



European Network of Councils  
for the Judiciary (ENCJ)

Réseau européen des Conseils  
de la Justice (RECJ)

# Alternative Dispute Resolution and the Judicial Domain

**Preparatory work: Questionnaire  
and replies**

**ENCJ Report  
2016-2017**



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## A. INTRODUCTION

The Working Group of ENCJ Project: Dispute Resolution/Judicial Domain 2016-2017 decided at its first meeting (Rome, 26-27 September 2016) to prepare (to the attention of the members and observers of the ENCJ) a questionnaire pertaining to the general developments of the EU dispute resolution scene.

The purpose of the questionnaire is to collect information on the approaches used and solutions developed in the EU states, regarding alternative dispute resolution schemes (ADR), provided for within or ordered by a Court basically in civil proceedings and their relation to the role of existing judicial systems, in order to ensure the quality of the debate of the Project Team.

Arbitration is excluded from the project.

In preparing answers to the questions the participants will be invited to acquire necessary information also from judges in their countries.

The information thus collected will also serve as a basis for the possible recommendations, standards and/or indicators developed by the Project Team on the role and position of the judiciary vis-à-vis existing and emerging ADR techniques in the context of judicial proceedings (conducted by courts or entrusted by the court to a third party).

## B. QUESTIONNAIRE

### I. A general outline of ADR's available through the Courts in your country

1. Which types of ADR are there in the society in general?

- negotiation
- conciliation
- mediation
- collaborative law
- case evaluation
- early neutral evaluation
- family group conference
- ombuds
- online dispute resolution
- other \_\_\_\_\_

2. In respect of the ADR listed above which are available through the civil courts (conducted by courts or entrusted/ordered by the court to a third party)

- negotiation
- conciliation
- mediation
- collaborative law
- case evaluation
- early neutral evaluation
- family group conference

- ombuds
  - online dispute resolution
  - other \_\_\_\_\_
3. Can you estimate the proportion of ADR procedures (attached to or pendant to official judicial mechanisms) in the overall number of disputes formally resolved in civil court proceedings?
  4. Are there any ADR techniques available in the criminal proceedings?
  5. At the national level have there been any analyses (surveys) made on how individuals and entities are familiar with the possibility of using ADR techniques (attached to or pendant to official judicial mechanisms), and how they are satisfied with them?

In short what are the results of these surveys/research, if they have been made?

## II. An overview of legislative regulation of court related ADR procedures in civil proceedings

6. Are court related ADR procedures regulated in national legislation and by means of which statutes and/or practice directions or rules or other procedures?
7. Which types of court related ADR are regulated by the national legislation?
8. In which legal areas have court related ADR procedures been provided through, or referred by the Courts and in which areas they have not been allowed?
  - Civil-law disputes:
    - obligations-law
    - contracts-law
    - torts-law
    - succession-law
    - property-law
    - family-law
    - capacity-law
    - other \_\_\_\_\_
  - Business-law disputes
  - Labour-law disputes;
  - Disputes in social security (in the area of pension, disability, health insurance, unemployment insurance, social benefits)
  - Disputes from judicial review of administrative acts
  - Disputes in minor offence procedures

Additional explanations about the admissibility of court related ADR procedures:

9. Whether the national legislation ensures and by which provisions the most basic procedural safeguards in court related ADR procedures (right to judicial protection; right to an equal position; right to make a statement; that a solution reached within the ADR proceeding is truly a reflection of real and true will of the participants?)
10. Whether the national legislation protects, and in what manner, the participants in court related ADR procedures from that disclosure of certain data in the ADR procedure does not deteriorate their position in further judicial proceeding (e.g. the evidentiary prohibition of using offers for settlement, statements made, and documents presented from an ADR procedure in subsequent judicial proceeding)?

11. Do the courts have the ability to order the parties to pursue an ADR procedure and, if yes, which of the ADRs?
12. In what circumstances, if any, are the parties obliged to undertake ADR arranged and/or ordered by a court?
13. In what circumstances, if any, is the ADR solution, arranged or ordered by the court, binding upon the parties?
14. If the state has determined an ADR procedure as compulsory for the parties by which means do they sanction a violation of this obligation (e.g. imposing the payment of costs for failing to participate in an ADR procedure; ADR as a procedural requirement for the admissibility of an action, etc.)?
15. Are solutions achieved in the process of court related ADR procedures enforceable?

If yes, what is the method of enforcement of an ADR solution?

16. Who bears the costs of court related ADRs:
  - parties
  - state/court
  - partially parties and partially court/state
  - other \_\_\_\_\_

### **III. A brief overview of legislative regulation of court related ADR procedures in criminal proceedings**

17. Are court related ADR procedures attached to criminal proceedings regulated in national legislation and by means of which statutes and/or practice directions or rules or other procedures?
18. Which court related ADRs are regulated by the national legislation in criminal proceedings?

### **IV. The role of judges and court related ADR procedures**

19. Is it a duty of judges (or is it desirable from judges) to encourage parties to make use of various (court related and/or private) ADR techniques?
20. To whom is entrusted conducting ADR techniques, attached to the court?
  - judges
  - experts
  - judges and experts working together
  - other \_\_\_\_\_
21. Are judges (in addition to exercising their judicial office) allowed to carry out various types of court related ADR procedures, that are not attached to the court but are ordered by the court to a third party :
22. If judges carry out court related ADR are they provided with training? Is it mandatory or voluntary?

**V. The influence of court related ADR on work and mission of courts and on the right to fair trial in a reasonable time**

23. Whether the judiciary perceives and effects of ADR procedures on the work of courts (e.g. unloading of cases) and thereby on the right to access to courts?
24. Is there a trend of a reduced number of cases, resolved in judicial proceedings, noticeable that could be ascribed to the effectiveness of court related ADR procedures?
25. Whether courts (or even participants in ADR procedures) perceive that the existing manners of court related ADR would in any manner jeopardize the right of individuals to judicial protection and the right to a fair and reasonable trial, as it may occur in the following examples:
  - Since by determining a preliminary ADR procedure as a procedural requirement it prolongs the time in which it is decided on rights and obligations, and thereby jeopardizes the right to trial in a reasonable time;
  - Since the costs of certain ADR procedures are so high so that together with possible costs of subsequent judicial proceedings jeopardize the right to access to court;
  - Since the participants (especially consumers) in ADR procedures are not ensured basic procedural rights (equality of the arms; a circumstances that a possible final solution is truly a reflection of true and right will of all the participants, etc.).

## AN OVERVIEW OF THE ANSWERS

### I. A general outline of ADR`s available through the Courts

	Types of ADR in society in general	Types of ADR available through the civil courts	The proportion of ADR procedures in the number of disputes resolved in civil court proceedings	ADR techniques available in the criminal proceedings	Existence of national Surveys or Analyses on ADR`s recognisability and on the satisfaction of users
<b>Belgium</b>	Practically all listed in the questionnaire, save collaborative law technique	Practically all listed in the questionnaire, save collaborative law technique and early neutral evaluation	5 % to 10 %	Yes Mediation: Amicable settlement; The payment of compensation in financial fraud cases;	No
<b>Bulgaria</b>	conciliation mediation ombuds arbitral institutions	mediation	under 1 %	No (de lege ferenda is being discussed right now a possibility of ADR in juvenile cases - for example family conference)	No
<b>Denmark</b>	negotiation conciliation mediation	negotiation conciliation mediation	2 %	No (only at the police stage)	Yes (the results are positive - very good)
<b>England and Wales</b>	Practically all, save case evaluation and family group conference <sup>1</sup>	negotiation conciliation mediation	No data. (All family-law cases go through a process of court sponsored dispute resolution hearing with a	No	No

<sup>1</sup>A form of settlement conference is being trialled in public law family cases in some courts.

			judge presiding)		
<b>Finland</b>	Practically all	conciliation mediation	approximately 35 %	No	Yes According to the statistics and research it seems likely that ADR is becoming more familiar and individuals are often more willing to accept the outcome when they feel that they have had a chance to participate and influence.
<b>France</b>	All (listed in the questionnaire)	mediation negotiation conciliation ombuds	below 1 %  (family cases have higher percentage)	Several ADR techniques are available: Criminal transaction or plea bargaining organised by a police officer before initiation of criminal proceedings or by the prosecutor; Mediation in criminal cases : settlement agreement between parties under the authority of the Prosecutor; Criminal composition: The prosecutor of the Republic proposes to a person of full age who admits to having committed an offense or a contravention to carry out certain measures having the force of a	No

				sanction;	
<b>Hungary</b>	negotiation conciliation mediation family group confer. ombuds arbitration	negotiation conciliation mediation family group confer.	approximately 0,99 %  (In the first half of year 2016, 87344 civil and commercial cases were finished at Hungarian courts. Linked to these, judicial mediators have finished 865 mediations.)	Yes  Mediation (conducted by probation officers or lawyers, who have a contract for mediating)	No
<b>Ireland</b>	All (listed in the questionnaire)	All (listed in the questionnaire, save ombuds)	No	No	No
<b>Italy</b>	negotiation conciliation mediation family group conference	negotiation conciliation mediation family group conference	No, but pending proceedings have remarkably decreased since 2010, the year in which the first ADR procedure was introduced (civil mediation).	Yes	No
<b>Lithuania</b>	negotiation conciliation mediation	conciliation mediation	0,05 % (122 cases of 208.852 were assigned to judicial mediation)	Yes conciliation (among private plaintiff/victim and accused person in the private accusation process)	No
<b>Northern Ireland</b>	Practically all (save case evaluation)	negotiation conciliation mediation	No	No	No



<b>Norway</b>	All (listed in the questionnaire)	negotiation conciliation mediation	15 %	No	No (However, society in general expects ADR mechanisms due to the fact that there are a vast number of ADR mechanisms/bodies in general. It would therefore be quite unheard of if the judiciary did not focus on ADR.)
<b>Poland</b>	negotiation conciliation mediation (for other methods there is no data)	negotiation conciliation mediation	less than 1 %	Yes (mediation)	Yes (lack of knowledge about advantages of ADR; lack of trust to mediators; lack of knowledge of possibility to solve the problem; lack of knowledge of possibility to enforce the ADR solution)
<b>Romania</b>	negotiation conciliation mediation	negotiation mediation	under 1 %	Yes Agreement of the parties (when the defendant and the applicant reconcile)	No
<b>Scotland</b>	negotiation conciliation mediation collaborative law early neutral evaluation ombuds	negotiation mediation	No	No	In Scotland a special board (SLAB) explores the operation of ADR on a national level. There is also a non- governmental Mediation Network (SMN) who partly oversees a private ADR market.

					<p>In Scotland there is a complex and very broad range of schemes, services and providers. The majority of ADR provisions is in the consumer field. Within Scotland, public funding from Scottish Government, legal aid and local authorities provides ADR primarily in non-consumer work through projects and schemes in family, community and Additional Support Needs (ASN) mediation, the Edinburgh sheriff court mediation project and the Scottish Public Services Ombudsman.</p>
<b>Slovakia</b>	conciliation mediation	conciliation mediation	/	<p>None</p> <p>There aren't any typical ADR methods in criminal cases in Slovakia, e.g. mediation, conciliation. These two methods are existing only in civil cases. But, there is one special proceeding called an Agreement on guilt and punishment</p>	/

<b>Slovenia</b>	negotiations conciliation mediation ombuds ODR (there is no reliable data)	mediation (under the law the courts are obliged to implement mediation, but may also provide for other forms of alternative dispute resolution in addition, but in practice only mediation is provided for in Slovenian courts)	1,82 %	The institution of negotiations; The agreement on the recognition of guilt for the committed offence;	No  (but each Court must provide for the parties and their counsels as anonymous evaluation questionnaire)
<b>Spain</b>	negotiations conciliation mediation collaborative law	negotiations conciliation mediation	0,03 %	Yes Mediation	Yes (the majority of disputants didn't know this possibility of ADR previously; the level of satisfaction is very high;)

## II. An overview of legislative regulation of court related ADR procedures

	Are court related ADR procedures regulated in national legislation?	Which types of ADR are regulated?	In which legal areas are court related ADR allowed or not?	Existence of basic procedural safeguards in court related ADR.	Existence of the protection from disclosure of data revealed in ADR in further judicial proceeding.	Existence of possibility to order ADR by the court
<b>Belgium</b>	Yes  (by law)	A settlement by compromise; The expert opinion; Arbitration; Mediation;	<b>Yes</b> all civil-law disputes business-law disputes labour-law disputes disputes in social security <b>No</b> disputes in administrative court	Yes The equality of the parties appears to be always guaranteed on the basis of the existing legal regulations. The way the equality of the parties is guaranteed is regulated differently depending on the type of alternative dispute resolution involved.	For mediation and conciliation there is a principle of confidentiality.	No
<b>Bulgaria</b>	No	None (under Civil Procedure Code the judge can inform parties of the possibility of applying mediation)	All (there is no explicit prohibition on areas in which ADR can be applied)	No regulation on that. (Nevertheless the court examines whether the agreement is not contrary to the law or morality and whether the agreement is a result of a true and	Under Civil Procedure Code, it is inadmissible to interrogate a mediator on circumstances disclosed to him under a mediation procedure. There are no regulations	No

				free will of parties)	regarding documents which the parties have submitted in the mediation procedure.	
<b>Denmark</b>	Yes	Mediation	All	Yes	/	No
<b>England and Wales</b>	Yes By Civil Procedure Rules and Family Procedure Rules	No relevant legislation	<b>Yes</b> Practically in all civil cases, save the cases, regarding persons legal capacity. Business-law cases Labour-law cases <b>No</b> disputes in administrative court proceedings disputes in minor offence procedures	No There is no legislation that would provide specific protection in out of court ADR, so there are many „trade“ forms of ADR that give rise to concerns regarding procedural safeguards for consumers.	Yes Rules of court procedure generally dictate that discussions in an effort to compromise a dispute, whether by formal ADR or otherwise generally, cannot be referred to in court proceedings if the dispute is not settled.	Only in Family money cases and Family private cases, otherwise there are no mandatory form of court sponsored ADR
<b>Finland</b>	Yes Act on mediation in civil matters and confirmation of settlements in general courts	Mediation in civil matters and contested petitionary matters in general courts.	<b>Yes</b> All civil cases Business-law cases Labour-law cases <b>No</b> Disputes in social security disputes in administrative court proceedings disputes in minor offence procedures	Yes Act on mediation; at least section 6 (conduct of court mediation), section 7 (reaching a settlement) and section 15 ( representation of the parties).	confidentiality obligation; disqualification of the mediator and privilege;	No
<b>France</b>	Yes (by law)	negotiation conciliation ombuds	All	Yes since these procedures are	Yes All court related ADR contain a	Yes Especially in family-law cases and for

				<p>overviewed by a judge</p>	<p>confidentiality clause stating that all the documents or statements can not be disclose lately.</p>	<p>collective redress; Parties are obliged, since 2015, to justify efforts made to reach a settlement before lodging a complaint in court.</p>
<p><b>Hungary</b></p>	<p>Yes</p> <p>Mediation Act Civil Code Code of Civil Procedures Duties Act Regulation on case management Order about mediations Recommendations</p>	<p>ADR procedures are allowed at every level of jurisdiction</p>	<p><b>Yes</b> All civil-law cases; Business-law cases; Labour-law cases; Minor offence cases; <b>No</b> Administrative court`s cases; Social security-law cases; In cases where parties had a violent episode in the past; Cases where parties have mental disorder and they can not keep themselves to the terms of the agreement, reached under ADR;</p>	<p>Yes</p> <p>the impartiality and independence of the mediator; confidentiality; strict exclusion rules; high level of education provided to the mediators mediators' and obligation to participate in continuous training; the timeframe of the ADR procedure; the parties can terminate the ADR at any time; the parties can initiate an ADR at any time and even at multiple times during the court procedure; the parties can involve further individuals in the ADR</p>	<p>The mediator is obliged to keep all data and information confidential.</p>	<p>Currently the court can only oblige to appear in front of the mediator and listen to the information session, exclusively in a small group of civil cases.</p> <p>If justified, the court can oblige the parents to pursue an ADR procedure in order to regulate parental supervision and to ensure cooperation, including cases where the contact between a child and a separately living parent needs to be settled.</p>

				<p>by mutual agreement;  the content of the agreement reached under ADR is determined by the parties;  only parts of the agreement under ADR can be included in a court settlement which are in line with the original court claim, in line with the relevant legislation and is enforceable;</p>		
<b>Ireland</b>	<p>Provisions relating to court related ADR are included in specific legislative acts in a fragmented manner.</p>	<p>Mediation and other forms of ADR  Family group conference</p>	<p>All (save minor offence cases)</p>	<p>National legislation does not specifically provide for procedural safeguards in court related ADR procedures.</p>	<p>The principle of confidentiality in dispute resolution proceedings, has not been placed on a statutory basis in Ireland, except to the extent that confidentiality in mediation is governed by the European Communities (Mediation) Regulations 2011 (S.I. No. 209/2011).</p> <p>The draft Mediation</p>	<p>Only in a personal injuries action  (A judge may direct the parties to attend a mediation conference, if a request has been made by one of the parties to the action for such an order to be made.)</p>

					Bill provides for the confidentiality of mediation communications.	
<b>Italy</b>	Yes, by ordinary law	Mediation Negotiation Attempt of conciliation	<b>Yes</b> all civil-law disputes, save the cases, regarding persons legal capacity business-law disputes labour-law disputes disputes <b>No</b> Disputes in social security disputes in administrative court proceedings disputes in minor offence procedures	Yes The guarantee of the correspondence to the real intention of the parties is ensured by the fact that the binding nature of the agreement always presupposes the signing of the same parties.	Yes Statements made or information acquired in the ADR procedure cannot be used in the subsequent judicial proceeding; As regards the content of the statements and information, proof of evidence is not admitted and sworn oath cannot be submitted; The mediator cannot be obliged to testify on the content of the statements made and information acquired during the ADR procedure; Whoever provides work or service within the body or the ADR procedure is obliged to secrecy;	Yes Mediation assisted negotiation attempt of conciliation in labour controversies
<b>Lithuania</b>	1. Law on Conciliatory Mediation in Civil Disputes	Judicial mediation	<b>Yes</b> all civil-law disputes business-law disputes	Yes	Yes obligation for all	No (but there is, under



	<p>2. Rules of Court Mediations</p> <p>3. Procedure of granting and revocation of Court Mediator status for persons</p> <p>4. Regulations of Court Mediation Commission and the Decision on Court Mediation Commission Composition</p>		<p>labour-law disputes</p> <p>disputes in social security</p> <p><b>No</b></p> <p>disputes in administrative court proceedings</p> <p>disputes in minor offence procedures</p>		<p>involved in ADR to keep all mediation related information confidential, except for those needed to confirm the requirements of mediation and those that could be contrary to the public interest</p>	<p>the civil procedural act, an obligation for judges, especially in family-law disputes, to be pro-active in trying to find a peaceful solution to the dispute)</p>
<b>Northern Ireland</b>	<p>Yes</p> <p>Rules of Court and Practice Directions</p>	<p>None</p>	<p><b>Yes</b></p> <p>all civil-law disputes, save the cases, regarding persons</p> <p>legal capacity</p> <p>business-law disputes</p> <p>labour-law disputes</p> <p>disputes in social security</p> <p><b>No</b></p> <p>disputes in administrative court proceedings</p> <p>disputes in minor offence procedures</p>	<p>No such legislation</p>	<p>No legislation, but it is perceived that the content of what is discussed and parties'and mediators views and opinions of what occurred during a mediation are not to be disclosed to the court.</p>	<p>The Judge may direct that the parties are required to consider mediation if the case is appropriate and, if one of the parties refuse, there may be costs consequences. However it is not considered that there should be a general requirement for compulsory mediation in the civil courts in this jurisdiction.</p>
<b>Norway</b>	<p>Yes</p> <p>(by law)</p>	<p>Family-law cases and civil cases in general.</p>	<p><b>Yes</b></p> <p>All civil-law cases;</p> <p>Business-law cases;</p> <p>Labour-law cases;</p>	<p>Yes</p> <p>The Dispute Act obliges the judge to have regard to the</p>	<p>Yes</p> <p>Prohibited evidence and duty of confidentiality.</p>	<p>Yes</p> <p>The judge may decide to initiate mediation against the will of the</p>

			<p>Social security-law cases;  <b>No</b>  Administrative court`s cases;  Minor offence cases;</p>	<p>relative strength of the parties and whether there is a real will among the parties.  The mediator judge may not proceed with the case if settlement is not reached.</p>		<p>parties only in exceptional cases.</p>
<b>Poland</b>	<p>Yes  Mediation and conciliation are regulated in the Code of Civil Procedure</p>	<p>Mediation conciliation</p>	<p><b>Yes</b>  Practically in all civil cases, save the cases, regarding persons legal capacity.  Business-law cases  Labour-law cases  Administrative cases  Minor offence cases  <b>No</b>  Capacity-law cases  Social security cases</p>	<p>Yes  The Code of Civil Procedure:  Mediation is voluntary;  A judge may not be a mediator;  A mediator shall remain impartial in the process;  Mediation shall not be open to the public;  A settlement can be validated by the court (the court shall refuse to declare a settlement enforceable, if the settlement is contrary to the law or social norms, or intends to circumvent the law, or where it is incomprehensible or contradictory;</p>	<p>Yes  Mediation shall not be open to the public;  A mediator, the parties and other persons participating in mediation proceedings shall keep confidential any facts disclosed to them in connection with the mediation;  Any proposed settlements, mutual concessions or other statements made in mediation shall have no effect when invoked in the course of proceedings before a court or court of arbitration;  A mediator may not testify as a witness with respect to facts</p>	<p>No  The court has only the ability to persuade parties to reconcile.</p>

					which he has learned in connection with mediation, unless the parties release him from the obligation of confidentiality of mediation;	
<b>Romania</b>	Yes Law on the mediation, provisions in the civil and penal codes	Mediation	Practically in all civil cases, save the cases, regarding persons legal capacity. Business-law cases Labour-law cases	Yes (the right to an equal position, without discrimination; free will of the parties, and, therefore, the solution reached within the ADR proceeding is truly a reflection of real and true will of the participants; the right to legal assistance)	Yes (nondisclosure is a general principle and the mediator is a subject to a disciplinary liability if he breaches this obligation)	No (ADR is voluntary)
<b>Scotland</b>	Yes Small Claim Rules 2002 (negotiation) Summary Cause Rules 2002 (negotiation) In any family action a judge may refer the issue of parental responsibilities or rights to a mediator accredited to a specified family	None	<b>Yes</b> <b>1.</b> Small Claims <b>2.</b> Family Actions <b>3.</b> Summary Cause Actions (The summary cause procedure is used where the value of the claim is over £3000 up to £5000. There are some circumstances where	N/A	N/A	No  (In small claims and summary cause actions, the sheriff is under statutory duty to seek to negotiate and secure settlement of the claim at the first hearing of the action, they can refer the

	mediation organisation.		this procedure is to be used however, even if the value of the claim is less than £3000; for example, actions for recovery of possession of heritable property and damages resulting from personal injuries. For claims over the value of £5000, the ordinary cause procedure should be used. Summary cause applications can only be raised in the sheriff court.)			case to mediation. In family cases the court may direct a referral to mediation.)
<b>Slovakia</b>	Yes Act no. 420/2004 Coll. on mediation; Act n.o 160/2015 Coll. on civil dispute proceedings; Act no. 161/2015 Col. on civil non-dispute proceedings;	Mediation Conciliation	Practically in all civil cases, save the cases, regarding persons legal capacity. Business-law cases Labour-law cases	/	/	No
<b>Slovenia</b>	Court related ADR procedures are regulated in an Alternative Legal Dispute Resolution Act (ZARSS) and in	The ZARSS allows any kind of ADR techniques in the context of judicial civil proceedings. But the ZARSS hasn't got	Practically in all civil cases, save the cases, regarding persons legal capacity. Business-law cases Labour-law cases	The following rules are prescribed:  The mediation can be implemented only if both parties to the	Yes  (There is an evidentiary prohibition)	No  (A judge may however order parties to attend the introductory hearing

	<p>the Act of mediation in civil and commercial matters.</p>	<p>virtually no procedural rules on ADR proceedings. Some procedural rules are defined in an Act of mediation in civil and commercial matters.</p>		<p>proceedings agree on;  The mediator can be anyone who meets the statutory conditions and carry out mandatory education;  The judicial proceeding can be interrupted by mediation for a maximum of 3 months;  The mediator must performe his task independently and impartially;  All the information, data, statements and evidence, brought up in the mediation process, are confidential and must not be used in a court proceedings;  Parties in mediation may agree that the agreement on the dispute is drawn up in the form of an enforceable notarial record, a settlement before a court or arbitration decision</p>		<p>(mediation informatinal session), but if one of the parties do not agree on that, the mediation can not proceed and the only consequence for the refusing party is that he/she must (under certain conditions) pay the costs of the mediation proceeding and/or subsequent court proceedings.</p>
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				on the basis of the settlement and can be therefore enforceable; The statute of limitations does not run during the mediation proceedings.		
<b>Spain</b>	Yes (by law)	Only in civil courts (included family and commercial cases)	<b>Yes</b> All civil cases; Business-law cases; Labour-law cases; Administrative-law cases; Minor offence cases; <b>No</b> Social security law cases;	The ADR are always voluntary; Parties can have assistance of their lawyers; Besides that, the mediator should assure participants have all the information and legal advise;	All those who take part in ADR procedures is bound to confidentiality.	No

	In what circumstances are the parties obliged to undertake ADR?	Can ADR solution be binding upon the parties?	Existence of sanctions in the cases of compulsory ADR when this obligation is violated	Are solutions achieved in ADR enforceable?	Who bears the costs of ADR?
<b>Belgium</b>	None	No (Arbitration is the only form resulting in a binding decision) <sup>2</sup>	None	No A settlement by compromise is regarded as a contract.	Parties
<b>Bulgaria</b>	None	The settlement reached between the parties is a contract. If the settlement is approved by the court, it shall be executed like a judicial decision.	None	Yes. If an agreement is drawn up in a notarial form or in writing with notarized signatures or if it is approved by the competent local regional (first instance) court.	In Sofia and Varna the mediators who work for the mediation centers to the courts are volunteers and it does not cost anything to the parties. The District Court of the city of Dobrich has a list of mediators from which the parties can choose. This service there is paid and at the expense of the parties.
<b>Denmark</b>	None	No	None	Yes (at the enforcement courts)	state/court
<b>England and Wales</b>	None (save family money and private cases)	Yes (if an agreement is approved by the court order)	Famili money and private cases (If a party refuses to co-operate in with an FDR or FHDRA then depending on the circumstances the proceedings made be stayed or may proceed but in a court directed abbreviated form)	Yes (if an agreement is approved by the court order)	Parties

<sup>2</sup>We excluded arbitration from the scope of our work.

			In other cases there could be cost implications if a party unreasonably refuses to participate in ADR.		
<b>Finland</b>	None	Yes, if confirmed according to law	None	Yes  (if approved by the court)	parties; court/state; partially parties and partially court/state
<b>France</b>	Family law cases; Collective redress;	Generally the settlement worths as an agreement between parties and compel the parties.	Yes If you can not prove that you have initiate an ADR, your complaint will not be admitted by the court.	Yes  (if approved by the court)	partially parties and partially court/state
<b>Hungary</b>	It is a discretion of the judges to order ADR informational session or ADR in family law cases.	Enforceable can be only those parts of the ADR agreement, which are in line with the original court claim and are included in a court settlement. Parts of the ADR agreement which were not included in the original court claim, can not be included in the court settlement and are therefore binding for parties only as any civil law agreement or contract.	Yes  (there could be cost implications)	Yes  (if included in a court settlement)	ADR procedures provided for by courts are free to the parties.
<b>Ireland</b>	Only in a personal injuries action  (A judge may direct the	N/A	N/A	Yes	Parties and the State



	parties to attend a mediation conference, if a request has been made by one of the parties to the action for such an order to be made.)				
<b>Italy</b>	<p><u>Mediation</u> is compulsory in the following scopes of action: disputing neighbours, real rights, division, hereditary successions, family agreements, tenancy, gratuitous loan, business lease, damages for medical liability, defamation via press or other means of advertisement, insurance, bank and financial contracts</p> <p><u>Assisted negotiation</u> is compulsory in the following scopes of action: compensation for road accidents and the circulation of boats, payment requests at any title of amounts not exceeding 50 thousand Euros, with the exception of controversies subjected to mediation</p>	<p>Yes</p> <p>In the ADR procedure the solution is binding when all parties involved in the mediation are assisted by an attorney and the agreement is signed by the parties and related attorneys. In all other cases the annexed agreement must be homologated, upon a party's request, with decree of the president of the court, upon ascertainment of the formal regularity and of the compliance with the imperative regulations and public order.</p>	<p>Yes</p> <p>In some cases compulsory mediation, the attempt of conciliation and assisted negotiation is the condition for proceeding. The party that, in cases of compulsory mediation, did not participate in the procedure without a justified reason, is sanctioned to pay the State an amount corresponding to the standard court fees owed. The refusal to participate in an assisted negotiation procedure can be assessed by the judge for court expenses.</p>	<p>Yes</p> <p>In the cases indicated under point 13, the agreement constitutes document of execution.</p>	Parties
<b>Lithuania</b>	A judge is entitled to set a conciliational hearing in a divorce cases	<p>Yes</p> <p>(after being approved by</p>	<p>None</p> <p>(but it is being considered</p>	<p>Yes</p> <p>(if approved by the court)</p>	<p>State/Court</p> <p>(Judicial mediation (the</p>

		the court the ADR settlement has the res judicata effect and is enforceable)	to regulate (de lege ferenda) a mandatory mediation in certain categories of civil disputes before bringing a claim to a court and to regulate possibility for judges to order mandatory mediation)		costs of the mediator) is free of charge for the parties. But parties must bear the expenses of their attorneys.)
<b>Northern Ireland</b>	None	Yes (if an agreement is approved by the court)	N/A	Yes (if an agreement is approved by the court)	Parties and State
<b>Norway</b>	All mediation is based upon consent from the parties, although section 8-3 (2) opens for mediation against the will of the parties in exceptionally. This possibility is in practice hardly used.	Yes The solution is binding upon the parties when signed and confirmed by the mediator ( the judge). The settlement has then the same legal significance as a judgement, and can be directly enforced.	The willingness to try to settle a case may have relevance for the courts decision on payment of costs.	Yes	Parties Except in child custody cases where the State carries the cost of the use of experts in mediation.
<b>Poland</b>	None	/	No  The court may refer the parties to mediation at each stage of proceedings. However, a mediation shall not be conducted if a party refuses to consent to the mediation. The only sanction for such a refusal is a mode of reimbursement of costs.	Yes  (if approved/validated by the court)	partially parties and partially court/state

<b>Romania</b>	None	Yes (if an agreement is approved by the court)	None	Yes  (if approved/validated by the court)	Parties
<b>Scotland</b>	None		N/A	N/A	Partially parties and partially court/state
<b>Slovakia</b>	None	If an agreement is approved by the court.	None	Yes  (if approved by the court)	Parties (when they settle the dispute by conciliation, the state returns a part of the court fees to the parties) The remuneration of the mediator shall be determined by agreement between the mediator and the parties involved in the mediation. If the mediator is determined by the Centre of a legal aid, the mediator is remunerated according the Act no. 420/2004 Coll. on mediation. In the case of mediation in consumer disputes, the consumer pays maximum 20 € and the rest of the amount (remuneration of the mediator) is paid by the supplier or ots legal successor.
<b>Slovenia</b>	None	Parties in mediation may agree that the agreement on the dispute is drawn up in	Generally no, since ADR is voluntary, (but there can be cost implications for the party who refuse to	Yes  (if included in a court settlement)	In family law disputes - the court bears the mediation costs; In commercial disputes, the

		the form of an enforceable notarial record, a settlement before a court or arbitration decision on the basis of the settlement and can be therefore enforceable.	participate in an informational session)		parties bear all the costs; In in all other civil matter cases, the court covers the award and travel expenses of the mediator for the first three hours of mediation. The rest must be borne by the parties themselves;
<b>Spain</b>	None	None	None	Yes (if approved by the court or a notary)	Depending on the area of jurisdiction.

### III. An overview of legislative regulation of court related ADR in criminal procedures

	ADR techniques available in the criminal proceedings	Existence of legislation regarding ADR in criminal proceedings	Which court related ADR is regulated by the legislation in criminal proceedings
<b>Belgium</b>	Yes	Yes	Yes Mediation: Amicable settlement; The payment of compensation in financial fraud cases;
<b>Bulgaria</b>	No	No	None
<b>Denmark</b>	No	No	None
<b>England and Wales</b>	No	No	None
<b>Finland</b>	No	/	/
<b>France</b>	Yes	Yes	Mediation Transaction or plea bargaining Composition
<b>Hungary</b>	Yes	Yes	Mediation
<b>Ireland</b>	No	N/A	None
<b>Italy</b>	Yes	Yes	Put on probation; discontinuance of an action; assessment of minor gravity of the fact;
<b>Lithuania</b>	conciliation (among private plaintiff/victim and accused person in the private accusation process)	Criminal procedural act	conciliation
<b>Northern Ireland</b>	No	N/A	N/A
<b>Norway</b>	No	No	None
<b>Poland</b>	Yes	Mediation and conciliation in criminal cases are regulated by Code of Criminal Procedure.	Mediation
<b>Romania</b>	Yes	Yes	Mediation;

		Penal Procedure Code	Agreement of the parties (they both decide to call off the dispute; such agreement is allowed only for some crimes, whereas in other cases the parties do not have this possibility);
<b>Scotland</b>	No	N/A	N/A
<b>Slovakia</b>	No There aren't any typical ADR methods in criminal cases in Slovakia, e.g. mediation, conciliation. These two methods are existing only in civil cases. But, there is one special proceeding called an Agreement on guilt and punishment	/	/
<b>Slovenia</b>	Yes	Yes Criminal Procedure Act	Negotiations Agreement on the recognition of guilt
<b>Spain</b>	Yes	No (existence of a special guide, elaborated by Judicial Council)	No

#### IV. The role of judges and court related ADR procedures

	Existence of a duty of judges (or is it desirable from judges) to encourage the use of ADR	Who conducts court related ADR?	Are judges allowed to carry out various types of ADR that are ordered by the court to a third party?	Is there a training provided for judges who carry out court related ADR? Is it mandatory or voluntary?
<b>Belgium</b>	No general rule. But highly desirable.	Judges (conciliation) Experts (mediators) Judges and experts working together (judicial expert)	Theoretically no.	Yes (voluntary)
<b>Bulgaria</b>	There is no obligation, it is a possibility.	Volunteer mediators and a very small number of judges.	According to Art. 4, sentence. 3 of the Law on Mediation ""No persons performing functions of administration of justice in the judiciary system may carry out mediation activities." There is also an opinion, according to which judges may carry out mediation, only in cases that he/she does not deal with and only for free.	Yes (voluntary)
<b>Denmark</b>	Yes (desirable)	Judges Lawyers	Yes	Yes (voluntary)
<b>England and Wales</b>	Yes	Judges	No	Yes (voluntary)
<b>Finland</b>	Yes	Judges; Judges and experts together;	No	Yes (voluntary)
<b>France</b>	Yes	Judges	No	Yes (voluntary, except for the young judges during their initial training)
<b>Hungary</b>	Yes	judges	No	Yes

				(mandatory) initial training before gaining a status in-service training
<b>Ireland</b>	Yes	Experts	No	Yes (voluntary)
<b>Italy</b>	Yes	Judges Experts	No	No
<b>Lithuania</b>	Yes	Judges Experts Judges and Experts together	Yes  (if a judge holds the status of a court mediator)	Yes (mandatory)  initial training before gaining a status in-service training
<b>Northern Ireland</b>	Yes	Judges Experts Judges and Experts together	No	N/A
<b>Norway</b>	Yes	Judges Experts	No	Yes (voluntary)
<b>Poland</b>	Yes the judge has a duty to encourage parties to make use of various (court related and/or private) ADR techniques	Judges Experts	No	Yes (voluntary)
<b>Romania</b>	Yes the judge is obliged to inform the parties of the possibility of making use of mediation and encourage them to choose such procedure	Porfessional mediators	No	/
<b>Scotland</b>	Yes	Only experts.	No	/
<b>Slovakia</b>	Yes	Judges	No	Yes



		Experts		(voluntary)
<b>Slovenia</b>	Yes (a judge must perform a settlement hearing; can also suggest to the parties to make use of court related mediation proceeding;)	Judges Experts (mediators)	No specific rule	Yes (mandatory)
<b>Spain</b>	Yes desirable	judges experts	No	Yes (voluntary)

## V. The influence of court related ADR on work and mission of courts and the right to a fair trial in a reasonable time

	Whether the judiciary perceives positive effects of ADR on the work of courts?	Is there a trend of reduced number of cases, resolved in judicial proceedings, that could be ascribed to the effectiveness of court related ADR?	Whether courts perceive that the existing manners of court related ADR would in any way jeopardize the right to judicial protection and the right to a fair and reasonable trial?
<b>Belgium</b>	No data	No data	No
<b>Bulgaria</b>	No	No	No Within the framework of the discussions, which are being held between lawyers on existing proposals for introduction of compulsory mediation on some types of disputes, concerns have been expressed that the introduction of a compulsory mediation may lead to making the examination of case files more expensive or to delays in the examination of case files.
<b>Denmark</b>	No	No	No
<b>England and Wales</b>	The general perception of the judiciary is that ADR is to be welcomed and that effects of succesful ADR has little practical effect on the court workload.	No	It is appropriate for a balance to be struck between the reduced cost/time to resolution of and ADR settlement against the costs/time to resolution of court proceedings. Each case or circumstance will require it's own decision as to where the balance should be struck. The court can often however assist.
<b>Finland</b>	Yes	Yes	Yes Since by determining a preliminary ADR procedure as a procedural requirement it prolongs the time in which it is decided on rights and obligations, and thereby jeopardizes the right to trial in a reasonable time; It is recognized that ADR can prolong the legal proceeding if the mediation fails.
<b>France</b>	Yes	No	In theory, yes, but it is difficult to assess. In practice, ADR techniques are proposed and

			enhanced for resolving mass disputes which involve parties who are not equal because it may relieve judges for part of their burden. Thus it seems unavoidable to pay real attention to the training of those who are in charge to lead these ADRs techniques.
<b>Hungary</b>	/	Yes (slightly)	No
<b>Ireland</b>	There is no concrete data.	No	No
<b>Italy</b>	Yes	Yes	No
<b>Lithuania</b>	There is no concrete data.  Nevertheless it is perceived that the ADR positively effect the speed of the judicial proceedings and the unloading of cases.	There is no concrete data.	There is no concrete data.  There is no maximum time period for mediation process. Judicial mediation is free of charge for the parties (save the costs of the attorneys).
<b>Northern Ireland</b>	No data	No	No
<b>Norway</b>	Yes	Yes	No
<b>Poland</b>	No	No	No
<b>Romania</b>	/	/	/
<b>Scotland</b>	N/A	N/A	N/A
<b>Slovakia</b>	No	No	No
<b>Slovenia</b>	Yes	Yes	No (Nevertheless a Slovenian non-governmental consumers organisation (ZPS) considers that the situation for slovenian consumers, despite the implementation of european regulations and directives, in this field, is still not improved satisfactorily)
<b>Spain</b>	Not yet	No	No