FOSTERING CROSS-BORDER/BOUNDARY MEDIATION EXCELLENCE

TOWARDS HARMONISED QUALITY STANDARDS AND BEST PRACTICES IN CIVIL AND COMMERCIAL DISPUTE RESOLUTION ACROSS SOUTH EAST EUROPEAN JURISDICTIONS

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* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

I Executive Summary

In response to the growing need for effective dispute resolution mechanisms in the complex landscape of South East Europe (SEE), this research project undertook a comprehensive exploration of cross-border/boundary mediation. By focusing on the European Union (EU) perspective, inter-domestic instruments, private international law, and the unique dynamics of SEE jurisdictions, the study aims to provide a nuanced understanding of the challenges and opportunities in this domain.

KEY FINDINGS:

- The EU has forged a robust foundation for mediation through legal instruments like the Mediation Directive,[1] ADR-Directive,[2] and ODR-Regulation.[3] These directives foster proliferation of alternative dispute resolution mechanisms and serve as instruments of harmonisation amongst member states.
- Cross-border/boundary disputes are uniquely poised for mediation due to its adaptability within the framework of private international law. Mediation's flexible and consensual nature aligns well with the complexities of transboundary conflicts.
- Our investigation revealed diverse cross-border/boundary mediation practices across SEE jurisdictions. While each jurisdiction presents its distinct approach, the common thread of court case backlogs highlights the pressing need for expedited dispute resolution mechanisms.
- The results of our mediation survey underscored the viability of mediation as a preferred mode of dispute resolution. Factors such as cost-effectiveness, flexibility, and privacy emerged as drivers for mediation adoption. However, challenges related to awareness and enforceability persist.

In summation, this research project delves into the multifaceted arena of cross-border/boundary mediation, offering a comprehensive analysis of legal frameworks, inter-domestic instruments, private international law, and practical insights from the SEE region. The amalgamation of these insights underscores the potential of mediation as a powerful tool for harmonious dispute resolution across boundaries. The recommended strategies offer a roadmap for SEE jurisdictions to enhance cross-border/boundary mediation practices, contributing to a more efficient and equitable regional dispute resolution landscape. As the SEE region strives for continued growth and collaboration, the implementation of these recommendations can pave the way for a more harmonised and effective approach to cross-border/boundary mediation.

1 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

2 Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR)

3 Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR)

II Introduction

In the pursuit of fostering efficient and effective dispute resolution mechanisms in the South East Europe (SEE) region, the present research project endeavours to delve into the realm of cross-border/boundary mediation. The project's primary objective is to provide a comprehensive and in-depth analysis of the current state of play of cross-border/boundary mediation practices and judicial cooperation amongst the thirteen SEE economies, namely Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Greece, Kosovo*, Montenegro, Moldova, North Macedonia, Romania, Serbia, Slovenia, and Türkiye.

2.1 BACKGROUND AND CONTEXT OF THE PROJECT

The SEE region, renowned for its rich cultural diversity and burgeoning economic ties, has witnessed an increasing need for an efficient dispute resolution framework to address the escalating complexities of cross-border/boundary civil and commercial disputes. Recognising the paramount importance of peaceful and mutually satisfactory resolutions, the Regional Cooperation Council (RCC) has undertaken initiatives to promote mediation as an invaluable tool in resolving such disputes within the SEE jurisdictions. Building upon the remarkable insights garnered from the RCC's endeavours, this research project seeks to expand and augment the existing body of knowledge by encompassing the entire SEE region. By focusing on cross-border/boundary mediation practices, the research aims to identify best practices and elucidate the potential benefits that mediation can bring to resolving bilateral trade disputes and civil and commercial matters at a regional level.

2.2 PURPOSE AND SCOPE OF THE REPORT

The overarching objectives of this research were to analyse the EU's stance on cross-border/boundary mediation, scrutinise the interplay of jurisdictions within private international law, evaluate the current state of play of cross-border/boundary mediation practices in SEE jurisdictions, and formulate actionable recommendations to enhance the adoption and efficacy of cross-border/boundary mediation.

The primary purpose of this report is to conduct an in-depth exploration of cross-border/boundary mediation practices in the SEE jurisdictions, with a particular emphasis on identifying best practices that can serve as a model for setting minimum regional quality standards on mediation. Through a meticulous examination of each economy's legal and institutional frameworks, the report will provide a comprehensive overview of the current state of play of cross-border/boundary mediation practices, highlighting its efficacy and potential in resolving complex disputes. Additionally, the research will endeavour to shed light on the backlog of court cases in each SEE economy, drawing on reliable sources such as the CEPEJ statistics to assess its impact on judicial efficiency and access to justice.

2.3 METHODOLOGY USED FOR DATA COLLECTION AND ANALYSIS

To achieve the rigorous objectives of this research, a well-structured and systematic methodology will be employed. The data collection process will draw on both primary

and secondary sources. Primary data will be gathered through a comprehensive questionnaire, thoughtfully designed to elicit valuable insights from mediators, lawyers, judges, public and private entities, NGOs, academics, and other relevant stakeholders across the SEE jurisdictions. This will provide a detailed understanding of the current practices and challenges faced in cross-border/boundary mediation.

Additionally, secondary sources, such as inter-domestic instruments and the EU legal framework on mediation, will be analysed to identify emerging trends and best practices in the field. By integrating both primary and secondary data, the report aims to present a holistic and reliable analysis of cross-border/boundary mediation practices in the SEE region.

This research project holds the promise of providing critical insights and recommendations that will contribute to the advancement of cross-border/boundary mediation practices in the SEE jurisdictions. By exploring the interplay of judicial cooperation and mediation, the report aims to empower stakeholders with the necessary tools to enhance the efficiency and effectiveness of resolving civil and commercial disputes across boundaries, fostering a climate of trust, cooperation, and mutual prosperity in the dynamic and diverse SEE region.

III Harmonising Resolution: The Role of Private International Law in Cross-border/boundary Mediation

The New York Convention, also known as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, offers a robust inter-domestic framework that greatly enhances the advantages of arbitration.[4] The convention in question provides a concise and standardised set of regulations pertaining to Private International Law. These regulations specifically focus on the procedural elements of arbitration in situations involving multiple jurisdictions. This includes the enforcement of arbitration agreements and the recognition of arbitral awards. The Brussels Ia Regulation[5] serves as the foundation for cross-border/boundary litigation within the EU, with the primary objective of promoting the unrestricted transfer of judgements amongst member states. The purpose of this regulation is to establish a comprehensive framework of fundamental principles that govern cross-border/boundary civil and commercial litigation. Its aim is to promote consistency in procedural matters and facilitate smooth recognition and enforcement of judgements. In contrast, it should be noted that mediation lacks a universally acknowledged inter-domestic legal framework that can be likened to the New York Convention or the Brussels Ia Regulation. The flexibility and party-driven nature of mediation can offer benefits in resolving trans-domestic disputes. However, the lack of a comprehensive inter-domestic legal framework may pose difficulties in achieving consistent and uniform outcomes across different jurisdictions.

The New York Convention and Brussels Ia Regulation provide a level of legal assurance and foreseeability to the parties engaged in arbitration and trans-domestic litigation. In contrast, the absence of a comparable all-encompassing structure for cross-border/boundary mediation could result in parties perceiving mediation as a less standardised and less legally binding method of resolving disputes. This perception may contribute to the reluctance in selecting mediation as a means of resolving inter-domestic disputes. The resolution of cross-border/boundary disputes presents a significant challenge for the EU and other inter-domestic entities, as they must grapple with the disparities that exist between the legal frameworks governing mediation, arbitration, and litigation. The establishment of a comprehensive and universally acknowledged inter-domestic legal framework for cross-border/boundary mediation has the potential to bolster the credibility and appeal of mediation as a proficient and successful method for resolving inter-domestic disputes.

4 Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, 10/6/1958, United Nations Treaty Series, vol. 330, No. 4739, pp. 3 ff.

5 Regulation (EU) 1215/2012 (Brussels Ia Regulation), OJ L 351 of 20/12/2012, pp. 1 ff.

The current state of play of the mediation field is characterised by a notable absence of a comprehensive and comparable legal framework when compared to arbitration or litigation. Although the Mediation Directive and ADR Directive aim to achieve a certain level of harmonisation in domestic regulations, they do not fully establish consistent and uniform rules for the cross-border/boundary aspects of mediation. In contrast to arbitration and litigation, which enjoy the advantages of established inter-domestic legal frameworks such as the New York Convention and Brussels Ia Regulation, mediation encounters challenges in dealing with the intricacies of navigating diverse rules of private international law in different jurisdictions. The existence of these divergences can give rise to uncertainties and pose challenges in the process of ensuring the enforceability of mediated settlements across inter-domestic boundaries. The lack of a universally accepted framework for cross-border/boundary mediation can result in notable disparities in the treatment and enforcement of mediation agreements on an inter-domestic scale. Parties involved in cross-border/boundary mediation may face challenges arising from divergent interpretations of applicable laws, acknowledgment of mediation agreements, and implementation of mediated settlements across various jurisdictions. The absence of consistency in cross-border/boundary mediation can hinder the efficacy and productivity of this process, discouraging parties from adopting mediation as their preferred approach to resolving inter-domestic conflicts. The implementation of a consistent and unified framework of regulations for cross-border/boundary mediation, akin to the existing frameworks for arbitration and litigation, would result in improved legal certainty, predictability, and enforceability of mediation outcomes for parties engaged in inter-domestic mediation. The implementation of a standardised legal framework has the potential to mitigate the challenges arising from varying domestic rules on private international law and enhance the trust of parties in selecting mediation as a feasible option for resolving disputes that transcend domestic boundaries. Hence, it is crucial for legal professionals and policymakers to thoroughly examine the potential advantages associated with the implementation of uniform inter-domestic legal frameworks to facilitate cross-border/boundary mediation. These endeavours would not only serve to narrow the divide between mediation and alternative dispute resolution approaches, but also foster the advancement and recognition of mediation as a proficient mechanism for addressing intricate global conflicts.

Private international law plays a pivotal role in effectively addressing fundamental challenges that arise in the context of trans-domestic disputes. The main functions of dispute resolution include determining the appropriate jurisdiction for handling the dispute, identifying the applicable substantive law that governs the elements of the dispute, and establishing the conditions for recognising and enforcing dispute resolution outcomes in foreign jurisdictions. Despite their global significance, PIL-rules have traditionally been an inherent component of each jurisdiction's domestic legal framework, resulting in notable disparities across different jurisdictions. The lack of inter-domestic harmonisation can result in significant legal risks and uncertainty stemming from these disparities. The influence of diverse rules governing private international law is notably conspicuous in the realm of litigation. This influence gives rise to a range of concerns, including the occurrence of simultaneous legal proceedings in multiple jurisdictions that may yield conflicting verdicts, ambiguity regarding the governing law, and difficulties in enforcing judgements beyond the jurisdiction of origin. The presence of intricate factors can impede the effectiveness of the conflict resolution procedure and erode the trust and confidence of the involved parties.

IV Cross-border/boundary Mediation Landscape in SEE Jurisdictions

4.1 OVERVIEW OF THE CURRENT STATE OF PLAY OF CROSS-BORDER/BOUNDARY MEDIATION PRACTICES[6]

4.1.1 ALBANIA

The legislative framework of Albanian Law on Mediation in Dispute Resolution, established in 2011,[7] aligns with Directive 2008/52/EC[8] and incorporates the nuanced recommendations provided by the Council of Europe. These provisions specifically address various aspects of mediation in civil and commercial matters. Originating

6 For the section "Overview of the current state of cross-border mediation practices," the analysis conducted by the Expert drew upon various sources to overcome language barriers inherent in comprehending domestic legal frameworks. Specifically, in examining cross-border mediation practices within Western Balkans (WB) economies, the Expert primarily relied on findings from the RCC's previous report titled Promoting Cross-Border Mediation in Resolving Civil and Commercial Disputes in the Western Balkans June 2021. Furthermore, the Expert consulted the following sources for specific SEE jurisdictions: Bulgaria: Valentina Popova, The Mediation in the Bulgarian and European Law, Bulgarian, European and International Civil Process Civil Procedure Review, v.9, n.1: 43-72, Jan.-Apr. 2018, ISSN 2191-1339. Croatia: (i) Alan Uzelac, et al., Aktualni Trendovi Mirnog Rješavanja Sporova U Hrvatskoj: Dosezi i Ograničenja, Pregledni znanstveni rad, Primljeno: rujan 2010, and (ii) Ela Milašinčić, Alternativne Metode Rješavanja Sporova u Republici Hrvatskoj, FIP / Volume 10 / Number 1 / 2022. Greece: Georgios Diamantopoulos and Vassiliki Koumpli, On Mediation Law in Greece, XIXth Congress of the International Academy of Comparative Law (Vienna, 20-26 July 2014). Moldova: Prisac Alexandru, Medierea Judiciară În Codul De Procedură Civilă Al Republicii Moldova, Vector European Revistă științifico-practică Nr. 1 / 2021. Romania: Sanda Lungu, Medierea în România, Revista Forumul Judecătorilor – Nr. 1/2010. Slovenia: EU Handbook on Mediation: Mediation Law and Practice in Other EU Countries, implemented by the Professional Association of Mediators in Bulgaria, Integrierte Mediation e.V. – Germany, and the European Association of Judges for Mediation (GEMME). Turkey: (i) Süleyman Dost, Mediation for Disputes in Private Law in Turkey, International Journal of Academic Research in Business and Social Sciences, October 2014, Vol. 4, No. 10, and (ii) Ash Gurbuz Usluel, Mandatory or Voluntary Mediation? Recent Turkish Mediation Legislation and a Comparative Analysis with the EU's Mediation Framework, Journal of Dispute Resolution, Vol. 2020, Iss. 2, Art. 13.
* For the translation of laws and scientific works originally in domestic languages, the Expert employed professional translation software tools. This approach facilitated accurate and consistent translation, ensuring the integrity and fidelity of the content while overcoming language barriers inherent in the analysis. By leveraging such sophisticated translation software, the Expert aimed to maintain the precision and academic rigor required for a comprehensive assessment of cross-border mediation practices within the specified jurisdictions.

7 Ligj Nr.10 385, datë 24.2.2011 Për Ndërmjetësimin në Zgjidhjen e Mosmarrëveshjeve (ndryshuar me ligjin nr. 81/2013, datë 14.2.2013, nr. 26/2018, datë 17.5.2018).

8 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.

from the fundamental Article 1 of the Law,[9] the concept of mediation is revealed as an inherently non-judicial process, wherein conflicting parties engage in their pursuit of resolving disputes, with the assistance and facilitation of an unbiased third party known as the mediator. The legal corpus underwent significant development via a series of modifications that occurred in 2018.[10] During this process of legal development, mediation underwent a significant transformation, becoming recognised as a procedural tool for resolving disputes outside of the court system. In this newly outlined situation, there are several entities on stage engaged in a dispute, connected by a voluntary agreement, diligently working to resolve conflicts with the assistance of a mediator's wise intervention. The resulting panorama encompasses a dynamic in which the practise of mediation is intertwined with legal formality, leading to solutions that align with voluntary agreement and a stated commitment to the values of impartiality and harmony.

The conciliation modality is situated inside the complex structure of the Civil Procedure Code (CPC)[11], which is a comprehensive legislative document including several provisions. Within the intricate framework of the legal system, the Civil Procedure Code aligns with the significant duty bestowed upon several levels of the judicial machinery, outlining their obligation to facilitate the early stage of conflict settlement by means of conciliation. The court is mandated by Article 25 of the Civil Procedure Code[12] to undertake a significant responsibility in facilitating the resolution of disputes between opposing parties entangled in a complex legal situation. The function of the judge as a harmonising agent in the symposia of conflict resolution is encapsulated in Article 158/ç of the CPC,[13] which appears as a vital overture in the orchestration of this conciliation symphony. During the preliminary stage of legal procedures, a favourable situation arises when the judge's involvement might be beneficial, as it aligns with the intrinsic characteristics of the case. This Article is a comprehensive exploration of the judge's role in facilitating conflict resolution via mediation. It sheds light on the proactive nature of the judge, who is committed to imparting knowledge and guidance to the parties involved in the dispute. This clause, characterised by its crystalline nature, outlines a potential turning point in the legal process. It suggests that the proceedings may smoothly shift to the realm of mediation, depending on the unanimous agreement of the parties involved. This transition might occur at any stage of the judicial journey.

Regarding the scope of application of the Law on Mediation in Dispute Resolution, Article 2[14] provides an elaboration on the specific domain in which mediation is relevant. The scope of mediation encompasses a wide range of issues in several areas of law, including civil, commercial, labour, and family law. The scope of its influence expands to include matters pertaining to intellectual property, consumer rights, and conflicts between public administrative bodies and individuals. Within the complex framework of legal regulations, it is the responsibility of the court or the relevant agency, as authorised by the law, to fulfil three key duties: providing notice, offering direction, and facilitating clear understanding. This pertains specifically, although not exhaustively, to disputes that fall into distinct categories: a) disputes that are entangled within civil and family cases that involve the well-being of minors; b) instances of conciliation that are involved in the dissolution of

9 Ligj Nr.10 385, datë 24.2.2011 Për Ndërmjetësimin në Zgjidhjen e Mosmarrëveshjeve (ndryshuar me ligjin nr. 81/2013, datë 14.2.2013, nr. 26/2018, datë 17.5.2018).

10 Ligji nr. 26/2018, datë 17.5.2018.

11 Ligj Nr. 8116, datë 29.3.1996 Kodi i Procedurës Civile.

12 Ligj Nr. 8116, datë 29.3.1996 Kodi i Procedurës Civile.

13 Ligj Nr. 8116, datë 29.3.1996 Kodi i Procedurës Civile.

14 Ligj Nr.10 385, datë 24.2.2011 Për Ndërmjetësimin në Zgjidhjen e Mosmarrëveshjeve (ndryshuar me ligjin nr. 81/2013, datë 14.2.2013, nr. 26/2018, datë 17.5.2018).

marital bonds, as outlined in Article 134 of the Family Code;[15] and c) disputes related to financial matters that encompass ownership or co-ownership rights, issues of property division, claims seeking possession. Within the framework of contractual obligations, if the parties involved in a dispute have established in their agreement or written contract that mediation must be pursued as the initial and primary method for resolving conflicts before resorting to legal means, then the court is obligated to abstain from considering the case unless this contractual requirement is fulfilled.

The principles outlined in the Law on Mediation in Dispute Resolution, specifically outlined in Article 2, paragraph 8,[16] provide a broad scope that includes mediation procedures for resolving disputes in a friendly manner, even if one or more of the parties involved are residing outside of Albania. It is important to highlight that the Albanian Law on Mediation lacks a particular clarification on cross-border/boundary disputes. Within the realm of Private International Law, a notable distinction may be seen in relation to the idea of the 'foreign element', which is thoroughly elucidated. This encompasses every legal aspect that is intricately connected to the subject matter, content, or nature of a legal-civil organisation, so establishing the central connection that binds the association to a separate legal framework (Article 1, point 2).[17] In accordance with its primary goal, Article 5 of the Law on Mediation18 expands the scope of licence for mediators to include inter-domestic individuals who have been lawfully accredited as competent mediators in their own jurisdictions. The considerations related to recognising the mediator's designation obtained in a foreign jurisdiction are subject to the authority of a ministerial decree, which establishes the procedural complexities and legal framework that regulate this process of acceptance.

4.1.2 BOSNIA AND HERZEGOVINA

The idea of mediation is defined in the Law on Mediation Procedure (Official Gazette of Bosnia and Herzegovina, No. 37/04)[19] as a structured procedure in which a mediator, a neutral third party, assists two disputing parties in achieving a consensual settlement to their disagreement (Article 2).[20] The purpose of this legislative framework is to promote the resolution of conflicts by peaceful means. It allows parties to actively pursue mediation either before or during court procedures, until the main trial concludes (Article 4, Paragraph 1).[21] If the parties involved in a dispute prior to litigation have not attempted mediation as a method of resolving their issues, the trial judge overseeing the case has the authority, if considered appropriate, to propose mediation as an alternative approach to resolving the dispute during the preparatory hearing (as stated in Article 4, Paragraph 2).[22] The voluntary nature of mediation in the jurisdiction of Bosnia and Herzegovina is a significant aspect to consider. The unique methodology arises due to the lack of mandatory pre-litigation mediation or legally mandated compulsory mediation in the legal structure of Bosnia and Herzegovina. Despite the legal need that a settlement

15 Ligj nr.9062, Datë 8.5.2003 Kodi i Familjes (Ndryshuar me Ligjin Nr. 134/2015, Datë 5.12.2015).

16 Ligj Nr.10 385, datë 24.2.2011 Për Ndërmjetësimin në Zgjidhjen e Mosmarrëveshjeve (ndryshuar me ligjin nr. 81/2013, datë 14.2.2013, nr. 26/2018, datë 17.5.2018).

17 Ligj Nr.10 385, datë 24.2.2011 Për Ndërmjetësimin në Zgjidhjen e Mosmarrëveshjeve (ndryshuar me ligjin nr. 81/2013, datë 14.2.2013, nr. 26/2018, datë 17.5.2018).

18 Ligj Nr.10 385, datë 24.2.2011 Për Ndërmjetësimin në Zgjidhjen e Mosmarrëveshjeve (ndryshuar me ligjin nr. 81/2013, datë 14.2.2013, nr. 26/2018, datë 17.5.2018).

19 Zakoni o postupku medijacije (Službeni glasnik Bosne i Hercegovine 37/04).

20 Zakoni o postupku medijacije (Službeni glasnik Bosne i Hercegovine 37/04).

21 Zakoni o postupku medijacije (Službeni glasnik Bosne i Hercegovine 37/04).

22 Zakoni o postupku medijacije (Službeni glasnik Bosne i Hercegovine 37/04).

agreement has both binding power and enforceability, as stated in Article 25,[23] the use of mediation in the jurisdiction of Bosnia and Herzegovina remains significantly limited.

The Law on Mediation Procedure[24] does not include specific requirements for cross-border/boundary mediation or mediation involving foreign components. However, Article 1[25] states that this Act applies to the mediation process only inside the territorial boundaries of Bosnia and Herzegovina. Considerable academic investigations have emerged about the elucidation of the expression "on the territory of Bosnia and Herzegovina". This prompts consideration as to whether this requirement is fulfilled exclusively by the implementation of a mediation agreement within the jurisdiction of Bosnia and Herzegovina, or if it requires one or more meetings involving the parties in dispute within the geographical confines of Bosnia and Herzegovina, or potentially mandates that settlements be exclusively concluded within the territorial boundaries of Bosnia and Herzegovina. According to Article 32[26] of the Law governing Mediation Procedure, an individual who is a foreign domestic and has the necessary authorisation to engage in mediation activities in a different jurisdiction, may be allowed to participate in the mediation process in Bosnia and Herzegovina under certain conditions. This permission is subject to the principle of reciprocity. The exercise of this prerogative is dependent on obtaining prior approval from both the Ministry of Justice and the Association of Mediators of Bosnia and Herzegovina. The ability for mediators from foreign jurisdictions, who are licenced outside of Bosnia and Herzegovina, to utilise their mediation expertise within Bosnia and Herzegovina is contingent upon meeting several specific requirements. These requirements include obtaining legal authorisation to practise mediation in a different jurisdiction, establishing reciprocal agreements, and obtaining prior approval from both the Ministry of Justice and the Association of Mediators for each individual case. It becomes evident that the rigorous requirements, as delineated, may be considered rather high, particularly when considering the needed approval from two separate governing entities.

4.1.3 BULGARIA

The Mediation Act is a crucial legislative tool that governs the use of mediation as an effective alternative method for resolving disputes.[27] It plays a major role in the field of legal practise (Article 1).[28] The law was subject to many revisions in 2006 and 2011, with the aim of aligning its provisions with the requirements outlined in Directive 2008/52.[29] This Directive addresses key aspects of mediation in relation to civil and commercial proceedings. Significantly, Article 8 of the Preamble of the Directive[30] establishes a clear distinction in which its implementation is intended primarily for cross-border/boundary conflicts. Nevertheless, it acknowledges the possibility for EU to possibly broaden its scope to include internal issues. The legal system of Bulgaria has effectively incorporated

23 Zakoni o postupku medijacije (Službeni glasnik Bosne i Hercegovine 37/04).

24 Zakoni o postupku medijacije (Službeni glasnik Bosne i Hercegovine 37/04).

25 Zakoni o postupku medijacije (Službeni glasnik Bosne i Hercegovine 37/04).

26 Zakoni o postupku medijacije (Službeni glasnik Bosne i Hercegovine 37/04).

27 Mediation Act [Zakon za mediatsiiata], D ŭrzhaven Vestnik [legal gazette] 17 December 2004 no. 110. Amendments: Dŭrzhaven Vestnik 24 October 2006 no. 86; 28 January 2011 no. 9 and 1 April 2011 no. 27.

28 Mediation Act [Zakon za mediatsiiata], D ŭrzhaven Vestnik [legal gazette] 17 December 2004 no. 110. Amendments: Dŭrzhaven Vestnik 24 October 2006 no. 86; 28 January 2011 no. 9 and 1 April 2011 no. 27.

29 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.

30 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.

and applied the fundamental principles outlined in the Directive, demonstrating a consistent commitment to meeting its regulatory standards, both in cases involving cross-border/boundary issues and those limited to domestic matters.

Regulation 2/2007,[31] published by the Ministry of Justice, is a notable legislative document of considerable importance in the field of mediation. This regulation effectively addresses multiple aspects, such as the requirements and procedural complexities related to the approval of mediator-training organisations, provisions regarding mediator training requirements, and comprehensive procedures governing mediator registration, deregistration, and removal from the Unified Register of Mediators. Moreover, it encompasses the procedural protocols and ethical principles that regulate the behaviour of mediators. The aforementioned elements include development of guidelines for the education of mediators, regulations outlining the procedural and ethical standards that mediators must adhere to, creation of a centralised database of qualified mediators, and implementation of regulatory measures to ensure compliance with the requirements for mediator training and supervision of training providers, as outlined in Article 2 of Regulation 2/2007.[32] Furthermore, it is worth noting the introduction of a European Code of Conduct for Mediators,[33] in addition to the aforementioned local regulations. The provided code outlines a comprehensive set of guiding principles that mediators might choose to adhere to, thereby taking personal responsibility for their compliance.

Article 2 of the Mediation Act[34] provides a legally defined explanation of the concept of mediation. This document outlines a formal and confidential procedure created for the non-legal settlement of disputes, in which a neutral mediator assists in facilitating communication between the involved parties with the goal of reaching a mutually agreeable agreement. The primary goal of this method is to achieve a settlement that avoids the formalities often associated with court proceedings. This approach aims to create a climate that promotes development of amicable relationships between the parties concerned, both in the short- and in the long-term. Mediation, as a form of extrajudicial alternative dispute resolution, is firmly grounded in the principles of voluntarism and equitable participation. It places great emphasis on the discretionary engagement of the parties involved, while also upholding their inviolable right to withdraw, as outlined in Article 5 of the Mediation Act.[35] The mediation technique is characterised by its consensual nature, as stated in Article 6(2) of the Mediation Act,[36] where all aspects of the process are agreed upon by the parties involved. The need of guaranteeing the neutrality and impartiality of mediators is of utmost relevance in this particular situation,

31 Naredba No. 2 ot 15 Mart 2007 g. za usloviiata i reda za odobriavane na organizatsiite, koito obuchavat mediatori; za iziskvaniiata za obuchenie na mediatori; za reda za vpisvane, otpisvane i zalichavene na mediatori ot edinniia registŭr na mediatorite i za protsedurnite i etichni pravila za povedenie na mediatora, D.V. 27 March 2007 No. 26. Amended D.V. 8 April 2011 No. 29.

32 Naredba No. 2 ot 15 Mart 2007 g. za usloviiata i reda za odobriavane na organizatsiite, koito obuchavat mediatori; za iziskvaniiata za obuchenie na mediatori; za reda za vpisvane, otpisvane i zalichavene na mediatori ot edinniia registŭr na mediatorite i za protsedurnite i etichni pravila za povedenie na mediatora, D.V. 27 March 2007 No. 26. Amended D.V. 8 April 2011 No. 29.

33 European Code of Conduct for Mediation Providers adopted at the 31st plenary meeting of the CEPEJ, Strasbourg, 3-4 December 2018.

34 Mediation Act [Zakon za mediatsiiata], D ŭrzhaven Vestnik [legal gazette] 17 December 2004 no. 110. Amendments: Dŭrzhaven Vestnik 24 October 2006 no. 86; 28 January 2011 no. 9 and 1 April 2011 no. 27.

35 Mediation Act [Zakon za mediatsiiata], D ŭrzhaven Vestnik [legal gazette] 17 December 2004 no. 110. Amendments: Dŭrzhaven Vestnik 24 October 2006 no. 86; 28 January 2011 no. 9 and 1 April 2011 no. 27.

36 Mediation Act [Zakon za mediatsiiata], D ŭrzhaven Vestnik [legal gazette] 17 December 2004 no. 110. Amendments: Dŭrzhaven Vestnik 24 October 2006 no. 86; 28 January 2011 no. 9 and 1 April 2011 no. 27.

as emphasised in Article 6(1)[37] of the legislation and further elaborated upon in Section IV, item 2.[38]

The Bulgarian Civil Procedural Code underwent an update in February 2023, which included a requirement for the obligatory incorporation of mediation in civil and commercial court processes, especially for defined claims. The amendment was officially published in the Official Gazette. Starting on 1 July 2024, the courts in Bulgaria will be obligated to comply with the recently implemented procedural norms. The courts are obligated to only enable and promote mediation amongst parties until the specified date. The mandatory use of mediation will be limited only to the following situations including a claim or petition: in order to ensure a fair distribution of the use of jointly owned property in accordance with the provisions of the Ownership Act; to address financial claims arising from co-ownership as specified in the Ownership Act; to facilitate the division of property as outlined in the Partition Proceedings under the framework of the Ownership Act; in accordance with the regulations set forth in the Condominium Ownership Management Act; regarding the complete settlement of the value of shares upon the termination of participation in a limited liability company, as defined within the Commerce Act; to establish the responsibility of a managing director or controller of a limited liability company, who is liable for damages incurred by the company as per the Commerce Act. In cases clearly specified in the Civil Procedural Code, when mediation is not obligatory, the court has the power to enforce mediation upon the parties concerned. Nevertheless, there are certain circumstances in which the court is unable to require mediation. These include situations where the nature of the dispute is incompatible with mediation as defined by the law, when the initial communication regarding the case has not been personally served to the respondent or through an intermediary, or if the respondent acknowledges the claim. Mediation may be initiated at any point in the continuum of judicial procedures, including both the initial phase and subsequent appeals. If parties want to engage in mediation during the appeal phase, the court has the authority to postpone or halt proceedings, subject to the mutual consent of the parties involved. The need for participation in mediation during the current judicial proceedings is limited to a single occurrence. The mediation process must be carried out within a court-specified period, which should not exceed a maximum length of two months after the parties have been notified. If a resolution is reached via the process of mediation, the outcome of the case will depend on the specific provisions outlined in the agreement. This may result in the dismissal of the case or need the court's validation of the settlement within one week of the application being submitted. In the event that a resolution is not achieved or if the certified settlement only pertains to a certain portion of the legal action, the court will continue to adjudicate the other facets of the case.

The 2007 Civil Procedure Code[39] has many provisions that give incentives for parties involved in disputes to participate in mediation as a method of settling their disagreements. The aforementioned motivation is readily apparent not just in cases of broad civil action, as explicitly stated in Article 140(3),[40] but also encompasses commercial litigations, as delineated in Article 374(2).[41] Following the completion of the preliminary phase of the

37 Mediation Act [Zakon za mediatsiiata], D ŭrzhaven Vestnik [legal gazette] 17 December 2004 no. 110. Amendments: Dŭrzhaven Vestnik 24 October 2006 no. 86; 28 January 2011 no. 9 and 1 April 2011 no. 27.

38 Mediation Act [Zakon za mediatsiiata], D ŭrzhaven Vestnik [legal gazette] 17 December 2004 no. 110. Amendments: Dŭrzhaven Vestnik 24 October 2006 no. 86; 28 January 2011 no. 9 and 1 April 2011 no. 27.

39 Code of Civil Procedure, Dŭrzhaven Vestnik [legal gazette] 20 July 2007 no. 59. Amendments: D ŭrzhaven Vestnik 30 May 2008 no. 50; 15 July 2008 no. 63; 5 August 2008 no. 69; 13 February 2009 no. 12; 13 March 2009 no. 19; 28 April 2009 no. 32; 5 June 2009 no. 42; 23 June 2009 no. 47; 16 October 2009 no. 82; 16 February 2010 no. 13; 21 December 2010 no. 100; 14 January 2011 no. 5.

40 Code of Civil Procedure, Dŭrzhaven Vestnik [legal gazette] 20 July 2007 no. 59.

41 Code of Civil Procedure, Dŭrzhaven Vestnik [legal gazette] 20 July 2007 no. 59.

case, it is the court's obligation to arrange a hearing, during which the relevant parties are appropriately notified to attend. In this adjudicatory session, the court is responsible for clarifying many aspects, including the disputed matters under consideration, relevant legal principles, and, if applicable, may inform the parties about the preliminary report outlining the complaint. In addition, the court asserts its authority to provide recommendations, such as proposing the commencement of a mediation procedure or the examination of other methods for resolving the conflict in a cooperative manner.

According to Article 78(9) of the Civil Procedure Code (CCP),[42] if a matter is resolved via a mutual agreement, the claimant has the right to get a refund of fifty percent of the initial charge that was paid. Moreover, it is within the purview of the courts to assume the duty of actively promoting the transfer of the case to the realm of mediation. The fiscal stimulus outlined in Article 78(9) of CCP[43] is a noteworthy provision aimed at encouraging the use of mediation methods.

The Consumer Protection Act (CPA)[44] includes specific restrictions about alternative methods of resolving disputes, in accordance with the standards established in Directive 2013/11[45] for the alternative settlement of consumer disputes. These standards possess global applicability, embracing instances involving both cross-border/boundary and domestic disputes. According to Article 161m,[46] the Consumer Protection Commission (CPC) assumes the duty of informing consumers about their rights and obligations regarding the formation and completion of contracts, as well as the options for resolving consumer disputes outside of the court system. The CPC also exerts its jurisdiction in the process of adjudicating motions and proposals put forward by consumers and consumer organisations. It is crucial to emphasise that any agreement that violates the provisions of the Consumer Protection Act (CPA) pertaining to alternative dispute resolution is deemed invalid, just as agreements that undermine consumer rights or limit the responsibility of businesses also lead to the same consequence. In addition, in accordance with Article 182 of the Consumer Protection Act (CPA),[47] it is the responsibility of the Minister of Economy to create conciliation boards that are both generalised and specialised. These boards are designed to address consumer complaints and must meet the requirements outlined in the legislative framework.

42 Code of Civil Procedure, Dŭrzhaven Vestnik [legal gazette] 20 July 2007 no. 59.

43 Code of Civil Procedure, Dŭrzhaven Vestnik [legal gazette] 20 July 2007 no. 59.

44 Consumer Protection Act Promulgated, Official Gazette No. 99/9.12.2005, effective 10.06.2006, amended, SG No. 30/11.04.2006, effective 12.07.2006, amended and supplemented, SG No. 51/23.06.2006, effective 24.12.2006, SG No. 53/30.06.2006, effective 30.06.2006, amended, SG No. 59/21.07.2006, effective as from the date of entry into force of the Treaty of Accession of the Republic of Bulgaria to the European Union - 1.01.2007, amended and supplemented, SG No. 105/22.12.2006, effective 1.01.2007, supplemented, SG No. 108/29.12.2006, effective 1.01.2007, amended, SG No. 31/13.04.2007, effective 13.04.2007, SG No. 41/22.05.2007, amended and supplemented, SG No. 59/20.07.2007, effective 1.03.2008, SG No. 64/7.08.2007, effective 8.09.2007, amended, SG No. 36/4.04.2008, amended and supplemented, SG No. 102/28.11.2008, amended, SG No. 23/27.03.2009, effective 1.11.2009, amended and supplemented, SG No. 42/5.06.2009, amended, SG No. 82/16.10.2009, effective 16.10.2009, supplemented, SG No. 15/23.02.2010, effective 23.02.2010, amended, SG No. 18/5.03.2010, effective 5.03.2010, SG No. 97/10.12.2010, effective 10.12.2010, amended and supplemented, SG No. 18/1.03.2011, amended, SG No. 38/18.05.2012, effective 1.07.2012, supplemented, SG No. 56/24.07.2012, amended, SG No. 15/15.02.2013, effective 1.01.2014, supplemented, SG No. 27/15.03.2013, amended, SG No. 30/26.03.2013, effective 26.03.2013.

45 Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR).

46 Consumer Protection Act Promulgated, Official Gazette No. 99/9.12.2005, effective 10.06.2006.

47 Consumer Protection Act Promulgated, Official Gazette No. 99/9.12.2005, effective 10.06.2006.

Due to Bulgaria's membership in the European Union, Directive 52/2008/EU[48] is of significance within its legislative system. The scope of this Directive encompasses cross-border/boundary disputes pertaining to civil and commercial matters, excluding rights and responsibilities that are intrinsically non-negotiable as per the existing legal framework. The extensive scope of the Directive is shown by its effective incorporation into the Mediation Act, which encompasses both domestic and cross-border/boundary conflicts, as outlined in Article 3(1) of the Mediation Act.[49] As per the provisions outlined in Article 2 of the Directive,[50] a dispute is deemed to possess a cross-border/boundary nature when one or more parties involved in the dispute maintain a habitual residence or domicile inside EU that is different from the EU jurisdiction of residence or domicile of the other parties engaged in the dispute. This classification is relevant to situations involving: (a) voluntary decision to commence mediation; (b) mediation order issued by a court; (c) mandatory mediation requirement specified in domestic laws; or (d) invitation extended to the parties in accordance with Article 5 of the Directive.[51] It is important to highlight that the term "cross-border/boundary" includes situations where, after mediation, a legal proceeding is commenced or arbitration is pursued in EU jurisdiction different from the customary residence or domicile of the parties. This is in accordance with the provisions specified in § 1, (a), (b), or (c),[52] for the purposes of complying with statute of limitations and maintaining confidentiality within the context of mediation. In situations where mediation is initiated in a specific EU jurisdiction, but legal proceedings regarding the same dispute are later initiated in Bulgaria under Regulation 1215/2012,[53] the rules regarding confidentiality and the time limits of the

48 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

49 Mediation Act [Zakon za mediatsiiata], D ŭrzhaven Vestnik [legal gazette] 17 December 2004 no. 110. Amendments: Dŭrzhaven Vestnik 24 October 2006 no. 86; 28 January 2011 no. 9 and 1 April 2011 no. 27.

50 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

51 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

52 Mediation Act [Zakon za mediatsiiata], D ŭrzhaven Vestnik [legal gazette] 17 December 2004 no. 110. Amendments: Dŭrzhaven Vestnik 24 October 2006 no. 86; 28 January 2011 no. 9 and 1 April 2011 no. 27.

53 The administration of direct enforcement as stipulated in Regulation (EU) No 1215/2012 is regulated under Article 622a of the Code of Civil Procedure. According to Article 622a, which was published in the Official Gazette No 50/2015, (1) The enforceability of a judgement rendered in a different Member State of the European Union is not contingent upon the issuance of a writ of execution. The enforcement of a judgement from another Member State of the European Union must be carried out by the bailiff upon request of the relevant party. This request must be supported by a copy of the judgement, which has been authenticated by the issuing court, as well as a certificate issued in accordance with Article 53 of Regulation (EU) No 1215/2012. In cases where the bailiff determines that the measure or order cannot be executed in accordance with the requirements outlined in this Code, the bailiff is authorised to initiate replacement enforcement. A temporary measure, including a precautionary one, that has been ordered in another Member State of the European Union must be enforceable as outlined in paragraphs 1 and 2. In cases where the measure was implemented without the defendant being formally notified to appear, it is required to provide evidence of the judgement being served. During the execution process, the bailiff is required to provide the debtor with a duplicate of the certificate mentioned in paragraph 2, which serves as an invitation for the debtor to willingly adhere to the necessary actions. In the event that the judgement has not been served on the debtor, it is required that the certificate be accompanied by a copy of the judgement rendered in another Member State of the European Union. The debtor has the option to apply for denial of enforcement within a period of one month after the service. In cases where a translation of the judgement is deemed required, the prescribed time limit should be temporarily halted until such translation is made available to the debtor. Either party has the right to challenge the modification of the measure or order mentioned in Article 436. The user's text does not contain any information to rewrite in an academic manner. The general provisions of Part Five, namely the Enforcement Procedure section, of the Code of Civil Procedure are applicable to enforcement procedures that are not controlled by Regulation (EU) No 1215/2012.

statute of limitations will apply to the mediation process. This concept is applicable in cases where mediation has taken place in Bulgaria and afterwards, judicial actions or arbitration related to the same issue are undertaken in a different member state.

4.1.4 CROATIA

Mediation or conciliation has become a prominent alternative method for resolving conflicts. The term "mediation" is derived from the Latin word "mediare", which denotes the function of serving as an intermediate. Although the word "mediation" has achieved inter-domestic acceptance, the Croatian legislative body has chosen to use the term "conciliation" due to its linguistic consistency with the Croatian language. The historical development of alternative conflict resolution in Croatia has been relatively short. In 2002, the Council of Europe and the European Commission provided guidelines that emphasised the significance of conciliation in civil and commercial disputes. Similarly, the Model Law of 2003 developed by the United Nations Commission on Inter-domestic Trade Law (UNCITRAL), which specifically addresses inter-domestic commercial disputes and, by extension, other consensual conflicts, emerged as a prominent framework and provided a basis for the creation of the Conciliation Act. In the current transforming environment, there has been a notable change in the central focus of the modern progression towards peaceful resolution of conflicts, moving away from its traditional foundations predominantly centred upon conventional property disputes. However, it is important to note that the UNCITRAL Model is limited in its application to inter-domestic conciliation in commercial concerns, which necessitates some adjustments within the Law on Conciliation (hereinafter referred to as: ZM). In contrast, the Croatian ZM demonstrates a broader scope, embracing not just inter-domestic and economic situations but also expanding its applicability to a larger range of circumstances. The ZM was implemented on 24 October 2003.[54] A notable milestone was reached in 2008 when Directive 2008/52/EC[55] pertaining to certain facets of conciliation in civil and commercial disputes was passed by the European Parliament and the Council. The implementation of this Directive was mandatory inside member states, resulting in a more detailed regulation of the conciliation process at the domestic level. The implementation of this regulation was mandated to be completed by 21 May 2011,[56] which in turn needed an adjustment to the current ZM. As a result, the Act underwent modifications in 2009, leading to the implementation of a revised version of ZM in early 2011, coinciding with the Croatia's entry to the European Union.

The ZM functions as the regulatory structure that governs the process of conciliation in several areas, including commercial, civil, labour, and other conflicts that pertain to the rights and responsibilities of the involved parties and may be resolved by voluntary means. Moreover, the scope of ZM's provisions extends to include other conflicts on the condition that such expansion is consistent with the fundamental essence of the legal relationship that gives rise to the dispute. It is important to highlight that any particular legislative enactments that provide separate provisions for such conflicts will be given priority. The primary objective of ZM is to enhance the efficiency and effectiveness of conciliation as a practical approach to resolving disputes by simplifying its accessibility and availability. Furthermore, ZM aims to enhance the prominence of conciliation by using various public communication channels, technological platforms, and other relevant media outlets.

54 Zakon o mirenju, Narodne novine broj 163/2003.

55 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.

56 Zakon o mirenju (Narodne novine, broj 18/11).

In addition to defining the scope of its applicability, ZM serves the primary objective of creating a comprehensive structure that encompasses not only the conceptual boundaries of conciliation but also includes the responsibilities of conciliators and the institutions responsible for conducting conciliation procedures. This legislative framework provides additional details on the processes involved in initiating the conciliation process. It clarifies the conditions under which a conciliator is appointed and outlines the specific responsibilities and authorities of the parties involved. ZM also extends its jurisdiction until the conclusion of the conciliation procedure, specifically on the resolution of its results. The text adeptly examines issues related to secrecy, recognises the complex connection between the conciliation process and its potential financial implications, and delineates the interdependent link between the conciliation procedure and concurrent cases that focus on similar subject matter.

In essence, the resolution of civil conflicts is mostly handled by courts that possess broad jurisdiction, such as municipal and county courts. Conversely, specialised commercial courts are responsible for addressing issues of a commercial nature. Nevertheless, the distinction between commercial and civil conflicts is somewhat intricate since the jurisdiction of commercial courts includes concerns that go beyond merely economic issues. Demarcation of authority between general courts and business courts, while seemingly organised, is often seen as being arbitrary and subjective. Malleability of the rules controlling jurisdiction has been subject to periodic adjustments in recent years, hence highlighting this specific aspect. Moreover, there is a possibility of implicit expansion of legal authority over substantial issues, which might lead to problems arising from changes in jurisdiction, as stated in the concluding clauses. The legal provisions pertaining to the resolution of disputes through voluntary agreement in municipal, jurisdiction, and commercial courts are established by a range of regulatory instruments, such as the Civil Procedure Act[57] (specifically Articles 34, 34a, and 34b of the ZPP),[58] Companies Act[59] (specifically Article 40 of the ZTD),[60] and Law on Conciliation[61] (derived from Article 186g of the ZPP).[62] It is worth mentioning that none of these statutes explicitly prohibits the use of conciliation for any particular category of disputes. This suggests that any disputes involving rights that fall within the scope of the parties' voluntary agreement can be resolved through the courts that have general substantive jurisdiction. This idea is applicable to business courts, which, being specialised institutions, have the authority to oversee conciliatory proceedings as well. However, before the 2008 amendment that somewhat inelegantly integrated conciliation into the civil procedural framework, the utilisation of conciliation in disputes falling under the substantive jurisdiction of municipal and commercial courts was limited to experimental initiatives carried out at certain court establishments.

In March 2006, an experimental conciliation programme was initiated in the Commercial Court in Zagreb. In a similar fashion, comparable initiatives were initiated in September and October 2006 throughout the broader substantive jurisdiction, which included eight municipal courts. The High Commercial Court of Croatia was the first second-instance court to use mediation as a method of resolving disputes in 2007. The pilot efforts

57 Zakon o parničnom postupku (Narodne novine, broj 53/91, 91/92, 58/93, 112/99, 88/01, 117/03, 88/05, 02/07, 84/08, 123/08, 57/11, 148/11, 25/13 i 89/14).

58 Zakon o parničnom postupku (Narodne novine, broj 53/91, 91/92, 58/93, 112/99, 88/01, 117/03, 88/05, 02/07, 84/08, 123/08, 57/11, 148/11, 25/13 i 89/14).

59 Companies Act of 23 November 1993 (Text No. 2133).

60 Companies Act of 23 November 1993 (Text No. 2133).

61 Zakon o mirenju, Narodne novine broj 163/2003.

62 Zakon o parničnom postupku (Narodne novine, broj 53/91, 91/92, 58/93, 112/99, 88/01, 117/03, 88/05, 02/07, 84/08, 123/08, 57/11, 148/11, 25/13 i 89/14).

played a crucial role in promoting the widespread use of conciliation via various media platforms. Additionally, these programmes included essential training sessions for conciliating judges, which were fundamental to their success. The Ministry of Justice initiated development of an initial training programme for conciliating judges, which was implemented in 2009. In the context of these programmes, the litigants who were part of the legal procedures were provided with the opportunity to engage in mediation sessions conveniently located inside the court facilities. In addition to implementing more comprehensive educational initiatives designed to raise awareness about the accessibility of conciliation, these efforts also contributed to the progress of conciliation. Within this particular framework, judges who are overseeing active cases in separate courts would suggest the use of mediation to the parties involved. If the litigants agree to the mediation proposal, the court would facilitate the process by assigning specific conciliators, who are typically other judges from the same judicial institution, to oversee the mediation.

Establishment of the original conciliation centre took place by separating this institution from the existing arbitration court within the Croatian Chamber of Commerce (HGK). The arbitration court, in compliance with its established arbitration rules, had the ability to engage in conciliation proceedings in addition to its primary arbitration tasks. Despite being a relatively uncommon practise within its operational framework, the Permanently Selected Court and the Conciliation Centre were established in 2002 as distinct entities within HGK. This decision was made strategically during the initial stages of mediation development. Both of these institutions were specifically designed to address traditional business disputes, including instances that have inter-domestic aspects. These entities continued to exist together, sharing logistical and partly human resources. Following the establishment of conciliation centres, particularly those under the Chamber of Crafts and the Employers' Association (HOK and HUP), many years later, these centres developed their own procedures, taking cues from the Law on Conciliation.

The change implemented in 2003 to the Law on Civil Procedure signified the inclusion of a compulsory provision for settlement of disputes involving Croatia as a party.[63] In accordance with the amended Article 186a of ZPP,[64] it is obligatory for any person seeking to initiate legal proceedings against Croatia to first engage with the appropriate economy's attorney's office by submitting a formal appeal for a mutually agreed resolution of the conflict prior to commencing litigation. This procedure entails a compulsory undertaking in which the applicant engages with the economy's attorney's office, which advocates for the economy's interests, with the primary objective of attaining a mutually agreeable conclusion, namely a settlement. The legally binding element of a settlement, once agreed, is emphasised by legal provisions, similar to a resolution mediated by a court. In situations where the plea for a peaceful resolution is not recognised or resolved within a period of three months after its submission, the individual making the request has the opportunity to file a formal complaint before the relevant court. Typically, the court will reject any complaint filed against Croatia if it has not been preceded by a peaceful settlement request or if it is filed after the expiration of the three-month deadline. The aforementioned requirement is modified by the provision of exceptions that are provided for certain appeals submitted in accordance with specialised rules.

63 Zakon o parničnom postupku (Narodne novine, broj 53/91, 91/92, 58/93, 112/99, 88/01, 117/03, 88/05, 02/07, 84/08, 123/08, 57/11, 148/11, 25/13 i 89/14).

64 Zakon o parničnom postupku (Narodne novine, broj 53/91, 91/92, 58/93, 112/99, 88/01, 117/03, 88/05, 02/07, 84/08, 123/08, 57/11, 148/11, 25/13 i 89/14).

4.1.5 GREECE

Greece has shown proactive dedication as one of the original member of the European Union in implementing the objectives outlined in Directive 2008/52/EC[65] via the implementation of Greek Mediation Act (GrMA).[66] As outlined in Article 4 of GrMA[67], the term "mediation" refers to a methodical and organised process, regardless of its specific name, in which two or more parties involved in a dispute voluntarily engage in efforts to reach a mutually agreed-upon resolution with the assistance of a mediator. The definition provided explicitly omits any attempts made by justices of peace or judicial bodies to reconcile a disagreement within the scope of adjudicative processes, as outlined in Article 208[68] and subsequent articles of the Greek Code of Civil Procedure (GrCCP).[69] The key distinguishing factor that sets mediation apart from other methods of resolving disputes, such as extra-judicial or conciliatory approaches, is the mandatory involvement of a mediator. This mediator serves as a neutral intermediary between the parties involved and is responsible for facilitating the mediation process.

According to Article 3(1)(a) of the Greek Mediation Act,[70] parties have the inherent right to possibly choose mediation as an option either before or during litigation (referred to as voluntarily induced mediation). In addition, it should be noted that the court has the jurisdiction to provide an invitation to the involved parties for mediation throughout the course of ongoing litigation, as mandated by Article 3(1)(b) of GrMA.[71] In the given context, the incorporation of mediation is formally recorded in the court's official documentation. Furthermore, parties may be required to engage in mediation by an alternative EU court in accordance with Article 3(1)(c) of GrMA.[72] Similarly, mediation may be enforced by a distinct legislative provision, as described in Article 3(1)(d) of GrMA, which pertains to mandatory mediation as prescribed by statute.[73]

The Greek Mediation Act provides a comprehensive account of the permissible circumstances under which mediation may be pursued in Article 3.[74] However, it fails to clarify the specific meaning of 'recourse' and, as a result, does not specify the exact point at which mediation process is initiated. The inquiry at hand has been the subject of extensive analysis in legal scholarship. Scholars have suggested that the crucial factor revolves around the specific moment when the mediation procedure is effectively initiated. This occurs when the parties involved formally appoint a mediator to commence the mediation process with the objective of resolving their conflict. According to the existing statutory framework, the use of mediation may be initiated either by the

65 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

66 Law 3898/2010 titled 'Mediation in civil and commercial matters' implemented Directive 2008/52/EC of the European Parliament and the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters, OJ C 286, 17.11.2005.

67 Law 3898/2010 titled 'Mediation in civil and commercial matters'.

68 According to the Greek Code of Civil Procedure, specifically Article 214A(4)(a), which was adopted by Law 2298/1995, parties engaged in conciliation proceedings were granted the opportunity to seek assistance from a mutually agreed upon third party, as long as they desired to do so. This provision was subsequently revised.

69 Code of Civil Procedure, A 182 1985 1024, Entered into force: 16.09.1968, Date of signature: 10.10.1985, amended.

70 Law 3898/2010 titled 'Mediation in civil and commercial matters'.

71 Law 3898/2010 titled 'Mediation in civil and commercial matters'.

72 Law 3898/2010 titled 'Mediation in civil and commercial matters'.

73 Law 3898/2010 titled 'Mediation in civil and commercial matters'.

74 Law 3898/2010 titled 'Mediation in civil and commercial matters'.

parties themselves or by court intervention. Regardless of its origins, it is important to emphasise that mediation continues to be a voluntary and highly private method for resolving disputes. The domain of public justice remains unrestricted and unhindered, since the pathway to the courts is maintained, while simultaneously, the imposition of mediation onto the conflicting parties cannot be enforced. The involved parties retain their right to choose the most appropriate alternative dispute resolution method in order to resolve their issue in a mutually agreeable manner.

The court-based mediation process established under Article 214B of the Greek Code of Civil Procedure[75] is specifically designed for resolving conflicts falling outside the scope of private law. This provision was introduced by the adoption of Article 7(1) of Law 4055/2012.[76] The voluntary nature of this alternative dispute resolution system is a notable characteristic, since it is administered by court professionals. As a result, it is customary for each trial court and appellate court throughout the jurisdiction to appoint one or more individuals, typically the presiding officers or seasoned magistrates, as specialised mediators. These mediators may serve either on a full-time or part-time basis for a fixed term of two years, with the potential for a one-year extension.

Mediation may be used either before the commencement of a legal action or during the course of ongoing litigation. The parties involved in a legal matter, or their authorised legal agents, are required to submit their legal claims by means of a written application. Regarding the phase of lis pendens, the court has the authority to exercise its discretion and conduct a thorough evaluation of various contextual factors related to the case, such as the nature of the dispute or complexities associated with presenting evidence. Based on this assessment, the court has the option to offer disputing parties the opportunity to engage in judicial mediation at any point during the legal proceedings. Upon the agreement of the involved parties, the court is instructed to postpone the case, arranging for a hearing to take place within an accelerated timetable that does not exceed six months. The judicial mediation procedure consists of both individual and group sessions, which include talks between the legal representatives of the parties and the mediator judge. The second party, with the ability to provide proposals that are not legally enforceable but relevant to resolving the dispute, aims to maintain anonymity throughout the mediation process, unless all parties agree on a different arrangement. It is important to note that before the mediation process begins, all parties involved have a moral responsibility to maintain the secrecy of the proceedings. This obligation is often formalised by a written agreement.

The use of judicial mediation, as prescribed by Law 4055/2012,[77] has received substantial critical evaluation. Academic scholars specialising in legal jurisprudence have expressed concerns regarding the discretionary power granted to judges, which permits them to choose between pursuing direct conciliation efforts during a court hearing or diverting a case towards judicial mediation. This provision is outlined in Article 233 of the Greek Code of Civil Procedure.[78] The process of reassigning a legal matter to a different judge, who may serve as both a mediator and an adjudicator depending on their classification as a full-time or part-time mediator, has difficulties in its implementation. The presence of a composite judicial role raises constitutional concerns as it may impinge upon the

75 Code of Civil Procedure, A 182 1985 1024, Entered into force: 16.09.1968, Date of signature: 10.10.1985, amended.

76 Law 4055/2012 (GG A 51/12.03.2012).

77 Law 4055/2012 (GG A 51/12.03.2012).

78 Code of Civil Procedure, A 182 1985 1024, Entered into force: 16.09.1968, Date of signature: 10.10.1985, amended.

principle of a fair and impartial judge, as outlined in Article 8 of the Constitution[79] and Article 108 of GrCCP.[80] This arrangement also undermines the inherent safeguards for individuals and the proper functioning of justice system, while potentially leading to procedural delays. Contrarily, there is a contention that this initiative embodies an aspect of proactive case management implemented by the court. In this approach, the judge assumes a managerial role by guiding each case towards the most suitable procedural pathway and embracing the innovative framework of the Multi-Door Courthouse concept.

The elucidation of the idea of 'cross-border/boundary mediation' within the legislative framework of Greece is accomplished by examining the delineation provided in Article 4(a) of the Greek Mediation Act.[81] The language used in Article 2 of Directive 2008/52/EC[82] bears a striking similarity to that found in Article 4(a) of GrMA.[83] According to the latter, a cross-border/boundary dispute arises when at least one of the parties involved is either domiciled or habitually resides in an EU jurisdiction different from that of any other party. This classification is applicable in the following circumstances: (a) when both parties agree to participate in mediation after the dispute arises; (b) when a court in an EU jurisdiction orders mediation; (c) when domestic law requires mediation to be undertaken; or (d) when the court summons the parties before the commencement of legal proceedings. The provision expands the classification of cross-border/boundary disputes to include situations where, following the circumstances described in (a)-(c), legal proceedings or arbitration take place in an EU jurisdiction different from the one where the parties were residing or domiciled at the time of those circumstances. The existing state of affairs is such that GrMA serves as the only legislative framework regulating cross-border/boundary mediation. However, it is important to highlight that the lack of a formal framework does not always prevent mediation from occurring, particularly in cases when one of the parties is located outside the European Union. In these circumstances, the term 'cross-border/boundary mediation' may be appropriate, but it is important to note that Greek law does not control this specific situation, and none of the requirements outlined in the Greek Mediation Act are applicable.

The Greek Mediation Act establishes a legislative framework that applies to both local and cross-border/boundary mediation cases inside the European Union, ensuring consistency and harmonisation. The only exception from the prevailing model of uniform or 'monistic' regulation may be seen in Article 4 of GrMA.[84] This article establishes a significant differentiation, specifying that, particularly in instances of domestic conflicts, the position of mediator shall be exclusively reserved for solicitors who hold accreditation in line with GrMA.[85] In contrast, when it comes to cross-border/boundary conflicts, the parties involved are given the privilege to include any person who is authorised in accordance with GrMA.[86] The binary approach towards the mediator's function seems to lack a clear and logical justification, which may raise problems within the domain

79 The Hellenic Constitution was drafted by the Fifth Revisionary Parliament of Greece in 1974, subsequent to the downfall of the Greek military dictatorship and the establishment of the Third Hellenic Republic. The legislation was enacted on 11 June 1975, with adoption occurring two days earlier. Subsequent amendments were made in the years 1986, 2001, 2008, and 2019.

80 Code of Civil Procedure, A 182 1985 1024, Entered into force: 16.09.1968, Date of signature: 10.10.1985, amended.

81 Law 3898/2010 titled 'Mediation in civil and commercial matters'.

82 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

83 Law 3898/2010 titled 'Mediation in civil and commercial matters'.

84 Law 3898/2010 titled 'Mediation in civil and commercial matters'.

85 Law 3898/2010 titled 'Mediation in civil and commercial matters'.

86 Law 3898/2010 titled 'Mediation in civil and commercial matters'.

of constitutional law as it might possibly violate the concept of equality as outlined in Article 4 of the Constitution. As mentioned earlier, with the modification of GrMA by paragraph IE.2 of the main article of Law 4254/2014,[87] a solution to this distinction has been proposed. Legislation has been enacted to provide parties engaged in domestic disputes the authority to choose any person who is accredited in line with GrMA, similar to the provisions applicable to cross-border/boundary conflicts.

4.1.6 KOSOVO*

Incorporation of mediation as a legal procedure in Kosovo* occurred in 2008[88] when the Law on Mediation was officially implemented, coinciding with the implementation of Directive 2008/52/EC.[89] Following its actual implementation, the Law on Mediation underwent significant amendments in 2018, with a special focus on addressing the deficiencies that had arisen in several sectors. The legislative framework places significant emphasis on Article 1,[90] which strongly highlights its connection with Directive 2008/52/EC and the European legal framework for mediation. The Ministry of Justice frequently publishes extensive statistics related to cases involving mediation processes.

The legal provisions related to mediation encompass a variety of regulations, including the Directive that governs the Accreditation of Mediators,[91] Directive that outlines the Education and Accreditation process for mediators,[92] Directive that delineates the protocols for accountability and the progression of disciplinary proceedings for mediators,[93] Directive that governs the registration protocol for mediators,[94] Directive that shapes the criteria for selecting participants in mediation training, Official Declaration that announces an open call for candidates seeking admission to mediation training, and lastly, Ethical Code that outlines the professional conduct standards for mediators.[95]

According to the provisions outlined in Article 25[96] of the Law on Mediation, individuals who hold foreign domesticity are eligible to serve as mediators in Kosovo* for particular cases. However, this eligibility is subject to the principle of reciprocity and requires prior authorisation from the Ministry of Justice. The concept of reciprocity is generally assumed to be in effect, and is only called into question when one of the parties participating in the proceedings raises an objection to the involvement of a foreign mediator, citing the perceived lack of reciprocal recognition. In the event that such an objection arises, the responsibility to provide evidence of the lack of reciprocity with regards to the mediator's initial jurisdiction lies with the party raising the issue. Although the legal framework does not explicitly cover cross-border/boundary mediation, it is worth noting that Article 1[97] highlights harmonisation of this legislation with Directive 2008/52/EC of the European Parliament and of the Council.

87 Law 4055/2012 (GG A 51/12.03.2012).

88 The First Law on Mediation (No. 03/L-057); Law No. 06/L-009 on Mediation.

89 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

90 The First Law on Mediation (No. 03/L-057); Law No. 06/L-009 on Mediation.

91 Administrative Instruction No. 06/2019 for the Training and Certification of Mediators

92 Administrative Instruction No. 03/2019 for the Licensing of Mediators in Kosovo*.

93 Administrative Instruction No. 04/2019 for Supervision, Responsibility, and Disciplinary Procedure of Mediators

94 Administrative Instruction No. 05/2019 for the Registration of Mediators.

95 Administrative Code No. 12/2019 on the Conduct of Mediators in Kosovo*.

96 The First Law on Mediation (No. 03/L-057); Law No. 06/L-009 on Mediation.

97 The First Law on Mediation (No. 03/L-057); Law No. 06/L-009 On Mediation.

4.1.7 MONTENEGRO

Definition of mediation's aims and benefits is established by legislative directives, strategic initiatives, action plans, and norms of professional behaviour. In September 2019, Montenegro implemented an extensive Development Programme for Alternative Dispute Resolution that was in effect from 2019 to 2021.[98] This programme is noteworthy for its incorporation of well evaluated proposals. Following that, Montenegro officially approved a revised law on Alternative Dispute Resolution in July 2020.[99] This legislative measure specifically emphasises its alignment with the principles advocated by the Directive of 2008. The jurisdiction of Article 1[100] of the amended ADR Law is clarified, focusing on civil legal relationships. This includes mediation, early impartial conflict assessment, and other alternative dispute resolution methods, all in accordance with inter-domestically recognised legal standards. The ADR paradigm focuses on resolving conflicts in a cooperative manner, using a neutral third-party mediator to aid the conflicting parties. This process may be undertaken before or after the start of a legal or similar proceeding (Article 3).[101] Moreover, Article 8[102] offers a comprehensive elucidation of mediation, defining it as a procedural mechanism through which the involved parties work together to achieve a harmonious settlement of their dispute, with the assistance of one or more mediators. The Law on Alternative Dispute Resolution presents a notable stimulus by means of a persuasive clause. It is specified that the costs linked to mediation efforts involving family-related conflicts and instances where one party represents Montenegro are funded from Montenegro's financial resources.

The scope of the Law on Alternative Dispute Resolution is defined in Articles 28[103] and 29,[104] which include laws related to mediation with an inter-domestic dimension and mediation used to resolve disputes that transcend domestic boundaries. Mediation with an inter-domestic dimension, as stipulated in Article 28,[105] is distinguished by the participation of a party who, at the commencement of the mediation proceedings, possesses a permanent or customary residence outside of Montenegro, as defined within the principles of the legal framework governing private international law. The scope of this legislation will encompass the mediation described in the previous section, unless the parties have mutually agreed to conduct the proceedings in accordance with the regulatory framework of another sovereign entity, with the participation of mediators who are accredited to administer mediation in accordance with the regulatory framework of that foreign jurisdiction. In situations where mediation involves an inter-domestic aspect that is consistent with the legal framework of a different jurisdiction, the resulting settlement becomes a legally binding document. This enforceability can be achieved either by following the specific requirements outlined in the applicable statute or by adhering to the relevant legal principles established in the alternate jurisdiction, depending on the principle of reciprocity. According to the provisions outlined in Article 29[106] of the Law on Alternative Dispute Resolution, cross-border/boundary mediation

98 Commission Staff Working Document -Montenegro 2020 Report - Accompanying the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions.

99 Zakon o Alternativnom Rješavanju Sporova, zasijedanja u 2020. godini, dana 16. jula 2020.

100 Zakon o Alternativnom Rješavanju Sporova, zasijedanja u 2020. godini, dana 16. jula 2020.

101 Zakon o Alternativnom Rješavanju Sporova, zasijedanja u 2020. godini, dana 16. jula 2020.

102 Zakon o Alternativnom Rješavanju Sporova, zasijedanja u 2020. godini, dana 16. jula 2020.

103 Zakon o Alternativnom Rješavanju Sporova, zasijedanja u 2020. godini, dana 16. jula 2020.

104 Zakon o Alternativnom Rješavanju Sporova, zasijedanja u 2020. godini, dana 16. jula 2020.

105 Zakon o Alternativnom Rješavanju Sporova, zasijedanja u 2020. godini, dana 16. jula 2020.

106 Zakon o Alternativnom Rješavanju Sporova, zasijedanja u 2020. godini, dana 16. jula 2020.

refers to a situation where, at the initiation of the mediation procedure, one of the parties involved has a permanent or habitual residence in a Member State of the European Union. The mediator is required to adhere to the requirements outlined in EU legislative instruments for civil and commercial mediation conflicts, as stated in the first clause of this article. It is important to highlight that the regulations outlined in this article pertain only to mediations involving cross-border/boundary conflicts, in which one of the parties is a resident of the European Union. The implementation of these regulations will come into force upon Montenegro's membership to the European Union. As a result, a person originating from an EU jurisdiction has the potential to serve as a mediator or evaluator in a dispute, in accordance with the principles outlined in this legislation, after Montenegro's official accession to the European Union.

4.1.8 MOLDOVA

The legally binding nature of this specific mode of mediation is an intrinsic trait seen in civil cases. The obligatory character of this component within the civil procedure has sparked theoretical and practical concerns, making it a unique step. The issue of compulsion was ultimately resolved by the Constitutional Court, which decided on the validity of certain elements within the Civil Procedure Code of Moldova, as established by Law.[107] The constitutional legitimacy of the mandatory mediation method was supported by citing the judicial practises of other jurisdictions.[108]

In a similar vein, the Constitutional Court of Moldova has undertaken a constitutional examination of the laws that regulate the procedure of judicial mediation.[109] This examination is based on the fundamental objective of ensuring efficiency in the civil process. The Court emphasised the economy's authority to prioritise efficiency and effective use of resources, particularly when a more complex procedural path, in situations where parties are unable to reach a resolution through mediation, could potentially impede the principle of delivering a timely verdict. The mandatory endeavour to achieve peaceful settlement of disputes is inherently focused on efficiently and economically resolving disagreements. The prioritisation of a more expeditious and economically advantageous resolution in the adjudication process is of utmost importance to all parties concerned. Concurrently, this paradigm involves a reduction in the total workload of the courts and enhances the effectiveness of economy justice administration. In the pursuit of lasting legal harmony, the attainment of agreement by extrajudicial means is often seen as more favourable when compared to contested court adjudications.

Based on the aforementioned considerations, it is apparent that the inclusion of provisions regarding judicial mediation in the Civil Procedure Code of Moldova represents

107 Code of Civil Procedure of Moldova No. 225/2003 of 30 May 2003.

108 An exemplary precedent within this particular framework is the case of Ryan v. Walls Construction Limited, which underwent examination by the Court of Appeal of Ireland in 2015 [4, p. 604]. In this particular case, the Irish Court of Appeal ruled that it does not possess the jurisdiction to mandate parties to participate in mediation as a means of resolving the dispute. On the other hand, it is within the jurisdiction of the court to temporarily halt legal processes in order to provide the parties involved with a chance to assess the feasibility of using an alternate method for resolving their disagreement. The Irish Court of Appeal emphasized the voluntary nature that characterizes alternative conflict resolution procedures, including mediation, by reiterating this view. This perspective is reflected in similar laws found within the English legal structure. According to rule 1.4(2)(e) of the English Rules of Civil Procedure, the authority of English courts is limited to proactive case management, which includes the promotion of parties' consideration of other conflict resolution options, if considered suitable.

109 Decision of the Constitutional Court of Moldova no. 8 of April 26, 2018 regarding the exception of unconstitutionality of some provisions of the Civil Procedure Code of Moldova, adopted by Law no. 225 from 30 May 2003. Published on 25.05.2018 in the Official Gazette of Moldova, no. 167 175.

an innovative approach compared to other European jurisdictions' judicial frameworks that also employ various forms of mediation. The notion of judicial mediation is outlined in paragraph (1) of Article 1821 of the Civil Procedure Code,[110] which provides a non-comprehensive list of situations when its implementation is anticipated. In accordance with paragraph (1) of Article 1821 of the Civil Procedure Code,[111] judicial mediation is a mandatory process for the amicable resolution of claims brought before the court. This process is conducted under the supervision of the court and is specifically required in cases involving: a) matters related to consumer protection; b) family disputes; c) disputes over ownership rights of assets between private individuals and/or legal entities; d) labour disputes; e) disputes arising from tort liability; f) conflicts related to succession; g) various civil disputes with a value below 200,000 LEI,[112] excluding cases involving an enforceable decree initiating insolvency proceedings.

Given the fundamental basis of mediation in procedural entitlements, it is noteworthy that paragraph (1) of Article 1821 in the Civil Procedure Code[113] establishes that judicial mediation can be requested by the parties even in situations that extend beyond the scope outlined in the aforementioned paragraph. This provision can be seen as a proactive measure. The use of settlement as a method of settling legal disputes, as indicated by a court ruling, is an effective approach to resolving contentions. As a result, the legislator did not limit the implementation of these agreements exclusively to the framework of the court mediation process. The latitude in question encompasses the practise of volunteer mediation, and may be observed even in situations when a mediator is not present. The process of judicial mediation occurs after the commencement of civil proceedings and continues until the stage of case preparation for court discussions. After the application for summons review, as outlined in Article 168, paragraph (4) of the Civil Procedure Code,[114] is approved, the court expeditiously arranges a hearing, to be held within a period of five days, with the purpose of facilitating the parties' efforts to reach a mutually agreeable resolution.

The second part of the text found in paragraph (1) of Article 1822 of the Civil Procedure Code[115] presents a provision that deals with the expiration of the specified time limit for judicial mediation, as described in paragraph (5),[116] emphasising the importance of complying with this requirement within the designated 45-day timeframe. The initiation of this timeline relies on the organisation of the first meeting intended to peacefully resolve the conflict. It is important to acknowledge that in accordance with paragraph (1) of Article 1822 of the Civil Procedure Code,[117] the advancement of this procedural period is halted if there is no official summons issued to the involved parties and if they subsequently fail to appear at the court hearing.

During the process of promoting peaceful settlement, the court has the responsibility of providing relevant information to the parties concerned. This involves clarifying the legal framework that is relevant to the dispute and providing a legal categorisation of the substantive problematic relationships between the parties. Moreover, the court provides

110 Code of Civil Procedure of Moldova No. 225/2003 of 30 May 2003.

111 Code of Civil Procedure of Moldova No. 225/2003 of 30 May 2003.

112 Approximately in the value of 40,212.87 Euro. Converted online in: https://www.xe.com/currencyconverter/convert/?Amount=200000&From=RON&To=EUR

113 Code of Civil Procedure of Moldova No. 225/2003 of 30 May 2003.

114 Code of Civil Procedure of Moldova No. 225/2003 of 30 May 2003.

115 Code of Civil Procedure of Moldova No. 225/2003 of 30 May 2003.

116 Code of Civil Procedure of Moldova No. 225/2003 of 30 May 2003.

117 Code of Civil Procedure of Moldova No. 225/2003 of 30 May 2003.

valuable insights into the temporal dimensions of the legal procedures, elucidating the notion of an acceptable timescale and its evaluation standards as stipulated by legal regulations. Furthermore, the court provides details pertaining to probable court fees, including the possible repayment of previously paid taxes and the expenditures associated with legal proceedings as specified in Article 90 of the Civil Procedure Code.[118] Equally noteworthy is the court's exposition of viable pathways for the settlement of the matter and the consequential ramifications for the parties involved.

Scholars have held the perspective that the use of this judicial discretion may be viewed as conflicting with the requirement of procedural fairness. The judge's early disclosure regarding the potential resolution of the case has the potential to weaken the effectiveness of all available defence strategies. This is because the judge's communicated resolution may influence the strategic decisions made by the party who stands to gain from the eventual resolution, based on the judge's initial indication. As a result, the party that finds the judge's preliminary resolution unfavourable may lose the effectiveness of the legal defences they had planned to provide. This is due to the fact that the opposing party's actions in the amicable settlement processes are influenced by the judge's expressed resolve.

Significant emphasis is placed on differentiation that becomes evident in cases involving counterclaims, which represent legal procedures that provide the defendant similar rights as those of the plaintiff in initiating a claim (civil action). In this particular context, it may be seen that mandatory court mediation does not extend to counterclaims, thereby highlighting an imbalance in the treatment of the parties involved in these two types of defence. Based on the aforementioned, our argument is that the lawmaker should consider revising the phrase "possible solution to the case" found in the concluding section of paragraph (2) of this article.[119] Scholars have proposed replacing it with the expression "and to develop suggestions regarding potential approaches for resolving disputes." This proposed rephrasing aims to establish equality in the procedural abilities of the involved parties. It suggests that granting the judge the authority to carefully consider the defendant's many procedural defences, while also encouraging the submission of recommendations for a mutually agreeable resolution to the conflict, would achieve this goal.

Judicial mediation method is characterised by the court's inherent responsibility to take actions that promote peaceful resolution of the dispute or particular contentious issues. These measurements are derived from several approaches and strategies rooted in the fields of communication and negotiation. Successful implementation of this process requires personal attendance of both parties involved, even if they are appropriately represented. In pursuit of this objective, the court has the authority to require their physical presence, regardless of their legal counsel, and may also prolong the period for conciliation, provided that it does not exceed a maximum of 15 days.[120] Nevertheless, it is important to highlight that the Act does not specify the procedural consequences for failing to comply with the need of appearing in person throughout the process of amicably resolving disputes.

The quality of secrecy is a significant benefit in the realm of judicial mediation, since it renders the idea of public court hearings inapplicable in this particular situation. The involvement of external persons is contingent upon the mutual agreement of both sides. The duty to maintain secrecy is not just placed on the court, but also applies to the

118 Code of Civil Procedure of Moldova No. 225/2003 of 30 May 2003.

119 Code of Civil Procedure of Moldova No. 225/2003 of 30 May 2003.

120 Code of Civil Procedure of Moldova No. 225/2003 of 30 May 2003.

defendants and all participants involved in the judicial mediation process. In the context of judicial mediation procedures, it is essential that any material shared during separate sessions between the parties remains confidential and is not disclosed or discussed with the opposing party, unless specific authorisation has been obtained from the person concerned. In addition to the extensive confidentiality associated with the deliberated information stemming from the participants in the judicial mediation process, it is crucial to highlight that this information maintains its confidential nature, making it ineligible as evidence in any other mediation, court proceeding, or arbitration, regardless of whether it falls within or outside the scope of these processes.

The transaction may be seen as a commercial agreement, often known in procedural law as a bilateral act of parties' disposition. In this arrangement, the involved parties mutually make concessions in order to end the current lawsuit, thus bringing the civil process to a conclusion. Within the framework of the mandatory court mediation process, the parties' agreement to seek a mutually agreeable settlement to the dispute is shown by the completion of a transaction. The legal confirmation of the judicial act of disposition, which is shown in the transaction, is obtained by a court decree. Therefore, in the event that the parties choose to pursue a mutually agreeable resolution to their conflict, the court will promptly issue a decree within a period of three days, officially declaring cessation of the legal proceedings. The present order is required to provide the precise details of the transaction, supported by the legal jurisdiction of the court. In order to emphasise the indisputable legal authority of the court ruling validating the transaction, paragraph. 21 of article 1824[121] of the Civil Procedure Code (CPC) provides a legal equivalency between a court decision that validates a transaction and any other court judgement. Therefore, the court's declaration, included in the judicial decree that signifies the conclusion of the procedures and encompasses the details of the agreement, has a similar legal weight as a judicial judgement.

In light of the fact that the civil process concludes following the validation of the transaction, it is the responsibility of the court to clarify to the parties involved the consequences of this procedural action before its validation. The completion of a transaction is prevented between parties if such an agreement is against the law or violates the rights, freedoms, and legal interests of people, the well-being of society, or the prerogatives of the economy. Paragraph (4) of Article 1824 of the Civil Procedure Code (CPC)[122] adds a provision pertaining to the distribution of court fees at the completion of a transaction. In this context, if the parties involved in the transaction establish a specific approach for allocating court expenditures, including the compensation due to legal representatives for their legal aid, the court will resolve the issue based on the shared agreement of the parties. In the event that the transaction does not specify a method for allocating court expenditures, it is understood that these expenses would be considered as paid. Prior to the implementation of the Law on the Amendment and Augmentation of Select Legislative Acts on 1 June 2018, in cases where mediation process failed to result in a transaction between the involved parties, the court would terminate the judicial mediation process and transfer the case file to a different judge or, if necessary, a full panel of judges through a random assignment process.

In the present-day context, if both parties involved in a civil process choose not to resolve their dispute amicably, the case will proceed to be reviewed and decided upon by the same judge who initially presided over the matter, or in some cases, by a panel of judges. The aim of this approach is to maintain efficiency in the legal process. Contrary

121 Code of Civil Procedure of Moldova No. 225/2003 of 30 May 2003.

122 Code of Civil Procedure of Moldova No. 225/2003 of 30 May 2003.

to the standard outlined in paragraph (1) of Article 1825 of CPC,[123] if the dispute remains unresolved within the specified timeframe stated in Article 1822 paragraph (5),[124] or if the parties are unable to reach a unanimous agreement on all claims, the court will issue a final resolution within three days after receiving the declination or at the end of the designated period for judicial mediation. This resolution signifies the conclusion of the judicial mediation process and cannot be reversed. Following this, the court dossier may be subject to discretionary reassignment to a substitute judge or, if necessary, an alternative adjudicative body. Following the conclusion of the court mediation procedure, the second stage of the civil process involves preparation of the case for judicial discussions. Following the aforementioned process, when the dossier has been assigned in accordance with the criteria specified in paragraph (2) of Article 1825 of CPC,[125] the judge assigned to the dossier proceeds with the necessary preparation actions for the upcoming judicial deliberations.

4.1.9 NORTH MACEDONIA

The primary goal of mediation, as outlined in Article 2[126] of the Legislation Concerning Mediation, is to achieve a mutually agreed upon and peaceful settlement to a conflict, which is willingly accepted by all parties involved. Mediation is a widely applicable process that can be utilised in various contexts, including property and legal disputes, family conflicts, labour disagreements, commercial disputes, consumer-related issues, insurance cases, educational challenges, and environmental preservation conflicts. Moreover, the scope of mediation expands to include situations pertaining to discrimination and other contentious relationships, in which the inherent characteristics of the conflict are suitable for mediation process and may benefit from its aid in achieving settlement.

When mediation occurs before court proceedings and the parties aim for the resulting agreement to have the legal force of a binding document, the agreement's content is carefully recorded in writing and signed by all parties involved. To ensure its validity, a notary public formally verifies the agreement in accordance with the legal requirements stated in Article 22, Section 1.[127] In contrast, if the mediation process takes place after a judicial referral, the mediator who has been assigned the task is constitutionally required to swiftly inform the court about the conclusion of the mediation within three working days. This notification should include detailed information about the outcome of the mediation procedure. Furthermore, it is required that the mediator, within the specified period of three business days, presents the agreement that has been properly endorsed to the court. This agreement then serves as the fundamental basis for the resolution of dispute through judicial settlement, particularly in situations where the agreement is reached during the termination phase of court proceedings (as stated in Article 22, Section 2).[128]

123 Code of Civil Procedure of Moldova No. 225/2003 of 30 May 2003.

124 Code of Civil Procedure of Moldova No. 225/2003 of 30 May 2003.

125 Code of Civil Procedure of Moldova No. 225/2003 of 30 May 2003.

126 Law on Mediation of North Macedonia (Official Gazette of North Macedonia no. 188/13, 148/15, 192/15 and 55/16)

127 Law on Mediation of North Macedonia (Official Gazette of North Macedonia no. 188/13, 148/15, 192/15 and 55/16)

128 Law on Mediation of North Macedonia (Official Gazette of North Macedonia no. 188/13, 148/15, 192/15 and 55/16)

According to Article 28[129] of the Mediation Legislation, North Macedonia is obligated to offer financial support for a portion of mediation costs in order to promote development of mediation practises within its jurisdiction. The specific criteria for receiving this financial assistance are outlined in the aforementioned Article. Furthermore, the legal structure, as delineated in Article 30,[130] expands the scope of granting exemptions from expenses associated with court proceedings. In situations when the parties involved in a dispute choose to engage in mediation before the first court hearing of the main legal case, they are exempted from the need to pay any court costs as stipulated by the legal framework.

The Law on Mediation, as outlined in Article 4,[131] acknowledges the significance of inter-domestic mediation. Inter-domestic mediation refers to the practise of resolving disputes that include a foreign element, as defined within the specific context of this regulation. This classification is particularly relevant in situations where: (1) the parties involved in a mediation agreement are located or have a legal presence in a jurisdiction different from the main one; (2) any of the contractual obligations resulting from the agreement will be carried out in a different jurisdiction; or (3) the party involved in the dispute is affected by its consequences in another jurisdiction. In situations where mediation is employed to address a disputed relationship as described in Article 4,[132] taking place within North Macedonia, the principles outlined in this legal framework will be applicable, unless the involved parties have explicitly agreed in writing to an alternative arrangement.

4.1.10 ROMANIA

The implementation of Law no. 192/2006[133] concerning mediation and the structural arrangement of the mediator occupation signified the commencement of a systematic framework for the incorporation of mediation into Romania's operational procedures. It is important to highlight that this particular legislative framework, which was influenced to some extent by input from members of civil society, emerged as the fifth version of the mediation bill since its origination in the year 2000. The law under consideration was carefully formulated, supported, and later approved to connect seamlessly with the mediation framework provided in the normative requirements created at the European level. This legislative effort strongly supports the fundamental principles that align with the suggestions put out by the European Commission. The fundamental principles of mediation are elucidated in Article 1 of Law no. 192/2006,[134] which has been subsequently modified by Law no. 370/2009.[135] Mediation is a conflict resolution approach that involves the involvement of a neutral and unbiased mediator, who facilitates the resolution process in a private manner. The participation of the parties involved is based on their voluntary agreement. The foundation of mediation is rooted in the trust placed in the mediator by the involved parties, based on the mediator's expertise in facilitating

129 Law on Mediation of North Macedonia (Official Gazette of North Macedonia no. 188/13, 148/15, 192/15 and 55/16)

130 Law on Mediation of North Macedonia (Official Gazette of North Macedonia no. 188/13, 148/15, 192/15 and 55/16)

131 Law on Mediation of North Macedonia (Official Gazette of North Macedonia no. 188/13, 148/15, 192/15 and 55/16)

132 Law on Mediation of North Macedonia (Official Gazette of North Macedonia no. 188/13, 148/15, 192/15 and 55/16)

133 Lege nr. 192 din 16 mai 2006 privind medierea ¿i organizarea profesiei de mediator.

134 Lege nr. 192 din 16 mai 2006 privind medierea ¿i organizarea profesiei de mediator.

135 Law 370/2009 to amend and supplement Law no. 192/2006 regarding the mediation and organisation of the profession of mediator.

discussions and offering skilled assistance in resolving conflicts. This is the endeavour to find a resolution that is agreeable to all parties involved, characterised by effectiveness and long-term viability. Therefore, positioned within the realm of alternative dispute resolution, mediation maintains its fundamental consensual nature while ensuring complete anonymity for the involved parties about their discussions with the mediator.

Following this, Article 2[136] of the legislative framework introduces another crucial aspect of mediation, emphasising its voluntary character, thus enabling its application at any stage of a conflict, including the preceding, simultaneous, and subsequent phases of a legal process. If there are no legislative provisions stating otherwise, both people and legal entities have the option to voluntarily participate in mediation, even after initiating a legal process in the appropriate court. In the context of civil proceedings, when a disagreement has reached the litigation stage, the option of resolving it via mediation may be pursued either at the request of the parties involved or at the court's suggestion, provided that the parties agree to engage in this process. Following the culmination of mediation procedure, it is the mediator's responsibility to inform the court of the result of mediation. In situations when a resolution is reached, the court has the power to issue a formal judgement that validates the agreement between the parties, as well as to assist in the refund of the stamp duty paid for the commencement of the aforementioned legal processes, if requested by the parties.

The amendment of Law no. 192/2006, as introduced by Law no. 370/2009[137] and Ordinance Governmental no. 13/2010, was considered necessary in order to harmonise the domestic legal framework with that of the European Community. This alignment was particularly aimed at complying with the provisions outlined in Directive 2008/52/EC of the European Parliament and the Council, which pertains to specific aspects of mediation in civil and commercial matters. In a similar manner, the mediation agreement was supplemented with specific provisions that outline the procedures via which the parties might enforce it. These procedures include either engaging the services of a notary public or resorting to the legal forum, as stated in Article 59.[138] Unfortunately, the aforementioned amendments failed to include any mention of the influence of mediation on the duration of restriction and expiry periods, particularly with regards to their suspension or termination, as stipulated by the conditions outlined in the Directive.

The legislation known as Ordinance of Government no. 51/2008 pertains to the allocation of public legal help in civil disputes. This ordinance outlines the economy's commitment to provide support in order to guarantee the right to a fair trial and promote equal opportunities for accessing justice. According to Article 20,[139] if an individual who meets the necessary requirements can provide evidence that they have engaged in litigation mediation before legal proceedings were initiated, they are also eligible to receive reimbursement for the amount paid to the mediator as compensation. The same privilege is granted to the person who meets the necessary requirements, if they request mediation after legal procedures have begun but before the first court appearance.

136 Law 370/2009 to amend and supplement Law no. 192/2006 regarding the mediation and organisation of the profession of mediator.

137 Law 370/2009 to amend and supplement Law no. 192/2006 regarding the mediation and organisation of the profession of mediator.

138 Law 370/2009 to amend and supplement Law no. 192/2006 regarding mediation and organisation of the profession of mediator.

139 Law 370/2009 to amend and supplement Law no. 192/2006 regarding mediation and organisation of the profession of mediator.

According to Article 16, paragraph 2[140] of the mentioned article, if the request for public legal assistance pertains to a matter that can be resolved through mediation or other alternative dispute resolution methods, the request may be denied. However, this is subject to the condition that the petitioner for public legal assistance had previously refused to engage in proceedings involving such a mechanism.

4.1.11 SLOVENIA

The Mediation in Civil and Commercial Matters Act,[141] which was enacted on 23 May 2008 and has been in effect since 21 June 2008, incorporates essential principles and regulations pertaining to the process of mediation. This legislation aligns with the provisions outlined in Directive 2008/52/EC of the European Parliament and the Council, which specifically addresses various aspects of mediation in civil and commercial settings. The purpose of this act is to integrate these provisions into the legal framework of Slovenia. The Mediation Act is applicable to all forms of mediation, including both inter-domestic and domestic cases, involving disputes arising from civil, commercial, labour, familial, and other proprietary relationships, as long as the claims fall within the scope of parties' voluntary resolution (Article 2, paragraph 1).[142] The principles outlined in this document may be applied to mediations involving other sorts of conflicts, as long as this extension aligns with the fundamental nature of legal relationship that caused the conflict and is not prohibited by any relevant laws.

The Act on Alternative Dispute Resolution in Judicial Matters, which was passed in November 2009, establishes specific regulations for the facilitation of mediation services by judicial institutions for litigants involved in legal procedures. This Act mandates that both first instance courts and appellate courts are obligated to provide mediation or alternative dispute resolution (ADR) alternatives to parties involved in civil, commercial, family, and labour disputes. In accordance with the provisions outlined in this legislation, effective from 15 June 2010, a total of 59 primary trial courts, consisting of 44 local courts, 11 district courts, and 4 labour courts, have started providing mediation services to parties involved in legal disputes.

In accordance with the stipulations outlined in the Civil Procedure Act,[143] it is incumbent upon the court to diligently investigate prospective opportunities for resolving disputes via court-mediated settlements at any stage of the legal procedures. Parties participating in the legal proceedings are granted the freedom to reach a mutually agreed upon resolution in court at any stage of the case, as stated in Article 306 of the Civil Procedure Act (CPA).[144] The presence of a settlement hearing is a necessary component of the legal procedure, as outlined in Article 305a.[145] This hearing plays a crucial role in facilitating harmonious settlement of conflicts. In this particular scenario, the judge in charge has

140 Law 370/2009 to amend and supplement Law no. 192/2006 regarding mediation and organisation of the profession of mediator.

141 Mediation in Civil and Commercial Matters Act 13 (adopted on 23 May 2008, in force since 21 June 2008).

142 Mediation in Civil and Commercial Matters Act 13 (adopted on 23 May 2008, in force since 21 June 2008).

143 The legal regulations pertaining to civil process in Romania are included in the Civil Process Code (CPC) of Romania, referred to as "Codul de procedură civilă al României" in the Romanian language. The regulatory instrument in question was implemented on 15 February 2013, with the official designation of Law number 134/2010, and later updated by Law no. 76/2012. The current Civil Procedure Code (CPC) replaced the previous Civil Procedure Code of 1865 when it was implemented. One crucial element of its implementation approach was the gradual enforcement of certain rules, which began on 1 January 2016, as a part of a transitional phase.

144 Civil Procedure Act.

145 Civil Procedure Act.

the authority to inform the involved parties about the possibility of using mediation as an alternative means of resolution. It is worth mentioning that civil procedures have the potential to be temporarily halted for a duration of three months if the involved parties mutually agree to engage in an alternate dispute settlement process, as outlined in Article 305.[146]

Simultaneously, the legislation dealing with Alternative Dispute Resolution in Judicial Matters includes a specific provision for an informational session. The legal framework includes a combination of incentives and punishments. For illustrative purposes, it should be noted that courts possess the jurisdiction to enforce the participation of parties in a specifically defined information session that is devoted to the process of mediation. Mediation services are provided free of charge for family and particular labour conflicts. Additionally, for disputes in other categories (excluding commercial disputes), the first three hours of mediation are also freed from fees for the parties concerned.

In situations when the parties involved do not suggest the use of alternative conflict resolution, it is possible to schedule a specialised information session at any stage of the court procedures. The educational session may be conducted by either the presiding judge or a designated assistant, as stipulated in Article 18[147] of the legislation regulating Alternative Dispute Resolution in the context of judicial affairs. Following the completion of informative session, it is within the court's authority to issue a directive requiring the parties to engage in mediation as a means of resolving their disagreement. The parties possess the legal entitlement to challenge the aforementioned judgement, thereby preventing the commencement of mediation processes. It is important to acknowledge that parties who unreasonably refuse the option of mediation may be responsible for the financial costs of the legal proceedings, regardless of the ultimate outcome of those proceedings. This aligns with the stipulations outlined in Article 19[148] of the legislation that governs Alternative Dispute Resolution in the context of judicial affairs.

The regulations pertaining to secrecy in the context of mediation proceedings are outlined in Article 10 of the Mediation Act.[149] The statement suggests that information exchanged by one party with a mediator may be disclosed to other participating parties, unless the disclosure relates to information provided to the mediator under special circumstances requiring its secrecy.

The scope of Article 11 of the Mediation Act[150] includes secrecy beyond the confines of mediation processes, specifically in regards to engagements with external parties. This article emphasises that any information related to mediation is inherently confidential, unless the involved parties mutually agree otherwise or legal requirements or the need to implement or enforce a settlement agreement necessitate its disclosure.

The Mediation Act's Article 12[151] addresses the complex issue of admission of evidence in future procedures. This provision stipulates that individuals or organisations involved in the mediation process, such as parties, mediators, or external entities, are prohibited from using, introducing as evidence, or testifying about any information obtained during mediation. This includes information related to the initiation of mediation or a party's

146 Civil Procedure Act.

147 Mediation in Civil and Commercial Matters Act 13 (adopted on 23 May 2008, in force since 21 June 2008).

148 Mediation in Civil and Commercial Matters Act 13 (adopted on 23 May 2008, in force since 21 June 2008).

149 Mediation in Civil and Commercial Matters Act 13 (adopted on 23 May 2008, in force since 21 June 2008).

150 Mediation in Civil and Commercial Matters Act 13 (adopted on 23 May 2008, in force since 21 June 2008).

151 Mediation in Civil and Commercial Matters Act 13 (adopted on 23 May 2008, in force since 21 June 2008).

willingness to participate in mediation proceedings. Exceptions to this provision are exclusively permitted in situations where the divulgence or application of said data is compelled by existing legislation, particularly in circumstances pertaining to matters of public policy, such as the protection of minors or the prevention of interference with an individual's physical or psychological welfare. In circumstances that are crucial for the execution or application of a resolution of a disagreement, this information may be presented to an arbitration panel, a court, or another relevant governmental body, provided that it complies with the requirements and restrictions imposed by the law. Information that does not match these standards is considered inadmissible as established fact or evidence in the context of judicial procedures.

In accordance with Article 14, paragraph 2 of the Mediation Act,[152] the parties have the right to jointly agree that their agreement will take the form of a notarial document that may be immediately enforced, a settlement approved by a court, or an arbitral award based on the settlement.

The Civil Procedure Act stipulates that in circumstances where litigation is continuing, the court is obligated to consistently examine the possibility of reaching a settlement by judicial means. According to Article 306 of CPA,[153] the parties maintain the ability to establish a settlement at any stage of the proceedings. Individuals who, during the progression of legal processes, achieve a consensus via the process of mediation, have the opportunity to officially establish the agreement as a court settlement immediately after the conclusion of the mediation process.

In the context of extrajudicial mediation settings, whereby legal proceedings have not yet been commenced, it is worth considering the potential for a court settlement to be reached. According to Article 309 of the Civil Procedure Act (CPA),[154] individuals who are considering litigation have the option to attempt a judicial settlement before a local court. The jurisdiction of the court is dependent on the residential domicile of the opposing party. Upon the court's reception of a settlement plan, it is required to call the opposing party, therefore presenting the suggested conditions of settlement for their careful evaluation and deliberation. Furthermore, it is within the jurisdiction of the parties involved to collectively petition the court for the enforcement of the agreement by means of a judicial settlement.

Another option that parties might consider after reaching an agreement via mediation is the creation of a notarial document that can be enforced directly. According to the provisions of the Notary Act, a notarial instrument becomes legally binding when an individual who is obligated under the terms specified in the instrument gives their consent for its immediate enforceability. This consent can be given either within the same instrument or through another notarial deed, as long as the claim is considered mature as per Article 4 of the Notary Act.[155]

152 Mediation in Civil and Commercial Matters Act 13 (adopted on 23 May 2008, in force since 21 June 2008).

153 Civil Procedure Act.

154 Civil Procedure Act.

155 Law No. 36 of 12 May 1995 (Republished) Public Notaries and Notary Activity. The legal regulations pertaining to public notaries and their associated notarial duties, as outlined in Law no. 36/1995, were subject to a process of republication in the Official Gazette of Romania, Part I, under issue number 72 on 4 February 2013. Following its implementation, this legal statute underwent modifications by Law number. 54/2013, with the aim of providing official approval to the requirements outlined in Government Emergency Ordinance no. 120/2011. The second regulation, in contrast, related to the prolongation of specified legally mandated deadlines and the resulting alteration and addition to particular regulatory legislation. The revised legal structure was formally published in the Official Gazette of Romania, Part I, under issue number 145 on 19 March 2013.

Furthermore, the possibility of an arbitral decision based on the settlement is taken into account. According to the provisions set out in the Arbitration Act (ZArbit),[156] it is stipulated that the arbitration process should come to an end when the parties involved in the dispute achieve a mutually agreed settlement. The parties have the right to request inclusion of the settlement in an arbitral ruling. The award that emerges from the settlement has an equivalent status to a conventional arbitral award, similar to the consequences of a final judgement (Article 38, ZArbit).[157] Once the court declares it enforceable, it may be performed (Article 41, ZArbit).[158] The appropriateness of including the agreement inside an arbitral ruling is particularly advantageous for parties who want to engage in mediation while arbitration procedures are still continuing. Nevertheless, for parties not directly involved in the mediation process, initiating arbitration proceedings solely with the intention of enforcing the agreement produced from mediation would undoubtedly present challenges and require significant allocation of resources.

4.1.12 SERBIA

The main goal of the Legislation on Mediation in the spectrum of Dispute Resolution is to achieve harmonisation in line with the legal framework established by the European Union, as well as the inter-domestic standards set by the Council of Europe and the United Nations. The mentioned Law explicitly refers to Article 4, which serves as a clear manifestation of the ambition towards these distinguished norms. Significantly, the 2014 Law on Mediation in Dispute Resolution[159] provides a broader scope for the use of mediation, which marks a clear difference from the previous legislation, namely the 2005 Law. The recalibration is evident in its expanded scope, which now includes environmental and consumer conflicts. Additionally, it has broadened its focus to incorporate criminal and misdemeanour cases related to property claims and the provision of compensation for damages caused.

The design and issue of Directives for the Advancement of Mediation in Judicial Proceedings in 2017 marked a significant joint effort between the Supreme Court of Cassation, the High Judicial Council, and the Ministry of Justice. The collaborative effort highlighted the deliberate use of extensive procedures aimed at significantly enhancing the effectiveness of mediation as an Alternative Dispute Resolution method. The primary focus of these guidelines was on the provisions outlined in Article 9, Paragraph 2 of the Law on Mediation in Dispute Resolution.[160] This article mandates that the court has a responsibility to provide comprehensive information to the parties involved in a dispute regarding the available options for mediation. Additionally, the court may assist in this process by referring the parties to a mediator. Notwithstanding these regulations, the practical implementation of them has, for the most part, been significantly disregarded. The guidelines specified in these directives establish that the responsibility for directing disputes towards mediation or encouraging parties to reach an amicable settlement lies with judicial authorities, especially during the early stages of legal proceedings, in order to facilitate prompt resolution. The use of this dual strategy not only helps to reduce the workload on the legal system but also acts as a facilitator for improving the operational efficiency of other instances, particularly in situations when reaching consensus-based remedies may not be viable. The Law on Amendments to the Law on Court Fees, which

156 Law 59/1993.

157 Law 59/1993.

158 Law 59/1993.

159 Law on Mediation in Dispute Resolution, Official Gazette no. 55/2014.

160 Law on Mediation in Dispute Resolution, Official Gazette no. 55/2014.

became effective on 1 January 2019,[161] has simultaneously pursued the objective of encouraging the resolution of disputes by peaceful means. The legal framework strongly promotes the use of amicable methods, such as mediation, negotiated settlements, court-arranged settlements, or similar approaches, for parties to seek resolution of disputes. Furthermore, the legislative framework includes a crucial clause which clarifies that if the civil proceedings are successfully concluded during the initial hearing session through means such as mediation, court settlements, claim recognitions, or claim renunciations, the parties are exempted from paying the corresponding fees.

The legislative framework in Serbia includes provisions that specifically recognise the importance of inter-domestic mediation in resolving issues that extend beyond domestic boundaries. Inter-domestic mediation is a mediation approach that is particularly relevant to disputes that possess a notable foreign aspect, as elucidated in Article 5.[162] This particular form of mediation is based on two essential criteria. Firstly, it applies when parties choose to participate in the mediation process and have permanent residency or registered offices in different economies. Secondly, it is applicable when the jurisdiction in which the parties reside or conduct their business activities is different from the jurisdiction where significant obligations arising from their business relationship are expected to be fulfilled, or from the jurisdiction that has the closest connection to the subject matter of the dispute. The legislative body explicitly states that the legal principles contained in the Law will be applied in mediations related to the categories listed in paragraph 1 of Article 5,[163] within the territorial boundaries of Serbia, unless the parties involved have mutually agreed upon a different arrangement.

The parameters of a cross-border/boundary conflict, as outlined in Article 6,[164] manifest via a complex network in which a prominent element is the existence of EU legal complexities. This situation arises when one party is residing in or has regular residence inside an EU Member State, whereas the other party lacks such connection. This particular arrangement occurs in different time periods: firstly, when the conflicting parties agree to engage in mediation after the conflict arises; secondly, when mediation is mandated by a court; thirdly, when mediation is required by domestic laws; or fourthly, when a court refers the parties to mediation after a petition has been filed. Moreover, the jurisdiction of a cross-border/boundary dispute includes situations where, after mediation, legal proceedings or arbitration are initiated between the same parties in an EU Member State other than the ones where they resided previously.

When considering determination of a party's residence in the context of a court process begun within the jurisdiction of Serbia, the adjudicative body will be guided by the principles and provisions of Serbian law. When a party's domicile extends outside Serbia, and the case requires determining the party's domicile in another jurisdiction, the court will examine the legal framework of that jurisdiction. A corporation or other legal entity establishes its registered office inside the boundaries of its registered seat, which serves as the central location for the governing body or the primary activities of the business. The complex question of whether a firm chooses to establish its registered office inside the European Union Member State where the legal processes take place necessitates application of legal principles controlling conflict of laws, as articulated in Article 7.[165]

161 Official Gazette of Serbia, no. 95/2018.

162 Law on Mediation in Dispute Resolution, Official Gazette no. 55/2014.

163 Law on Mediation in Dispute Resolution, Official Gazette no. 55/2014.

164 Law on Mediation in Dispute Resolution, Official Gazette no. 55/2014.

165 Law on Mediation in Dispute Resolution, Official Gazette no. 55/2014.

Settlement of cross-border/boundary conflicts is facilitated by a complex interplay of many mediations, which together shape the trajectory of the process. Within this framework, Article 8[166] assumes a prominent role in orchestrating the harmonious progression of these efforts. It is said that if a Member State, in accordance with its legislative framework, provides the opportunity for a party or parties to mutually agree and create a written agreement via cross-border/boundary mediation, the Serbian court would recognise and enforce such an agreement. The combination of these provisions allows a non-native individual, who has been properly authorised to conduct mediation proceedings in a different jurisdiction, to act as a mediator in these inter-domestic discussions. This opportunity is made possible through the principle of reciprocity, which has not been previously explored in the existing legal framework. It is important to emphasise that these provisions, as well as those related to cross-border/boundary issues, will only have an impact after Serbia becomes a member of the European Union.

4.1.13 TÜRKIYE

Law No. 6325, known as the Mediation Act for Legal Disputes,[167] was formally enacted on 7 June 2012, in the legal framework of Türkiye. Following that, a series of legislative frameworks were carefully developed, which included the Regulation of Mediation Act for Legal Disputes,[168] Ethical Guidelines for Mediation,[169] and Minimum Wage Tariff for Mediation.[170] Mediation Act was officially implemented on 22 June 2013,[171] establishing the specific requirements for individuals to be included in the registry of mediators. This act effectively formalised the process of registering certified mediators, which was completed by December 2013. The actual use of mediation in Türkiye began in early 2014. It is noteworthy that Türkiye's efforts to build a legislative framework for mediation represent a positive step in its continuing discussions with the European Union.

The precursor to the official implementation of the Mediation Act in Türkiye demonstrates a noticeable pattern in which some aspects resembling mediation were included into several legislative measures. The mandate for competent courts to promote amicable resolutions amongst parties is emphasised by several legal acts, including the Civil Procedure Act No. 6100 (Article 137),[172] the Act of Establishment of Family Courts No. 4787 (Article 7),[173] and the Act of Establishment of Labour Courts No. 5521 (Article 7).[174] Similarly, legal practitioners are granted the power of conciliation by the Attorneys' Act No. 1136 (Article 35/A).[175] The Act on Protection of Consumers No. 4077 (Article 22/5-6)[176] has provisions that allow for the use of arbitration tribunals in certain consumer-related conflicts. Article 50 of the Act of Community Unions and Collective Bargaining Agreements No. 6356[177] pertains to the inclusion of mediation as a mechanism for resolving collective labour disputes. Conciliation is included into the procurement

166 Law on Mediation in Dispute Resolution, Official Gazette no. 55/2014.

167 Law No. 6325 Mediation Act for Legal Disputes.

168 Regulation for Turkish Mediation Act. See for text of Regulation: http://www.adb.adalet.gov.tr/.

169 Ethics Rules. See for text of Ethics Rules: http://www.adb.adalet.gov.tr/.

170 Minimum Wage Tariff for Mediation. See for text of Minimum Wage Tariff: http://www.adb.adalet.gov.tr/.

171 Mediation Act for Law Disputes No. 6325.

172 The Civil Procedure Act No. 6100.

173 Act of Establishment on Family Courts No. 4787.

174 Act of Establishment on Labour Courts No. 5521.

175 Attorneys' Act No. 1136.

176 Act on Protection of Consumers No. 4077.

177 Act of Community Unions and Collective Bargaining Agreements No. 6356.

process via the Expropriation Act No. 2942 (Article 13).[178] Within the range of outlined methodologies, the mediation procedure is subject to varying outcomes, which may be determined by mediators or judges, or alternatively, via negotiating processes. Nevertheless, the concept of mediation that is being addressed in this discussion and recognised worldwide is fundamentally different from these conditions, as it results in independent choices made by the persons participating in the process.

The Turkish Mediation Act was implemented with the aim of promoting the settlement of private law issues via the use of mediation. However, the effectiveness of mediation as a method of resolving disputes depends on the specific characteristics of the private legal relationship, as outlined in the legislation. The legal framework discussed in the Mediation Act, namely Article 1,[179] primarily focuses on resolving conflicts that arise from business contacts and transactions. It gives parties the authority to make decisions based on their own judgement. Additionally, this framework also applies to disputes that have an inter-domestic aspect. In this particular context, a wide range of legal disputes can be identified, such as complex commercial and contractual issues, cases involving negligence, concerns related to consumer protection, dynamics involving employer-employee relationships, and conflicts concerning property ownership. All of these fall within the realm of business and transactions that can be resolved through voluntary agreements between the parties involved.

The Turkish Mediation Act has effectively established the principle of complete voluntary participation. As per the stipulations outlined in the Mediation Act, individuals or groups maintain the unrestricted ability to commence the mediation procedure, sustain its advancement, achieve a mutually agreeable resolution, or terminate their participation in said process (Mediation Act, Article 3).[180] The initiation of the mediation process may occur in two ways: by the inclusion of a pre-dispute provision in an existing agreement, or through the agreement of all parties involved after a conflict has arisen. The Turkish legal system places significant emphasis on the use of mediation as an alternative method for resolving disputes, highlighting the importance of voluntary participation. The Mediation Act, Article 13,[181] grants the court the authority to clarify and advance the advantages of engaging in mediation, therefore demonstrating a mutually beneficial connection between the concepts of voluntary participation and fairness. In a similar vein, the Code of Civil Procedure[182] establishes that the presiding judge has the authority to promote the resolution of disputes via mediation after the commencement of legal procedures.

The Act guarantees a fair and equal treatment for the parties involved in the mediation process, in accordance with the idea of parity as stated in the same article. This principle, which is in line with the notion of "equality of arms", grants equal rights to all parties engaged, both at the commencement of mediation and during its subsequent course. Although mediation exists beyond the realm of formal adjudication, it encompasses a mechanism for resolving disputes. The duty to maintain equality, which is an intrinsic characteristic of mandatory legal processes, is also applied to the voluntary context of mediation. The fair treatment of all parties throughout the whole of the procedure aligns beautifully with the fundamental principles of mediation.

178 Expropriation Act No. 2942.

179 Mediation Act for Law Disputes No. 6325.

180 Mediation Act for Law Disputes No. 6325.

181 Mediation Act for Law Disputes No. 6325.

182 Civil Procedure Act No. 6100.

It is apparent that the Turkish legislative authorities undertook a comprehensive and detailed evaluation of the provisions included in the Directive. The careful examination has resulted in a harmonisation between the European Union and Turkish legal systems, even though the Directive primarily addresses cross-border/boundary issues. Turkish legislation has implemented a prompt and effective mechanism for compulsory mediation, which is a unique characteristic not before seen in the legal framework of continental Europe. The implementation of compulsory mediation in Türkiye has played a crucial role in promoting a strong mediation culture and subsequently leading to a decrease in the number of lawsuits. However, it raises the question of whether voluntary mediation should be reconsidered in the future. The potential significance of this notion is further emphasised by the suggestion to implement monetary thresholds similar to those found in other civil law countries. This would enhance Turkish mandated mediation system by making it more comparable to these jurisdictions. On the other hand, the legislative framework of the European Union has adopted the Online Dispute Resolution (ODR) mechanism as a means for consumers to address their issues against dealers. However, the integration of Online Dispute Resolution (ODR) system in Türkiye's environment remains incomplete. Therefore, it is crucial to implement appropriate frameworks, especially considering the favourable nature of consumer conflicts as a favourable field for compulsory mediation. It is important to emphasise, however, that the current scope of compulsory mediation in Türkiye is limited to labour and commercial conflicts. This restriction may not effectively reduce the strain on the court system.

4.2 BACKLOG OF COURT CASES IN SEE JURISDICTIONS

4.2.1 WESTERN BALKANS ECONOMIES[183]

The present analysis delves into a comprehensive examination of court-involved mediation trends within the context of the Western Balkans (WB) economies. It is imperative to underscore that the data employed in this specific section of the report is meticulously sourced from the Council of Europe European Commission for the Efficiency of Justice (CEPEJ). This esteemed entity annually assembles a repository of data pertaining to the previous year's operations of the justice systems across its beneficiary jurisdictions, WB included. At the juncture of this report's composition, the most contemporaneous dataset available is centred around the year 2021, obtainable through the official digital channels of CEPEJ.

A. Incidence of court-involved mediations and their fluctuations during the period spanning from 2020 to 2021

Turning our attention to the empirical insights garnered from Table 1 and Table 2 of this report, a discernible elucidation emerges regarding the incidence and fluctuations of court-involved mediations within the timeframe spanning from 2020 to 2021. These tables crystallise the dynamic landscape of court-mediated interventions, substantiating the perceptible evolution of these mechanisms of alternative dispute resolution over this specified temporal span. By encapsulating data on the initiation and resolution of court-related mediations, these tables inherently offer a panoramic visualisation of the efficacy, prevalence, and shifts characterising these interventions within the legal milieu.

183 The data employed in this section of the report are sourced from the Council of Europe European Commission for the Efficiency of Justice (CEPEJ) as of August 2023.

Economies	Cases in court related mediation for which:					
	Agreement to start mediation		Finished court-related mediations		Cases with a settlement agreement	
	2021	Variation 2020-2021 (%)	2021	Variation 2020-2021 (%)	2021	Variation 2020-2021 (%)
Albania	N/A	N/A	N/A	N/A	N/A	N/A
Bosnia and Herzegovina	810	52.50%	660	33.10%	594	29.70%
Montenegro	3,073	17.40%	1,903	10.00%	1,315	3.60%
North Macedonia	475	44.40%	475	44.40%	155	18.80%
Serbia	642	28.90%	N/A	N/A	N/A	N/A
Kosovo*	N/A	N/A	N/A	N/A	N/A	N/A
WB Average	1,250	35.80%	11,013	29.10%	688	17.20%
WB Median	726	36.60%	660	33.10%	594	18.30%

Table no. 1

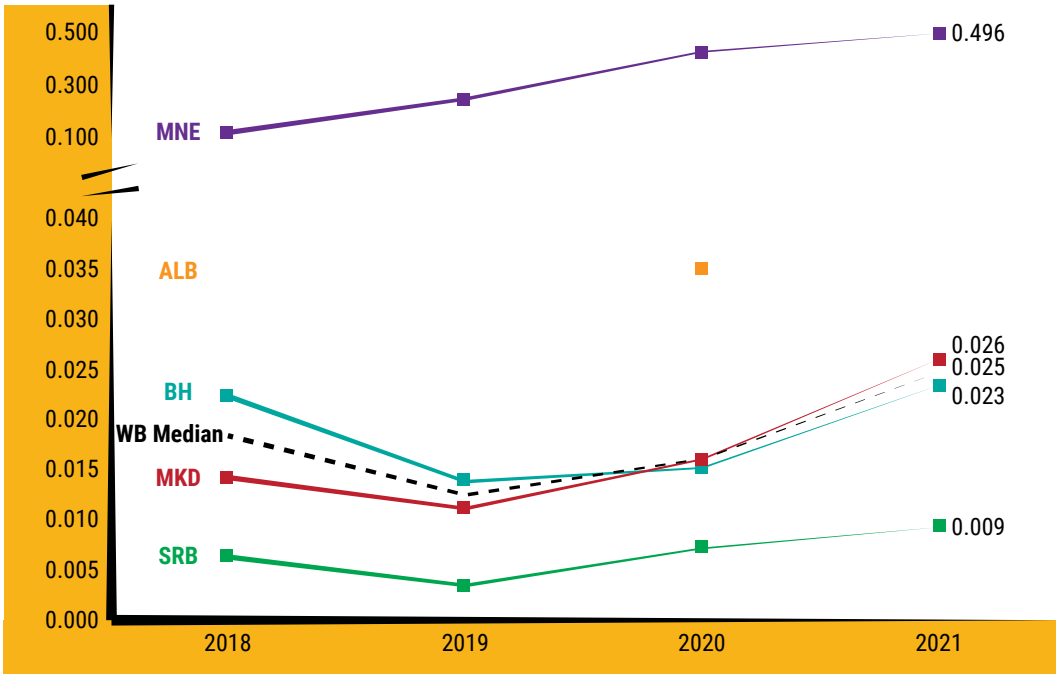


Table No. 2

*The population estimates of North Macedonia had a notable change between 2020 and 2021 as a result of the execution of the 2021 Census. Hence, the variations found in the standardised values across several factors, especially linked to population size, may be largely ascribed to changes in demographic data.

B. Categories of entities offering mediation services within the context of legal proceedings in civil and commercial matters during the year 2021

Table 3, in a distinct vein, navigates the intricate topography of entities instrumental in furnishing mediation services within the legal framework of civil and commercial proceedings during the year 2021. The tabulated categorisation, meticulously constructed, offers a taxonomical dissection of stakeholders operating within the realm

of mediation services. This detailed classification not only underscores the multifaceted composition of mediation providers but also engenders a discerning appraisal of their respective contributions to the mediation paradigm. The table, in essence, serves as an analytical prism, refracting the kaleidoscope of mediation service providers and their varied roles within the legal landscape.

Economies	Civil and Commercial Cases
Albania	Private Mediator
Bosnia and Herzegovina	Private Mediator; Public Authority
Montenegro	Public Authority
North Macedonia	Private Mediator
Serbia	Private Mediator; Public Authority Judge
Kosovo*	Private Mediator

Table No. 3

C. Total count of instances involving court-mandated mediation during the calendar year 2021

Concluding our analytical expedition, Table 4 amalgamates the manifold instances of court-mandated mediation throughout the calendar year 2021 into a single numerical representation. This numerical encapsulation, succinct yet pivotal, furnishes a consolidated vista of the extent to which court-mandated mediation has been invoked within the legal domain. By distilling multifarious instances into a singular quantifiable value, this table serves as a poignant evidence to the ascendancy of court-mediated resolutions as an integral facet of contemporary dispute resolution mechanisms. The cumulative count therein resonates with the profound significance attributed to these interventions, signifying their prominence in expediting harmonious resolutions within legal proceedings.

Economies	Civil and Commercial Cases		
	Parties agreed to start mediation	Finished court-related mediations	Cases with a settlement agreement
Albania	N/A	N/A	N/A
Bosnia and Herzegovina	405	330	297
Montenegro	2,294	1,379	933
North Macedonia	318	318	29
Serbia	319	N/A	N/A
Kosovo*	N/A	N/A	N/A
Average	834	676	420
Median	362	330	297
Minimum	318	318	29
Maximum	2,294	1,379	933

Table No. 4

In summary, the meticulous extraction and analysis of data from CEPEJ has facilitated an intricate comprehension of court-involved mediation trends within the Western Balkans economies. The interplay of data in Tables 1-4 unveils a narrative of dynamic evolution,

diverse participation, and substantial impact, thereby providing a panoramic portrayal of the landscape of court-involved mediation. This analysis contributes to a deeper comprehension of the intricacies inherent in alternative dispute resolution mechanisms, highlighting their pertinence and contribution to the legal tapestry of the WB.

4.2.2 A COMPARATIVE EXAMINATION OF SEVEN ADDITIONAL ECONOMIES

In the context of court cases related to mediation, a comprehensive analysis of the available data for Bulgaria, Croatia, Greece, Slovenia, and Türkiye, based on the findings of the Council of Europe (CoE) report for the year 2021, reveals distinct patterns and limitations across these economies. In the instances of Bulgaria, Croatia, Greece, Slovenia, and Türkiye, the current unavailability of data is not a reflection of the absence of case-law, but rather results from the fact that the jurisdiction-specific reports necessary for such analysis have not yet been compiled and disseminated to the public. Consequently, a comprehensive understanding of the trends, patterns, and consequences of mediation in the realm of civil and commercial disputes for the specified year remains elusive due to the lack of these pivotal data points.

In contrast, the situation for Romania presents a distinct scenario. While a comprehensive breakdown of these cases is presently unavailable, a preliminary overview of this statistical mechanism reveals certain insights. Specifically, the CoE report states that as of 31 December 2021, a discernible tally of 476 court-sanctioned mediation agreements were documented within Romania. This aggregate encompasses cases that were in various stages of progression. Notably, amongst these cases, 188 were in a pending status on 31 December 2020, indicating a carryover from the preceding year. Additionally, throughout the course of the calendar year 2021, a total of 288 new cases were registered, showcasing a consistent engagement with court-sanctioned mediation within the Romanian legal context.

For Moldova, a distinct approach was undertaken to gather the data for the year 2022, which provides an illuminating perspective on mediation within the jurisdiction's legal framework. The statistical data for the year 2022, specifically focusing on disputes settled through mediation, was meticulously prepared by the Mediation Council. This comprehensive dataset was officially released on 27 February 2023, and is accessible through the official website of the Mediation Council of Moldova. The statistical analysis for the year 2022 reveals compelling insights into the prevalence and efficacy of mediation in Moldova. Within this timeframe, a total of 1,596 civil and commercial cases were addressed to the courts across the jurisdiction. Notably, out of these cases, a substantial proportion, specifically 1,401 cases, were successfully resolved through the mediation process. This statistic underscores the significant role that mediation has played in the resolution of civil and commercial disputes within the Moldovan legal landscape. Furthermore, a noteworthy deduction from the dataset is the observation that in each of these cases, a singular mediator was involved. This finding underscores the focused and individualised nature of the mediation process in Moldova. Such a trend could reflect the emphasis on personalised and tailored dispute resolution mechanisms, where a mediator engages directly with the parties involved to facilitate productive and amicable solutions. The availability of such comprehensive and specific data for the year 2022 from the Mediation Council of Moldova enriches our understanding of the mediation landscape within the jurisdiction. It provides a valuable empirical foundation for assessing the prevalence and impact of mediation in addressing civil and commercial disputes. This data-driven approach to understanding mediation not only enhances

our comprehension of its effectiveness but also highlights Moldova's commitment to fostering a robust and efficient mediation framework within its legal system.

V Conclusion and Recommendations

V.1 Identifying Best Practices

The analysis of mediation practices in the 13 South East European (SEE) jurisdictions reveals several notable best practices that contribute to development of effective mediation frameworks in the region. These practices are indicative of a shared commitment to promoting mediation as a viable alternative for dispute resolution, aligning with inter-domestic standards, and ensuring accessibility and professionalism of mediation services.

First and foremost, the voluntary nature of mediation emerges as a consistent best practice. All SEE jurisdictions prioritise maintaining the voluntary aspect of mediation, allowing parties the freedom to choose this method for resolving their disputes. This commitment to voluntariness underlines the core principle of mediation, which is to facilitate consensual agreements while preserving party autonomy. Another commendable practice is the alignment of domestic mediation laws with inter-domestic standards and directives, particularly Directive 2008/52/EC. This alignment ensures consistency and harmonisation with European mediation practices, fostering cross-border/boundary cooperation and recognition of mediation outcomes. SEE jurisdictions have made significant efforts to bring their mediation legislation in line with these inter-domestic standards. A crucial role is played by judges in promoting mediation. Several jurisdictions involve judges in encouraging parties to consider mediation before initiating court proceedings, especially when mediation appears suitable. Judges' proactive involvement enhances the visibility of mediation and helps parties explore alternative avenues for resolving their disputes. Legislative updates and amendments also stand out as best practices. Croatia and Albania, for instance, have demonstrated their commitment to regularly updating mediation laws to adapt to changing needs and circumstances. This dynamic approach ensures that mediation frameworks remain relevant and effective over time. Training and certification of mediators are vital practices that contribute to professionalism and competence of those involved in mediation. Kosovo* and North Macedonia, amongst others, prioritise mediator training and certification, ensuring that mediators are well-equipped to handle disputes effectively and ethically. Cross-border/boundary mediation is another noteworthy practice. SEE jurisdictions recognise the importance of allowing for cross-border/boundary mediation, which provides flexibility in resolving disputes involving inter-domestic elements. Albania and Bosnia and Herzegovina acknowledge the relevance of cross-border/boundary mediation, facilitating dispute resolution in an interconnected world. Efforts to raise awareness about mediation through various public communication channels, technological platforms, and media outlets are also commendable. Croatia actively

engages in awareness campaigns, emphasising the importance of making mediation more accessible to the public. Ethical standards and codes of conduct for mediators are integral to maintaining the integrity of mediation process. Albania, in particular, places significant emphasis on ethical standards, ensuring that mediators adhere to high professional and impartiality standards. Furthermore, the provision of mediation-related resources and materials in multiple languages, as observed in Kosovo*, promotes accessibility to mediation for diverse linguistic communities, enhancing inclusivity and outreach. Integration of mediation into the broader legal framework reinforces its status as a legitimate and recognised method for resolving disputes. Albania and Serbia demonstrate strong integration, ensuring that mediation is seamlessly incorporated into the legal system. Reciprocity mechanisms for foreign mediators, as highlighted in Albania, promote inter-domestic cooperation in mediation and encourage the use of experienced mediators from different jurisdictions, further enhancing the diversity and expertise available for dispute resolution. Lastly, flexibility in court procedures, allowing for the transition from litigation to mediation at various stages, provides opportunities for resolving disputes even after legal action has commenced. Albania and Bosnia and Herzegovina, for example, offer such flexibility, encouraging parties to explore mediation as a means to reach mutually acceptable solutions.

V.2 Conclusions

In light of our comprehensive exploration, this research project offers illuminating insights into the realm of cross-border/boundary mediation, spanning both the European Union (EU) and South Eastern Europe jurisdictions. Our journey commenced with an introduction that set the stage, unveiling the purpose and context of our investigation. Armed with a meticulous methodology for data collection and analysis, we embarked on an academic expedition.

Venturing into the EU perspective and inter-domestic instruments facilitating cross-border/boundary mediation, we delved into the intricate tapestry of mediation in Europe. The Mediation Directive emerged as a cornerstone, fostering a harmonised framework for alternative dispute resolution within EU Member States. Moreover, the strategic evolution of the ADR Directive and ODR Regulation underscored the EU's commitment to advancing dispute resolution mechanisms, fostering coherence, and aligning practices. The far-reaching endeavours of UNCITRAL further amplified the harmonisation initiatives on an inter-domestic scale.

Navigating the interplay of jurisdictions, our exploration into cross-border/boundary disputes within the realm of private international law unveiled mediation's inherent pertinence. The nuanced attributes of inter-domestic disputes find resonance in mediation's adaptive prowess, serving as a beacon of harmonisation across diverse legal landscapes.

The landscape of cross-border/boundary mediation within SEE jurisdictions emerged as a compelling focal point. Our survey traversed the jurisdictions of Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Greece, Kosovo*, Montenegro, Moldova, North

Macedonia, Romania, Slovenia, Serbia, and Türkiye, each offering a unique perspective. The prevalence of court case backlogs cast a spotlight on the pressing need for expeditious and effective dispute resolution mechanisms.

Culminating our academic odyssey, the results of the mediation survey illuminated valuable dimensions. These findings, rooted in perceptions, preferences, and challenges, spotlighted mediation's potential as a preferred avenue for dispute resolution. They unmasked factors influencing its utilisation and shed light on areas meriting further attention.

In summation, this research project unveils a panorama of cross-border/boundary mediation, spanning from the EU's legislative mechanisms to SEE jurisdictions' diverse approaches. Our journey through legal frameworks, inter-domestic instruments, private international law, jurisdictional dynamics, and survey revelations collectively underscores the potential of mediation as a unifying force in the realm of dispute resolution. As the curtains draw on this scholarly endeavour, the clarion call for continued efforts to fortify and propagate cross-border/boundary mediation resounds, bearing the promise of a more seamless and effective dispute resolution landscape within the region and beyond.

V.3 Recommendations

In light of the comprehensive exploration conducted within this research project, a series of concrete recommendations emerge, aimed at bolstering the efficacy and prevalence of cross-border/boundary mediation within the South East Europe region. These recommendations encompass two focal aspects: (i) formulation of a specific set of rules for conducting efficient cross-border/boundary settlement discussions, accompanied by actionable regional measures; and (ii) strategic directives to amplify mediation's role in resolving civil and commercial disputes within SEE jurisdictions.

(i) Specific Set of Rules for Conducting Efficient Cross-border/boundary Settlement Discussions and Related Recommendations for Regional Action:

- Standardised Mediation Protocol: Develop a comprehensive and standardised protocol for cross-border/boundary settlement discussions, outlining procedural guidelines, communication channels, and timelines. This protocol should be endorsed and disseminated across SEE jurisdictions to ensure consistent practices.

- Qualified Mediator Registry: Establish a regional registry of qualified and accredited mediators with expertise in cross-border/boundary disputes. This database would facilitate selection of skilled mediators, ensuring neutrality, cultural sensitivity, and relevant domain knowledge.

- Enforceable Settlement Agreements: Advocate for the adoption of an enforceable framework for cross-border/boundary settlement agreements, ensuring that mediated settlements can be recognised and enforced across SEE jurisdictions. This step would boost parties' confidence in the mediation process.

- Cross-Jurisdictional Training: Collaborate on training programmes for legal practitioners, judges, and mediators, focusing on the nuances of cross-border/boundary mediation, inter-domestic private law, and cultural competency. This effort would enhance the quality and effectiveness of mediation proceedings.

- Cross-border/boundary Mediation Centre: Establish a dedicated regional centre for cross-border/boundary mediation, serving as a hub for information dissemination, case referrals, and specialised resources. Such a centre would facilitate seamless access to mediation services and support. Establishing a sustainable funding mechanism is crucial for the long-term viability of the Cross-border/boundary Mediation Centre. This can be achieved through a combination of public and private funding sources. Governments and inter-domestic organisations can provide initial grants or seed funding to set up the centre. Simultaneously, the centre can explore fee-based services for users, such as charging a nominal fee for mediation services or training programmes. Developing partnerships with local and inter-domestic businesses that value conflict resolution can also be a source of financial support.

- Harmonised Disclosure Requirements: Advocate for uniform disclosure requirements in cross-border/boundary mediation, ensuring that all relevant information is shared transparently between parties. This would promote fairness and informed decision-making.

(ii) Specific Recommendations for a Regional Boost of Mediation in Resolving Civil and Commercial Disputes in SEE:

- Public Awareness Campaigns: Launch comprehensive awareness campaigns targeting businesses, legal practitioners, and the public to highlight the benefits of mediation and its effectiveness in resolving civil and commercial disputes. Utilise various mediums, including social media, workshops, and informational seminars.

- Incentive Mechanisms: Introduce tax incentives or financial benefits for parties engaging in mediation before pursuing litigation. Encouraging parties to explore mediation as an initial step could alleviate the burden on court systems and expedite dispute resolution.

- Mediation in Legal Education: Collaborate with law schools to incorporate mediation training within the legal curriculum. Graduating lawyers equipped with mediation skills would further propagate its use and integration within the legal landscape.

- Sector-Specific Mediation Guidelines: Develop sector-specific mediation guidelines tailored to industries prevalent in SEE, such as construction, commerce, and finance. These guidelines would address unique challenges and streamline resolution processes.

- Mediation Facilitation Offices: Establish mediation facilitation offices within relevant government bodies or chambers of commerce to provide information, case referrals, and logistical support for parties considering mediation.

- Cross-border/boundary Mediation Incentive Fund: Create a regional fund to subsidise mediation costs for cross-border/boundary disputes, particularly for small and medium-sized enterprises (SMEs). This fund would alleviate financial barriers and encourage broader mediation adoption.

- Regional Mediation Conferences: Organise annual regional mediation conferences, bringing together stakeholders, practitioners, and policymakers to share best

practices, insights, and advancements in mediation techniques. RCC plays a pivotal role in advancing mediation within the region by organising an annual regional conference on mediation, which serves as a cornerstone for knowledge exchange, networking, and dissemination of best practices, significantly contributing to the growth and impact of mediation initiatives.

By implementing these concrete recommendations, the SEE region can lay a robust foundation for the efficient conduct of cross-border/boundary settlement discussions and a substantial boost to mediation in resolving civil and commercial disputes. These steps collectively hold the potential to transform the regional dispute resolution landscape and enhance the overall business and legal environment.

ANNEX I

EU Perspective and Inter-domestic Instruments Facilitating Cross-border/boundary Mediation

A. MEDIATION IN EUROPE: A COMPREHENSIVE ANALYSIS

The European Single Market stands as a distinctive and tightly-knit economic community, uniting 27 jurisdictions. The EU's vision of an unobstructed marketplace places great emphasis on the expeditious resolution of cross-border/boundary disputes.[184] Consequently, fostering the effectiveness of cross-border/boundary dispute resolution has consistently held a position of paramount importance on the EU's strategic agenda.[185] Over the years, the EU has primarily directed its efforts towards eliminating barriers to cross-border/boundary litigation, as evidenced by various legislative instruments aimed at bolstering "judicial cooperation in civil matters having cross-border/boundary implications."[186] However, the paradigm of ADR has steadily emerged, enticing EU policymakers with its promise of expeditious, efficient, and satisfactory dispute resolution.[187] As a result, there has been an increasing recognition of the potential benefits offered by ADR within the EU's legal landscape. In the realm of present-day EU dynamics, ADR and, more notably, mediation have emerged as formidable instruments aimed at augmenting the access to justice within the EU's internal market.[188] The strategic integration of mediation into the EU's arsenal of cross-border/boundary dispute resolution mechanisms marks a paradigm shift away from an entrenched emphasis on litigation as the predominant approach.[189] Instead,

184 Heijmans and Plasschaert, Effective Cross-Border Mediation in Europe, Association of Corporate Council Docket, European Briefing (June 2006).

185 Rühl, Giesela, Judicial Cooperation in Civil and Commercial Matters After Brexit: Which Way Forward?, International & Comparative Law Quarterly, 2018, Vol. 67(1), pp. 99–128.

186 De Palo, Cross-Border Commercial Mediation: How Legislation Affects Mediation Use, presentation to the European Parliament (2007).

187 Wagner, Rolf, Grenzüberschreitender Bezug in der justiziellen Zusammenarbeit in Zivilsachen, Zeitschrift für Zivilprozess, 2018, Vol. 132(2), pp. 183–224.

188 European Commission Green Paper on Alternative Dispute Resolution in Civil and Commercial Law, COM (2002) 196 final (April 19, 2002). See also Recital 2 of Directive 2008/52/EU on certain aspects of mediation in civil and commercial matters.

189 Brady, Mediation Developments in Civil and Commercial Matters within the European Union, 75, No. 3, INT'L J. ARB., Mediation, and Dispute Management 390 (2009).

it embodies a more nuanced and diverse cross-border/boundary dispute resolution system, incorporating extrajudicial avenues for redress.[190]

1. EXPLORING THE MEDIATION DIRECTIVE: LEGAL FRAMEWORK AND KEY PROVISIONS

In the pursuit of promoting mediation, the EU initiated its initial efforts as early as 1998.[191] However, it was only with the significant milestone of the adoption of the Mediation Directive in 2008,[192] followed by its subsequent implementation by the Member States that the EU established its own legislative framework specifically tailored for cross-border/boundary mediation. The core objective of the Mediation Directive was to achieve a delicate equilibrium between the usage of mediation and traditional litigation methods.[193] Contrary to aiming for comprehensive regulation of mediation, the Directive adopted a pragmatic approach by opting for minimum harmonisation.[194] By doing so, it aimed to lay down essential groundwork for cross-border/boundary mediation practices in Europe while allowing ample room for Member States to retain or develop their unique domestic perspectives and regulatory models concerning mediation.[195] The Directive served as a crucial building block to facilitate and promote mediation, recognising its potential as a constructive "tool" for enhancing access to justice within the EU's internal market.[196] Through this legislative development, the EU acknowledged the value of integrating mediation into its toolbox for cross-border/boundary dispute resolution, signifying a conceptual shift from a primarily litigation-focused approach to a more diversified and adaptable cross-border/boundary dispute resolution system, enriched by extrajudicial remedies.[197]

The Mediation Directive has emerged as a formidable force in facilitating the resolution of civil and commercial disputes with cross-border/boundary implications within the EU.[198] Initiated in response to the growing need for a balanced approach between mediation and litigation, the Directive aims to establish a structured process for parties to voluntarily engage in mediation and collaboratively seek resolution with the assistance of a mediator.[199] Encompassing a wide range of civil and commercial disputes,[200] the Directive provides a comprehensive definition of mediation, emphasising its structured nature while leaving room for varied terminologies employed to describe

190 Ibid (fn.7).

191 98/257/EC: Commission Recommendation of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes. OJ L 115, 17.4.1998, p. 31–34.

192 Directive 2008/52/EU on certain aspects of mediation in civil and commercial matters.

193 Directive 2008/52/EU on certain aspects of mediation in civil and commercial matters.

194 Philips, The European Directive on Commercial Mediation: What it Provides and What it Doesn't, available at: http://www.businessconfl ictmanagement.com/pdf/BCMpress_EUDirective.pdf.

195 Howell-Richardson, Europe's changing mediation landscape, S.J. Berwin LLP, THE IN-HOUSE LAWYER (July-August 2008)

196 Martin, International Mediation: An Evolving Market, in Arthur W. Ravine, ed., Contemporary Issues in International Arbitration and Mediation: The Fordham Papers (2010) at 404 (2011), available at www.adrgovernance.com.

197 Posin, Mediating International Business Disputes, 9 Ford. J. Corp. & Finan. L. 449 (2004).

198 Directive 2008/52/EU on certain aspects of mediation in civil and commercial matters.

199 Bombois, T., Renson, P.-P. (2009). La directive du 21 mai 2008 «sur certains aspects de la médiation en matière civile et commerciale» et sa transposition en droit belge". R.E.D.C. 2009.

200 Directive 2008/52/EU on certain aspects of mediation in civil and commercial matters.

the process.[201] A key objective of the Directive is to promote access to mediation and set essential quality standards to enhance the effectiveness of the process.[202] Despite recognising the significance of framework legislation to address crucial aspects of civil procedure, the Mediation Directive takes a somewhat cautious approach.[203] While ensuring confidentiality of mediation process and safeguarding parties' right to access courts when a settlement cannot be reached, the Directive refrains from providing exhaustive Private International Law (PIL) rules, thereby focusing on preserving the autonomy of Member States in certain aspects.[204] However, the Directive's ambit extends to addressing cross-border/boundary enforcement challenges. It mandates Member States to ensure the enforceability of settlement agreements resulting from mediation at a domestic level, though it does not introduce specific mechanisms for cross-border/boundary enforcement.[205] Instead, parties are expected to rely on the existing European PIL instruments for this purpose.[206] Furthermore, the Mediation Directive does not delve into the assessment of the validity and enforceability of mediation agreements, leaving this domain relatively untouched. In light of the Directive's nuanced approach to cross-border/boundary aspects, stakeholders may explore supplementary measures and regulatory frameworks to bolster cross-border/boundary mediation's efficacy and harmonisation. The Directive's emphasis on voluntary engagement and confidentiality creates a conducive environment for parties to proactively seek alternative dispute resolution, leading to potentially faster, more efficient, and satisfactory dispute resolution outcomes.

2. UNRAVELLING THE ADR-DIRECTIVE AND THE ODR-REGULATION: ADVANCING DISPUTE RESOLUTION MECHANISMS IN THE EUROPEAN UNION

Post the Treaty of Lisbon in 2009, the EU has increasingly recognised the growing significance of ADR, with mediation emerging as a prominent representative in this domain.[207] Subsequently, in 2013, the EU witnessed a notable surge in legislative initiatives concerning ADR, leading to the adoption of both the ADR Directive[208] and the

201 Ibid (fn.18), See: Article 3 of the Directive 2008/52/EU.

202 Ibid (fn.18), See: Articles 4-5-9 of the Directive 2008/52/EU.

203 Robinson, Peter, Adding Judicial Mediation to the Debate about Judges Attempting to Settle Cases Assigned to Them for Trial, 2006 J. Disp. Resol. 335–85 (2006).

204 Della Noce, Dorothy J., Bush, Robert A. Baruch and Folger, Joseph P., Clarifying the Theoretical Underpinnings of Mediation: Implications for Policy and Practice, 3 Pepp. Disp. Resol. L.J. 39–66 (2002).

205 Directive 2008/52/EU on certain aspects of mediation in civil and commercial matters.

206 Hopt, Klaus J. and Steffek, F. (eds.), Mediation – Rechtstatsachen, Rechtsvergleich, Regelungen, Mohr Siebeck, Tübingen, 2008.

207 Consolidated version of the Treaty on the Functioning of the European Union; OJ C 326, 26.10.2012, p. 47–390. See: Article 81, which explicitly states: "1. *The Union shall develop judicial cooperation in civil matters having cross-border implications, based on the principle of mutual recognition of judgments and of decisions in extrajudicial cases. Such cooperation may include the adoption of measures for the approximation of the laws and regulations of the Member States. 2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures, particularly when necessary for the proper functioning of the internal market, aimed at ensuring: …g) the development of alternative methods of dispute settlement…*"

208 Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR)

ODR Regulation.[209] These pivotal legislative measures were designed to bolster consumer confidence within the internal market by facilitating accessible, swift, and cost-effective out-of-court dispute resolution mechanisms. The primary objective was to empower consumers with effective means to resolve disputes, fostering trust and facilitating seamless cross-border/boundary transactions.[210] Unlike the Mediation Directive, which specifically addresses cross-border/boundary disputes,[211] the ADR Directive and ODR Regulation have a distinct scope, encompassing consumer-to-business contracts.[212] This scope, however, does not confine these instruments solely to cross-border/boundary disputes; they extend their purview to embrace a diverse range of dispute resolution mechanisms operating under the ADR banner.

Central to the objectives of both instruments is the reinforcement of institutional support for ADR. The ADR Directive mandates that every Member State provides consumers with accessible ADR entities that meet the Directive's exacting quality standards. Simultaneously, the ODR Regulation introduces a ground-breaking online platform, serving as a singular gateway for consumer disputes arising from online contracts.[213] While this platform itself does not directly provide dispute resolution services, it efficiently directs consumers to competent ADR entities, streamlining the resolution process. Despite their concerted efforts to enhance consumer access to justice, particularly in cross-border/boundary scenarios, the ADR Directive and ODR Regulation do not comprehensively address certain intricate legal issues that arise in this context. Only one notable exception, Article 11 of the ADR Directive,[214] safeguards consumers' essential rights in situations involving a conflict of laws. Nevertheless, the Directive remains reticent on crucial matters, such as the enforceability of ADR outcomes resulting from proceedings conducted in compliance with its provisions. As the EU endeavours to fortify its commitment to consumer protection and streamlined dispute resolution, the implications of the ADR Directive and ODR Regulation are undoubtedly far-reaching.[215] Nevertheless, the EU must continue its quest to address the remaining legal intricacies

209 Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR)

210 Proposal for a Regulation of the European Parliament and of the Council on Online Dispute Resolution for Consumer Disputes (2011) (Regulation on Consumer ODR).

211 Eidenmüller, Horst, Establishing a Legal Framework for Mediation in Europe: The Proposal for an EC Mediation Directive, SchiedsVZ 2005, 124–29.

212 H. Wagner, Fern Universität in Hagen Discussion Paper, p. 13; M. Del Gatto, G. Mion and G.I.P. Ottaviano, CORE DP 2006/61 20 (2006) and R. Kneller, M. Pisu and Z. Yu, 41(2) Can. J. Econ 639–69 (2008).

213 Council and Parliament Proposal for a Regulation (EC) on Online Dispute Resolution for Consumer Disputes (Regulation on Consumer ODR) COM (2011) 794.

214 Article 11 of ADR Directive, explicitly states, that: "*Member States shall ensure that in ADR procedures which aim at resolving the dispute by imposing a solution on the consumer: (a) in a situation where there is no conflict of laws, the solution imposed shall not result in the consumer being deprived of the protection afforded to him by the provisions that cannot be derogated from by agreement by virtue of the law of the Member State where the consumer and the trader are habitually resident; (b) in a situation involving a conflict of laws, where the law applicable to the sales or service contract is determined in accordance with Article 6(1) and (2) of Regulation (EC) No 593/2008, the solution imposed by the ADR entity shall not result in the consumer being deprived of the protection afforded to him by the provisions that cannot be derogated from by agreement by virtue of the law of the Member State in which he is habitually resident; (c) in a situation involving a conflict of laws, where the law applicable to the sales or service contract is determined in accordance with Article 5(1) to (3) of the Rome Convention of 19 June 1980 on the law applicable to contractual obligations, the solution imposed by the ADR entity shall not result in the consumer being deprived of the protection afforded to him by the mandatory rules of the law of the Member State in which he is habitually resident. 2. For the purposes of this Article, 'habitual residence' shall be determined in accordance with Regulation (EC) No 593/2008.*"

215 Wiwen-Nilsson, Tore, 'Commercial dispute settlement: issues for the future', in Modern Law for Global Commerce: Congress to celebrate the 40th annual session of UNCITRAL (2007).

to create an all-encompassing framework that will usher in a new era of transformative consumer dispute resolution within its internal market.

3. ADVANCING COHERENCE AND EFFICIENCY IN INTER-DOMESTIC MEDIATION: THE ENDEAVOURS OF UNCITRAL FOR HARMONISATION

Beyond the confines of the EU, the United Nations Commission on Inter-domestic Trade Law (UNCITRAL) has been at the forefront of driving mediation as an instrumental mechanism for resolving cross-border/boundary disputes.[216] These robust efforts materialised in the formulation and adoption of the renowned 1980 UNCITRAL Conciliation Rules[217] and the 2002 UNCITRAL Model Law on Inter-domestic Commercial Conciliation.[218] While these mechanisms hold immense potential, they have not garnered the same widespread utilisation and impact as the UNCITRAL Arbitration rules within the EU.[219] UNCITRAL's latest endeavour, culminating in the revision of the 2002 Model Law and the momentous introduction of the Singapore Convention,[220] marks a notable progression in the field of inter-domestic dispute resolution.[221] With 56 signatories,[222] including major global economies like the United States, China, and India, the Convention stands as a binding multilateral treaty, purposefully crafted to promote and enhance the use of mediation in resolving cross-border/boundary commercial disputes. The updated 2018 UNCITRAL Mediation Model Law[223] seamlessly incorporates the provisions of the Singapore Convention into the existing framework of the 2002 Model Law,[224] signifying a concerted effort to bolster the efficacy and reach of inter-domestic mediation practices.[225] Analogous to the New York Convention for arbitral awards, the Singapore Convention serves as a pivotal global mechanism, providing a robust infrastructure for the enforcement of Mediated Settlement Agreements (MSAs) across inter-domestic boundaries.[226] The Singapore Convention is specifically designed to govern settlement agreements arising from mediation in commercial disputes, providing a comprehensive framework for their

216 van Ginkel, Eric, The UNCITRAL Model Law on International Commercial Conciliation: A Critical Appraisal, 21 J.Int. Arb. 1–65 (2004).

217 UNCITRAL Conciliation Rules 1980

218 UNCITRAL Model Law on International Commercial Conciliation (2002).

219 C. Abraham, How to Promote a Uniform Interpretation of Public Policy? in Modern Law for Global Commerce: Congress to celebrate the 40th annual session of UNCITRAL, available at <www.uncitral.org>.

220 The Singapore Convention on Mediation, formally known as the United Nations Convention on International Settlement Agreements Resulting from Mediation, represents a significant advancement in the global endorsement of mediation as a means of resolving international conflicts. This convention establishes a framework for the international recognition of settlements achieved through mediation. The Convention was formally initiated for signature on 7 August 2019. Since then, a total of 56 jurisdictions have signed the Convention. These signatories span across a wide range of nations, from Afghanistan to Venezuela, and include prominent global business partners such as the United States, Singapore, and China.

221 Schnabel, Timothy, The Singapore Convention on Mediation: A Framework for the Cross-Border Recognition and Enforcement of Mediated Settlements, Pepperdine Dispute Resolution Law Journal, 2019, Vol. 19(1), pp. 1–60

222 For further information on the Singapore Conventions please refer to: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXII-4&chapter=22&clang=_en

223 UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, 2018.

224 UNCITRAL Model Law on International Commercial Conciliation (2002).

225 Schnabel, Pepp. Disp. Resol. L.J. 2019/1, p. 2.

226 L Cole, Exploring International Mediation, Past, Present and Beyond in A Georgakopoulos (ed), The Mediation Handbook, Research, Theory, and Practice (Abingdon, UK, Routledge 2017) 315–23.

enforcement.[227] As stated in Article 1(1) of the Singapore Convention,[228] its scope extends to written settlement agreements reached by parties engaged in commercial conflicts. Crucially, the Convention allows for enforcement in any jurisdiction that has acceded to it, as articulated in Article 3(1) of the Convention,[229] subject to limited grounds for refusal specified in Article 5 of the Singapore Convention.[230]

Despite the Convention's overall positive reception globally, its adoption within the EU remains uncertain and poses significant questions for the region's stance on cross-border/boundary dispute resolution.[231] From the inception of the project, the EU exhibited scepticism towards the necessity of harmonisation and viewed the prospects of a treaty on this subject as unrealistic.[232] Despite later active involvement of EU delegates in the drafting process, this initial scepticism endured throughout the negotiations.[233] As of today, the EU has not become a signatory to the Singapore Convention and has yet to communicate any definitive intention to do so.[234] The EU's cautious approach to the Singapore Convention may be attributed to various factors. One key consideration is the existing legal landscape within the EU, where ADR mechanisms, including mediation, are already well-established at both domestic and regional levels. The EU has sought to promote mediation and other forms of ADR within its boundaries, encouraging member states to adopt supportive legislative frameworks and providing guidance on best practices.[235] Consequently, the EU may perceive that its current system adequately addresses cross-border/boundary disputes, reducing the perceived urgency to accede to the Singapore Convention.[236] Furthermore, the EU's hesitancy might also stem from concerns about potential conflicts between the Singapore Convention and existing EU legislation or regional mediation directives.[237]

Another consideration is the EU's preference for autonomy in shaping its dispute resolution mechanisms, allowing it to cater to the unique needs and legal traditions of its

227 Jie Zheng, Online Resolution of E-Commerce Disputes: Perspectives from the European Union, the UK, and China (Springer Nature 2020).

228 According to Article 1/1 of the Convention: "*This Convention applies to an agreement resulting from mediation and concluded in writing by parties to resolve a commercial dispute ("settlement agreement") which, at the time of its conclusion, is international in that: (a) At least two parties to the settlement agreement have their places of business in different States; or (b) The State in which the parties to the settlement agreement have their places of business is different from either: (i) The State in which a substantial part of the obligations under the settlement agreement is performed; or (ii) The State with which the subject matter of the settlement agreement is most closely connected.*"

229 According to Article 3/1 of the Convention: "*Each Party to the Convention shall enforce a settlement agreement in accordance with its rules of procedure and under the conditions laid down in this Convention.*"

230 According to Article 5 of the Convention: "*The competent authority of the Party to the Convention where relief is sought under article 4 may refuse to grant relief at the request of the party against whom the relief is sought only if that party furnishes to the competent authority proof that: (a) A party to the settlement agreement was under some incapacity…*"

231 Marta Poblet and Graham Ross, ODR in Europe in Mohamed Abdel Wahab, Ethan Katsh and Daniel Rainey (eds), Online Dispute Resolution: Theory and Practice (2nd ed, Eleven Intl. Publishing 2021).

232 N Alexander and S Chong, The Singapore Convention on Mediation: A Commentary (Alphen aan den Rijn, Kluwer Law International 2019) 39–40.

233 Ibid (fn. 50).

234 For further information on the Singapore Conventions please refer to: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXII-4&chapter=22&clang=_en

235 See: https://mediate.com/the-singapore-convention-on-mediation-wheres-europe/

236 Giuseppe De Palo, A Ten-Year-Long 'EU Mediation Paradox': When an EU Directive Needs to Be More …Directive (European Parliament Briefing 2018) 1.

237 Ibid (fn.54).

member states.[238] The EU has historically embraced a flexible approach, recognising the diverse legal systems and cultural differences amongst its members.[239] The Convention's uniform and global enforcement mechanism might be perceived as constraining this autonomy, leading the EU to exercise caution before fully embracing it.[240] While the EU has not yet signed the Singapore Convention, it remains a topic of interest and deliberation within the EU's legal and policy circles. There might be room for further engagement and dialogue between the EU and UNCITRAL to address any outstanding concerns and explore potential avenues for alignment.

4. THE NOTION OF A BALANCED RELATIONSHIP IN CROSS-BORDER/ BOUNDARY DISPUTE RESOLUTION

In the EU, a framework with a visionary approach emerged, aiming to promote harmonious relations between litigation and mediation in cross-border/boundary disputes. The Mediation Directive, a framework that was implemented, aimed to establish a harmonious relationship between litigants and mediators, with the goal of reaching amicable resolutions.[241] However, as time elapsed, the lofty aspirations of the Directive appeared to face unanticipated obstacles.[242] Although the Directive undeniably raised awareness about mediation, its actual impact did not meet the initial aspirations.[243] The EU Commission conducted a thorough investigation into the complex domain of cross-border/boundary disputes, aiming to unravel the perplexing puzzle.[244] The study successfully identified the primary factors that are responsible for the lacklustre response observed in relation to mediation efforts. The limited understanding of the practise of mediation presented a significant obstacle, impeding its full implementation. The inclusion of cultural inclinations towards adversarial conflicts also contributed to the overall resistance against the peaceful approaches of mediation, resulting in a complex interplay of factors.

The EU embarked on a fervent endeavour of education and promotion in response to the belief that the reluctance of parties was primarily rooted in a lack of knowledge. Through a series of seminars and awareness campaigns, the EU undertook an endeavour to educate the general public about the numerous benefits and merits of mediation. However, over the course of time, the advancement appeared to be gradual, resulting in the European Union desiring more substantial achievements. It became apparent that cultural traditions and legal frameworks in various Member States exerted significant

238 Hess, B., 2019. Privatizing Dispute Resolution and its Limits. In: L. Cadiet, B. Hess and M.R. Isidro, eds. Privatising Dispute Resolution: Trends and Limits (Vol. 18). BadenBaden: Nomos, 15–46.

239 Ontanu, A.E., 2019b. Court and Out-of-Court Procedures: In Search of a Comprehensive Framework for Consumers' Access to Justice in Cross-Border Litigation. In: L. Cadiet, B. Hess and M.R. Isidro, eds., Privatising Dispute Resolution. Baden-Baden: Nomos, 49–78.

240 T Allen, Mediation Law and Civil Practice (2nd ed, London, Bloomsbury Professional 2019) 32, 264

241 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 [2008] OJ L136/3

242 Steffek F and others, Regulating dispute resolution: ADR and access to justice at the crossroads (Bloomsbury Publishing 2014).

243 Esplugues C, General Report: New Developments in Civil and Commercial Mediation – Global Comparative Perspectives in C Esplugues and L Marquis (eds), New Developments in Civil and Commercial Mediation: Global Comparative Perspectives (Springer International Publishing 2015).

244 Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application of Directive 2008/52/EC of the European Parliament and of the Council on certain aspects of mediation in civil and commercial matters.

influence over the beliefs and sentiments of the parties involved.[245] The EU confronted the idea that the strong attraction towards litigation was ingrained in the social structure of these societies, posing a challenge to the goal of achieving harmony through mediation.[246] As the narrative progressed, the European Union came to a realisation that a singular approach may not be adequate.[247] A comprehensive approach was required, encompassing both cultural sensitivities and legislative improvements.[248] The objective was to explore methods for cultivating a proficient group of mediators, establishing a standardised mediation procedure, and resolving the challenges associated with cross-border/boundary enforceability.

The European Union maintains a resolute dedication to the aspiration of mediation, with the aim of bridging the divide between litigation and the attainment of peaceful resolutions. The unfolding of the Mediation Directive narrative remains ongoing, and its true impact can only be fully understood with the passage of time. As we anticipate the forthcoming phase of this endeavour, we observe the European Union's resolute commitment to constructing a narrative that fosters the flourishing of mediation and facilitates the resolution of cross-border/boundary conflicts through the attainment of harmonious outcomes. The pursuit of equilibrium persists, guided by optimism and driven by the potential for an improved future in the European Union's cross-border/boundary dispute resolution.

B. UNDERUTILISATION OF CROSS-BORDER/BOUNDARY MEDIATION IN THE EU LEGAL LANDSCAPE

The term "EU mediation paradox" has been coined to describe the phenomenon wherein parties demonstrate hesitancy to engage in cross-border/boundary mediation, despite recognising the advantages and continuous efforts made to promote it.[249] The paradoxical nature of the low mediation rate stems from the assumption that mediation offers a cost-effective and efficient approach to resolving cross-border/boundary disputes, making it more economically beneficial than litigation.[250] Scholars have argued that the limited adoption of mediation, when analysed from an economic perspective, can be seen as a possible market failure that necessitates remedial measures.[251] In order to comprehensively examine the complexities surrounding the "EU mediation paradox," it is imperative to thoroughly investigate the underlying dynamics that influence the preferences and decision-making processes of parties involved in cross-border/boundary disputes.[252] Despite the aforementioned benefits associated with mediation, various factors can influence the parties involved, thereby affecting their inclination towards

245 Giacalone M and Loui RP, Dispute Resolution with Arguments over Milestones: Changing the Representation to Facilitate Changing the Focus (2018) Jusletter IT, IRIS 167.

246 STRONG, STACIE, Realizing Rationality: An Empirical Assessment of International Commercial Mediation, Washington and Lee Law Review, 2016, Vol. 73(4), pp. 1973–2088.

247 Ibid (fn.64).

248 Ibid (fn.64).

249 De Palo, Guiseppe, A Ten-Year-Long EU Mediation Paradox: When an EU Directive Needs to Be More …directive. European Parliament Briefing, 2018, requested by the JURI committee (Directorate General for Internal Policies).

250 Menkel-Meadow C, Mediation, Arbitration and Alternative Dispute Resolution (ADR) in JD Wright (ed.), International Encyclopedia of Social and Behavioral Sciences (2nd ed, Elsevier 2015).

251 G De Palo and S Carmeli, Mediation in Continental Europe: A Meandering Path Toward Efficient Regulation in Newmark and Monaghan (eds) (n 4) 342.

252 Cortés, Pablo, A New Regulatory Framework for Extra-Judicial Consumer Redress: Where We Are and How to Move Forward, Legal Studies, 2015, Vol 35(1), pp. 114–14.

utilising alternative dispute resolution methods. The choices made by parties can be significantly influenced by cultural norms and legal traditions in various Member States, as certain jurisdictions may strongly favour adjudicative approaches. Furthermore, the presence of informational asymmetries and a lack of familiarity with the mediation process may result in parties resorting to traditional litigation, despite the potential for mediation to provide a more advantageous resolution.

The concept of "market failure" in the realm of cross-border/boundary mediation necessitates meticulous examination. Market failures of a traditional nature commonly occur when the mechanisms of the market fail to allocate resources efficiently, primarily due to the presence of externalities or information asymmetries.[253] Nevertheless, when employed within the context of mediation, the concept assumes a unique dimension. In this particular context, the failure is not solely ascribed to inherent market inefficiencies, but rather represents a manifestation of intricate interactions amongst legal systems, cultural norms, and psychological biases that hinder the adoption of mediation. In its pursuit of effectively managing cross-border/boundary mediation, the EU must recognise the existence of the "EU mediation paradox." This recognition necessitates the adoption of sophisticated strategies that go beyond simplistic market-driven approaches. By adopting a comprehensive approach that takes into consideration the legal, cultural, and psychological aspects, the EU can endeavour to establish a mediation framework that is more robust and inclusive, in line with the evolving requirements of a diverse and interconnected European context. Within the realm of economics, the concept of market failure pertains to a situation in which the unregulated functioning of a free market results in an ineffectual distribution of goods or services.[254] In the realm of the market for cross-border/boundary dispute resolution services, there has been a notable focus on achieving a more equitable balance between mediation and litigation. This pursuit is primarily based on the underlying belief that a higher utilisation of mediation would contribute to improved overall efficiency. As a result, there has been significant discussion focused on determining the most effective approaches to increase the frequency of mediation cases. Advocates of mediation's economic benefits have called upon European legislators to take a proactive approach by enacting a directive that would require Member States to implement mediation as a mandatory prerequisite for the majority of legal conflicts prior to trial.[255] Moreover, a number of scholars have put forth a measurable approach to assess the extent to which the objective of establishing a balanced relationship, as outlined in Article 1 of the Mediation Directive, can be successfully achieved.[256]

The analysis of market failure in the market for cross-border/boundary dispute resolution services reveals the complex relationship between economic theory and the field of conflict resolution. Advocates argue that the economic benefits of mediation suggest that the current underutilisation of this method may be considered a case of market failure.[257] This occurs when decision-making processes of parties involved do not

253 Gómez-Barroso, JOSÉ, Market Failure (Analysis), in: Marciano, Alain; Ramello, Giovanni (eds.), Encyclopedia of Law and Economics, 1st Edition, New York, 2016, pp. 1–5.

254 Mankiw, N.G. 2003. Principles of macroeconomics. 3rd ed. Cincinnati, OH: South-Western College Publishing.

255 C.H. van Rhee Mandatory Mediation before Litigation in Civil and Commercial Matters: A European Perspective 2021 4(12) Access to Justice in Eastern Europe 7–24.

256 van Rhee, CH, Case Management in Europe: A Modern Approach to Civil Litigation (2018) 8 (1) International Journal of Procedural Law 65-84.

257 De Palo, Guiseppe, A Ten-Year-Long EU Mediation Paradox: When an EU Directive Needs to Be More …directive. European Parliament Briefing, 2018, requested by the JURI committee (Directorate General for Internal Policies).

effectively align with the optimal resolution mechanism, which in this case is mediation.[258] Therefore, proponents argue in favour of implementing targeted interventions that utilise regulatory mandates to encourage a higher level of adoption of mediation, consequently readjusting the dynamics of the market. The proposition to mandate mediation as a necessary preliminary step in the resolution of majority of disputes aims to tackle the perceived imbalances in information and behaviour that may influence parties' decisions to pursue either mediation or litigation.[259] The imposition of a requirement for mediation is thought to create a situation where parties are obligated to participate in the mediation process. This would result in a heightened recognition of the advantages of mediation and contribute to the development of a societal inclination towards this alternative approach to resolving disputes.

The attempt to measure the success of a harmonious relationship, as outlined in the Mediation Directive, reflects a desire to provide evidence for the influence and efficacy of policy interventions related to mediation. Scholars aim to determine if the expansion of mediation aligns with the objectives of the Directive and if market dynamics have indeed shifted towards a more equitable coexistence of mediation and litigation, through the use of quantifiable metrics. The commendable objective of achieving a balanced relationship between mediation and litigation necessitates an acknowledgment of the intricate factors that influence parties' preferences for resolving disputes. Economic perspectives provide valuable insights; however, it is crucial to complement them with socio-cultural, legal, and psychological factors. Furthermore, it is crucial to thoroughly assess the effectiveness of compulsory mediation mandates, as any regulatory interventions must carefully consider the need to both encourage the use of mediation and uphold the parties' autonomy in selecting their desired method of resolving disputes.

Within the framework of the quantitative paradigm, the concept of "balance" between mediation and litigation is conceptualised as an economic standard, which involves a pre-established objective number of cases to be mediated in every Member State. If the Member State fails to attain the specified figure, it may be subjected to potential legal consequences. This methodology, similar to the analysis conducted by the Commission, assumes that the perceived "underutilisation" of mediation lacks a logical justification. However, in contrast to the Commission's focus on promoting mediation, advocates of the quantitative approach argue that achieving a balanced relationship requires legislative interventions that directly increase the frequency of mediations.

The enduring inclination towards litigation, despite the EU promotion of mediation, highlights the complexities inherent in influencing the decision-making process of parties involved in dispute resolution. In order to effectively tackle the "EU mediation paradox," it is crucial to adopt a comprehensive approach that goes beyond mere legislative interventions. This approach should encompass a holistic comprehension of the social, cultural, and legal determinants that influence decision-making processes of the involved parties. The utilisation of a quantitative approach offers a valuable methodological framework for evaluating the equilibrium between mediation and litigation. However, it is crucial to supplement this approach with a comprehensive analysis of the diverse array of factors that shape parties' preferences for resolving disputes.

258 G De Palo and S Carmeli, Mediation in Continental Europe: A Meandering Path Toward Efficient Regulation in Newmark and Monaghan (eds) (n 4) 342.

259 C.H. van Rhee Mandatory Mediation before Litigation in Civil and Commercial Matters: A European Perspective 2021 4(12) Access to Justice in Eastern Europe 7–24.

The resolution of mediation paradox can be achieved through the integration of legal measures with a thorough understanding of the dynamics inherent in the varied legal framework of the EU. By adopting a comprehensive approach to analysis, policymakers have the ability to develop a robust framework that promotes increased acceptance and utilisation of mediation as a valuable alternative to litigation in disputes that transcend domestic boundaries.

ANNEX II

Mediation's Pertinence to the Unique Traits of Inter-domestic Disputes

To gain a thorough understanding of the impact of Private International Law (PIL) regulation on mediation, it is essential to explore the benefits that mediation, as a procedural mechanism, can provide in the settlement of disputes that transcend domestic boundaries. Upon closer examination of private inter-domestic mediation, it becomes evident that it possesses numerous advantageous attributes akin to those found in inter-domestic commercial arbitration, particularly within the realm of cross-border/boundary conflicts.

Mediation, being a voluntary and cooperative procedure, facilitates active engagement of the involved parties and promotes transparent communication, thereby creating a favourable atmosphere for the identification of mutually agreeable resolutions. The utilisation of a collaborative approach proves to be highly beneficial in the context of cross-border/boundary disputes, wherein involved parties often possess varying cultural backgrounds and legal systems. The inherent flexibility and informal nature of mediation afford parties the opportunity to customise resolutions that effectively address their distinct interests and concerns, thereby potentially yielding outcomes that are more enduring and gratifying.

Inter-domestic commercial arbitration and mediation both possess advantageous characteristics, particularly in the context of resolving cross-border/boundary disputes. Both methods place a high value on party autonomy and offer alternatives to the conventional process of resolving disputes in domestic courts.[260] In the context of arbitration, the involved parties possess the freedom to exercise their agency in various aspects, such as the selection of arbitrators, determination of procedural rules, and choice of the governing law.[261] This autonomy enables them to maintain a substantial level of influence over the process of resolving their dispute. In a similar vein, mediation enables the parties involved to engage actively in the process of formulating resolutions, thereby increasing the probability of attaining mutually agreeable outcomes.[262] Furthermore, it is important to note that both mediation and arbitration provide a level of confidentiality that is particularly significant in cross-border/boundary disputes involving potentially sensitive commercial or proprietary information.[263] The preservation of confidentiality promotes the

260 Civic Consulting (2009). Study on the use of Alternative Dispute Resolution in the European Union.

261 Cornes, D. (2008). Mediation Privilege and the EU Mediation Directive: An Opportunity? Arbitration 2008, nr. 74.

262 Kontz, B., Zach, E. (2007). Taking the best from mediation regulations, Arbitration International.

263 Oddy, A. (2011). EU Mediation Directive: implementation and key changes. 10 February 2011.

development of trust amongst involved parties and facilitates the establishment of open lines of communication throughout the process of resolving conflicts.[264] Furthermore, the conclusive nature of outcomes in both mediation and arbitration contributes to the establishment of certainty in the resolution process, thereby offering parties a sense of assurance that the dispute will be effectively resolved.[265] The examination of mediation and inter-domestic commercial arbitration demonstrates shared characteristics that contribute to their attractiveness in the context of resolving cross-border/boundary disputes. Similar to the flexibility observed in the process of arbitration, mediation offers parties the opportunity to select a neutral forum, thereby reducing the potential for bias that may arise from domestic judicial systems.[266] Furthermore, individuals engaged in mediation are afforded the chance to tailor procedural regulations according to their specific preferences, thereby circumventing the necessity of navigating unfamiliar procedural laws from other jurisdictions. Rather than depending on a judge who may lack a thorough comprehension of the subject matter or the applicable law, parties have the option to designate an expert with specialised knowledge in their specific business domain to assist them in resolving the dispute. In addition, it is worth noting that cross-border/boundary mediation is significantly strengthened by strong institutional backing, as prominent inter-domestic arbitration organisations frequently provide dedicated mediation initiatives.

The aforementioned analysis highlights the prominent characteristics that facilitate the participation of parties in the process of resolving disputes, primarily through the adaptable nature of mediation. By opting for a neutral forum, parties can circumvent concerns regarding potential bias in domestic courts, particularly in cases involving cross-border/boundary disputes that entail different legal systems and cultural contexts.[267] The capacity to customise procedural regulations based on individual preferences affords parties an enhanced perception of authority over the process of resolving disputes, thereby cultivating an atmosphere conducive to cooperation and collaboration. Furthermore, the inclusion of the freedom to designate a subject-matter expert to provide guidance during the mediation process enhances the probability of attaining mutually agreeable resolutions, particularly in intricate commercial conflicts where specialised expertise is crucial. Furthermore, the substantial support from institutions is crucial in facilitating the extensive adoption of cross-border/boundary mediation.

The endorsement and integration of mediation programmes by well-established inter-domestic arbitration bodies highlight the recognition and acceptance of mediation as a valid mechanism for resolving disputes. The provision of institutional support engenders a sense of assurance amongst involved parties, affirming the effectiveness and sustainability of mediation as a means of addressing their cross-border/boundary conflicts. The combination of neutral forum selection, customisable procedural rules, the expertise of mediators, and strong institutional support collectively makes mediation an attractive choice for parties involved in cross-border/boundary conflicts. By capitalising on these benefits, parties are able to effectively navigate the intricacies of inter-domestic disputes, leading to a more streamlined and proficient approach in resolving conflicts that transcend domestic boundaries. Highlighting the favourable attributes of mediation

264 Sim Khadijah Binte Mohammed, Do You Hear Me Clearly From Over There? Communicating on Different Planes in Cross-Culture Mediation, Address at First Asian Mediation Association Conference, Singapore (June 2009).

265 Howell-Richardson, Europe's changing mediation landscape, S.J. Berwin LLP, THE IN-HOUSE LAWYER (July-August 2008).

266 Martin, International Mediation: An Evolving Market, in Arthur W. Ravine, ed., Contemporary Issues in International Arbitration and Mediation: The Fordham Papers (2010) at 404 (2011)

267 Mark D. Bennett & Michele S. G. Herman, The Art of Mediation (1996).

in contrast to conventional litigation serves to foster acceptance of this alternative approach amongst stakeholders, thereby facilitating the advancement of a more unified and effective framework for resolving inter-domestic disputes. Moreover, individuals have the opportunity to utilise the vast array of ADR organisations that have been established in compliance with the ADR Directive.

Theoretically, mediation diverges from arbitration in its reduced reliance on the implementation of rules derived from a particular domestic legal system.[268] In the context of cross-border/boundary litigation and, to a lesser extent, inter-domestic arbitration, the determination of procedural law is contingent upon the law of the forum or the seat of arbitration, respectively.[269] Likewise, the nature of the disagreement is typically regulated by the legal statutes of a particular jurisdiction. Nonetheless, the intrinsic adaptability of mediation, coupled with its dependence on self-determination of the parties involved, diminishes the importance of these factors within the realm of inter-domestic mediation. Efforts have been undertaken within the realm of inter-domestic commercial arbitration to evade the enforcement of a specific domestic legal framework by invoking uncodified principles of transdomestic law, such as the lex mercatoria.[270] Unfortunately, these undertakings have frequently demonstrated a lack of clarity and unpredictability, thereby impeding their wider adoption.[271] However, it is important to note that despite potential limitations, transdomestic principles can still serve as a viable basis for achieving consensus in cross-border/boundary mediation. As a result, mediation has the capacity to provide a dispute resolution process that is more unbiased and fairer, particularly in light of the transdomestic nature of the underlying relationship between the parties involved.

The extensive array of ADR institutions that have been established as a result of the ADR Directive, along with the inherent benefits of mediation compared to litigation and arbitration, present a strong argument for regarding mediation as a favourable approach to resolving cross-border/boundary disputes. As the recognition of mediation's advantages in addressing the intricacies of inter-domestic relations grows amongst parties involved, it is expected that its presence in the global dispute resolution arena will continue to increase. The European Union's adoption of mediation as a dependable mechanism for handling trans-domestic disputes showcases its dedication to promoting equitable and efficient methods of resolving conflicts. This commitment ultimately contributes to the advancement of a more harmonious and cooperative global business environment.

Given the current circumstances, it is noteworthy to observe that mediation has not achieved a comparable degree of success as inter-domestic arbitration.[272] At first glance, this disparity may give rise to the assumption that the relatively low utilisation of mediation in cross-border/boundary contexts is irrational. However, the observations made by the European Commission and proponents of the quantitative approach, such as cultural inclinations towards adjudicative dispute resolution methods, limited awareness of

268 Schnabel, Timothy, The Singapore Convention on Mediation: A Framework for the Cross-Border Recognition and Enforcement of Mediated Settlements, Pepperdine Dispute Resolution Law Journal, 2019, Vol. 19(1), pp. 1–60.

269 C. Bühring-Uhle, L. Kirchhoff and G. Scherer, Arbitration and Mediation in International Business, p. 44.

270 D. McClean and K. Beevers, The Conflict of Laws, p. 4 and M. Reimann, in M. Reimann and R. Zimmermann, The Oxford Handbook of Comparative Law, p. 1364.

271 Psaila, Emma and others, Study for an Evaluation and Implementation of Directive 2008/52/EC – the Mediation Directive: Final Report, in: European Commission Report (Directorate General Justice and Consumers), Updated Version, 2016, Luxembourg.

272 Rühl, Giesela, Judicial Cooperation in Civil and Commercial Matters After Brexit: Which Way Forward?, International & Comparative Law Quarterly, 2018, Vol. 67(1), pp. 99–128.

mediation and its advantages, and the impact of irrational cognitive biases, are relevant not only to inter-domestic disputes but also to domestic ones. Considering the benefits that mediation provides in the settlement of cross-border/boundary conflicts, it is reasonable to anticipate a further limited utilisation of this method in domestic contexts. Nevertheless, the empirical evidence presents a contradiction to this expectation, as it indicates that mediation is utilised more often in domestic disputes compared to cross-border/boundary disputes.[273]

Cross-border/boundary disputes frequently involve complex legal matters and conflicting determinations of jurisdiction, which can create reluctance amongst parties to consider mediation as a method of resolving their conflicts. The limited knowledge of foreign legal systems, combined with uncertainties surrounding the enforceability of mediated agreements across inter-domestic boundaries, may lead parties to choose more conventional and established methods, such as litigation or inter-domestic arbitration. Additionally, it is important to acknowledge that cultural factors have a significant impact on the formation of parties' preferences regarding dispute resolution methods. The presence of adversarial legal systems in numerous jurisdictions is accompanied by longstanding traditions and historical acceptance. These factors may impact the willingness and assurance of parties in embracing mediation as an alternative approach. Likewise, the notion of mediation being a process centred on compromise may not be congruent with specific legal cultures that prioritise assertiveness and vigorous advocacy. Diverse levels of institutional support and awareness regarding mediation across different jurisdictions may also serve as a contributing factor. In certain jurisdictions, the practise of mediation has been widely advocated and formalised, resulting in increased awareness and confidence in its efficacy. On the other hand, it is worth noting that certain regions may exhibit a deficiency in terms of firmly established and resilient mediation frameworks, thereby diminishing the attractiveness and accessibility of such mechanisms for the parties engaged in cross-border/boundary conflicts.

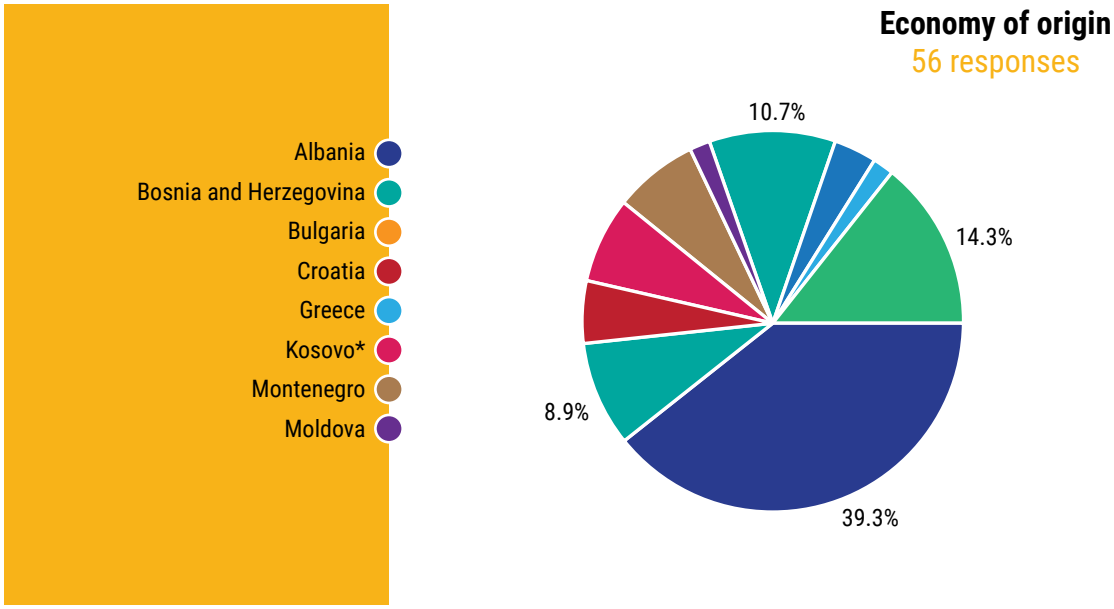
273 Ibid (fn.90).

ANNEX III

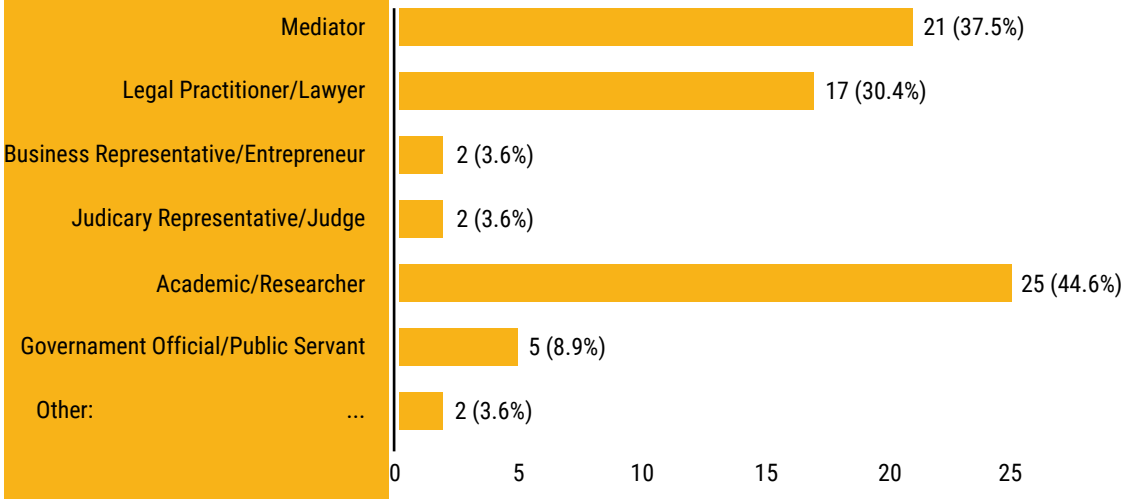
Results of the Mediation Survey

As part of the research process, a comprehensive questionnaire was meticulously designed to capture insights from key stakeholders within the legal and mediation domains. The questionnaire was distributed across the thirteen jurisdictions under study, targeting a diverse group of participants including mediators, judges, law professors, lawyers, and legal professionals. In total, a considerable effort was undertaken to reach out to 3801 individuals, soliciting their valuable perspectives on cross-border/boundary mediation practices and judicial cooperation within the South East Europe (SEE) region. This extensive outreach ensures a robust and comprehensive dataset, reflecting the collective insights and experiences of a wide spectrum of legal and mediation experts.

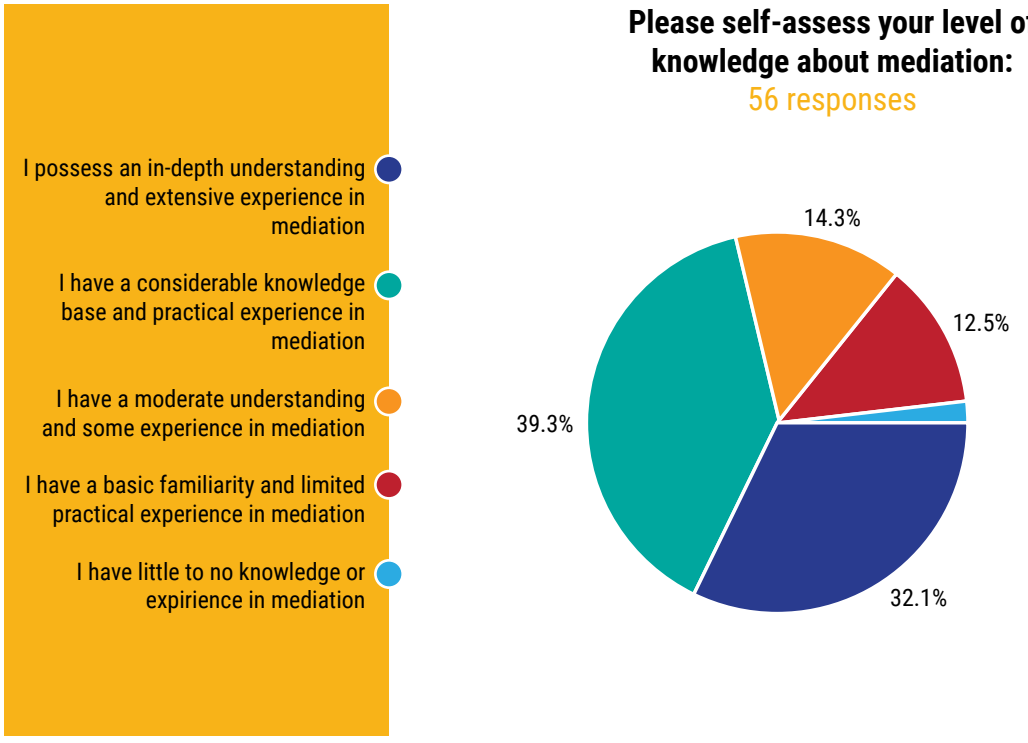
In this section, a comprehensive analysis of the survey results is presented. The survey, disseminated amongst mediators, judges, law professors, lawyers, and legal professionals across the thirteen jurisdictions, yielded a wealth of insights and perspectives on various aspects of cross-border/boundary mediation practices and the state of judicial cooperation within the South East Europe (SEE) region. The responses provide a nuanced understanding of prevailing trends, challenges, and potential opportunities in the realm of cross-border/boundary dispute resolution. The subsequent discussion delves into the key findings, shedding light on the collective viewpoints that shape the landscape of cross-border/boundary mediation and its intersection with judicial processes.

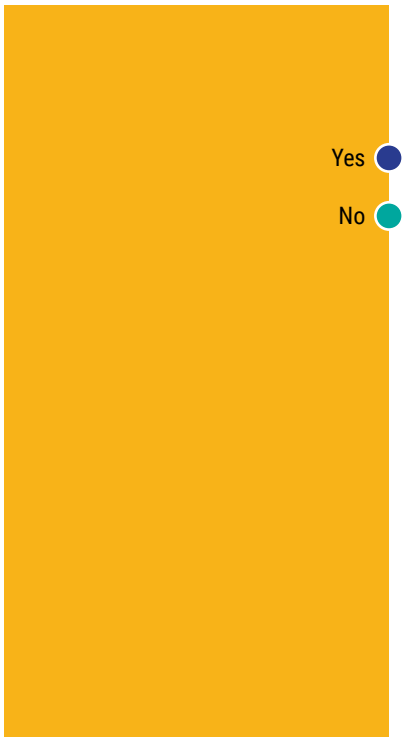


Please specify your current proffesional role or occupation (Please feel free to select multiple options if applicable):
56 responses



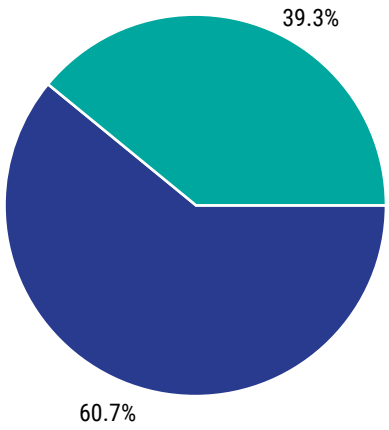
Please self-assess your level of knowledge about mediation:
56 responses

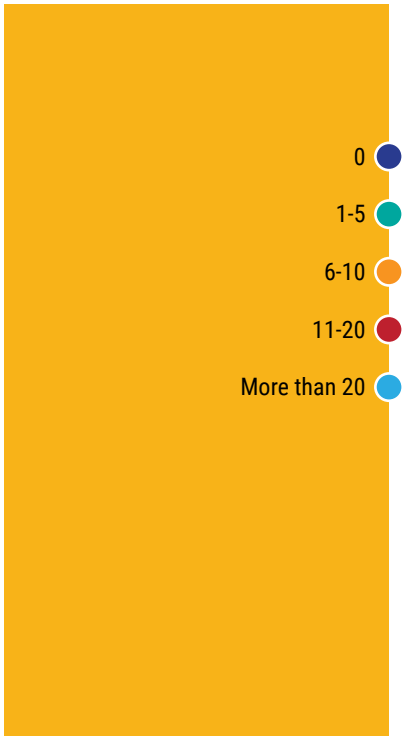




Have you been involved in mediation in any capacity (as a mediator, legal representative, party to a dispute, etc.):

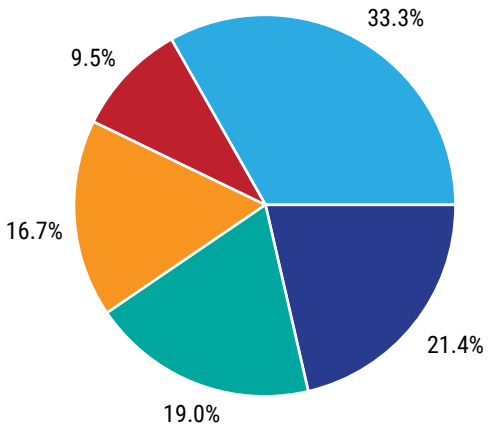
56 responses



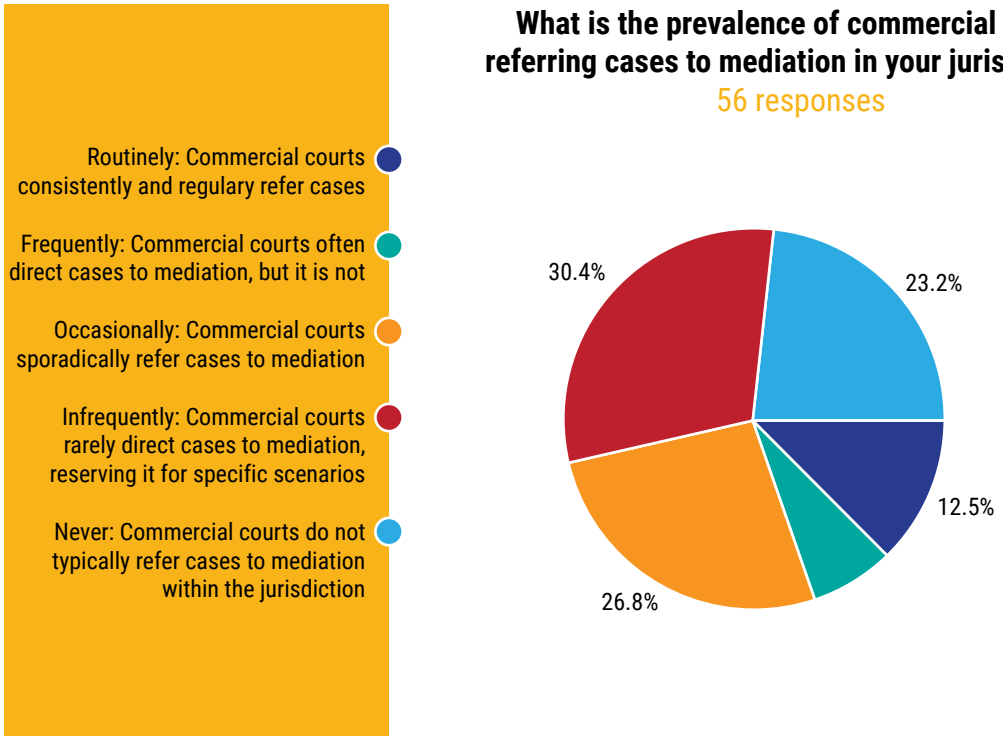


If you answer to the prevoius question is "Yes", please specify the number of mediations you have participated in or conducted:

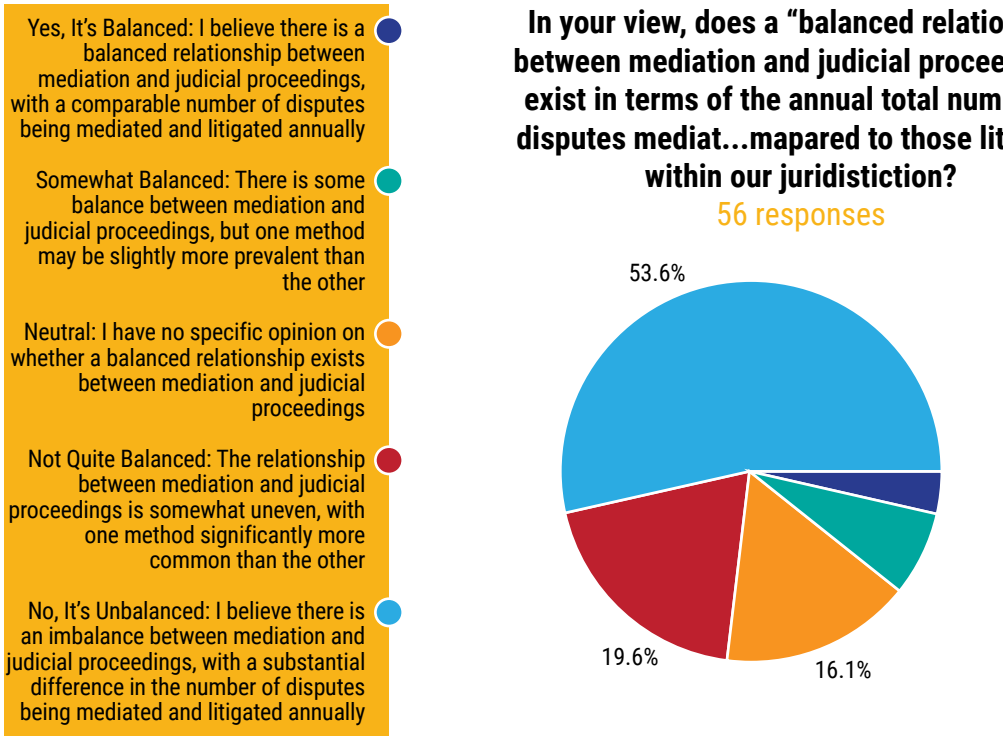
42 responses



What is the prevalence of commercial courts referring cases to mediation in your jurisdiction?:
56 responses



In your view, does a "balanced relationship between mediation and judicial proceedings" exist in terms of the annual total number of disputes mediat...mapared to those litigated within our juridistiction?
56 responses



Highly Efficiant: I consider commercial courts in my jurisdiction to be highly effective and efficient in handling cases

Moderately Efficient: I beleive commercial courts generally demonstrate reasonable efficiency in case handling

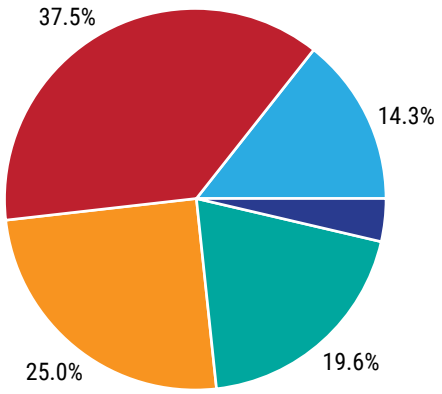
Neutral: I hold no specific opinion regarding the efficiency of commercial courts in my jurisdiction

Moderately Inefficient: I percieve some aspects of inefficiency in the functioning of commercial courts

Highly Inefficient: I beleive commercial courts in my jurisdiction are considerably inefficient and face significant challenges

In your evaluation, how do you perceive the efficiency of commercial courts within your jurisdiction?

56 responses



Strongly Agree: I strongly believe that certain disputes should be automatically referred to mediation before accessing the courts

Agree: I agree that mediation should be mandatory for specific disputes, but there may be exceptions

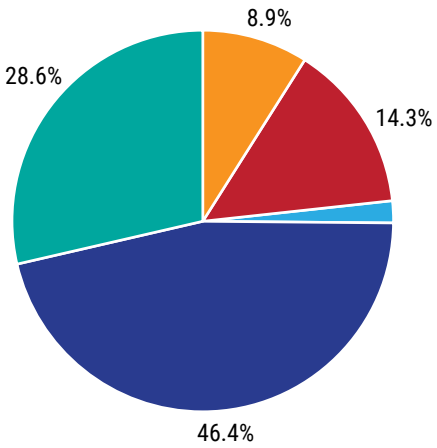
Neutral: I have no specific opinion on whether certain disputes should be mandatorily referred to mediation

Disagree: I do not think that mediation should be mandatory, and parties should have the freedom to choose litigation if desired

Strongly Disagree: I strongly disagree with mandatory mediation, as parties should always have the option to directly access the courts

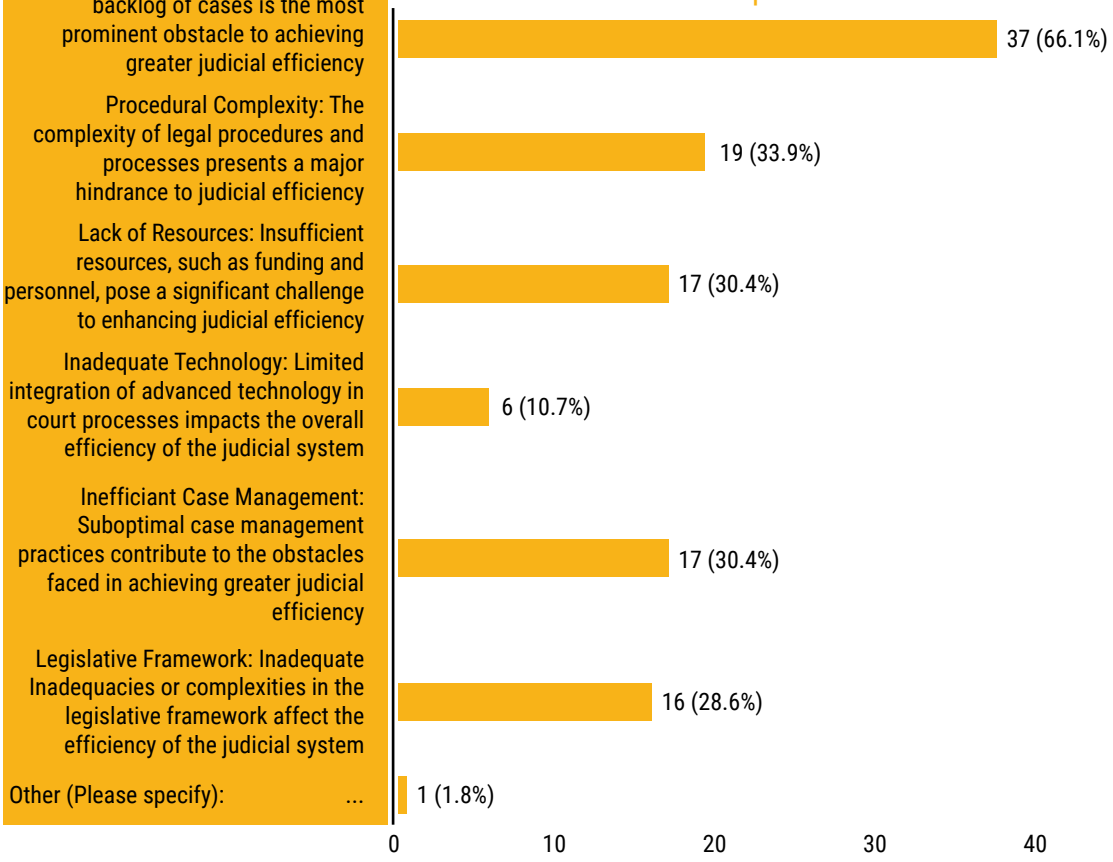
In your opinion, should certain disputes be mandatorily referred to mediation before pursuing litigation in the courts?

56 responses



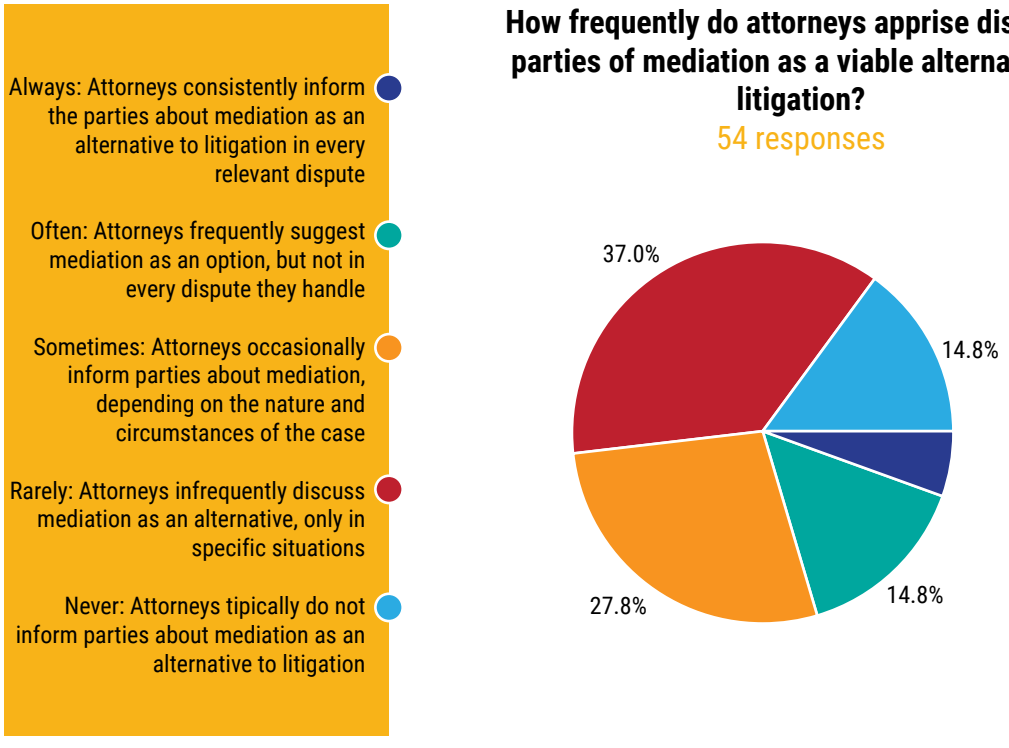
In your opinion, what is the primery obstacle hindering the attainment of enhanced judicial efficiency in your jurisdiction? (Please feel free to select multiple options if applicable):

56 responses



How frequently do attorneys apprise disputing parties of mediation as a viable alternative to litigation?

54 responses



Always: Dispute resolution clauses are consistently included in all commercial contracts I handle

Often: Dispute resolution clauses are frequently integrated into commercial contracts, but not in every instance

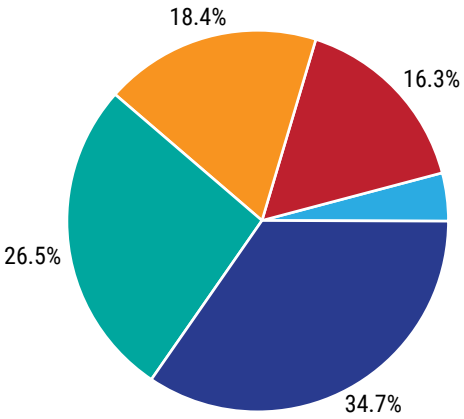
Sometimes: Dispute resolution clauses are occasionally included, depending on the specific contract and circumstances

Rarely: Dispute resolution clauses are infrequently incorporated, only in exceptional cases

Never: Dispute resolution clauses are not typically included in the commercial contracts I handle

To what extent do you incorporate dispute resolution clauses in commercial contracts?

49 responses



Extremely Likely: I would be very inclined to attempt mediation as the first option for resolving a regional cross-border commercial dispute

Likely: I am inclined to consider mediation, but I may also explore other avenues

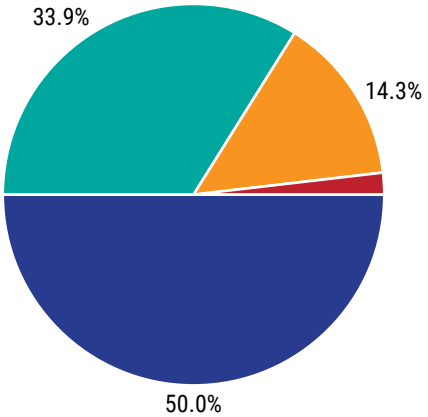
Neutral: I am equally open to both mediation and court proceedings for resolving such disputes

Unlikely: I am less inclined to consider mediation and would prefer to pursue court proceedings in most cases

Extremely Unlikely: I would rarely or never consider mediation as a resolution method, favoring court proceedings instead

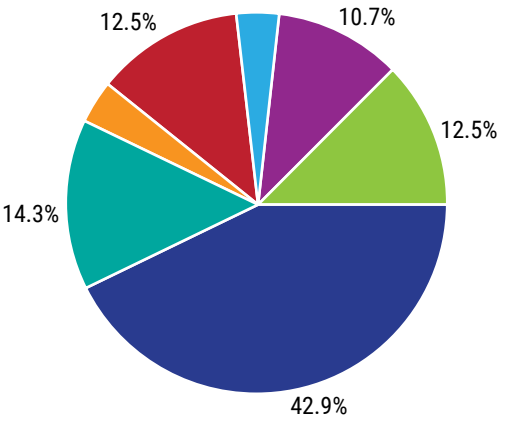
What is the likelihood that you would consider attempting mediation as a means to resolve a regional cross-border commercial dispute before resorting to court proceedings?

56 responses



When conteplating the utilization of mediationin a regional cross-border commercial dispute, what would be your primary concern or consideration?

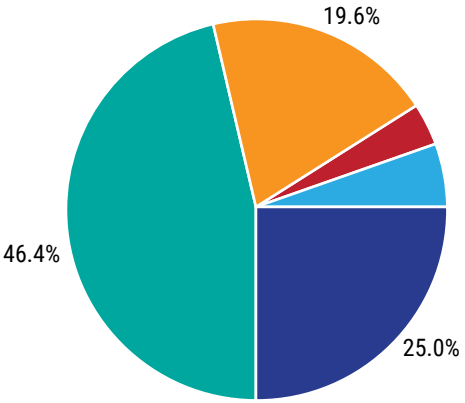
56 responses



- Enforceabillity of Outcomes: My main concern would be the enforceabillity of mediation outcomes across multiple jurisdictions
- Neutrality and Impartiality: I would prioritize ensuring the neutrality and impartiality of the mediator in the cross-border context
- Language and Curtural Differeces: Language barriers and cultural disparities might be my primary concern in the mediation process
- Legal Framework and Jurisdictional Issues: My main consideration would be navigating the legal framework and jurisdictional complexities
- Time and Cost Efficiency: I would primarily focus on the time and cost-effectiveness of mediation compared to court proceedings
- Parties' Willingness to Cooperate: My main concern would be the willingness of all parties involved to actively participate in mediation
- Lack of Mediation Expertise: I might be concerned about the availability of qualified mediators experienced in cross-border commercial disputes
- Other (Please specify) ...

how inclined would you be to explore the option of "online mediation" for the resolution of a cross-border commercial dispute?

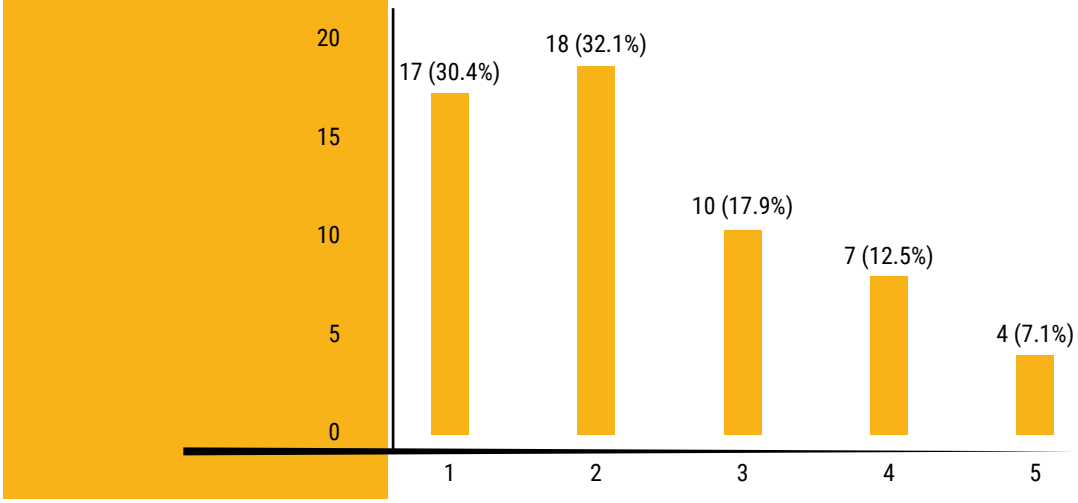
56 responses



- Highly Inclined: I would be very interested in exploring "online mediation" as a viable option for resolving a cross-border commercial dispute
- Moderatly Inclined: I am open to considering "online mediation" as a potential resolution method for such disputes
- Neutral: I hold no specific inclination towards or against "online mediation" in the context of cross-border commercial disputes
- Slightly Inclined: I have some intrest in exploring "online mediation" but would also explore other alternatives
- Not Inclined: I am less interested in "online mediation" and would prefer to explore other dispute resolution methods

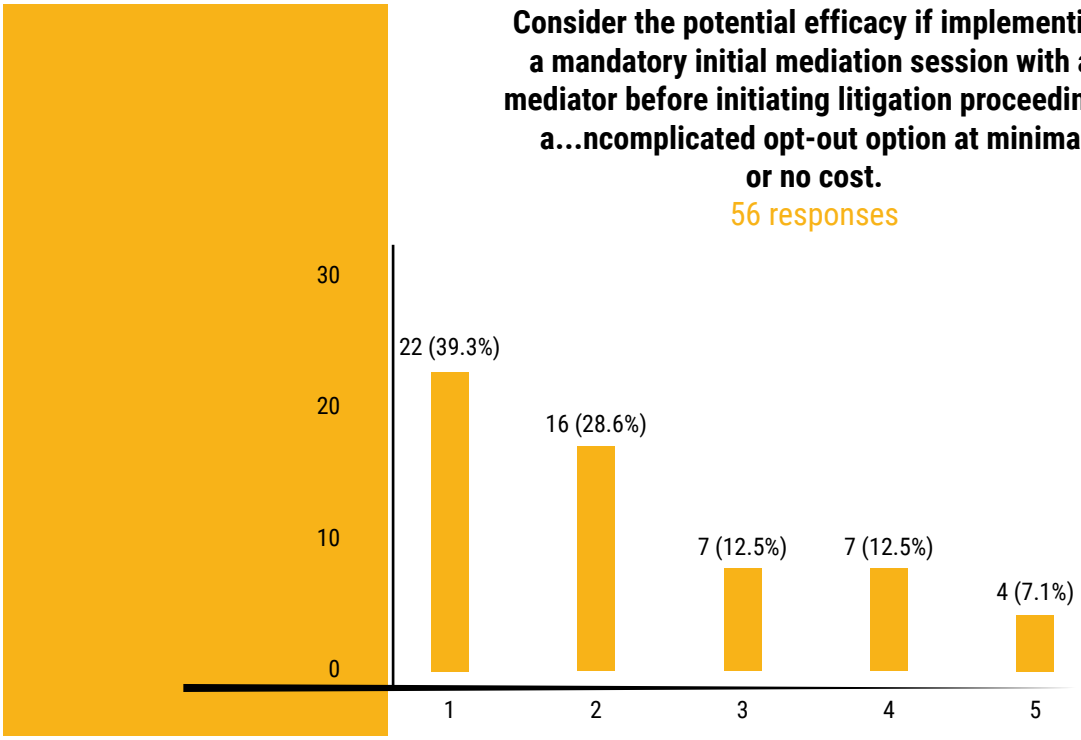
Evaluate the potential impact of requiring counsel to inform their clients about mediation as an alternative to litigation and implementing penalties for lawyers who fail to fulfill this obligation:

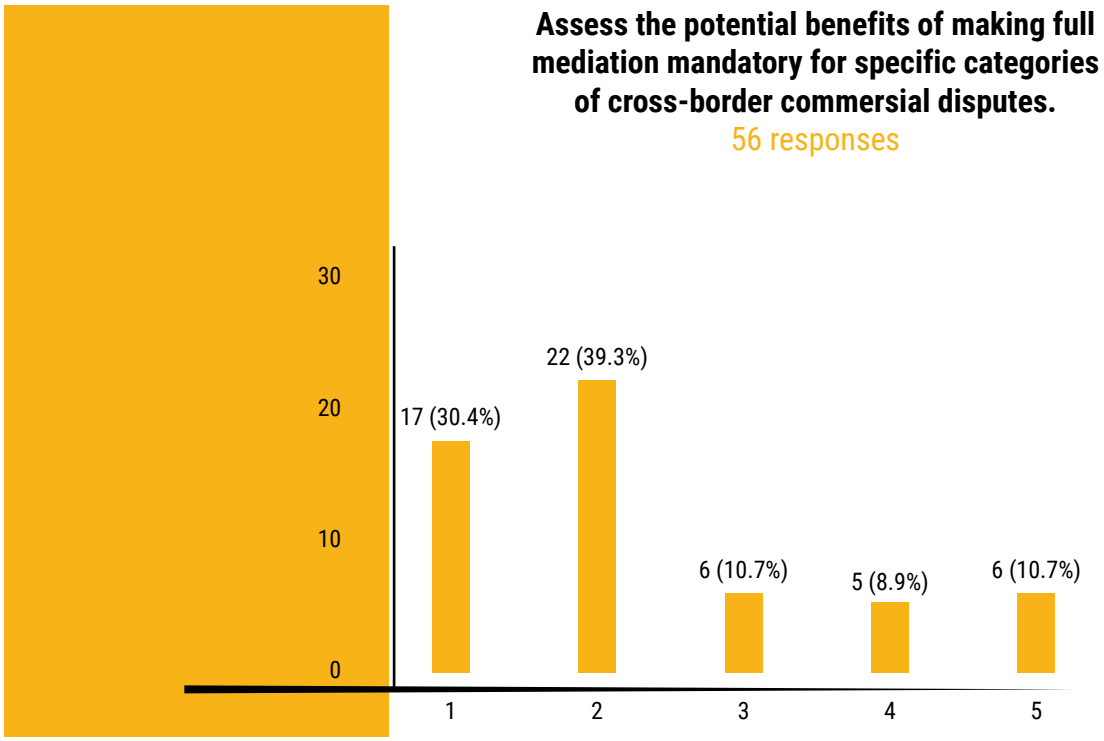
56 responses

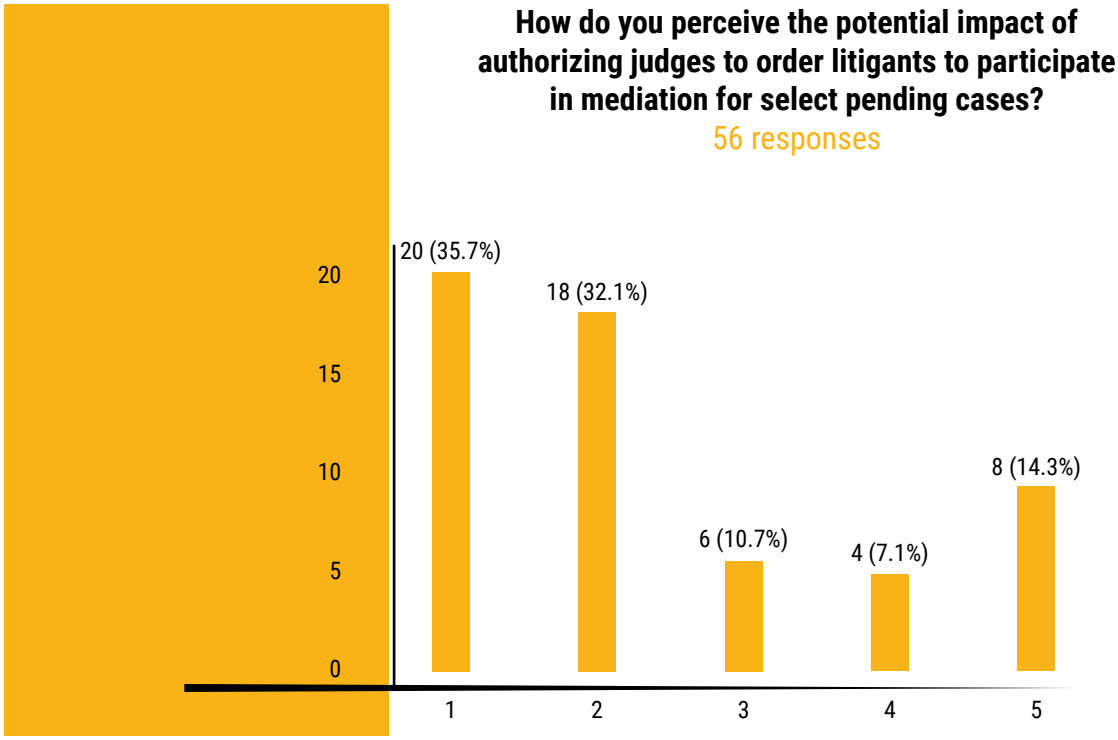


Consider the potential efficacy if implementing a mandatory initial mediation session with a mediator before initiating litigation proceedings, a...ncomplicated opt-out option at minimal or no cost.

56 responses

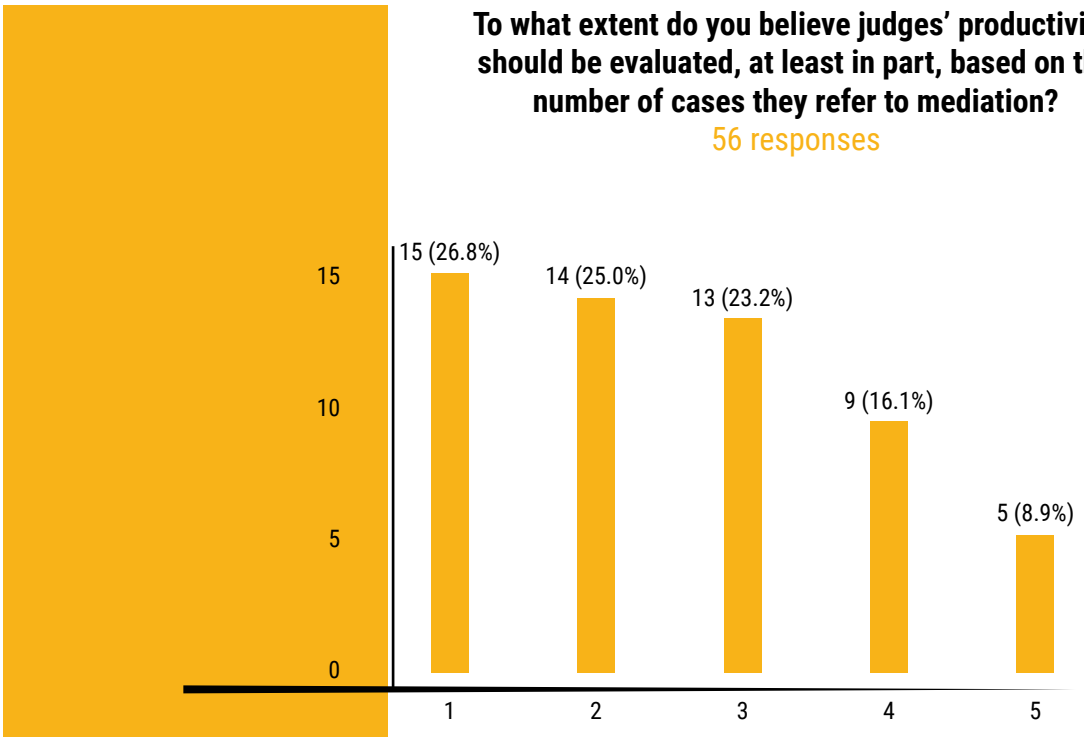



Assess the potential benefits of making full mediation mandatory for specific categories of cross-border commersial disputes.
56 responses
30
20
10
0
17 (30.4%)
22 (39.3%)
6 (10.7%)
5 (8.9%)
6 (10.7%)
1
2
3
4
5


How do you perceive the potential impact of authorizing judges to order litigants to participate in mediation for select pending cases?
56 responses
20
15
10
5
0
20 (35.7%)
18 (32.1%)
6 (10.7%)
4 (7.1%)
8 (14.3%)
1
2
3
4
5

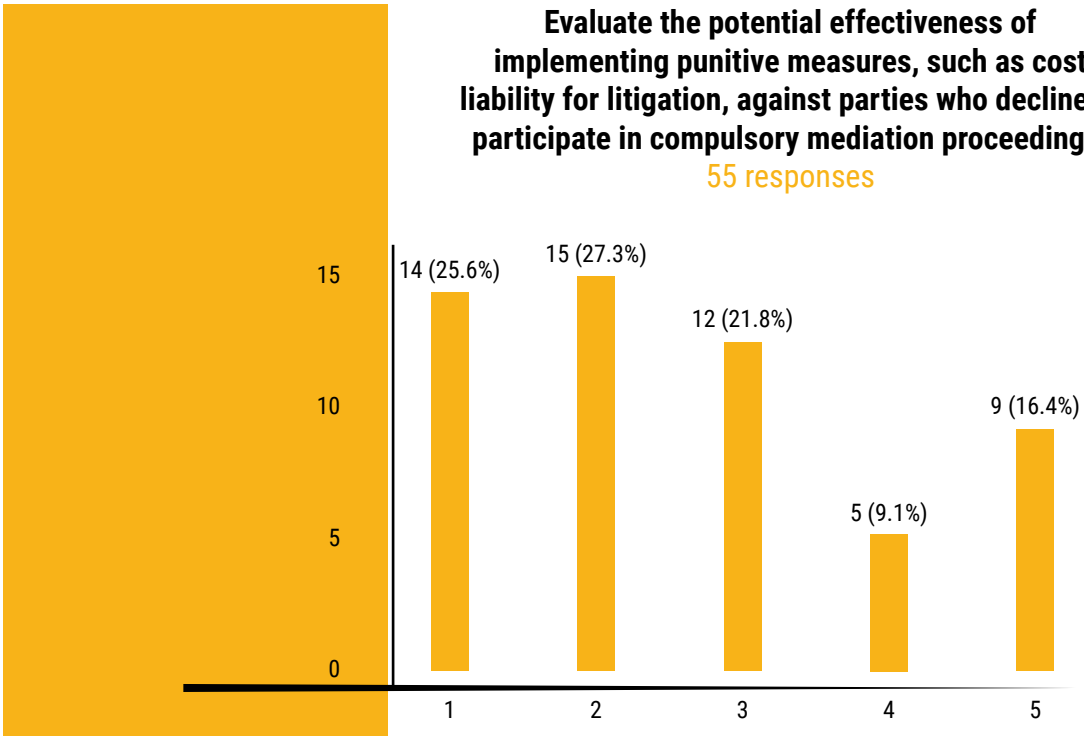
To what extent do you believe judges' productivitiy should be evaluated, at least in part, based on the number of cases they refer to mediation?

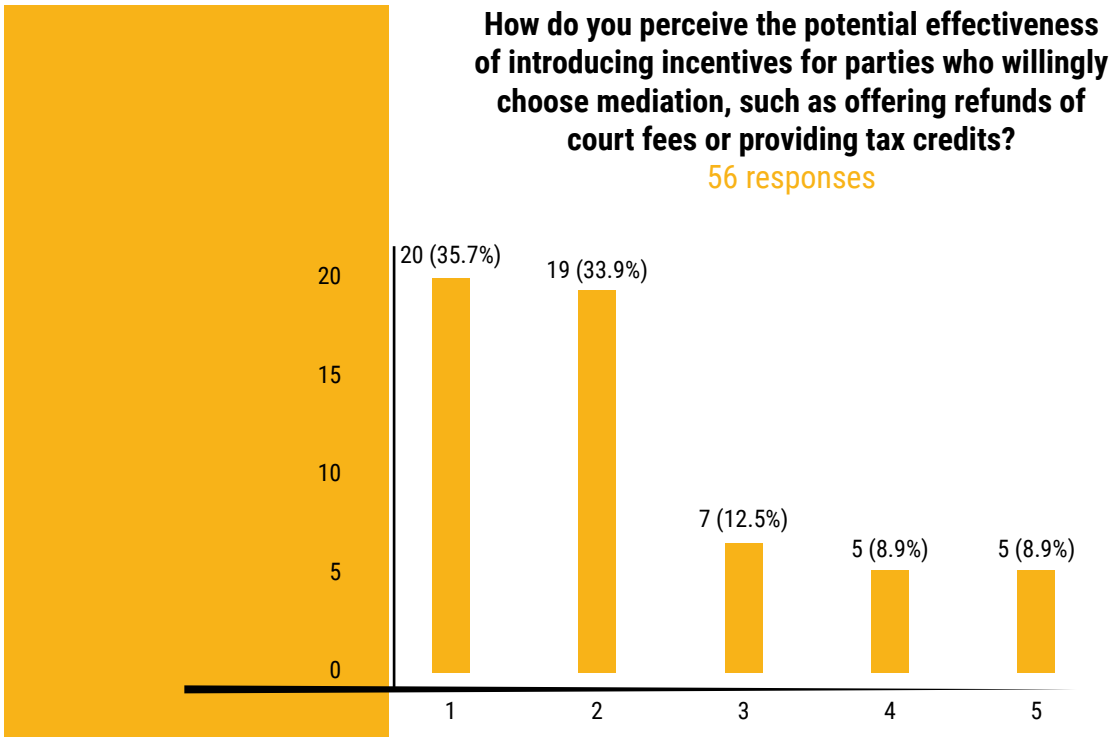
56 responses

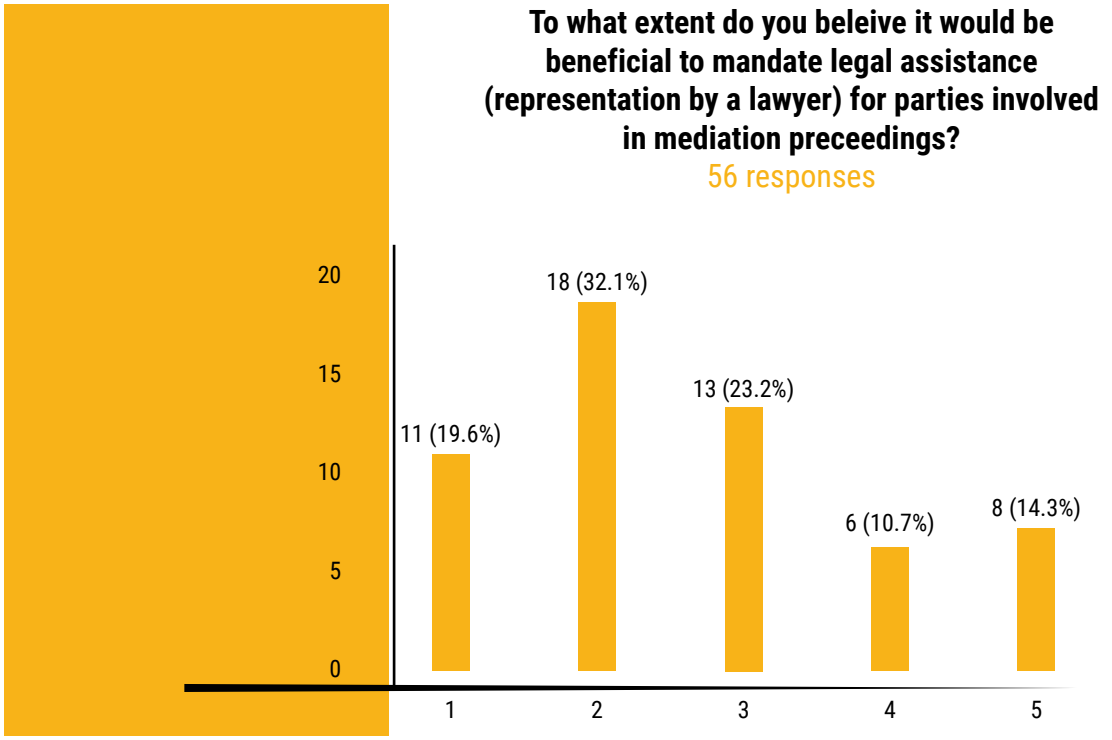


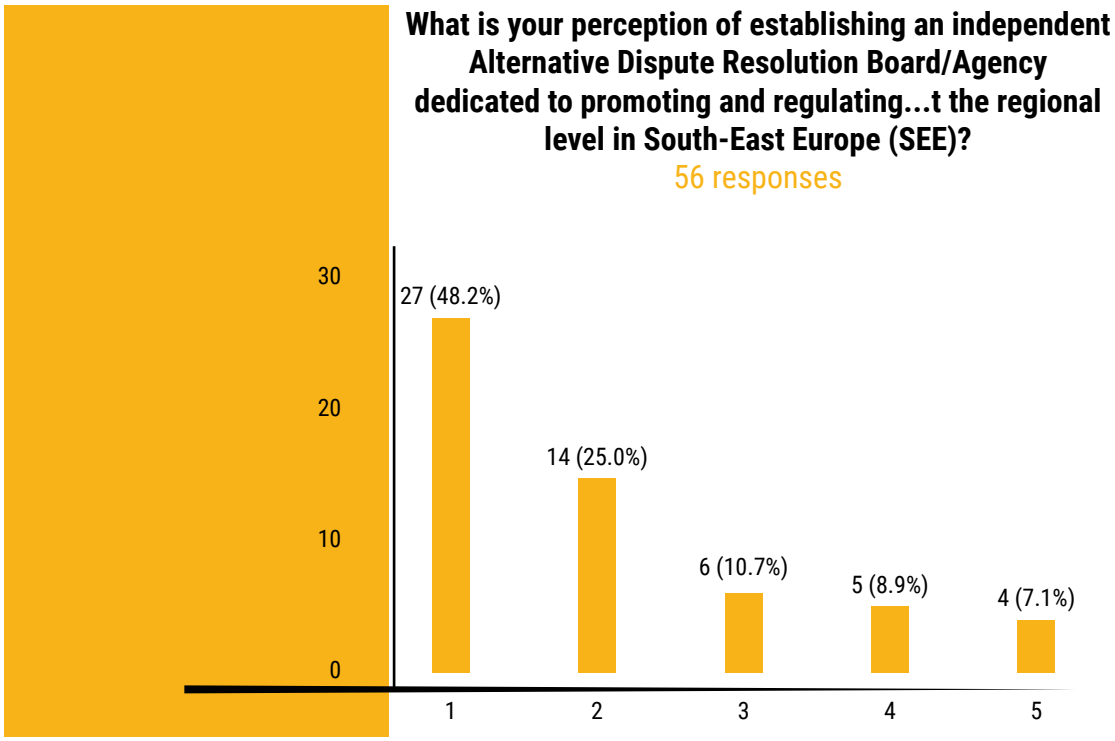
Evaluate the potential effectiveness of implementing punitive measures, such as cost liability for litigation, against parties who decline to participate in compulsory mediation proceedings.

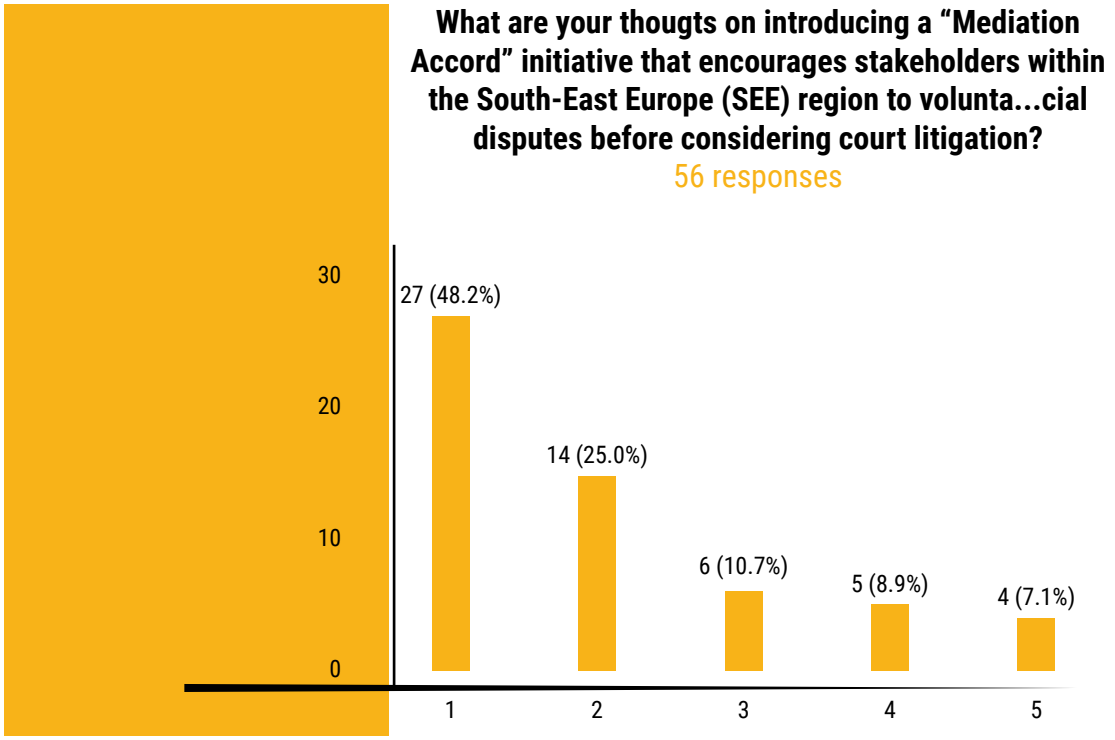
55 responses

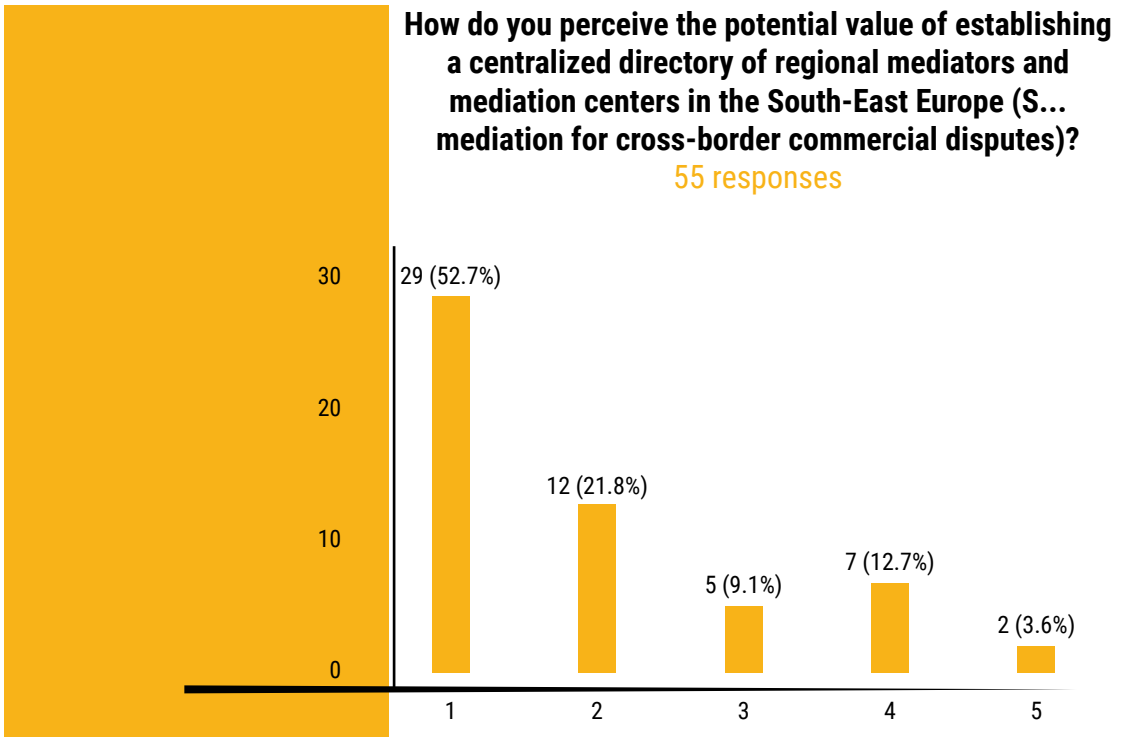


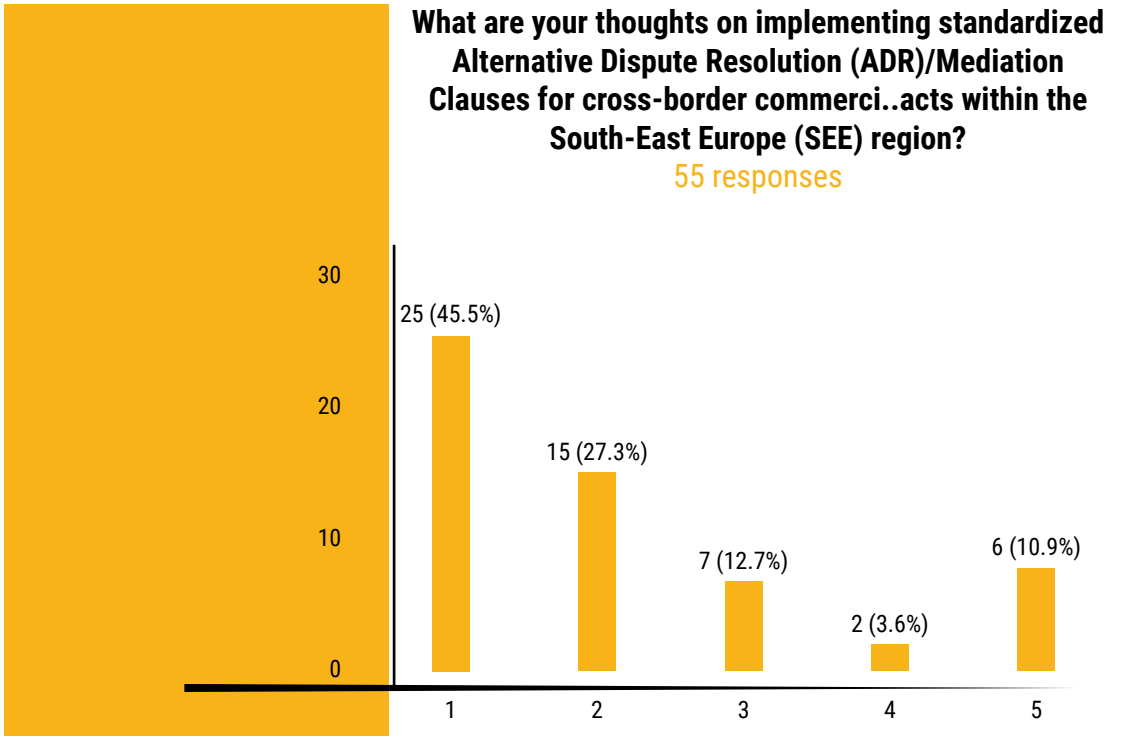

How do you perceive the potential effectiveness of introducing incentives for parties who willingly choose mediation, such as offering refunds of court fees or providing tax credits?
56 responses
20 (35.7%)
19 (33.9%)
7 (12.5%)
5 (8.9%)
5 (8.9%)
20
15
10
5
0
1
2
3
4
5

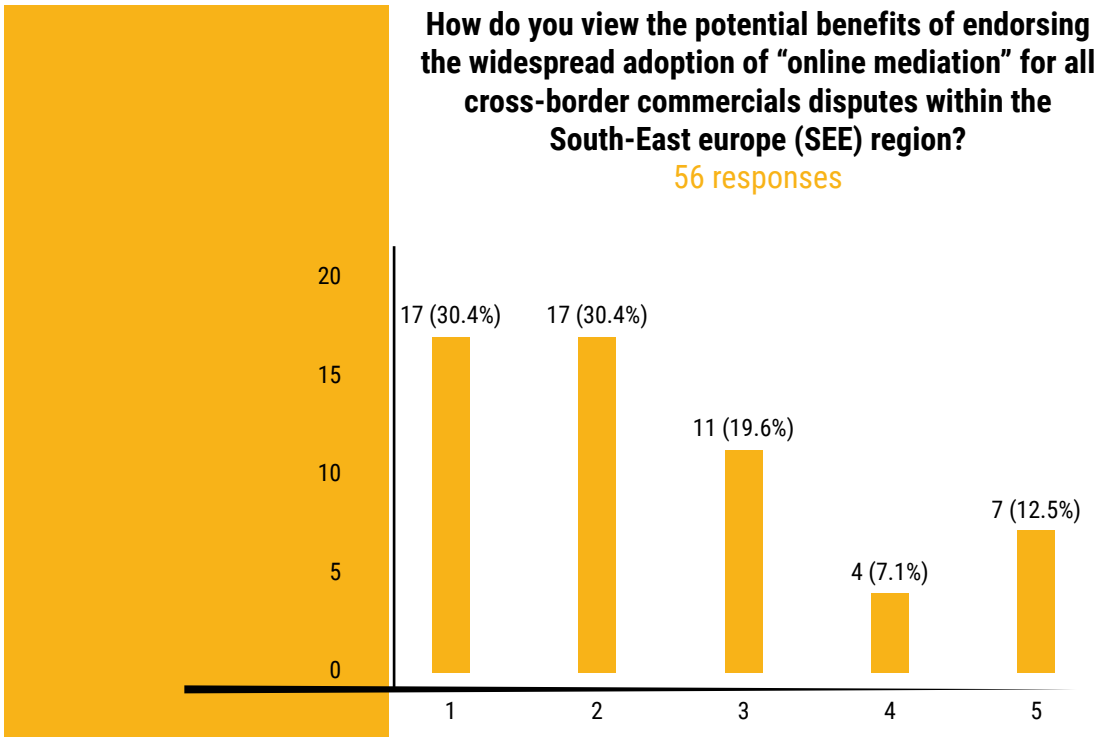

To what extent do you beleive it would be beneficial to mandate legal assistance (representation by a lawyer) for parties involved in mediation preceedings?
56 responses
11 (19.6%)
18 (32.1%)
13 (23.2%)
6 (10.7%)
8 (14.3%)
20
15
10
5
0
1
2
3
4
5


What is your perception of establishing an independent Alternative Dispute Resolution Board/Agency dedicated to promoting and regulating...t the regional level in South-East Europe (SEE)?
56 responses
30
20
10
0
27 (48.2%)
14 (25.0%)
6 (10.7%)
5 (8.9%)
4 (7.1%)
1
2
3
4
5


What are your thougts on introducing a “Mediation Accord” initiative that encourages stakeholders within the South-East Europe (SEE) region to volunta...cial disputes before considering court litigation?
56 responses
30
20
10
0
27 (48.2%)
14 (25.0%)
6 (10.7%)
5 (8.9%)
4 (7.1%)
1
2
3
4
5


How do you perceive the potential value of establishing a centralized directory of regional mediators and mediation centers in the South-East Europe (S... mediation for cross-border commercial disputes)?
55 responses
30
20
10
0
29 (52.7%)
12 (21.8%)
5 (9.1%)
7 (12.7%)
2 (3.6%)
1
2
3
4
5


What are your thoughts on implementing standardized Alternative Dispute Resolution (ADR)/Mediation Clauses for cross-border commerci..acts within the South-East Europe (SEE) region?
55 responses
30
20
10
0
25 (45.5%)
15 (27.3%)
7 (12.7%)
2 (3.6%)
6 (10.9%)
1
2
3
4
5


How do you view the potential benefits of endorsing the widespread adoption of “online mediation” for all cross-border commercials disputes within the South-East europe (SEE) region?
56 responses
20
15
10
5
0
17 (30.4%)
17 (30.4%)
11 (19.6%)
4 (7.1%)
7 (12.5%)
1
2
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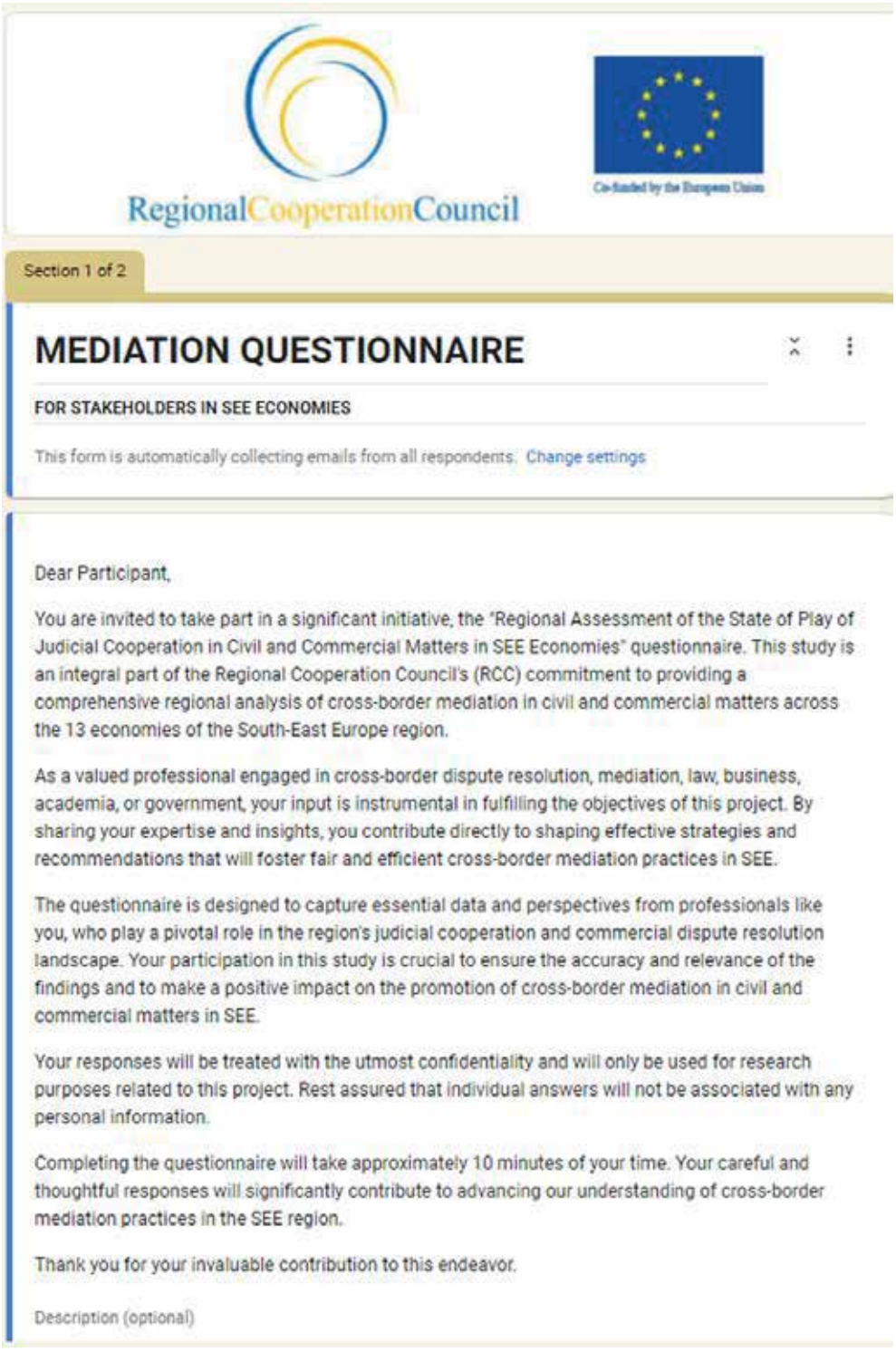
4
5

ANNEX IV

Mediation Questionnaire



RegionalCooperationCouncil

Co-funded by the European Union

Section 1 of 2

MEDIATION QUESTIONNAIRE

FOR STAKEHOLDERS IN SEE ECONOMIES

This form is automatically collecting emails from all respondents. Change settings

Dear Participant,

You are invited to take part in a significant initiative, the "Regional Assessment of the State of Play of Judicial Cooperation in Civil and Commercial Matters in SEE Economies" questionnaire. This study is an integral part of the Regional Cooperation Council's (RCC) commitment to providing a comprehensive regional analysis of cross-border mediation in civil and commercial matters across the 13 economies of the South-East Europe region.

As a valued professional engaged in cross-border dispute resolution, mediation, law, business, academia, or government, your input is instrumental in fulfilling the objectives of this project. By sharing your expertise and insights, you contribute directly to shaping effective strategies and recommendations that will foster fair and efficient cross-border mediation practices in SEE.

The questionnaire is designed to capture essential data and perspectives from professionals like you, who play a pivotal role in the region's judicial cooperation and commercial dispute resolution landscape. Your participation in this study is crucial to ensure the accuracy and relevance of the findings and to make a positive impact on the promotion of cross-border mediation in civil and commercial matters in SEE.

Your responses will be treated with the utmost confidentiality and will only be used for research purposes related to this project. Rest assured that individual answers will not be associated with any personal information.

Completing the questionnaire will take approximately 10 minutes of your time. Your careful and thoughtful responses will significantly contribute to advancing our understanding of cross-border mediation practices in the SEE region.

Thank you for your invaluable contribution to this endeavor.

Description (optional)

Part I "Professional Perspectives on Cross-Border Mediation and Dispute Resolution Practices"

Description (optional)

Economy of origin: *

- ○ Albania
- ○ Bosnia and Herzegovina
- ○ Bulgaria
- ○ Croatia
- ○ Greece
- ○ Kosovo*
- ○ Montenegro
- ○ Moldova
- ○ North Macedonia
- ○ Romania
- ○ Slovenia
- ○ Serbia
- ○ Turkey

Please specify your current professional role or occupation (*Please feel free to select multiple options if applicable*): *

- [ ] Mediator
- [ ] Legal Practitioner/Lawyer
- [ ] Business Representative/Entrepreneur
- [ ] Judiciary Representative/Judge
- [ ] Academic/Researcher
- [ ] Government Official/Public Servant
- [ ] Other: _____

Please self-assess your level of knowledge about mediation:

- ○ I possess an in-depth understanding and extensive experience in mediation practices
- ○ I have a considerable knowledge base and practical experience in mediation
- ○ I have a moderate understanding and some experience in mediation
- ○ I have basic familiarity and limited practical experience in mediation
- ○ I have little to no knowledge or experience in mediation

Have you been involved in mediation in any capacity (as a mediator, legal representative, party to a dispute, etc.)? *

- ○ Yes
- ○ No

If your answer to the previous question is "Yes," please specify the number of mediations you have participated in or conducted:

- ○ 0
- ○ 1-5
- ○ 6-10
- ○ 11-20
- ○ More than 20

What is the prevalence of commercial courts referring cases to mediation in your jurisdiction?

- ○ Routinely: Commercial courts consistently and regularly refer cases to mediation as a standard procedure
- ○ Frequently: Commercial courts often direct cases to mediation, but it is not a universal practice
- ○ Occasionally: Commercial courts sporadically refer cases to mediation, depending on the nature of the di...
- ○ Infrequently: Commercial courts rarely direct cases to mediation, reserving it for specific scenarios
- ○ Never: Commercial courts do not typically refer cases to mediation within the jurisdiction

In your view, does a "balanced relationship between mediation and judicial proceedings" exist in terms of the annual total number of disputes mediated compared to those litigated within our jurisdiction?

- ○ Yes, It's Balanced: I believe there is a balanced relationship between mediation and judicial proceedings, ...
- ○ Somewhat Balanced: There is some balance between mediation and judicial proceedings, but one metho...
- ○ Neutral: I have no specific opinion on whether a balanced relationship exists between mediation and judi...
- ○ Not Quite Balanced: The relationship between mediation and judicial proceedings is somewhat uneven, ...
- ○ No, It's Unbalanced: I believe there is an imbalance between mediation and judicial proceedings, with a s...

In your evaluation, how do you perceive the efficiency of commercial courts within your jurisdiction?

- ○ Highly Efficient: I consider commercial courts in my jurisdiction to be highly effective and efficient in han...
- ○ Moderately Efficient: I believe commercial courts generally demonstrate reasonable efficiency in case ha...
- ○ Neutral: I hold no specific opinion regarding the efficiency of commercial courts in my jurisdiction
- ○ Moderately Inefficient: I perceive some aspects of inefficiency in the functioning of commercial courts
- ○ Highly Inefficient: I believe commercial courts in my jurisdiction are considerably inefficient and face sign...

In your opinion, should certain disputes be mandatorily referred to mediation before pursuing litigation in the courts? *

- ○ Strongly Agree: I strongly believe that certain disputes should be automatically referred to mediation bef...
- ○ Agree: I agree that mediation should be mandatory for specific disputes, but there may be exceptions
- ○ Neutral: I have no specific opinion on whether certain disputes should be mandatorily referred to mediati...
- ○ Disagree: I do not think that mediation should be mandatory, and parties should have the freedom to cho...
- ○ Strongly Disagree: I strongly disagree with mandatory mediation, as parties should always have the optio...

In your opinion, what is the primary obstacle hindering the attainment of enhanced judicial efficiency in your jurisdiction? *(Please feel free to select multiple options if applicable)* *

- ☐ Case Backlog: The significant backlog of cases is the most prominent obstacle to achieving greater judic...
- ☐ Procedural Complexity: The complexity of legal procedures and processes presents a major hindrance to...
- ☐ Lack of Resources: Insufficient resources, such as funding and personnel, pose a significant challenge to...
- ☐ Inadequate Technology: Limited integration of advanced technology in court processes impacts the over...
- ☐ Inefficient Case Management: Suboptimal case management practices contribute to the obstacles faced...
- ☐ Legislative Framework: Inadequacies or complexities in the legislative framework affect the efficiency of ...
- ☐ Other [Please specify] _____

How frequently do attorneys apprise disputing parties of mediation as a viable alternative to litigation?

- ○ Always: Attorneys consistently inform the parties about mediation as an alternative to litigation in every r...
- ○ Often: Attorneys frequently suggest mediation as an option, but not in every dispute they handle
- ○ Sometimes: Attorneys occasionally inform parties about mediation, depending on the nature and circum...
- ○ Rarely: Attorneys infrequently discuss mediation as an alternative, only in specific situations
- ○ Never: Attorneys typically do not inform parties about mediation as an alternative to litigation

To what extent do you incorporate dispute resolution clauses in commercial contracts?

- ○ Always: Dispute resolution clauses are consistently included in all commercial contracts I handle
- ○ Often: Dispute resolution clauses are frequently integrated into commercial contracts, but not in every in...
- ○ Sometimes: Dispute resolution clauses are occasionally included, depending on the specific contract an...
- ○ Rarely: Dispute resolution clauses are infrequently incorporated, only in exceptional cases
- ○ Never: Dispute resolution clauses are not typically included in the commercial contracts I handle

What is the likelihood that you would consider attempting mediation as a means to resolve a regional cross-border commercial dispute before resorting to court proceedings? *

- ○ Extremely Likely: I would be very inclined to attempt mediation as the first option for resolving a regional ...
- ○ Likely: I am inclined to consider mediation, but I may also explore other avenues
- ○ Neutral: I am equally open to both mediation and court proceedings for resolving such disputes
- ○ Unlikely: I am less inclined to consider mediation and would prefer to pursue court proceedings in most c...
- ○ Extremely Unlikely: I would rarely or never consider mediation as a resolution method, favoring court pro...

When contemplating the utilization of mediation in a regional cross-border commercial dispute, what would be your primary concern or consideration? *

- ○ Enforceability of Outcomes: My main concern would be the enforceability of mediation outcomes across...
- ○ Neutrality and Impartiality: I would prioritize ensuring the neutrality and impartiality of the mediator in the...
- ○ Language and Cultural Differences: Language barriers and cultural disparities might be my primary conc...
- ○ Legal Framework and Jurisdictional Issues: My main consideration would be navigating the legal framew...
- ○ Time and Cost Efficiency: I would primarily focus on the time and cost-effectiveness of mediation compa...
- ○ Parties' Willingness to Cooperate: My main concern would be the willingness of all parties involved to ac...
- ○ Lack of Mediation Expertise: I might be concerned about the availability of qualified mediators experienc...
- ○ Other [Please specify] _____

How inclined would you be to explore the option of "online mediation" for the resolution of a cross-border commercial dispute? *

- ○ Highly Inclined: I would be very interested in exploring "online mediation" as a viable option for resolving ...
- ○ Moderately Inclined: I am open to considering "online mediation" as a potential resolution method for suc...
- ○ Neutral: I hold no specific inclination towards or against "online mediation" in the context of cross-border...
- ○ Slightly Inclined: I have some interest in exploring "online mediation" but would also explore other alterna...
- ○ Not Inclined: I am less interested in "online mediation" and would prefer to explore other dispute resolutio...

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo* declaration of independence.

Description (optional)

Section 2 of 2

Part II " Solutions and Proposals Impact Assessment"

In this section, we kindly request your valuable insights to rank the likely impact that various proposed solutions and initiatives would have on mediation within your jurisdiction or the South-East Europe region. The proposed solutions and initiatives are designed to foster and enhance the adoption of mediation as an effective and efficient method for resolving commercial disputes. We aim to identify the most promising strategies that can contribute to a more robust and accessible mediation framework in the region.

Please carefully review each proposal and rank them according to your assessment of their potential impact on mediation in your jurisdiction or the SEE region. Assign a rank from 1 to 5 to each solution/proposal, where:

- 1 represents "Highly Likely to Have a Positive Impact"
- 2 represents "Likely to Have a Positive Impact"
- 3 represents "Moderate Impact (Neutral)"
- 4 represents "Unlikely to Have a Positive Impact"
- 5 represents "Highly Unlikely to Have a Positive Impact"

Evaluate the potential impact of requiring counsel to inform their clients about mediation as an alternative to litigation and implementing penalties for lawyers who fail to fulfill this obligation.

1	2	3	4	5
○	○	○	○	○

Consider the potential efficacy of implementing a mandatory initial mediation session with a mediator before initiating litigation proceedings, allowing parties an uncomplicated opt-out option at minimal or no cost.

1	2	3	4	5
○	○	○	○	○

Assess the potential benefits of making full mediation mandatory for specific categories of cross-border commercial disputes.

1	2	3	4	5
○	○	○	○	○

How do you perceive the potential impact of authorizing judges to order litigants to participate in mediation for select pending cases?

1 2 3 4 5

To what extent do you believe judges' productivity should be evaluated, at least in part, based on the number of cases they refer to mediation?

1 2 3 4 5

Evaluate the potential effectiveness of implementing punitive measures, such as cost liability for litigation, against parties who decline to participate in compulsory mediation proceedings.

1 2 3 4 5

How do you perceive the potential effectiveness of introducing incentives for parties who willingly choose mediation, such as offering refunds of court fees or providing tax credits?

1 2 3 4 5

To what extent do you believe it would be beneficial to mandate legal assistance (representation by a lawyer) for parties involved in mediation proceedings?

1 2 3 4 5

What is your perception of establishing an independent Alternative Dispute Resolution Board/Agency dedicated to promoting and regulating mediation at the regional level in South-East Europe (SEE)?

1 2 3 4 5

○ ○ ○ ○ ○

What are your thoughts on introducing a "Mediation Accord" initiative that encourages stakeholders within the South-East Europe (SEE) region to voluntarily prioritize mediation as the first step in resolving cross-border commercial disputes before considering court litigation?

1 2 3 4 5

○ ○ ○ ○ ○

How do you perceive the potential value of establishing a centralized directory of regional mediators and mediation centers in the South-East Europe (SEE) region, with standardized certification and quality control criteria to facilitate mediation for cross-border commercial disputes?

1 2 3 4 5

○ ○ ○ ○ ○

What are your thoughts on implementing standardized Alternative Dispute Resolution (ADR)/Mediation Clauses for cross-border commercial contracts within the South-East Europe (SEE) region?

1 2 3 4 5

○ ○ ○ ○ ○

How do you view the potential benefits of endorsing the widespread adoption of "online mediation" for all cross-border commercial disputes within the South-East Europe (SEE) region?

1	2	3	4	5
○	○	○	○	○

If there are any further remarks or comments you wish to share, we would greatly appreciate your input. Your valuable feedback is welcome and encouraged.

Long answer text

Your privacy is important to us. By participating in this questionnaire, you agree that the information you provide will be used solely for the purpose of conducting the "Regional Assessment of the State of Play of Judicial Cooperation in Civil and Commercial Matters in SEE Economies" project. The data collected will be treated with utmost confidentiality and in compliance with applicable data protection regulations.

Please be assured that your responses will be aggregated and anonymized to ensure individual privacy and confidentiality. No personally identifiable information will be disclosed or shared with any third parties without your explicit consent.

If you have any concerns or questions about the handling of your personal data or require further information on our data protection practices, please do not hesitate to contact us at xhon.skenderi@fdut.edu.al.

Thank you for your participation and valuable contribution to this study. Your cooperation is highly appreciated.

Description (optional)

Regional
Cooperation
Council

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Bosnia and Herzegovina

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RegionalCooperationCouncil


RCCSec


Regional Cooperation Council


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