

COMPARATIVE STUDY QUESTIONNAIRE:

**ADVANTAGES OF MEDIATION OR OTHER ADR PROCEDURES
OVER COURT BASED DISPUTE RESOLUTION PROCEDURES**

Please complete name of jurisdiction for which you are completing this questionnaire

.....Ukraine.....

1. Does your jurisdiction use mediation (or other forms of Alternative Dispute resolution) to resolve disputes?

Answer: Mediation, adjudication: There are no internal legal regulations, no common use. There is draft of law on Mediation of 2008 (not adopted). Mediation and adjudication are only emerging in practice but are still rare. Among all ADR Ukrainian law regulates only arbitration (there two laws: on International commercial arbitration of 1994 and on Intermediate courts (internal arbitration courts) of 2004).

2. Is mediation in common use?

Answer: No. Only single cases.

3. Is the mediator provided by the court or is the mediator found and paid for privately by the parties?

Answer: The mediator is found and paid for privately by the parties.

4. What is the typical cost of a mediation in your jurisdiction? Please state the mediator's fees and the lawyer's fees for each party.

Answer: No typical costs, they vary very much. It could be an hourly rate from \$50 to \$200, or fixed amount for a process including preparation. So mediator's fee would be between \$600 and \$2400. The parties share the mediator's fees. The lawyers for each party normally charge according to the time spent. Hourly rate of a lawyer is \$100 to \$300. Including the cost of preparation, costs for a 1 day mediation would be approximately \$1200 to \$3600.

5. How long does the mediation process usually take?

Answer: 2 to 4 weeks from the day of mediator's appointed.

6. How does this compare with the cost and time taken for a traditional court process?

Answer: Definitely mediation is much faster than court proceedings. Civil and commercial cases court hearings in the first instance usually take between 4 months and 12 months. Besides that appellations and cassations make the process lasts for 1-3 years.

The costs for a traditional court process include the state dues (generally 1% of the amount in dispute for the 1st instance and half of that for the appellation and cassation) and the lawyers' fees (\$100 to \$300 per hour). So the lawyers' costs in small cases start from \$1000 for each instance. In complex cases the lawyers' costs can reach \$20000-30000 and higher amounts.

7. Can the parties to a mediation agree any settlement terms they wish, or are there restrictions?

Answer: As there are no special legal rules concerning the mediation, general norms of civil and commercial law are applied to the settlement. So any agreements not contrary to the Ukrainian law can be signed as a result of mediation.

8. Are mediation agreements enforceable once they have been signed by the parties?

Answer: As current Ukrainian legislation considers mediation agreements as usual contracts between parties, there is only one way to enforce them – to go to the court. And in this way the procedure of court hearings do not differ from any other court trials.

9. Is mediation encouraged by the courts in your jurisdiction?

Answer: No. The judge only asks if the parties want to resolve dispute peacefully.

10. Are there sanctions which the courts will apply if the parties refuse to consider mediation?

Answer: No.

11. Do you recommend mediation as an alternative to court based litigation in your jurisdiction?

Answer: As a lawyer I would recommend it if there would be easier procedure of settlement agreement enforcement in Ukraine. Now for unfair parties mediation would be one of the ways to delay the court judgement enforcement.

12. What do you think are the main advantages of mediation compared with traditional court procedures?

Answer: I agree with Francis: Speed, saving of costs, saving of management time, preservation of business relationship. Just want to add that the parties have very active position in dispute resolution through mediation and they elaborate the final settlement themselves on the contrary to the court proceedings.

13. Are there any disadvantages of mediation?

Answer: Risks of wasting time and costs if one of the parties is intransigent.

14. Is there any other information which group members should be aware of, concerning mediation in your jurisdiction?

Answer: Mediation is only emerging in Ukraine as it was, for example, in Great Britain 20 years ago. The governmental bodies tried to introduce mediation in criminal cases in 2006, but not very successfully.

In the middle of 2008 the Ukrainian Mediation Centre (UMC) was found with the support of the International Financial Corporation. Now they are very active in mediation promoting in Ukraine, providing services of mediators' training (there were two programmes introduced by CEDR in Ukraine) and mediation. But the mediation processes are still uncommon, not many people know about mediation and its advantages, there is no specific legislation on mediation in Ukraine.

Just for general information: previous meeting in Athens I was very interested in presentation made by Catherine Cotsaki and after returning to Ukraine began to look for the information on mediation here. I was lucky and found out that Ukrainian Mediation Centre jointly with CEDR were organising two levels training on basic skills of mediator. I took part in the first level training then I was invited to take part in the second level which included assessment for CEDR accreditation. On the 30th of April I received a letter from CEDR informing that I received CEDR accreditation as a mediator. Unfortunately, I have not got any practice yet to share it with you, but I think in a couple of years the situation will change. Anyway, the training was very interesting and skills obtained are very helpful to me. So many thanks to Catherine for her presentation.

Please state your name and the date on which you completed the questionnaire.

NameAnna Olifirenko.....Date 07.5.09.....

Many thanks for your assistance.

MEDIATION

Danish law

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Mediation is a facilitative process in which disputing parties engage the assistance of an impartial third party, the mediator, who helps them to try to arrive at an agreed resolution of their dispute. The mediator has no authority to make any decisions that are binding on them, but uses certain procedures, techniques and skills to help them to negotiate an agreed resolution of their dispute without adjudication.

In the Danish Code of Civil Procedure, chapter 27, you will find rules after which the judge has the right to appoint a mediator – if the parties ask for it.

In the Parent Liability Law (§ 32) you will find rules where the Public Administration has an obligation to offer mediation in case of disputes about custody, the child's place of residence or contact visits.

Comparison between reconciliation and court mediation

	Reconciliation	Court mediation
The role of the neutral third part	Decision-maker	Responsibility to the process
The role of the parts	Illustrate the case and decide on the settlement	Take an active part in the process and the solution
Representation	Lawyers represent the parties and are main players	The parties are main players; lawyers are assessors
Formulation of the problems	Juridical	Who the parties would like to involve
The result	Often "winder/loser"	Often consideration for both parties
The laws influence on the result	Finally	In the extent the parties involve it – or own standards
Openness	Fully	Private

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Preliminary Note

For the purposes of the questionnaire, the term “mediation” will be used. In England and Wales mediation is generally a voluntary and private process, where a trained mediator is chosen and paid for by the parties. The mediator obtains information from the parties about what the dispute concerns, in advance of a mediation meeting. The mediator then meets with the parties and encourages them to arrive at their own settlement terms for the dispute. If and when the parties reach their own agreement, the mediator will encourage them to write out the terms of the agreement and to sign it. At that point, it becomes binding. Typically, a mediation meeting takes one day, although in some cases they take longer.

If your jurisdiction does not recognise mediation, but it does have some other ADR system such as conciliation, please explain the main features of your system, perhaps by comparing it with the English model of mediation.

You are asked to answer the following questions about your jurisdiction, to facilitate the International Litigation Group’s study of the subject at our meeting in Dusseldorf in May 2009.

Please complete name of jurisdiction for which you are completing this questionnaire

.....England & Wales.....

1. Does your jurisdiction use mediation (or other forms of Alternative Dispute resolution) to resolve disputes?

Answer:

2. Is mediation in common use?

Answer: Yes. It is commonly used in all kinds of disputes.

3. Is the mediator provided by the court or is the mediator found and paid for privately by the parties?

Answer: There are some limited court-based schemes, but not all courts provide these. Most mediations involve the parties finding and paying for the mediator privately.

4. What is the typical cost of a mediation in your jurisdiction? Please state the mediator's fees and the lawyer's fees for each party.

Answer: Mediators generally charge a daily rate. This may vary according to the amount in dispute. Charges of between £1500 and £3000 for a one day mediation are common. The parties normally share the mediator's fees. The lawyers for each party normally charge according to the time spent. Including the cost of preparation, typical costs for a 1 day mediation would often be £2500 to £3000.

5. How long does the mediation process usually take?

Answer: The mediator will usually try to fix a date for the mediation appointment, within 2 weeks of his appointment. That date may be 4 to 6 weeks ahead, depending on how difficult it is to agree a date when both parties and their lawyers are available. So the whole process usually takes around 6 to 8 weeks, but it can be much faster if both sides can agree an early date.

6. How does this compare with the cost and time taken for a traditional court process?

Answer: It is much faster than almost all types of court proceedings. Civil cases in the courts normally take between 9 months and 18 months to reach trial; large or complex cases can take much longer.

Mediation can incur significant costs: each party may have to pay up to £3000 for his own lawyer, and £1500 for the mediator, but these costs are much less than many court actions. Small court actions can easily incur costs of £5000 upwards. Medium cases rarely cost less than around £25,000 if they reach trial. Large or complex cases, which can take one week, two weeks or more of the court's time for the trial, can cost £100,000, "

Another issue often mentioned by clients is their management time. A mediation usually takes up much less management time than a court action which may last for 18 months.

7. Can the parties to a mediation agree any settlement terms they wish, or are there restrictions?

Answer: They can agree any terms they wish, as long as these are not contrary to the law. The terms do not have to be limited to the issues which are already in dispute between the parties, or the issues mentioned in existing court proceedings between them.

8. Are mediation agreements enforceable once they have been signed by the parties?

Answer: Yes. Once an agreement has been reached, it is binding. If one party needs to use the court to enforce the agreement, then the court will normally award judgment quickly, using an accelerated process called summary judgment. The courts encourage the use of

mediation and other forms of ADR, so they are very ready to give summary judgment against a party who refuses to honour a mediated agreement.

9. Is mediation encouraged by the courts in your jurisdiction?

Answer: Yes. The parties have a duty to consider whether mediation or another type of ADR would be a better method of resolving their dispute than court proceedings. Proceedings should be seen as the last resort. Judges often ask the parties whether they have considered mediation, and the courts have the power to stay cases, that is to freeze the proceedings for a period of time, to enable the parties to attempt a settlement via mediation. There have been cases where one party has unreasonably refused to mediate, has issued successful court proceedings, but has then been ordered to pay the other party's costs, because the proceedings could have been avoided if mediation had been used.

The court cannot actually compel the parties to mediate. Mediation remains a voluntary process.

10. Are there sanctions which the courts will apply if the parties refuse to consider mediation?

Answer: Yes. The court can apply costs sanctions, as mentioned under Q. 9. The court can always take account of each party's conduct, in deciding whether to award costs, and if so how much these should be. It is rare for a successful party to be ordered to pay his opponent's costs. However, it is quite possible for him to be deprived of any award of costs against the unsuccessful party, either in whole or in part, if the court considers he has refused unreasonably to mediate.

11. Do you recommend mediation as an alternative to court based litigation in your jurisdiction?

Answer: Yes. In general I would recommend it. Most forward-thinking lawyers share the same view in England & Wales.

12. What do you think are the main advantages of mediation compared with traditional court procedures?

Answer: Speed, saving of costs, saving of management time. A successful mediation can also preserve the business relationship between two parties who have been in dispute. There is much more chance at a mediation for each party to come to understand the other party's point of view. There is less chance of the relationship being preserved after long and costly court proceedings.

13. Are there any disadvantages of mediation?

Answer: Mediation can incur costs which are wasted, if one party is very intransigent, and simply attends the mediation because he has been advised the court will expect him to do this.

14. Is there any other information which group members should be aware of, concerning mediation in your jurisdiction?

Answer: Mediation is quite a well-developed industry in the English legal system. There are a number of very well-established mediation providers, such as CEDR (the Centre for Effective Dispute Resolution). Many lawyers, architects, surveyors and engineers are trained mediators. Mediators are also found outside of those professions. It is generally considered that the skills a mediator needs are different from those of a lawyer, and it is certainly not essential to choose a mediator who is a lawyer for a legal dispute, or an architect or surveyor for a construction dispute, for example.

Please state your name and the date on which you completed the questionnaire.

NameFrancis Wallace.....Date 25.4.09.....

Many thanks for your assistance.

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COMPARATIVE STUDY QUESTIONNAIRE:

**ADVANTAGES OF MEDIATION OR OTHER ADR PROCEDURES
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**THIS QUESTIONNAIRE IS COMPLETED FOR GREECE
BY MAITRE CATHERINE J. COTSAKI
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1. Does your Jurisdiction use Mediation (or other forms of Alternative Dispute Resolution) to resolve disputes?

Answer: 1.1. Greek Legislation contains dispositions providing for mediation in specific cases, which are mentioned hereinbelow.

Most importantly, there is now a Law, which is expected to be voted very shortly, to comply with Directive 2008/52/EU of the European Parliament and the Council, containing express dispositions regarding the submission of Private Law disputes to mediation. We shall refer in a more detailed way to the Law in question in the frame of the answers given to other points of this Questionnaire.

1.2. At present, the standing dispositions of Greek Legislation about mediation are the following :

a. articles 209 – 214 of the Greek Code of Civil Procedure, by application of which the Judge of the District Court has competency to conduct mediation following a relevant application of the concerned parties, not only in case being of its *ratione materiae* competency, but also in cases which are of the *ratione materiae* competency of higher Courts (Court of First Instance composed of one Judge, Multimember Court of First Instance etc..). To date, these articles have almost never been applied.

b. Law 2251/1994 re : “Consumer’s Protection” providing Committees to which Consumers or the Regional Unions of Consumers may apply seeking an out - of - Court solution of disputes between suppliers and consumers or Unions of Consumers.

c. articles 99 – 106 of the new Greek Bankruptcy Code providing that any trader (either physical person or legal entity) who is in a position to prove that he is in a bad financial situation or that he suspects that he will be in a bad financial situation, may - under

the mandatory condition that he has not ceased his payments - ask the Court, which would have competency to declare the applicant into bankruptcy should the case occur, to open the procedure of mediation, which is actually opened by the Court if it considers the application grounded, by appointing a mediator among the persons included in the relevant list of the Court. The mediation process cannot last for more than two (2) months, unless the mediator asks the Court to extend it. The extension cannot exceed one (1) month. When the above period(s) elapse(s), the mediation process ends automatically.

The task of the mediator is to achieve that an agreement is reached between the debtor and his creditors, who must represent at least the majority of the claims existing against the debtor, as same accrue out of his Commercial Books.

In case an agreement is reached, it is submitted to the above Court for validation purposes and closing of the mediation process. The agreement must be submitted to the Court within ten (10) days as of the day on which it is signed.

The Court does not ratify the agreement in the following cases :

- i. if the debtor had stopped his payments when he signed the agreement.
- ii. if the terms and conditions of the agreement do not safeguard the duration (continuation) of the business of the debtor.
- iii. if the interest of the creditors, who have not signed the agreement, are harmed and
- iv. if the duration of the validity of the agreement has been fixed to more than two (2) years.

During the hearing of the application seeking the validation of the agreement reached following the mediation process as above, the mediator, the debtor, the creditors having signed the agreement and a representative of the personnel of the debtor are heard by the Court. Any other person having a legal interest in the case may intervene in the trial.

It is interesting to note that the hearing of the above persons by the Court in this specific case is an exception to a fundamental rule governing mediation to protect its confidential character, according to which any person having participated to the mediation process cannot be heard as a witness and, if the Court decides to hear one or more of the parties in the dispute, same have not the obligation to disclose what happened during the mediation process.

If ratified by the Court, the agreement binds only the debtor and his creditors, who have signed it.

The judgment of the Court, by virtue of which the agreement reached during the mediation process is ratified, constitutes an enforceable title as far as the obligations undertaken by virtue of it are concerned.

d. Law 2854/2000 having introduced in Greek Legislation the dispositions of Directive 92/13/EEC regarding the judicial protection offered during the stage before the conclusion of a contract with an Organism functioning in the sectors of water, energy, transportation and telecommunications.

By application of article 5 of the above Law, the right is granted to any person proving

that he has an interest or that he had an interest in entering into a contract in the sector of water, energy, transportation or telecommunications and who considers, not only that he has suffered, but also that there is risk for him to suffer damages due to infringement of the European Union Legislation or of the National Laws regarding its implementation, during the procedure pertaining to the conclusion of a specific contract related to the above sectors, to claim for submission of the dispute to a compromise procedure as it is called by the above Law, which in fact is a mediation process.

It is interesting to note that both Directive 92/13/EEC and L. 2754/2000 provide nothing regarding the enforcement of any agreement related to the settlement of a dispute reached following the mediation process set forth by them.

e. Law 1876/1990 re : “Free Collective Negotiations and other dispositions”, providing among others - labour disputes resolution through mediation, which can be requested by the parties in case the negotiations for conclusion of a Collective Labour Agreement fail. The mediation is conducted by a mediator selected by the parties from a special list of mediators. In case the parties do not agree, the mediator is appointed by the parties.

The above concern collective labour disputes. For individual labour disputes, there is a Body of Labour Inspectors, who intervene between employers and employees in order to have their dispute(s) solved by means of an out – of – Court settlement. Such intervention has proven to be very successful so far.

1.2. Besides mediation, Greek Legislation provides in various cases a mandatory attempt for conciliation of the litigants before the case is heard by the Court.

More particularly, by application of article 208 of the Greek Code of Civil Procedure, the Judge of the District Court has the obligation to make an attempt of conciliation of the litigants before he starts to hear a case submitted to it. Yet, the omission of said obligation does not attract the nullity of the procedure. Therefore, it is almost never applied.

By application of article 233 para. 2 of the above Code, any Court, of any degree and jurisdiction and at any stage of the trial, may - at its discretion - try to conciliate the parties. The Courts use said discretionary right very rarely.

By application of article 667 of the same Code as above, the Court which tries labour disputes has the obligation to make an attempt conciliation of the parties during the hearing of the case. Yet, the non observation of said obligation having not as a result any nullity, voidness or other sanction, it is not a real obligation but a mere recommendation done by the Law to the Court.

The same apply regarding articles 681A, 681B, 681D of the Greek Code of Civil Procedure concerning, respectively, the disputes having as object damages caused by cars etc., disputes regarding alimony and custody of children and disputes regarding indemnification for offenses done through publications in the press or radio / television programs.

On the contrary, as far as disputes provided for by article 681 C para. 2 (b) of the above Code are concerned, regarding parental prestations and communication of the parents with their underaged child or children, in case the Court does not fulfill its obligation to try to solve the dispute by conciliation before hearing the case (always to the best interest of the child) the hearing is void.

Last but not least, before some five (5) years ago, a new article under number 214A was introduced in the Greek Code of Civil Procedure setting forth a mandatory attempt for conciliation before the hearing of a dispute submitted to the Multimember Court of First Instance, in case the dispute is governed by Private Law and qualifies according to the Law for settlement by means of a compromise.

A law - suit having as object such a dispute cannot be heard without prior attempt for out - of - Court settlement.

At the relevant meeting, the litigants, together with their lawyers or represented by their lawyers and also assisted, if they wish so, by a third party selected by common agreement, review the dispute in whole, as well as the counter law - suit of the defendant - if any - without being bound by the dispositions of the Law governing the substance of the dispute. They use any appropriate means in order to ascertain the crucial facts and the points on which they agree and those on which they disagree, as well as the consequences which they accept or which they contest, in order to reach a mutually acceptable solution of the entire dispute or part thereof. If the attempt fails in whole or in part and if afterwards the dispute is heard by the Court, the third person, who has possibly participated even to some of the meetings, cannot be heard as a witness, nor can he act as an expert or as a technical counsel or can he participate to the hearing in any capacity whatsoever.

It accrues out of what is exposed above that, if a third party selected by common agreement of the parties assists them in the process of the out - of - Court attempt for conciliation under discussion, same looks very much like a process of mediation.

In case the litigants reach a total or a partial solution of the dispute, Minutes are drawn up, in which the contents of the agreement are recorded.

Any litigant may ask the President of the Multimember Court of First Instance before which the law – suit is pending to ratify the Minutes provided he produces the original thereof. The President ratifies the Minutes after he ascertains that: (a) the dispute ranks for out - of - Court settlement, (b) the Minutes have been lawfully signed and (c) the nature of the right, which was acknowledged and the amount - if any - of the consideration due accrue clearly out of said Minutes.

If the law - suit regarding the dispute, which was settled as above, contained a demand that the defendant be condemned to pay an amount or to do or not to do something, the Minutes constitute an enforceable title as of their ratification and the President sets on them the enforcement formula. In case the law – suit had only a recognition character, the Minutes merely evidence the right which was acknowledged.

In any case, the ratification of the Minutes has as a result that the trial is over. If the agreement ratified as above covers only part of the dispute, the cancellation of the trial concerns only the part in question.

In case of non agreement, Minutes regarding the failure of the attempt of out - of - Court settlement of the dispute are drawn up and signed, which may also include the reasons of the failure. In case no common Minutes are signed, the lawyer of the claimant or of any other litigant expediting the procedure draws up a statement, in which the reasons of the failure may be exposed. The Minutes regarding the failure or the relevant statement are filed at the hearing together with the briefs of the litigants.

Any false statement is punished according to the relevant dispositions of the Penal

Code.

The law – suit can be heard only: (a) if it accrues out of the common Minutes or of the above mentioned statement that the attempt of out - of - Court settlement of the dispute has failed in whole or in part and (b) if one of the parties has refused or did not attend the attempt.

The voidness of the debates due to omission of the attempt of out – of – Court settlement of the dispute may be raised and can also be taken into consideration ex officio by the Court only during the hearing of the case at the first degree.

A law – suit seeking the recognition of the nullity or seeking the cancellation of the agreement contained in the Minutes provided for hereinabove can be filed with the Court of Appeals in the area of which the Minutes were drawn up, within thirty days as of the notification of the act of the President ratifying them. In case the agreement is cancelled, the litispence is considered not to have ever been suppressed. In case of partial cancellation, the litispence arises partially anew. A new attempt of out - of - Court settlement of the dispute is not required.

The attempt of out - of - Court settlement of the dispute (attempt for conciliation) provided for by the above mentioned article 241A of the Greek Code of Civil Procedure unfortunately ends to positive results in rather few cases. This is most probably due to the fact that the attempt for conciliation is usually not done by a third person but the relevant process is conducted by the litigants themselves through their attorneys - at - law, who - at present at least - are not very keen to close disputes by conciliation, because they believe - erroneously to our opinion – that, if the dispute is solved by conciliation, they will get lower fees than those provided for by the Greek Lawyers Code for the first and the second degree of jurisdiction (all the more that, in case there is no conciliation and the case is heard by the Multimember Court of First Instance, the litigant, who will lose the case at the first degree, will in most of the cases make an appeal against the first judgment, which will bring the case before the Court of Appeals) the lawyers being therefore almost sure that they will get their legal fees for both degrees and possibly also for the procedure before the Supreme Court in a case a recourse is filed before said Court against the judgment of the Court of Appeals.

Greek Legislation provides arbitration as well, which is governed by articles 867 to 903 of the Greek Code of Civil Procedure. It has to be noted that, in case the parties agree beforehand that any dispute arising between them shall be settled by arbitration, their relevant agreement must be in writing. It accrues a contrario out of the above that, in case the dispute has already arisen, the parties may agree orally to its resolution by means of arbitration.

Arbitration is also provided by the above mentioned Law 1876/1990 re: “Free Collective Negotiations and other dispositions”, as far as collective labour disputes are concerned, which can be submitted to arbitration by common agreement of the parties but also unilaterally, at the request of one of them in case the other party has refused mediation, which is provided by said Law according to what has been exposed above.

Further, the above mentioned Law provides also conciliation as an alternative dispute resolution, which is conducted by an agent of the competent Department of the Ministry of Employment acting as conciliator or by an agent of the Labour Inspection of the competent Prefecture.

2. Is Mediation in common use?

Answer: Mediation is not in common use at present in Greece. However, since the formation of the Hellenic of Mediation and Arbitration Centre in 2006, the evolution is very quick. Intensive efforts are done for the diffusion and divulgation of this alternative dispute resolution method among the business community, which becomes very interested in it since it gives a chance to disputes to be solved very quickly as opposed to litigation, which is extremely slow and lasts for many years and is much more expensive precisely because it is long lasting.

Further, now that the new Law regarding mediation shall be put into force in compliance with Directive 2008/52/EU of the European Parliament and the Council, it is certain that the lawyers also shall change their view - points and considerations about mediation. Actually this alternative dispute resolution method will start to be applied based on specific rules under the supervision of organized Bodies. No doubt that the parties in dispute, especially in disputes of a commercial nature, will consider it attractive and will prefer to use it rather than to instigate legal proceedings. Subsequently, lawyers will become interested in being requested to assist their clients in mediation processes, (where it is mandatory, according to the new Law, that the parties be either assisted or represented by their attorneys - at - law). Consequently, mediation as an Alternative Dispute Resolution (ADR) will stop to be considered as an Alarm in Drop Revenue (ADR !).

Nonetheless it will take sometime before the use of mediation becomes actually substantial.

To be noted that according to the relevant dispositions of the Law, which is to be voted regarding mediation, private law disputes may be submitted to mediation following a relevant agreement of the parties, which has to be in writing and provided the parties are entitled to dispose freely of the object of the dispute. That is to say that Family Law cases the object of which is not financial (for example, a divorce), administrative disputes (for instance, disputes between Tax Authorities and tax payer(s)), criminal cases etc... cannot be submitted to mediation.

The Law in question gives a definition of the mediation as being a regulated procedure regardless to its name, where two or more parties in a dispute try voluntarily to end to an agreement regarding the resolution of their dispute, with the assistance of a mediator. The Law provides expressly that, unless the parties agree otherwise, the mediation has to be conducted in a way securing its confidentiality.

The Law provides also that mediation does not include the attempts, which are done by the Judge of the Court, which is to try the case, in order to have it solved during the trial.

3. Is the mediator provided by the Court or is the mediator found and paid for privately by the parties?

Answer: The mediator is found and paid for privately by the parties.

More precisely, the Law, which will be voted as above, provides that the mediator is any third party, who is requested to conduct a mediation in an appropriate, efficient and impartial way, independently of the way in which he has been appointed or he has undertaken to perform the mediation. However, it is mandatory that the person, who is selected as mediator, be a lawyer assessed by the competent Assessment Body, which will be created by the Bar Association, to be designated by the Presidents of all the Bar

Associations of Greece.

The Law in question provides that the Assessment Body establishes an Ethic Rules Code for the mediators, who must respect it and it determines the skills and the conditions of assessment of the mediators, the terms of their basic training and of their further training after specific periods of time. The same Body as above determines also the conditions of assessment of mediators, who have been trained or assessed by other Bodies abroad.

4. What is the typical cost of a mediation in your Jurisdiction? Please state the mediator's fees and the lawyer's fees for each party.

Answer: The Law on Mediation will provide that the mediator's fees are calculated on an hour basis by application of an hour rate of two hundred (200) euros at least and for twenty four (24) hours at maximum including the preparation of the mediator in respect to the mediation process, which he will conduct, but the parties and the mediator may agree a different way to calculate the fees of the mediator.

The minimum legal fees of the lawyers of the parties, whose presence is mandatory as stated above, are calculated based on an hour rate equal to half of the one applied for the calculation of the mediator's fees. In case of successful outcome of the mediation, the lawyers of the parties are in addition entitled also to the legal fees provided for by article 124 of the Greek Lawyers' Code for the settlement of a case by compromise, where the lawyer(s) fees may reach a percentage of five per cent (5%) of the amount of the compromise. In case of dispute the object of which is not financial, the legal fees of the lawyers are fixed by means of an agreement with their respective client(s), which cannot, however, provide legal fees lower than those provided for by the Greek Lawyers' Code for the two degrees of Jurisdiction (District Court or Court of First Instance and Court of Appeals).

The fees of the mediator are paid equally by all the parties involved, unless the parties have agreed otherwise. Each party has to pay the legal fees of his lawyer.

5. How long does the mediation process usually take?

Answer: The Law to be voted as above does not provide expressly the duration of the mediation process, but given that it provides that the fees of the mediator are calculated for twenty four (24) hours at maximum, it can be considered implicitly that, normally, the mediation process will take three (3) working days. Obviously, there are no restrictions for the parties to decide that, in spite of the fact they have not been able to find an agreement solving their dispute during the three (3) mediation days, they nevertheless wish to continue the effort. In such a case, the mediation will continue for as long as all concerned parties agree safe the right / professional obligation of the mediator to close the process or at least to firmly advise the parties involved to stop the process in case he is convinced that to go further would only mean useless additional expenses for the parties.

Regarding the mediation process provided for by articles 99 and following of the new Greek Bankruptcy Code, it is expressly provided - as stated above - that it can last for two (2) months only. One sole extension is possible for one (1) more month upon request of the mediator only.

6. How does this compare with the cost and time taken for a traditional Court

process?

Answer: As a matter of fact, there is no room for comparison between the time taken by a mediation process and a traditional Court process, the latter lasting for at least two (2) years at the first degree in case of disputes being of the *ratione materiae* competency of the One Member Court of First Instance (claims of an amount higher of twelve thousand (12.000) euros up to eighty thousand (80.000) euros, claims between one (1) euro and twelve thousand (12.000) euros being of the *ratione materiae* competency of the District Court) and for three (3) years and even more for the first degree in case of disputes being of the *ratione materiae* competency of the Multimember Court of First Instance (claims exceeding eighty thousand (80.000) euros).

As to the expenses, it is obvious that the judicial expenses for trials lasting for such long periods of time as those mentioned hereinabove are much higher than the mediation costs, although same entails the legal fees of the mediator, which do not exist in a classic Court procedure. Further, the legal fees of the lawyers for a traditional Court process are much higher than those provided for their attendance at the mediation process. Actually, besides his legal fees for attending the hearing, which are not very high, the lawyer of the claimant is entitled to legal fees for the preparation of the law – suit amounting to at least two percent (2%) of the amount of the claim, plus one percent (1%) of the amount of the claim for the preparation of his briefs and counterbriefs, while the lawyer of the defendant is entitled to legal fees equal to at least two percent (2%) of the amount of the claim for the preparation of his briefs and counterbriefs.

7. Can the parties to a mediation agree any settlement terms they wish or are there restrictions?

Answer: The parties may agree any settlement terms they wish. However – based on the General Principles of Law – the settlement terms cannot be contrary to public order and / or mandatory legal dispositions.

8. Are mediation agreements enforceable once they have been signed by the parties?

Answer: The new Law will provide that, after the end of the mediation process, the relevant Minutes are signed by the mediator, the parties and their attorneys - at - law. The original thereof is filed, at the initiative of the mediator provided at least one of the parties has request him to do so, with the Clerk of the One Member Court of First Instance in the territorial area of which the mediation took place. As of their submission as above, the Minutes in question, which contain - among others - the agreement reached by the parties during the mediation process - if any such agreement has been reached - become an enforceable title according to article 904 para 2 (c) of the Greek Code of Civil Procedure.

It worths pointing out that the new Law on mediation, which is to be voted, gives a satisfactory solution to the issue of the enforceability of the mediation outcome, which is definitely one of the most crucial points of the mediation process to be dealt with and which is not efficiently regulated even by Directive 2008/52/EU. Actually, the Directive in question provides that the settlement agreement having resulted out of the mediation process can be declared enforceable at the request of all parties involved. It is, consequently, clear that, if one of the parties changes his mind after the settlement agreement is signed, he can block its enforcement. This will occur especially if one of the parties is in bad faith and he has participated to the mediation process without real intention to settle the matter, but only to

win time.

It is self – understood that, if one or more parties participating to the mediation process are in bad faith, most probably no agreement will be reached. Still, by providing that the settlement agreement generated by the mediation process can be declared enforceable merely following its submission by the mediator to the Clerk of the One Member Court of First Instance at the request of even only one of the parties involved, the enforceability of the settlement agreement is at least secured for the cases where the mediation process has actually ended to a settlement agreement, but one of the parties has changed his mind after having signed it.

9. Is mediation encouraged by the Courts in your Jurisdiction?

Answer: At present, Greek Courts have no competency to recommend mediation. Only the attempt for conciliation provided for by article 214 A of the Code of Civil Procedure is a mandatory prerequisite, which must be checked by the Multimember Court of First Instance before it proceeds to the hearing of the case.

10. Are there sanctions which the Courts will apply if the parties refuse to consider mediation?

Answer: Such sanctions are neither provided by the standing Legislation nor by the new Law to be voted as above.

11. Do you recommend mediation as an alternative to Court based litigation in your Jurisdiction?

Answer: Yes, unreservedly.

12. What do you think are the main advantages of mediation compared with traditional Court procedures?

Answer: The main advantages of mediation compared with traditional Court procedures are that mediation is quicker and less expensive. Even in case it fails, the parties will have lost only rather small amounts to pay the fees of the mediator and of their lawyers, which worths to be done since, if the mediation is successful, the matter will be closed very quickly instead of remaining pending for years and years before the Courts. It is also advisable to recommend mediation, not only because it is very profitable for the clients as stated above, but also because it is very interesting for the lawyers as well, who - among others – will avoid the complaints of the clients, who - although they know that the lawyers can do nothing to accelerate the Court procedures - consider them responsible for the delays and become so much upset that they change their lawyers !

13. Are there any disadvantages of mediation?

Answer: To our opinion, there are no disadvantages in mediation, all the more that the new Law provides that the signing of an agreement for submission of a dispute to mediation interrupts the prescription of the claim(s) involved as of the day the agreement is

signed. Therefore, there is no risk that the claim will become time-barred due to the time which will be absorbed by the mediation process, which in any case is very short.

Further, the new Law providing expressly that the mediation has to be conducted in a way respecting confidentiality and that the mediator, the parties, their lawyers and any other parties involved in an administrative way in the mediation procedure cannot be heard as witnesses and that they have not the obligation to produce in subsequent trials or arbitrations data having accrued out of the mediation process or related to it, except if this is imposed by mandatory legal dispositions and given that anyone participating to the mediation process must undertake in writing the obligation to respect the confidentiality of the process, there is no risk accruing out of the disclosure during the mediation process of information out of which either party could take advantage against the other because same cannot be referred to the Court.

It has to be underlined, that the new Law includes express dispositions according to which, if the Court decides to hear the parties as litigants (and not as witnesses, which, in any case, cannot be done under Greek Legislation), they have not the obligation to disclose what occurred during the mediation process. Thus, the risk of disclosure existing in Jurisdictions where it is only provided that the parties cannot be examined as witnesses but where it is possible for them to be heard as parties involved (without oath) is minimized since, if the parties could be heard as litigants they would possibly have to answer questions leading to disclosure of information related to the mediation process, which should be kept confidential according to the understanding of all the persons involved.

14. Is there any other information which Group members should be aware of, concerning mediation in your Jurisdiction?

Answer: As stated above, the new Law putting Greek Legislation in line with EU Legislation, i.e. with Directive 2008/52/EU of the European Parliament and the Council, is to be voted shortly. Thus, mediation will be provided for expressly by the standing Greek Legislation much earlier than May 21, 2011, which is the time limit set forth by the above European Directive for the State Members to include in their Legislations rules governing mediation.

Further, as we have already stated both in the frame of a document presented during the Meeting of our Practice Group in Athens, in October 2008 and orally during the same Meeting, the Hellenic Mediation and Arbitration Centre has been founded in 2006 and the progresses it has done since then, are impressive thanks to Mrs. Ioanna Anastassopoulou, lawyer of the Athens Bar, who is the "heart" of the Mediation in Greece. After preliminary seminars, an intensive seminar took place in September 2008 taught by Mrs. Amanda Bucklow and Mr. Charles Middleton – Smith who are among the five hundred (500) best mediators all over the world. Twenty (20) persons among which the undersigned have been trained in a very efficient way. In November 2008, we have been assessed by four Assessors and one Chief Assessor coming from the Chartered Institute of Arbitration of London. There was an eighty percent (80%) success. Those having been accredited have received their accreditation on December 19, 2008 and, thus, we are now the first team of accredited Greek Mediators together with two or three other lawyers accredited earlier among whom is Mrs. Ioanna Anastassopoulou, who has been accredited as mediator, in 2004, by the Center for Effective Dispute Resolution (CEDR) of London, where Mrs. Amanda Bucklow and Mr. Charles Middleton – Smith as well have been accredited.

We would like also to inform our Group that the Hellenic Mediation and Arbitration Centre is member of the International Forum of Mediation Centres formed by the "UNION INTERNATIONALE DES AVOCATS" in 2001.

Please state your name and the date on which you completed the questionnaire.

Name : Catherine Cotsaki

Date : May 4, 2009.

Comparative study questionnaire:

BELGIUM

1. Does your jurisdiction use mediation to resolve disputes?

Yes. On Sept. 30, 2005, the Belgian Law on Mediation dated Feb. 21, 2005 came into force. This law adds part seven to the Belgian Judicial Code, headed "Mediation." Part six of the Belgian Judicial Code deals with arbitration.

2. Is mediation in common use?

Mediation can be used in all kinds of disputes, but it is mostly used in family disputes.

3. Is the mediator provided by the court or is the mediator found and paid for privately by the parties?

The Belgian Law on Mediation makes a distinction between two types of mediation:

Voluntary mediation and judicial or court-instigated mediation. Voluntary mediation relates to mediation that is not linked to an existing procedure in court, whereas court-instigated mediation takes place within the framework of an existing procedure in court.

In both cases the parties have to find the mediator and pay for the mediator privately.

4. What is the typical cost of a mediation in your jurisdiction? Please state the mediator's fee and the lawyer's fees for each party.

Mediators generally charge a hourly rate or a fixed rate per meeting. Charges between 50 and 140 EUR for an hour of mediation are common. The parties normally share the mediator's fees by half, but the parties can agree an other sharing. The lawyers for each party normally charge according to the time spent. Including the cost of preparation, typical costs for an hour would often be some 140 EUR.

5. How long does the mediation process usually take?

Mediation can go really fast. Mediation can sometimes only take one meeting between the parties. In more difficult, complex or voluminous cases, mediation can take several meetings.

6. How does this compare with the cost and time taken for a traditional court process?

Mediation can go much faster than almost all types of court proceedings.

Mediation is also cheaper than many court actions. The cost of mediation is also shared by both parties.

7. Can the parties to a mediation agree any settlement terms they wish, or are there restrictions?

They can agree any terms they wish, as long as these are not contrary to the law.

8. Are mediation agreements enforceable once they have been signed by the parties?

No. Before a mediation agreement can be enforceable, it has to be homologated by the court.

The court can only be requested to homologate the mediation agreement if the mediation has been conducted by a mediator accredited by the General Commission. The court can only refuse to homologate the mediation agreement when to do so would be contrary to the ordre public or, in family matters, when the mediation agreement violates the interest of minors.

9. Is mediation encouraged by the courts in your jurisdiction?

Only in family disputes and cases of juvenile delinquency.

10. Are there sanctions which the courts will apply if the parties refuse to consider mediation?

No. The use of mediation is voluntary for the parties.

11. Do you recommend mediation as an alternative to court based litigation in your jurisdiction?

No, because it belongs to the lawyers of the parties involved in a dispute to try to reach an agreement.

12. What do you think are the main advantages of mediation compared with traditional court procedures?

- confidentiality;
- speed;
- facilitates resumption of the dialogue between the parties, enabling them to co-exist peacefully;
- produces "tailor-made" solutions, adapted to their particular requirements and which could not have been obtained by means of legal proceedings;
- results in a more long-lasting solution, since it has been accepted by the parties, whereas a solution imposed by a judge risks frustrating at least one of them;
- eliminates protracted and expensive legal proceedings.

13. Are there any disadvantages of mediation ?

- Mediation can only work if both parties wish to participate in it;
- litigation can offer an advantage to a very strong organization facing a weaker opponent. For that stronger party, recourse to mediation could be thought to be a disadvantage;
- if mediation fails, the fees will have been wasted.

14. Is there any other information which group members should be aware of, concerning mediation in your jurisdiction?

A.

The Belgian legislation has recognized that confidentiality and professional secrecy are key conditions to the chances of success of mediation proceedings. These conditions are achieved by imposing a duty of confidentiality and professional secrecy for the parties and mediator.

The documents drafted and the communications made during the course, and for the purpose, of mediation are confidential. They cannot be produced in court, or in administrative or arbitral proceedings, or in any other proceeding for the resolution of conflicts, and they cannot be admitted as evidence, not even as an extra-judicial admission. Deviation from this is possible only by agreement of the parties, for example, in order to allow the judge to

homologate the agreements resulting from the mediation. Violation of the duty of confidentiality by one of the parties can give rise to a claim for damages. Confidential documents that have nevertheless been disclosed will be disregarded from the proceedings ex officio.

B.

Any contract may contain a mediation clause, by which the parties agree to have recourse to mediation with respect to any dispute relating to the validity, the conclusion, the interpretation, the performance or the breach of the contract before having recourse to any other dispute resolution method.

Guy PORTAELS

07.05.2009

MEDIATION

Polish law

COMPARATIVE STUDY QUESTIONNAIRE:**ADVANTAGES OF MEDIATION OR OTHER ADR PROCEDURES
OVER COURT BASED DISPUTE RESOLUTION PROCEDURES**

Please complete name of jurisdiction for which you are completing this questionnaire:

POLAND**1. Does your jurisdiction use mediation (or other forms of Alternative Dispute resolution) to resolve disputes?**

Answer: A regulation concerning a mediation is provided by Polish law. Within assumptions to the regulation it has been adopted, that the construction of provisions regarding mediation be simple, not complicated, would encourage parties to use mediation to resolve disputes. In particular it refers to an easiness of enforcing claims in civil matters, rapidity of its settling, as well as low costs of the proceeding.

Parties can conclude an agreement in front of a mediator in all cases, in which conclusion of agreement is admissible by law.

Besides the mediation, there are other forms of resolving disputes, among which conciliation and arbitration are practiced and provided by law in Poland.

2. Is mediation in common use?

Answer: No. However, more commonly used is arbitration.

3. Is the mediator provided by the court or is the mediator found and paid for privately by the parties?

Answer: Depends on whether the mediation is based on an agreement on mediation or a decision of a court leading parties to mediation.

When speaking of a "contractual mediation" parties in an agreement on mediation determine by and between a person of mediator or a way of its appointment.

In a situation, in which parties are led to a mediation by a court, a mediator is appointed by that court. However, parties can choose other mediator on their own.

4. What is the typical cost of a mediation in your jurisdiction? Please state the mediator's fees and the lawyer's fees for each party.

Answer:

1/ In cases of property laws the fee is 1% of the value of the object of litigation no less than about 10 EUR and no more than 250 EUR for the whole mediation proceedings.

2/ In cases of property laws in which the value of the object of litigation cannot be settled or in cases of immaterial laws remuneration of a mediator for the first session amounts to about 15 Euro and for each next session amounts to about 7 Euro.

3/ A mediator is entitled to additional remuneration in the amount of 10 % of remuneration settled in point 1. or 2. if a mediator analyses the court files (which is the rule).

4/ A mediator has a right to refunding costs of expenses borne in mediation proceedings.

5. How long does the mediation process usually take?

Answer: It is difficult to define the duration of mediation proceeding due to many factors that have to be considered. In general, a mediation should be faster than the usual court proceeding. The number and duration of mediation sessions depends on the complexity of the case, as well as attitude of parties. Nevertheless, a general rule is that it takes about 30 days.

6. How does this compare with the cost and time taken for a traditional court process?

Answer: The costs of traditional court proceedings is higher than the mediation. As an example, in case for payment of the amount of 40.000 PLN the court fee is 2.000 PLN (5% of the value of the claim). Costs of the mediation on the other hand in the subject case would be 400 PLN (1% of the value of the claim).

7. Can the parties to a mediation agree any settlement terms they wish, or are there restrictions?

Answer: There are no special legal rules concerning the terms of settlement, therefore general rules of law should apply. In case an agreement is contrary to provisions of law, principles of community life or an agreement leads to circumvention of the law, the court will refuse to approve or will refuse to grant the enforcement formula to the agreement.

8. Are mediation agreements enforceable once they have been signed by the parties?

Answer: An agreement reached in front of a mediator after its approval by the court is equal to an agreement in front of the court. If an agreement has been reached during the court mediation it will lay grounds for discontinuance of legal proceeding. An agreement that can be executed in a execution proceeding, after granting the enforcement formula is an executive title.

9. Is mediation encouraged by the courts in your jurisdiction?

Answer: In accordance with the Polish Civil Procedure, in cases, where reaching an agreement is admissible, the court should in every stage of the proceeding encourage parties to resolve the dispute amicably. It especially refers to disputes between commercial entities.

10. Are there sanctions which the courts will apply if the parties refuse to consider mediation?

Answer: No.

11. Do you recommend mediation as an alternative to court based litigation in your jurisdiction?

Answer: The main goal of mediation is to work out an agreement satisfactory for both of the parties of the mediation. There is no losing party in mediation, which means, that a solution respecting interests of both of the parties is sought. Winning the mediation refers not only to satisfaction of a claim, but also to a personal satisfaction that parties gain when reaching an agreement. Moreover, winning a mediation increase a mutual respect and chances for the future constructive contacts between parties in dispute.

Nevertheless, besides the above, the mediation is much cheaper and faster than the usual court proceeding.

Therefore, I would recommend the mediation as an alternative to court based litigation.

12. What do you think are the main advantages of mediation compared with traditional court procedures?

Answer: Apart from the advantages of the mediation mentioned, in particular low costs and rapidity of proceeding, few more can be added. The mediation sessions are informal, which gives the parties an opportunity to feel much more comfortable. During the mediation sessions parties keep the right to decide on the final result of the mediation. Additionally, facts revealed during the mediation proceeding have to be kept in secret by the parties and mediator, who also cannot be a witness as to circumstances learnt about during mediation.

13. Are there any disadvantages of mediation?

Answer: No.

14. Is there any other information which group members should be aware of, concerning mediation in your jurisdiction?

Answer: Because of the fact that mediation is a pretty “young” institution in Polish law (an amendment to the Polish Civil Procedure Code was enacted in 2005, that introduced the mediation), it is then not so popular and its potential is not fully used.

Apart from commercial entities and in family matters, mediation is also one of the methods of resolving disputes between consumers. This kind of disputes are resolved between an

enterprise, producer, service provider on one side and a consumer on the other. Among institutions conducting mediations with consumers are: Federation of Consumers, Association of Polish Consumers.

Please state your name and the date on which you completed the questionnaire.

Name: Benedykt Fiutowski

Date: 8 October 2009

Many thanks for your assistance.