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Cross-Border Mediation Proceedings within the European Union

ABSTRACT

This article examines the nature and principles of cross-border mediation. Within the European Union, this form of mediation is used in cases where one of the parties to a dispute resides or is established in a different Member State from the other parties, or where the parties have different nationalities. It mainly concerns disputes and conflicts in family matters (residence of the child, exercise of parental authority, access to the child, and the like). However, the use of this type of mediation is broader. It can, for example, be used in civil and commercial disputes (such as in the enforcement of contracts between business partners) and in consumer matters.

With ongoing social and economic development, and the diminishing of barriers between countries, the importance of cross-border mediation is likely to increase. The article primarily examines the fundamental principles common to the various systems of the EU Member States and discusses the main instruments of international law on which these are based. This article also considers the advantages and disadvantages that continue to prevent mediation from being recognised as an effective tool.

Keywords: Alternative dispute resolution, cross-border mediation, European Union.

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I. Introduction

Mediation is now a leading alternative for resolving disputes, potentially implying litigation.[1] Its roots lie in the idea of restorative justice, within which the parties are seen as partners and their conflict is understood as interconnected rather than isolated. Its resolution involves other people, including those closest to them, who are better able to identify the needs of the parties than state authorities.[2] Mediation is seen as a set of different types of activities aimed at organising and mediating a dialogue between the parties in a dispute of different aetiology. These activities are primarily logistical and mediatory in nature, and guide and support the opponents in reaching mutually acceptable arrangements.[3]

Mediation is promoted primarily because of its effectiveness and the steadily increasing volume of court proceedings, which in turn leads to longer waiting times for final decisions. It also represents a significantly cheaper alternative, as it involves far lower costs than judicial proceedings. Structured consensualism in the form of mediation therefore greatly facilitates the resolution of various types of disputes. Its foundation is dialogue-oriented, based on an exchange of views and arguments supporting the parties' positions, with the aim of reaching an agreement that brings the dispute to a close.

A concept closely connected with mediation is the participation of the public in seeking amicable solutions to disputes, which corresponds to the demands of civil society. It is also consistent with the principles of a democratic state governed by the rule of law, where the idea of subsidiarity forms a key foundation. Implementing this idea ensures the right balance and complementarity between mediation and judicial proceedings. This article analyses the scope of cross-border relations in the European Union, compares selected issues related to mediation, and assesses its advantages and disadvantages in the context of general European regulations.

Mediation should be characterised by a considerable degree of flexibility, as this is essential for achieving compromise.[4] It may also serve as a way to defuse the emotions accompanying a conflict,[5] evident in both family and criminal law proceed-

1 Menkel-Meadow, Love and Schneider, 2013, 442.

2 Zalewski, 2012, passim.

3 Krajewska, 2009, 85; Cichobłaziński 2010, 51.

4 See: Lo, 2014, 121.

5 Wdzięczna, 2010, 94.

ings. The mediator oversees the entire process of reaching an agreement and, as an impartial observer, intervenes when one of the parties goes beyond the permissible boundaries. This very feature – flexibility – clearly distinguishes mediation from court proceedings, which lack such adaptability and are marked by formalism that limits party autonomy.

Another important aspect is that mediation takes place under far less stressful conditions than traditional court proceedings, enabling the parties to influence both the course and the outcome of the process directly. In this sense, they take the matter "into their own hands". While mediation offers many advantages, it is not without weaknesses. These include weaker procedural guarantees, ineffective enforcement mechanisms for mediated settlements, inequality of the parties to the conflict, sometimes unnecessary bureaucratisation, relatively low efficiency (although there is an increasing trend here), or the lack of a stabilising effect on relations between the parties over the long term.[6]

Over the years, however, many of these shortcomings have been gradually reduced as experience accumulates.

Nonetheless, mediation should be viewed not as a substitute for the administration of justice, but as an institution that supports it and enhances the efficiency of the courts. Mediation proceedings, in terms of their scope of influence, can be divided into proceedings of an internal and cross-border nature. The former are based exclusively on the internal legal norms of the country concerned. The latter, on the contrary, are based not only on domestic norms, but also on European and foreign laws. For this reason, they are characterised by a significantly higher degree of complexity.

Owing to its many advantages, mediation is already present in almost all branches of law. It is used in civil proceedings, criminal proceedings, family law cases and even in sports law. Naturally, it also plays an important role in areas with a broader scope of influence, including European law. Despite the diversity of of mediation processes across the EU Member States, interest in this method of dispute resolution continues to grow, as does the number of successfully completed mediations. Over time, several core standards – fundamental characteristics that must always be respected – have been developed. Five of these key features deserve particular mention.[7] The first of these is voluntariness. This means that no party may be coerced into en-

[6] Kulesza, 1995, 12.

[7] Mediation in European Union Countries, <https://e-justice.europa.eu/64/PL/mediation_in_eu_countries> [20.09.2025].

tering mediation. It also prohibits the use of deception or manipulation in order to induce mediation. Another element is confidentiality, which requires that the course and content of the mediation remain undisclosed. This obligation primarily applies to the mediator, although it may be waived if both parties consent. Confidentiality is also subject to material limitations – for example, in criminal proceedings, it does not extend to the most serious offences. This exception is justified by the need to balance confidentiality with the protective aims of criminal law. The next feature immanent to mediation is the impartiality of the mediator. He or she must not sympathise with or be associated in any way with any of the parties. The mediator must oversee the course of the proceedings, ensure an appropriate relationship between the parties, and guide their actions towards reaching an agreement. The mediator is there to support negotiations, tone down conflicting situations, and help both parties to reach a compromise, without imposing his or her own view of the matter. Closely related to this is the principle of immediacy, which recognises that, in some situations, the mediator may need to act as an intermediary – relaying the parties' intentions, arguments and positions to prevent direct confrontation. The next feature of mediation, closely related to the previous one, is neutrality, which reinforces the prohibition against the mediator influencing the final outcome, or steering the parties toward a preferred solution. The last feature is the principle of acceptance, which consists of the parties agreeing to a specific person conducting the mediation and enforcing its rules. An extension of this feature is the possibility to change the mediator if he or she does not meet the above-mentioned standards, or abandons the mediation.

II. The Nature of Cross-Border Mediation and Its Basis

Mediation is increasingly recognised as a valuable tool for resolving a wide range of disputes involving natural persons, legal entities, and even unincorporated organisations.[8] The topic has been addressed internationally for many years, and, over time, mediation has gained prominence due to its numerous positive features. As Ewa Anna Wdzięczna aptly notes,[9] it represents a clear and accessible expression of new ideas reflected in various EU documents.

Cross-border mediation arises when one party to a dispute is domiciled or established in a different country from the other parties, or when the parties have different

[8] Nadja, 2019, 446-447.

[9] Wdzięczna, 2010, 94.

nationalities. In practice, it is most commonly applied in family law cases, but it is also increasingly used in civil and commercial disputes. More broadly, mediation is generally admissible in proceedings that allow for the possibility of settlement. It can occur before, during, or even after the judicial stage of proceedings, and in some cases, may be initiated at the enforcement stage.[10]

Mediation in cross-border cases consists of three stages. The first stage defines the framework of the proceedings. It is up to the mediator to explain to the parties the purpose and the rules of the procedure, his or her role in it, and to gain acceptance for the proposed method of mediation. The second stage is exploratory in nature. Here, the mediator becomes acquainted with the position of the parties and their view of the facts of the case. There is also room at this stage for more detailed consultations (identifying concerns about the proceedings and their potential course) and for relieving stress, mutual tensions or other emotions (if needed). The third stage involves creating a list of issues to be addressed during mediation, outlining its plan and duration. Contentious issues are distinguished from consensual ones, and a consensus is developed on areas of conflict. Naturally, this model may not be suitable in every case; accordingly, slightly different models may emerge, incorporating more or fewer elaborated individual elements.

These elements require the mediator to take a more active role, assisting more prominently in facilitating compromise – particularly by presenting the ranges of potential agreement, identifying areas where consensus can be reached quickly or later, and highlighting issues that are unlikely to be resolved amicably. In this context, the conclusion of the mediation itself can be considered "zero-sum". This procedure can either lead to a compromise or (for various reasons) failure to achieve this goal. In the case of an amicable settlement, the mediator should draw up a detailed written agreement in such a way that it has the necessary legal force in all legal systems represented by the parties. If, on the other hand, no consensus is reached, the mediator should make a written summary of the negotiations, indicating the points in dispute. It is then possible to initiate or return to court proceedings.

The costs of mediation are generally lower than resolving a dispute through the courts, although they can still pose a barrier for some parties. Mediation costs typically include the mediator's fees and any expenses incurred in organising the process. It should be noted – while also open to criticism – that EU law addresses legal costs

[10] Zienkiewicz, 2011, 124-125.

only marginally. The preamble to Directive 2008/52/EC of the European Parliament and of the Council only indicates that mediation is intended to be a "cost-effective" method of out-of-court dispute resolution, and leaves it to the national legislator to define the limits of this "cost-effectiveness". More specifically, the costs of mediation are addressed in the Recommendation.[11]

The institution of mediation in cross-border relations within the European Union is intended to facilitate access to alternative dispute resolution methods at any stage of a dispute, and to promote such methods.[12] For this reason, the Directive in question contains instruments that also guarantee the enforceability of the settlement agreement and therefore addresses issues of enforceability. It provides that an application for the enforceability of a settlement agreement must be made in accordance with the procedure established by the legislation of the relevant Member State. Once granted, the agreement is also recognized and enforceable in other Member States, in line with applicable EU and national regulations.

In 2004, the European Commission established the European Code of Conduct for Mediators. This soft law standard sets out norms and standards of conduct for mediators and organisations overseeing the provision of mediation services. It contains elements of a fair mediation standard, further underlining their importance.[13]

The Commission drafted a Directive of the European Parliament and of the Council on certain aspects of mediation,[14] which was adopted by the European Parliament and the Council with slight modifications.[15] As far as the resolution of cross-border family disputes is concerned, among the most important pieces of European legislation are Recommendation No. R (98) 1 of the Committee of Ministers of the Council of Europe to Member States on family mediation, adopted by the Committee of Ministers on 21 January 1998 at the 616th meeting of the Vice Ministers,[16] and a specific

[11] Recommendation No. R 87/20 of the Committee of Ministers to Member States on Social Responses to Juvenile Delinquency.

[12] Morek, 2008, 93.

[13] See: <european-code-of-conduct-on-mediation-comissao-europeia-2004.pdf> [20.09.2025].

[14] European Commission Proposal of 22 October 2004 for a Directive of the European Parliament and of the Council on certain aspects of mediation in civil and commercial matters, cf. <http://parl..sejm.gov.pl> [20.09.2025]; European Parliament Legislative Resolution of 29 March 2007 on the Proposal for a Directive of the European Parliament and of the Council on Certain Aspects of Mediation in Civil and Commercial Matters, cf., <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2007-0088+0+DOC+XML+V0//PL> [20.09.2025].

[15] 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 (OJ EU L of 24 May 2008).

[16] Ibid., 3-8, EUR-Lex 32008L0052.

document in the form of the Hague Conference on Private International Law's Practical Guide (Guide to Good Practice) to the 1980 Hague Convention on the Civil Aspects of Child Abduction, Vol. IV – Mediation.[17] Recommendation No. R (98) 1 primarily defined the scope of family mediation. It accepted that mediation may be used in all conflicts between members of the same family who are linked by ties of consanguinity or marriage, and persons who have been or remain in family relationships. The recommendation furthermore establishes a standard for mediation in this type of case, analogous to the one discussed above, and emphasises the need to promote this way of resolving disputes by creating broad information campaigns. These are intended to identify mediation as the best means of resolving family conflicts of an international nature. The Guide to Good Practice Act, on the other hand, emphasises the growing importance of mediation in cross-border family disputes. It is designed to strengthen the effective implementation and enforcement of the 1980 Hague Convention on the Civil Aspects of Child Abduction, and the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children.

The Mediation Directive, which has been in force since 13 June 2008,[18] directed Member States to implement the relevant provisions by 20 May 2011. The task of the directive is to promote mediation in the Member States. This entails the following recommendations:[19]

- To promote the training of mediators and ensuring the highest possible quality of mediation;
- The right of judges to propose that the parties involved in the proceedings participate in mediation;

[17] 1980 Hague Convention on the Civil Aspects of International Child Abduction (Convention on the Civil Aspects of International Child Abduction, signed at The Hague on 25 October 1980, ratified by the Republic of Poland on 10 August 1992, OJ 1995, No. 108, item 528), the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children (Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children was concluded within the framework of the Hague Conference on Private International Law on 19 October 1996, ratified by the Republic of Poland on 27 July 2010, OJ 2010. No. 172, item 1158) and the Practical Guide to the 1980 Hague Convention, Vol. IV - Mediation. Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction - MEDIATION, Hague Conference on Private International Law 2012.

[18] Directive 2008/52/EC of the European Parliament and of the Council of 21.05.2008 on Certain Aspects of Mediation in Civil and Commercial Matters (OJ L 136, 24.05.2008, 3).

[19] <https://www.europarl.europa.eu/cmsdata/226405/EPRS_ATAG_627135_Mediation_Directive-FINAL.pdf> [20.09.2025].

- That agreements reached through mediation should be enforceable and, to that end, obtain an enforcement clause;
- To guarantee the confidentiality of mediation;
- To guarantee the possibility of initiating and continuing court proceedings after mediation – the running of procedural deadlines may be suspended for the duration of the mediation proceedings.

III. Cross-Border Mediation in Civil and Commercial Matters

Cross-border mediation also applies to civil and commercial proceedings.[20] However, it should be remembered that the European Single Market stands as a distinctive and tightly-knit economic community, uniting 27 jurisdictions, which somewhat casts a shadow over the standardisation of standards. Mediation in this field began on 12.12.2003, when the European Parliament adopted a Green Paper on alternative dispute resolution in civil and commercial matters. In light of the increasing number of such cases, fueled by expanding economic connections and the demand for effective resolution, this solution is now indispensable. Yet, the Green Paper remains limited, addressing solely mediation in commercial law matters.[21] Mediation also includes, for example, disputes arising from virtual transactions (online dispute resolution). Consequently, the Directive of the European Parliament and of the Council 2008/52/EC of 21 May 2008, on certain aspects of mediation in civil and commercial matters (the Mediation Directive), was enacted. This document attaches great importance to enforcement issues, and includes certain standards for Member States, particularly regarding the requirement to incorporate specific provisions into their domestic legal systems. However, these relate to general mediation standards (characterised at the outset), such as the principle of confidentiality or the objectives of mediation proceedings. Member States are, however, free to create these standards in detail.

Furthermore, the document highlights competence-related aspects, including the requirement to provide information on the European Code of Conduct for Mediators and to ensure its public availability.[22] In an effort to not unduly hamper the flow

[20] Cross-Border Mediation in Family Matters, <http://www.bibliotekacyfrowa.pl /Content/ 43447/ 007. pdf.> [20.09.2025].

[21] Kalisz, 2010, passim.

[22] Steffek, 2012, 8.

of trade, and to deal with conflict in a more efficient, swift and cost-effective manner, multinational corporations are increasingly turning towards alternative methods for managing disputes. As indicated by Bashir Adan Mohamed: "more than two-thirds of multinational corporates state that they prefer commercial arbitration over traditional litigation, either alone, or in combination with other alternative dispute resolution mechanisms, such as mediation, to resolve cross-border disputes."[23] The benefits of using mediation in cases of this type are well illustrated by a comparison of costs and duration.

The average period of mediation within the EU is between 43 and 90 days. The average difference in cost between litigation and mediation is €9,179 for litigation and €3,371 for mediation. For example, in Austria, the average cost of litigation would be around €13,095, and of mediation €10,000; in Belgium €12,286 and € 3,478, respectively; in Denmark: €21,159 and €6,500, in Ireland: €15,606 and €1,250; in Spain: €8,015 and €1,833. According to available sources, in Italy, a successfully mediated dispute can save 860 days and in excess of €7,000.[24]

However, against the backdrop of legal solutions in individual countries, there are significant discrepancies in the advancement of regulations. As rightly pointed out by A. Pera,[25] "Some Member States have considered the 'Mediation Directive' as an occasion to reflect in a comprehensive way on the regulation concerning conflict resolution. States like Germany, France and Italy have promulgated new, comprehensive laws and regulations, which do not follow the limitation of the EU Directive in scope, especially having regard only to cross-border disputes. Other legal systems, such as England and Austria, have limited the legislative reform only to cross-border disputes." This author comes to the correct conclusion: "The latter choice determines a dichotomous set of rules, respectively for internal disputes and cross-border ones, and demonstrates in itself that national attitude and traditions are far from each other, and that the call for harmonisation is not necessarily shared and welcome in such area of law. Many good intentions – at a European level – are not enough, as the way to hell is paved with good intentions." This issue undoubtedly requires a separate comparative study, as the aim should be to achieve the fullest possible harmonisation of solutions.[26]

[23] Mohamed, 2020, 6.

[24] Fiodorova, 2017, 196.

[25] Pera, 2014, 118.

[26] See: Skënderi, 2023, passim.

IV. Cross-Border Mediation in Family Matters

When analysing mediation in cross-border cases, it should be noted that they have a specific character[27] which necessitates special consideration by mediators. This type of mediation, applied in family cases, may involve, among other things, parties coming from different cultural backgrounds. Multiculturalism in descriptive terms, moreover, has a developmental trend,[28] which makes it possible to forecast an increase in the popularity of this type of mediation. Not only legal or psychological, but also sociological and pedagogical knowledge is becoming particularly important here. A good solution in these situations is to entrust the conduct of the mediation to two mediators who come from the countries of origin of the parties. Generally speaking, consideration should then be given to mediating with the involvement of other participants, such as suitably selected family members, educationalists or psychologists. Such extensive involvement of others is generally beneficial for the parties. Similarly, the implementation of indirect mediation, i.e. without the parties meeting face-to-face, may sometimes prove beneficial.[29] It should also be borne in mind that not all family conflicts should be referred to mediation: some issues should only find their finality before a court. This is dictated by varying factual or legal circumstances. Important contraindications to mediation include, for example, abuse by one party over another (domestic violence), addictions, mental illnesses and emotional disturbances of various aetiologies. In cross-border mediation, the degree of complexity is increased by the need to analyse the coherence of the rules of international law and the domestic laws of at least the two states in which the parties have their habitual residence. If these remain mutually coherent, then the mediation conditions developed will prove authoritative at the enforcement stage, allowing the parties' arrangements to be properly taken into consideration. The parties therefore need expert legal assistance here, in particular, information on the internal rules of the state of permanent residence. Unhindered and close cooperation between the mediator, the parties to the mediation, and the attorneys, is essential. However, these difficulties are well worth addressing, as family mediation offers significant, tangible benefits. It contributes to better communication between family members, reduces the level of conflict, promotes consensus, consolidates and regulates contact between parents and children,

[27] Zagórska, 2013, 103-115.

[28] Budyn-Kulik, 2022, 48.

[29] Kalisz, 2010, passim.

reduces the social and economic costs of proceedings, and significantly reduces the time needed to resolve the dispute.[30] When the parties to a mediation come from different EU Member States, cultural differences may also become apparent. It is enough to note that EU rules are based on place of residence rather than nationality. This alone shows that mediation may involve individuals from diverse cultural backgrounds.[31] From this perspective, it is also important that the parties can use their native language, which results in freedom of communication and full transparency.

However, linguistic constraints must not have a detrimental effect on the situation of the parties. It is a desirable state of affairs in cross-border mediation for the mediator to speak the languages of both parties.[32] The specificity of this type of mediation is also influenced by the very place of residence of the parties. In the case of face-to-face mediation, this affects the mediation meetings, and may imply logistical difficulties. In some situations, however, the considerable distance between the parties has a positive effect, as it allows the parties to tone down their emotions and distance themselves from the dispute, thus enhancing the grounds for negotiation, and achieving a satisfactory outcome for the parties. Often, however, the distance between the place of mediation and the parties' place of residence generates high travel and accommodation costs.

V. Summary

Mediation is to justice as diplomacy is to international politics, and it should be treated as the first and most natural way to resolve a conflict.[33] Cross-border mediation remains closely dependent on the interrelationship of both the parties to the proceedings, as well as the internal legal systems of the individual Member States. To ensure its effectiveness, it is essential to introduce appropriate legal measures that address not only the ability to conduct cross-border mediation, but also the norms governing potential implementation issues, thereby guaranteeing the enforcement of the parties' agreement. The EU has taken positive steps to regulate and promote cross-border mediation between Member States.[34] Ideally, this will be continued. However, the

[30] Recommendation No. R (98) 1 of the Committee of Ministers of the Council of Europe to Member States on Family Mediation and Explanatory Memorandum, adopted by the Committee of Ministers on 21 January 1998 at the 616th meeting of vice ministers.

[31] Yousofi, 2024, 129.

[32] See: Carroll, 2023, 131-145;

[33] López-Barajas Perea, 2012, 4.

[34] Esplugues, 2013, 333.

scope of national regulations varies considerably, and is sometimes too general, potentially leading to legal conflicts, especially at the stage of implementing settlements. It therefore seems reasonable to take steps to clarify EU regulations, so as to improve the solutions thus far introduced, and to further harmonise cross-border mediation, making it more consistent across the EU. This, in turn, will be among those elements contributing to the improvement of business activity.

Due to advancing globalisation, to which the development of new technologies and remote communication has contributed in no small measure, a systematic increase in the importance of cross-border mediation can be predicted. An observable slowdown, however, may result from the excessively wide discretionary power of Member States under European law to create this type of standard. In view of this, it is becoming particularly important for Member States of the European Union to monitor proceedings and to attempt to eliminate any shortcomings that have been identified. Of course, this should only concern strictly legal matters, for the sake of the principle of confidentiality of mediation.

It remains vital to ensure the swift enforcement of settlements in all Member States. This is currently perhaps the biggest issue with mediation.

In many countries, mediation is still a marginalised issue, hence the importance of promoting this instrument as to the benefits it brings both the participants of the proceedings and the state authorities.

An important task is to gradually raise public awareness, with the emphasis that this is a "soft", as it were "flexible", way of resolving a dispute. This is, in fact, a fully consensual mode, where the final solution is delegated to the parties. By the same token, specialised training is required for those professionally involved in the dispute (mediators, judges, attorneys of the parties, etc.). Indeed, cross-border mediation is, for a number of reasons, clearly more complex than mediation conducted under national orders. It is undoubtedly a "higher level of mediation", requiring specialised knowledge and prior experience at the level of national mediation.

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