

Working group V: TOWARDS EFFECTIVE MEDIATION POLICIES

FRIDAY, 7 DECEMBER 2012, 9.30 – 11.30

ABOUT

The EU's systematic reflection upon mediation, as a form of alternative dispute resolution (ADR), can be traced back to the October 1999 European Council of Tampere. In May 2008 the EU Member States have decided to subject themselves to certain common rules on cross-border mediation in civil and commercial matters by virtue of the Directive 2008/52/EC (further: Mediation Directive); these had to be implemented in the Member States within three years.

The focus of the discussions held within this working group will be to analyse practical costs and benefits of mediation for cases involving fundamental rights violations. The experiences gathered since the adoption/implementation of the Mediation Directive will serve as a basis for discussions on the desired balance between litigation and mediation in the EU judicial practices. Most specifically, the question of how the use of mediation impacts other fundamental rights as guaranteed by the Charter of Fundamental Rights will be looked at. Also, the practical experience gathered so far should be seen as an important source of information for decision-makers as regards future EU financial support for initiatives fostering mediation as an effective method of alternative dispute resolution.

CHAired BY:



Giuseppe De Palo is President of ADR Center – member of JAMS International, the largest private mediation firm in continental Europe. A full-time mediator since 1998, he has contributed to the resolution of over 400 complex commercial disputes. Mr De Palo is also an international professor of Alternative Dispute Resolution Law and Practice at Hamline University School of Law (St. Paul, USA) and has written extensively on the subject, his latest book being *EU Mediation Law and Practice*, co-edited with Mary Trevor and published by Oxford University Press (November 2012). Over the last ten years, he has led teams on several large-scale projects - funded by the World Bank, the European Commission and the Inter-American Development Bank - to promote mediation on four different continents.



PANELLISTS:

- **Izabella Csalotzky**, Programme manager Civil Justice Programme, DG Justice, European Commission
- **Michel Benichou**, Head of the French delegation to the Council of Bars and Law Societies of Europe (CCBE) and expert in mediation, France
- **Maija Gellin**, Director of National Programme for School Mediation and Restorative Approaches in Education (VERSO), and Board Member of Finnish Forum for Mediation (FFM), Finland
- **Magdalena Grudziecka**, Member of the Board, Association of Mediators, Poland
- **Dorin-Valeriu Badulescu**, President, Mediation Council, Romania

GUIDING QUESTIONS:

- What fundamental rights does ADR promote (Art 47 and beyond?) How does the use of ADR impact other fundamental rights?
- How can we ensure that mediation results are properly enforced in cross-border cases?
- What are legal and financial incentives that could further promote mediation?
- How can the EU better promote mediation through its financial instruments? What are the priority areas for mediation under the Civil Justice Programme?

FORMAT

Each working group will have **Chairperson**, **5-7 speakers** who will talk about promising practices and share expert contributions, two **FRA facilitators**, who will help to guide the discussions. It will bring together around 40 representatives from EU institutions and bodies, national governments, judiciary, legal professionals, civil society etc.

For each session we have envisaged 2-3 presentations of concrete case studies/promising practice examples from different Member States. Each presentation will be up to 5 minutes, then followed by a short question and answer session. The case studies should set the stage for further discussions in a panel debate with 3-4 experts and practitioners working in the field and broader discussion with the audience. Panel debate will be guided by a number of questions that will be shared with all the speakers in advance.

We have envisaged the **Chairperson** to:

- Open the working group session with an introduction into the theme and explanation of the working aim and purpose (8-10 minutes);
- Preside over the working group session, open, suspend and close the session and ensure the proper conduct of the debate by giving appropriate speaking time to all participants;
- Contribute to the working group on behalf of his/her organisation;
- Lead participants to conclusions and draw a summary of the debate;



- Report back to the plenary through an interactive panel debate with all working group chairs from 12.00 to 13.00.

We have envisaged the **speakers** two different roles:

- Give a short presentation (up to 5 minutes) on the existing challenges and promising practices in the field that could inspire new policies or initiatives.

There are many conferences on good practices, but it is a lot harder to achieve real change particularly if it involves costs or requires systemic changes. We are therefore particularly keen to hear how change can be achieved in practice including in times of economic austerity.

- Take part in the panel debate following brief presentations and contribute to the discussion from the perspective of their organisation; each panellist will be offered to make an introductory statement, but no Power Point presentations or formal speeches. The purpose of this format is to make discussions more interactive, but at the same time cover key questions with substantive input from experts and practitioners.

FRA facilitators will:

- Support the Chairperson throughout the working group;
- Take notes of the working group discussions and identify main elements for the conclusions;
- Contribute to the working group on behalf of the FRA.

FRA FACILITATORS:

- **Inga Rudecka**, Liaison Officer with Council of the European Union
- **Pia Tironnen**, National Human Rights Institutions and Equality bodies Focal Point
- **Katya Andrusz**, Journalistic Editor



SUGGESTED WORKING GROUP FLOW:

1. Opening by the chair (approx. 10 minutes): The EU Mediation Paradox....and a Possible Solution

Framing the debate: highlighting the issues connected with the development of the EU policy on mediation as an effective method of alternative dispute resolution.

PART 1: POLICY CONTEXT: (40 minutes)

2. Presentations by first 3 panellists (maximum 5 minutes for each)

- **Michel Benichou**, tbc
- **Maija Gellin**: policies to support mediation, mediation training, the case of Finland
- **Dorin-Valeriu Badulescu**: existing challenges and mechanisms you have in place in Romania concerning mediation; enforceability of agreements resulting from mediation in cross-border cases.

3. Open the floor to participants, focussing on:

- Reaction to the policy context – with a key focus on the Mediation Directive and its implementation;
- Experiences, current practices, ideas & concerns.

Discussion time: 25 min

4. Summary by the Chair (5 min.)

PART 2: PROMISING PRACTICES/CONCRETE ACTIONS (40 minutes)

5. Presentations by further 2 panellists (maximum 5 minutes for each)

- **Magdalena Grudziecka**: mediation in Poland – experience in cross-border mediation.
- **Izabella Csalotzky**: financial support to initiatives aiming to foster judicial cooperation in the EU.

6. Open the floor to participants, focussing on:

- Concrete examples of promising practices/ current practices (keeping in mind the potential impact of the economic crisis);
- Proposals for effective EU financial support to initiatives on mediation.

Discussion time: 30 min

7. Summary by the Chair (5 min.)



PRACTICAL DETAILS

All the necessary equipment will be available for Power Point presentations. However, given the interactive nature of the working group, we would encourage you to keep your presentation short (2-3 slides). More information could be shared with participants in a follow-up to the conference (also including additional slides that you might not have enough time to refer to). We would be pleased to publish all the presentations on the conference website.

To ensure that everything runs smoothly, all the speakers are kindly asked to send presentations to frc@fra.europa.eu by Tuesday, **4 December** (end of business).

The working group will be held in English with simultaneous interpretation from/into **French**.

Technical equipment available in the working group: 1 laptop connected to a beamer and a screen; table microphones, 1 Flipchart, name plates for the speakers.