>YOUR MEDIATION CENTRE/S MONITORS: (Put a cross – more than one answer possible)</th>
<th>YOU DO NOT MONITOR BUT WOULD BE USEFUL: (Put a cross – more than one answer possible)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Location (City, region, district, etc where the mediation request is deposited)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mediator</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Type of mediation (voluntary, from mediation clause, mandatory, court-annexed)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cross-border dispute</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Parties to the dispute (i.e. individual / company, etc)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Field / subject of the dispute (property, ICT, service, insurance, industry etc)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Type of litigation (breach of contract, undue payments...)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Features of mediation:

<table>
<thead>
<tr>
<th>YOUR MEDIATION CENTRE/S MONITORS: (Put a cross – more than one answer possible)</th>
<th>YOU DO NOT MONITOR BUT WOULD BE USEFUL: (Put a cross – more than one answer possible)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Value of the dispute</td>
<td></td>
</tr>
<tr>
<td>Costs for parties</td>
<td></td>
</tr>
<tr>
<td>Length of the procedure (number of days from deposit to conclusion)</td>
<td></td>
</tr>
<tr>
<td>First Information meetings (if held)</td>
<td></td>
</tr>
<tr>
<td>Number / duration of mediation sessions</td>
<td></td>
</tr>
<tr>
<td>Outcome (failure, success, etc.)</td>
<td></td>
</tr>
<tr>
<td>Other (please specify)</td>
<td></td>
</tr>
</tbody>
</table>

### QUESTION 12: USEFULNESS

**Please specify for what purposes data collection on mediation is - or could be - useful for your mediation centre/s.**

<table>
<thead>
<tr>
<th>DATA COLLECTION IS / COULD BE USEFUL FOR: (Put a cross - more than one answer possible)</th>
</tr>
</thead>
<tbody>
<tr>
<td>To assess the quality of mediators / mediation centres</td>
</tr>
<tr>
<td>To monitor the impact of legislative reforms (i.e. the introduction of mandatory mediation)</td>
</tr>
<tr>
<td>To support policy making / legislative process (i.e. to suggest reforms, introduce changes...)</td>
</tr>
<tr>
<td>To assess / improve your daily work</td>
</tr>
<tr>
<td>To target communication and awareness raising campaigns</td>
</tr>
<tr>
<td>To assess the effectiveness of mediation vis-à-vis court proceedings</td>
</tr>
<tr>
<td>To conduct studies and researches</td>
</tr>
<tr>
<td>To monitor strengths and weaknesses of mediation procedures</td>
</tr>
<tr>
<td>Other (please specify)</td>
</tr>
<tr>
<td>It is not useful</td>
</tr>
</tbody>
</table>
QUESTION 13: CROSS-BORDER DISPUTES
Does your mediation centre/s monitor / collects data on cross-border mediation procedures?

YES ☐
NO ☐

13.a If the answer is YES, please briefly describe how you do it and which are the problems. Please specify if others (mediation centres, public bodies, judges, etc) in your country collect data / monitor cross-border mediations too:
________________________________________________________________________________________________
________________________________________________________________________________________________

13.b If the answer is NO, please briefly describe which problems you encounter, how to solve them and if you think it would be useful. Please specify if others (mediation centres, public bodies, judges, etc) in your country collect data or monitor cross-border mediation:
________________________________________________________________________________________________
________________________________________________________________________________________________

B – AT COUNTRY / REGIONAL LEVEL

QUESTION 14: REGULATION
There exists in your country/region a legal obligation for mediators / mediation centres to collect data on mediation and/or an official regulatory system to monitor the mediation market at national / regional level?

YES ☐
NO ☐

14.a If the answer is YES, please briefly describe how this system works, why it was put in place, if and why, in your view, it is useful:
________________________________________________________________________________________________
________________________________________________________________________________________________

14.b If the answer is NO, please indicate which in your view are the obstacles/reasons for it:

<table>
<thead>
<tr>
<th>OBSTACLES / REASONS FOR NOT HAVING AN OFFICIAL MONITORING SYSTEM: (Put a cross – max 3 answers possible)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Confidentiality of mediation</td>
</tr>
<tr>
<td>Voluntariness of mediation (mediation is only voluntary)</td>
</tr>
<tr>
<td>Mediation law too recent</td>
</tr>
<tr>
<td>Mediation not very used in the</td>
</tr>
</tbody>
</table>
OBSTACLES / REASONS FOR NOT HAVING AN OFFICIAL MONITORING SYSTEM:
(Put a cross – max 3 answers possible)

<table>
<thead>
<tr>
<th>country/region</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scarce interest in mediation from institutions</td>
</tr>
<tr>
<td>Difficulties in statistics/data collection on judicial matters (in general)</td>
</tr>
<tr>
<td>Monitoring system in progress, underway</td>
</tr>
<tr>
<td>There is no public, national body dealing with mediation</td>
</tr>
<tr>
<td>Costs/ lack of resources</td>
</tr>
<tr>
<td>Mediators are hostile / reluctant</td>
</tr>
<tr>
<td>Other (please specify)</td>
</tr>
</tbody>
</table>

Please, briefly explain how in your view it could be possible to solve the problems/obstacles listed above and if such an obligation or regulatory system would be useful:

______________________________________________________________________________________________
______________________________________________________________________________________________

QUESTION 15: RESPONSIBILITY
Regardless of a legal obligation, in your country/region is there any (public or private) institution that monitors the mediation market?

YES □

NO □

15.a: If the answer is YES, please specify which institution/s:

<table>
<thead>
<tr>
<th>Ministry of Justice</th>
</tr>
</thead>
<tbody>
<tr>
<td>National Statistics Office</td>
</tr>
<tr>
<td>Other national / regional public institution (please specify)</td>
</tr>
<tr>
<td>Courts or notary (i.e. when agreements are made enforceable)</td>
</tr>
<tr>
<td>Public mediation centre/s (please specify)</td>
</tr>
<tr>
<td>Private mediation centers (i.e., large private bodies, or authorized centres / please specify)</td>
</tr>
<tr>
<td>Research centre/s, Academia</td>
</tr>
<tr>
<td>Chambers of Commerce</td>
</tr>
<tr>
<td>OTHER (Please specify)</td>
</tr>
</tbody>
</table>

(Put a cross – more than one answer possible)
15.b: If the answer is YES, please specify if and how such institution/s disseminates data on mediation in your country and makes information available to the public and policy/decision makers:

<table>
<thead>
<tr>
<th>Periodic / regular reports</th>
<th>(Put a cross – more than one answer possible)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Occasional reports / papers / researches, informal studies</td>
<td></td>
</tr>
<tr>
<td>Online / open database</td>
<td></td>
</tr>
<tr>
<td>Private / undisclosed database</td>
<td></td>
</tr>
<tr>
<td>Official Registry</td>
<td></td>
</tr>
<tr>
<td>Media (press releases, interviews, statements…)</td>
<td></td>
</tr>
<tr>
<td>Communications to Government/Parliament</td>
<td></td>
</tr>
<tr>
<td>OTHER (Please specify)</td>
<td></td>
</tr>
</tbody>
</table>

**QUESTION 16: REGISTER OF MEDIATION BODIES**

Does in your country (or region) exist an official Register / directory for mediators (or mediation centres) or other forms of authorisation / certification of mediators?

- [ ] YES
- [ ] NO

16.a If the answer is YES, please indicate how many mediators / mediation centres were registered/certified at the end of 2013:

No. of registered mediators/mediation centres in 2013:  
_________________________________________________________________________________________________________