

MEDIATION FOR NOTARIES NOTARIES FOR MEDIATION

———— PRACTICAL GUIDE ————
TO CROSS-BORDER NOTARIAL MEDIATION



Co-funded by the European Union

Table of Contents

Procedural framework 10



Introduction 05



Cross-border element 08



Complementary frameworks 18



Conclusion 26

05	Introduction
08	Notariats and mediation, notaries and mediators: the cross-border element
10	Procedural framework
10	1. Concept
12	2. First step: Implementing the process
14	3. Second step: Beginning the process
14	4. Third step: Body of the process
15	5. Fourth step: Closing the process
17	6. Fifth step: Effectiveness of the agreement
18	Complementary frameworks
18	1. Logistical framework
22	2. Promotional framework
22	a. Mediation clauses
23	b. The prescription of mediation
24	c. Communication to the general public
25	3. Training framework
26	Conclusion
27	1. A positive dynamic with multiple approaches
27	2. Common aspirations
29	Bibliography
30	Annexes

INTRODUCTION

The writing of this guide is part of the activities selected by the “Mediation for Notaries – Notaries for Mediation” project, set up by the Council of the Notariats of the European Union (CNUE) and co-funded by the European Commission¹.

This project is an important step in the process initiated by the CNUE’s Mediation working group to establish a common framework for notarial mediation and a network of notary-mediators identified in the European Notarial Network (ENN)². The framework and the network were included among the commitments in the CNUE’s 2020 Action Plan with a view to providing new solutions for the daily lives of citizens moving around within the European Union.

This project is in line with the momentum generated by the evaluation initiated by the European Commission in 2015 of Directive 2008/52/EC of 21 May 2008 on certain aspects of mediation in civil and commercial matters³. An action plan to this effect was unanimously adopted by the CNUE General Assembly in 2015. Taking note of the decision of the European Commission⁴ not to revise this Directive at present, the Commission invited the notariat, like other professions active in the field of mediation, to continue its investment in mediation practices through awareness-raising and promotion activities in order to further stimulate the use of mediation as an alternative dispute resolution mechanism. The submission of the project to the European Commission was unanimously approved at the CNUE General Assembly on 17 and 18 June 2016 in Zagreb.

This practical guide mainly draws lessons from the five cross-border workshops on mediation in civil and commercial matters held in the first quarter of 2018 in Spain, France, Slovenia, Italy and Belgium. Each workshop provided an opportunity to exchange information on the regulatory frameworks and current practice in each participating country, as well as to experiment

with “casus” exercises. In addition to this guide, the various documents prepared prior to and following these workshops, such as the minutes of the workshops, the national reports on mediation practice, the presentation of cases experienced, the comparative table of the most frequently asked questions (FAQ), the dashboard for mediators, as well as other documents and websites listed below under references and bibliography, will provide valuable information on the subject.

This guide, and more generally the Mediation for Notaries – Notaries for Mediation project, is placed within the framework of judicial cooperation in which the notariat is involved through reflection on a preventive justice that participates in both alternative and subsidiary conflict resolution, and the implementation of new tools common to European professionals in the sector. In particular, it wishes to support the special relationship between the court and the notary, in this case the notary-mediator, as the number of notarial mediations in Europe initiated by referrals from the courts to notary-mediators or notarial mediation centres has increased.

The guide emerged as a necessity during a first experimental workshop held in Paris in September 2016⁵, which led to the following observation: while the notaries involved in mediation gathered at this workshop had the good fortune to observe that they shared the same culture (the same know-how, the same principles) in their mediation practice, the idea of a concretisation, of collaboration between them in cross-border cases raised many questions generating uncertainties: seeking orientation criteria, finding means of collaboration, initiating a common methodology, etc. So many challenges to be taken up. Hence the priority given during the workshops held within the framework of the Mediation for Notaries – Notaries for Mediation project to the implementation of several frameworks.

1. The European project “Mediation for Notaries – Notaries for Mediation”, co-funded by the Directorate General for Justice and Consumers of the European Commission (DG JUST) and coordinated by the Council of the Notariats of the European Union (CNUE) under the JUST-AG-2016-02 call for proposals.

2. The European Notarial Network was created in 2008 by the CNUE, then improved and supported by European Commission co-funding from 2010 under the programme Justice, Freedom and Security JLS Civil Justice 2007-2013.

3. Report on the implementation of 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 (2016/2066 (INI)), <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A8-2017-0238+0+DOC+XML+Vo//EN>

4. Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee of 26.08.2016 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, <https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-542-EN-F1-1.PDF>

5. Symposium on “Mediation and arbitration: challenges for European notarial practice” held on 12 September 2016 by the Conseil Supérieur du Notariat in Paris.



The first priority is a **procedural framework** centred on how to proceed;



then a **logistical framework** centred on the provision of information on the one hand and on the establishment of a collaborative network on the other;



then a **promotional framework** intended to facilitate orientation towards the mediation process as an Alternative Dispute Resolution;



and finally a **training framework** aimed at giving the notary-mediator the expertise required by the cross-border nature of the conflict and the common culture as an actor in the mediation process.

Of the five workshops held in early 2018, two symptomatic observations emerged. The first observation concerns the **complementarity of the workshops** in relation to each other and hence the added value provided by each one. Thus, the inaugural workshop held in Madrid was able to identify a methodological basis for setting up cross-border mediation, which was not denied subsequently; the workshop held in Paris was able to highlight the necessary search for a common approach to collaboration between mediators of different (legal) cultures; the workshop held in Ljubljana was able to push to a high level the reflection

on the functional and organisational principles of cross-border mediation; the workshop in Rome was able to identify the questions relating to the specificity of the mediation process and to its handling by mediator-notaries, wanting moreover to ensure the best transnational effectiveness of the agreement resulting from the mediation; and, finally, the workshop held in Brussels was able to demonstrate the common nature of the unavoidable benchmarks in a process of cross-border mediation and the need to associate notaries who are not mediation practitioners with the development of cross-border notarial mediation.

The second observation is the **permanent presence of opposing forces**, some of which underline a strong community between the participating national notariats on the main organisational principles of cross-border mediation and on the common way of practice, and others constantly recall the national singularities of the regulatory frameworks, the national or regional frameworks for setting up the mediation service and obviously the sociological frameworks linked to languages, cultures and applicable law, whether substantive or private international law. From this tension, the need for the establishment of the common frameworks that are the subject of this guide is reinforced.



NOTARIATS AND MEDIATION, NOTARIES AND MEDIATORS

THE CROSS-BORDER ELEMENT

The Notary-Mediator

Where notaries act as the national authority ensuring the authentication of particular wills, their action is conditioned by very specific binding national rules, since it is dependent on the organisation by each State of its missions of general interest. As a result, although cross-border notarial cooperation is fortunately developing before and after the “signing of documents”, this signing remains the work of one or more notaries from a single country.

This is not the case in a cross-border mediation context. Notarial mediation, while part of the notarial function and its framework, can be practised in cooperation in a cross-border area. Thus, subject to compliance with the national regulations specific to the practice of mediation, notarial mediation can be carried out in concert between notary-mediators from different countries. A great opportunity to bring European notariats together in a common mission when dealing with cross-border situations. In cross-border situations, a cross-border approach brings the notarial profession into line with the requirements resulting from the internationalisation of human and economic flows that already characterise the 21st century.

In the context of an open dispute, which is before a court or is in the process of being referred to a court, the notarial mediation service, with its expertise in many fields, is an effective relay to the trial, which it will replace as a method of alternative dispute resolution (ADR). Besides this **“judicial” notarial mediation**, sent by the court, the notariat also has the particularity of being a source of **voluntary mediation**. Indeed, having a preventive justice mission, the notarial function in its substance, and notaries, in their way of being and acting, constantly track any potentially contentious situation during the drafting of documents to clarify the parties’ wishes. In the absence of agreement, and if the situation proves to be conflictual, the notary sometimes initiates conciliation and sometimes prescribes mediation before any referral of the dispute to a court. In this case the mediation will be voluntary and it will find in the notaries-mediators professionals experienced in international situations which they meet more and more frequently in their daily practice⁶.



6. “The notary is a contributing factor to social peace. In the event of a dispute between parties, the notary always seeks to reconcile them. He or she must inform them of the existence, terms and benefits of so-called alternative dispute resolution, such as mediation”, Article 2.1 “Preventive justice” of the revised European Code of Notarial Conduct, revision adopted by the CNUÉ General Assembly on 11 December 2009.



Cross-border nature of mediation

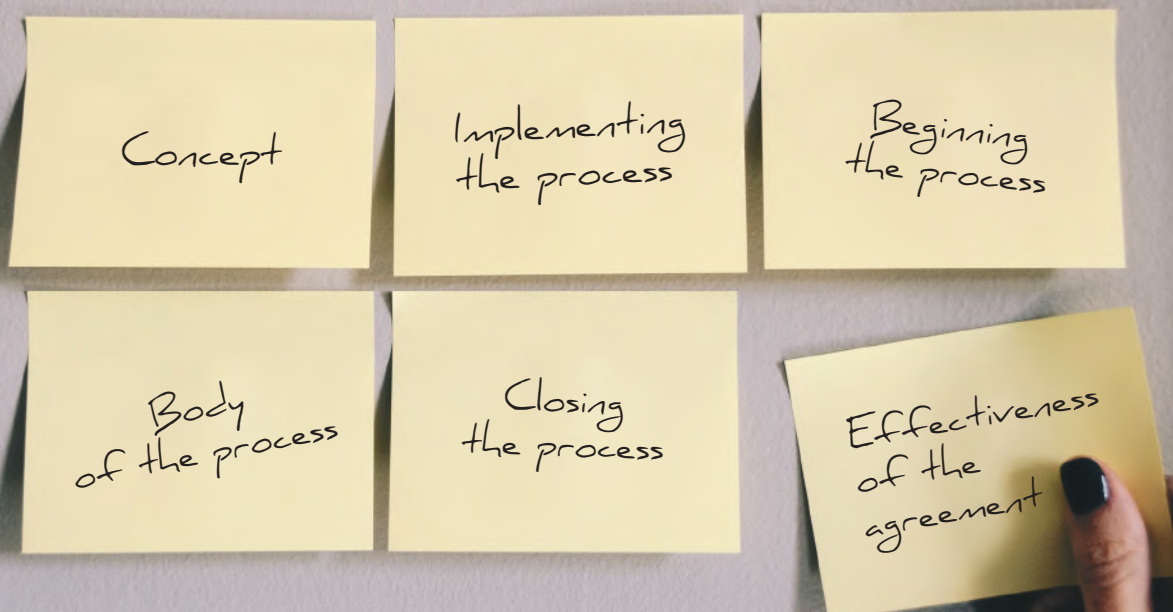
Mediation can be qualified as cross-border in terms of the situation it is used in, but also in terms of the operational method underlying it. **As for the situation in question**, Directive 2008/52/EC of 21 May 2008 considers a conflict to be cross-border if at least one of the parties to the conflict is resident in a different Member State from the other party. However, the scope of international notarial mediation is much broader. First of all, it is necessary to take into account that, according to the traditional expression, “all mediation takes place in the shadow of the court and in the shadow of the law”. It is therefore necessary in this respect to take into account all the foreign elements that may be taken into consideration in determining the court’s jurisdiction or the applicable law. However, since the mediation process is essentially open to the psychological and social complexity of each situation, elements such as language, culture, tradition, origin, etc. may justify the organisation of a cross-border mediation.

As for the operational method, it will give mediation a cross-border character through the cooperation of actors from different countries. This collaboration, which is at the heart of the Mediation for Notaries – Notaries for Mediation project, must adopt rules and, at the forefront of these, common and therefore international ethical rules. More generally, the project participants noted the relevance with regard to cross-border mediation of

the main principles governing the cross-border cooperation of notaries as set out in the “Revised European Code of Notarial Conduct” of 11 December 2009⁷. Finally, the partner notariats of the project are particularly concerned about the cross-border effectiveness of the agreement resulting from the mediation at the last stage of the procedural framework.

Where, at national level, there is already an obligation for notaries acting as mediators to clarify the specific rules linked to their role as mediator, in a cross-border situation there is also the increased need to clarify between professionals and then to the parties the specific national features of both their capacity as notaries and as mediators. Here too, the parties must be aware of the scope and hence the limits that the mediation process assigns to the notary-mediator in relation to the service they expect to receive.

⁷ See note 4 above.



PROCEDURAL FRAMEWORK

1 Concept

The need to establish a procedural framework is based on the following observations:

The parties to a cross-border conflict, made aware – through the promotional efforts that will be studied below under the section Complementary frameworks (p.18) – of the desirability of using mediation as a mechanism to resolve their conflict, and determined to use mediation, run the risk that the mediation process will never begin because they have been unable to make **choices** and having taken **decisions** made more complicated by the international nature of the situation or the parties. Thus the choice of mediator(s) or mediation body, the choice of the language or languages of the mediation, the role of each party (notaries, lawyers, experts, judges) in the mediation procedure, the choice of the country (place) of the mediation procedure, the choice of the law applicable to the mediation process, the determination of the fees applicable to the procedure, the expected effects of a successful mediation, etc.

Hence the need to provide mediation professionals with **information, criteria for analysis and discernment**, and a **process** that provides guidelines for the smooth running of operations. This underpinned the programme of the five workshops held in early 2018. Thus, during the workshop held in Ljubljana, Ms Gordana Ristin, judge at the Supreme Court of Ljubljana and mediator, stressed, at the end of the practical case presented, the need to guarantee a transparent and honest mediation – ordered step by step and not disorganised. She added: “knowledge of

the law and international conflict rules is necessary so that we can agree on the applicable law”. At the same workshop, in the conclusions, Mr Andreas Schmitz-Vornmoor, notary and mediator in Remscheid, Germany, spoke about the need to define clear rules for mediation procedures.

What all the workshops highlighted is that **uniform rules applicable to all situations are not possible given the diversity of national situations and regulations**. Hence the importance of drawing up as complete an inventory as possible of the issues to be taken into account from the beginning to the end of the mediation process. Thus, based on the experience of the four preliminary workshops, a “dashboard” was drawn up for the notary-mediators leading the experimental workshops.

The objective being to give cross-border notary-mediators an overview of the problems to which they will have to find an approach according to each specific situation. There can indeed be multiple specificities, depending on the subject of the conflict and the parties involved (the parties to the conflict, their lawyers,

“... uniform rules applicable to all situations are not possible given the diversity of national situations and regulations.”

experts, etc.) as well as the need to coordinate the action of mediators according to the regulatory frameworks of mediation stemming from the different national regulations of the countries concerned. Certain questions will be answered. Others will remain unanswered because it will turn out that they are without interest in the evolution of mediation, or answers will ultimately be found as the mediation evolves.

In addition to this annexed dashboard, a **common procedural framework** will offer notary-mediators a systematic approach to the common steps that should mark out the course of all cross-border mediation processes. These steps range from the implementation of the process, through the beginning of the process, the body of the process and its closure, to measures to ensure the effectiveness of the final agreement. These various steps had already served as a framework for the exchanges organised in Budapest in September 2015 by the CNUE's Mediation working group at the invitation of

the Hungarian notariat⁸. While these exchanges were at the time of an informative nature, they took the form during the five workshops of the Mediation for Notaries – Notaries for Mediation project of experimental practical workshops whose results feed into the considerations of this guide.

⁸. Workshop entitled “Exchange Forum on Notarial Mediation” held in Budapest on 10 and 11 September 2015 by the Hungarian notariat.



The major and valuable lesson learned from the workshop held in Madrid in January 2018 was the awareness of the paramount importance of the first step in the implementation of the cross-border mediation process:

the founding moment of the process and guarantor of its feasibility and success. This implementation consists of a **contact between the professionals** involved in the process, and in first order of course the notary-mediators. Without being exhaustive, the dashboard referred to above and annexed to this guide lists the issues to be clarified between them under four headings: contacts, guarantees, the place of the parties involved and the mediation agreement pursued. In addition, it will of course be necessary to examine and ensure that the subject of the conflict can, where the mediation process is organised and where an agreement must have effects, enter into an **area where mediation in general is permitted** and more particularly notarial mediation. Thus, the workshop held in Paris revealed that, except for specific training, family mediation (law of individuals) is not an area of activity open to notarial mediation in France (collectively, only practised on an individual basis, however), whereas in other countries, in a different way, but more often than not considered appropriate, notarial expertise with families and the intrinsically linked nature of property and personal conflicts within families are retained to support the competence of notaries in all facets of this area of mediation.

As for the workshop held in Brussels in March 2018, the experimental part of it had the specific feature of being split into two workshops, one held in French and the other in Dutch. In addition to its organisational interest, this duplication made it possible to note that the conclusions drawn by each of these workshops from the parallel experimentation of the same

case were completely concordant, in particular with respect to the discernment of the problems to be taken into account as soon as the process was implemented.

In their task as organisers of the process, the international notary-mediators involved will have at their disposal the documents drawn up within the framework of the project to support this guide, in addition to the **dashboard**, the various **national reports** resulting from the workshops and the **comparative questionnaire** containing the most frequently asked questions on national regulations, which is also attached at the end of this guide.

During several workshops, the wish was also expressed to give the cross-border notary-mediator the support of a contact point that is a person or a national or European body particularly documented and experienced and able to help them to identify the most appropriate options in the particular situation submitted to them. This should be the subject of reflection at the level of the European notariat.

Among the delicate and complex issues are the recurrent **clarification of the law applicable** to the mediation process and the law(s) governing the **competence** of the mediator(s) involved in the process. The principle that “*mediation takes place in the shadow of the court and in the shadow of the law*” has particular connotations when applied to a cross-border situation. Thus, with regard to conflict of law rules, it will be necessary to take into account the law(s) applicable to the various legal fields encountered (private international law) and, with regard to the rules of international jurisdiction, it will be necessary to pay attention to the rules making it possible to determine, on the one hand, which court would be seised of the dispute if the mediation process were unsuccessful, and, on the other hand, the court requested to give effect to the mediation agreement or to recognise its effects. The comparative table in the form of FAQs will have its full utility here.

Faced with the technical and legal difficulty of certain problems raised during the implementation of the process, the need appeared particularly during the Paris workshop not to be trapped and pa-



1. Workshop in Madrid, 15th January 2018.

2. Workshop in Paris, 23th February 2018.

3. Workshop in Ljubljana, 8th March 2018.

4. Workshop in Rome, 16th March 2018.

5. Workshop in Brussels, 19th March 2018.

analysed by these questions and to dare to start the mediation process based on a reasonable framework even if all the theoretical questions are not mastered (as mentioned previously).

Generally speaking, with regard to the analysis and commentary of the many problems raised during the workshops and which must be taken into account during this first stage of implementation, we refer to the reports of the workshops and more particularly to the way in which these problems were approached specifically according to the practical cases worked on, which covered various fields.

Thus the case experienced in Madrid concerning a dispute over supplies by a large Spanish building materials company to a small Bulgarian company, involving in particular the cultural differences of the respective professional environments and a mastery of company law;

the case in Paris concerning commercial relations between French and Polish naval companies mainly focused on the difficulties linked to transnational co-mediation by mediation centres and highlighted the need to know how to leave certain questions unanswered at the start of the process;

the case studied in Ljubljana concerning a civil liability dispute following a road accident for which the victim of Bosnian origin and living in Croatia claimed compensation from a German insurance company represented by its Slovenian branch, mediation held in Slovenia highlighting the need to establish from the outset of the process a clear framework based on detailed legal knowledge of the rights potentially applicable to the merits of the dispute as well as the need for international notary-mediators to be creative;

the case in Rome concerning the liquidation of a succession whose movable and immovable assets were scattered in France, Italy and Spain highlighted the usefulness of being aware from the outset of the process of the instruments that will have to be established in the event of successful mediation to ensure its full effectiveness in each of the countries concerned;

finally, the case in Brussels concerning the liquidation of a matrimonial property regime on the occasion of a divorce raised questions relating to the choice between the appointment of one mediator or mediation body in one country (the one whose courts would have international jurisdiction in the event of failure of the mediation) and the choice of several mediators or bodies from different countries and ensuring that the various cultural and linguistic sensitivities of the parties are taken into account in the context of cross-border co-mediation. These cases are also presented at the end of this guide.

Finally, before moving on to the second step, which is the first plenary meeting, it will be necessary to clarify the place, the role to be played by each of the participants: thus the mode of representation of the parties, the place of the lawyers, the place of the prescribers of mediation (family notary, etc.), the place of the experts, the place of each mediator in the event of co-mediation, etc.

Beginning the process



3

A clear mediation service proposal at the first mediation meeting that would be accepted by all participants

All the experimental workshops, particularly those in Ljubljana and Rome, stressed the need to submit a **clear mediation service proposal** at the first mediation meeting that would be **accepted by all participants**. Beyond all other elements, the organisational and contractual elements contribute to the essential climate of trust with regard to the mediation framework set up and with regard to mediators since they are crucial for the beginning of all mediation. This clear proposal should also be reflected in the **“mediation protocol”** (agreement on the mediation process) which will ensure that the various options taken within the framework of the implementation – previous step – are *“conventionalised”* and clearly specify the subject of the conflict to be mediated and, if possible, define what is not agreed upon. A reminder was given in Paris that agreement on the disagreement is already a very important element. Even if this is not an absolute necessity given the videoconferencing and other media, it was generally stressed as being particularly important to be able to bring all the parties together in the same place, at least for this first meeting at the beginning of the process if possible and, failing that, by resorting to videoconferencing. Every mediator understands the importance of non-verbal communication and energy management from the very beginning of the process.



Body of the process



4

Several separate sessions spread over time

This is the central part of the mediation process, where in the framework previously fixed and agreed, the parties try through their exchanges to find a solution to their conflict or even dispute with the help of the professional mediator, the orchestrator of the process. This phase is generally composed of **several separate sessions spread over time**. In cross-border matters, this multiplication of meetings can prove to be a major obstacle to the process. Here too, depending on the nature of the conflict situation, sometimes a minimum number of sessions will be preferred, each needing a longer duration (this will often be the case in commercial matters), sometimes respecting a time of maturation between the various sessions (this will be the case mainly for family matters). In this regard, the workshop held in Rome highlighted the importance, also in cross-border mediation, of giving full consideration to human and relational factors in family conflicts. Any mediator understands the distance between the needs expressed in the demands and those actually experienced by the parties. It is here that we appreciate the **common character of the mediation culture** as it was experienced between European notariats during the experimental workshop previously held in Paris in September 2016⁹. While the foundations of mediation practice are indeed part of a common culture, it has become clear that it is nonetheless necessary for international notary-mediators to work together in order to give them the opportunity to confront this common culture in the context of additional (so-called continuous) training courses particularly dedicated to cross-border mediation. The learning of the shared use of certain tools (sometimes more developed in certain countries), the adaptation of the tools to a cross-border context, the training necessary to maintain and develop skills in this context are of major importance at this level. We will return to this at the end of this guide when we discuss the training framework.

⁹. See note 3 above.

During the sessions forming the body of the process, the mediators will have at their disposal at any time the **logistical supports** that will be listed later in the section on the logistical framework¹⁰, and among these more particularly the reference to or even the provision of articles written on the subject of international notarial mediation. Mediation techniques are often proposed that could underpin a common practice, particularly important in co-mediation cases. The importance for the notarial profession of having and, if necessary, encouraging the writing of articles, works and doctrine specifically geared towards cross-border notarial mediation is also apparent here. The Mediation for Notaries – Notaries for Mediation project aims mainly at creating a common framework, developing a network and promoting mediation among notaries in order to enable this common European culture of notarial mediation to be practised. This exercise and the training it requires go beyond the primary object of this project and, while obviously being its essential objective, it was not at the centre of the workshops held and will not be further developed here.

10. See point IV.1. of this guide.

11. Fernando Rodríguez Prieto, "El testamento motivado con el recurso a la mediación. Un poderoso instrumento para evitar y encauzar el conflicto sucesorio", *El Notario del Siglo XXI*, n°79, Mayo-Junio 2018, Colegio Notarial de Madrid.



Closing the process



5

The process will end with or without agreement.

In the latter case, which will most often result from the wish of one or both parties not to continue the process or from the expiry of the time limits set for the mediation attempt prior to bringing legal proceedings, it may be useful to keep a record of the context justifying the failure to reach an agreement. In addition, if disagreement has been expressed, it may be appropriate to try to identify what the remaining disagreement is about. Moreover, there may be an opportunity to take note of partial agreement(s). Finally, there will be an opportunity to remind the parties of the framework rules of mediation which will continue to have an impact on the subsequent methods for resolving their dispute, such as confidentiality and the non-presentation in court of elements communicated during the mediation.

In the event that the mediation process concludes with an agreement between the parties, the mediator will take care to ensure, on the one hand, that the individuals who express their agreement have full capacity and power of representation; and, on the other hand, to ensure that the parties had all the technical and legal information to give this agreement in full knowledge of the facts. Once this is done, the parties will often request a rapid formalisation of this agreement. This formalisation gave rise to interesting exchanges during the workshop held in Paris: from the oral form to the notarial or even judicial form, a wide range was evoked. Thus, in certain sectors and under certain circumstances, a verbal agreement seems to be able to fully satisfy the parties. For written formalisation, in other circumstances (companies with legal and technical services), the legal services and technical experts of these companies can certainly take over. In still other circumstances, and more particularly where the parties have been assisted in the mediation process by a legal professional, the agreement may be drafted by this legal professional. Let us think above all of the notarial form, the primary speciality of the participants in the workshops on international notarial mediation.

Regarding the **formalisation** by notarial act, the ideas exchanged are very opportunely reflected in a contribution written by Mr Fernando Rodríguez-Prieto – notary in Coslada in the Madrid region of Spain – presenting themselves as an exercise in applying the authentication process to the mediation agreement¹¹. This exercise highlights the problem of the notary's requisition by the parties and the legality control inherent in notarial involvement. Note the recommended control of the legality of the mediation process. And then, of course, the control of compliance with mandatory and public order legal provisions and conformity; but even further, notarial authentication being distinguished here from simple homologation or authentication by judgment (judgment of agreement or homologation), the notary will examine the conformity of the mediation agreement with the legal prescriptions, thus providing the added value derived from the duty to advise. This control requires the notary to carry out an investigation, interpretation or even adaptation task. The notary may also refer the parties to the mediator to reach a more pre-

cise agreement on certain points. Well informed, the parties will quickly understand that far from restricting their freedom, this notarial intervention offers greater security for the process and its consequences.

The next question that arose in connection with the formalisation of the agreement resulting from the international notarial mediation process is whether the mediator, in this case the notary, is the right person to draw up this agreement. For the **drafting of a private agreement**, it will be agreed that where the drafting of the agreement by a mediator is recommended, it could be all the more so by a notary-mediator in view of their very particular expertise in drafting contracts.

As regards the **notarial drafting** of the final mediation agreement, two “schools” emerged during the workshops. The first school heard in Spain and France recommended entrusting the task of authentication to a notary other than the mediator. In Spain, the reason given seems to be the need for the notary authenticator to be independent of the prior process. In France, it is argued that the drafting of the final mediation agreement by the notary-mediator may hinder the process of prescription of mediation by notaries in charge of conflict cases. It was observed that in both countries, notarial mediation is most often organised within the framework of mediation centres rather than by the individual practice of independent notaries. It was also observed that notaries recommending mediation to their clients in conflict situations may be supported by other aspects, such as their duty to advise, and that they could be given a place (as an expert or counsel) in the mediation process. The other school, which mainly and predominantly operates in Slovenia, Germany, the Netherlands, Poland and Italy, accepts or even provides that the notary who acts as mediator in a case can then draw up the authentic instrument. The principles of neutrality and independence do not seem to suffer from this, subject on the one hand to ensuring an unambiguous formal distinction between the time of the mediation and that of the authentication, and on the other hand to always respect the freedom of the parties as to the free choice of their notary where possible.

Finally, as regards the **choice of the notary drafting** the act authenticating the final mediation agreement, account must be taken of the effectiveness that this agreement will have to achieve in different national legal systems. Ensuring the effectiveness of the agreements is precisely the next and final phase of the international notarial mediation process.



1. Workshop in Rome, 16th March 2018.

“...the parties will quickly understand that this notarial intervention offers greater security for the process and its consequences.”

The effectiveness of cross-border (notarial) mediation

It was during the workshop held in Rome that the reflections and debates were particularly detailed and of high quality concerning this problem of the effectiveness of cross-border (notarial) mediation. It is true that all the other workshops encountered this problem, most often in the reflection or in the experimental workshop as early as the implementation phase of the mediation process. Indeed, the importance was stressed in the various workshops of ensuring from that moment the implementation of a framework that could establish correct effectiveness of the agreement hoped for. Thus, this concern underlies the choice of the law applicable to the process, the choice of the law(s) applicable to the legal field(s) concerned by the conflict, as well as the choice of the mediator(s) and the type of collaboration between them if there are several of them. The dashboard outlined for the Brussels workshop and discussed above will serve as a useful basis for reflection at that time. Moreover, the judicial or voluntary nature of the mediation process in place will certainly interfere with the possible choices regarding this framework and these instruments for the effectiveness of the process.

The maximum effectiveness that can be given to the mediation agreement is based on its authentication. Such authentication may be the result of a judgment recording the mediation agreement or approving it. However, this judicial act may be limited in its effectiveness (marginal control) when the rights and obligations resulting from these mediation agreements are mentioned in public registers. The notarial act will be more appropriate in this respect. Under the previous point (5. Fourth step: Closing the

process), the benefit of **legal certainty** offered by notarial involvement in the context of the authentication of the final agreement following a thorough legality control of this agreement by the notary was underlined.

The **probative force and enforceability** of foreign notarial acts in the various countries of the European Union under the current European regulations are obviously of the utmost importance. As regards access to the various registers (real estate, companies and others), care must be taken to ensure that any requirements regarding the use of languages and the national character of the public office-holder who is the author of the document are complied with. In addition, it should be borne in mind that many tax and administrative procedures make the enforceability or even validity of agreements dependent on their successful completion, without forgetting the significant financial responsibilities incurred by the professionals involved in the authentication process. We refer here to the documentation and speeches collected during the Rome workshop as a basis for reflection on the current challenge, as well as in the short and long term, of the movement of the notarial act in Europe. This point appeared to be crucial in the context of the problem of the effectiveness of cross-border (notarial) mediation.



COMPLEMENTARY FRAMEWORKS

1 Logistical framework

To be able to set up, start, continue, close and ensure an efficient intervention, international notary-mediators must have multiple reliable logistical supporting materials. Providing such materials for them is one of the important objectives of the present “Mediation for Notaries – Notaries for Mediation” project.

The materials that we will mention first in this guide are obviously the written information to be made available to cross-border notary-mediators. In addition to this guide, there are the following:

- ✓ **national reports** on the practice of mediation in the five notariats organising workshops, supplemented by the reports communicated during these workshops by the Netherlands and Poland;
- ✓ the **comparative table of the national frameworks** presented in the form of FAQs;
- ✓ the **minutes of the five workshops** held during the project, which contain a great deal of information on the attitudes to be adopted by the international notary-mediator;
- ✓ the **presentations of the five practical cases experienced** in five workshops that could serve as examples for cross-border notary-mediators to guide their attitude in similar situations;
- ✓ the **dashboard** designed to accompany the international notary-mediator throughout the development of the procedural framework;
- ✓ and finally **documents, articles and references** enabling them to continue their research.



It is of great importance for the development of cross-border notarial mediation to develop doctrinal and practical reflection on the subject through the dissemination of written materials ranging from more or less concise articles to larger-scale studies. It should be noted that the dashboard mentioned above provides concise and specific information for notarial mediation. Its addressees are first of all any citizen, professional or authority in search of information: prescribers of mediation (notary, lawyer, judge, etc.), citizens questioning the feasibility of mediation, partners in a notarial mediation (experts, lawyers, judges, etc.). This information is then intended more particularly for the notary-mediator required for a cross-border mediation process, in search of recurrent information necessary for the setting up of the framework of a new mediation, for the smooth running of the mediation until its outcome and for the follow-up to it.

Providing international notary-mediators with **logistical support** enabling them to be brought together and to communicate with each other as partners in a specific network is also of prime importance. As we have seen, the practice of cross-border notarial mediation requires a high level of expertise both as a practitioner of mediation and as a specialist in international private matters (comparative law, private international law). This expertise must be supported by frequent and mutually enriching exchanges. We will return to this when we discuss the training framework, but as logistical support, the provision of an exchange platform within the European Notarial Network meets this expectation.

At the time of writing this guide, the European Notarial Network brings together more than 800 European notaries who benefit

from all the tools offered by the platform¹². The CNUE created the European Notarial Network in November 2017, following the model of the European Judicial Network in civil and commercial matters. The main mission of this network is to provide information and technical support to European notaries dealing with cross-border cases in the European area. The ENN project is supported by the European Commission's Justice programme through co-funding¹³.

In summary, the **activities of the European Notarial Network** are based on the following vectors:

1. The exchange of specific questions and answers relating to questions addressed by notaries confronted with cross-border cases; for example, exchanges concerning specific provisions of national/foreign law, the enforcement or formalities of a notarial act in accordance with the legislation of another country, the competence of a specific authority in a particular legal field, etc. The exchange of legal and practical information between the 22 national ENN interlocutors takes place mainly through the ENN communication tools of the ENNIT infrastructure and in the framework of ENN meetings.
2. Macro projects providing information at European level for citizens and/or notaries on foreign legislation and European law; such as the *Couples in Europe*¹⁴, *The Vulnerable in Europe*¹⁵, *Successions in Europe websites*¹⁶, the Handbooks on the notarial implementation of the Successions Regulation and the Regulation on Matrimonial Property Regimes and Registered Partnerships as well as databases and intranet instruments useful for cross-

12. Accessible online: www.enn-rne.eu

13. The ENN is co-funded by the European Commission's Directorate General for Justice and Consumers (DG JUST) and coordinated by the Council of the Notariats of the European Union (CNUE) through this European Union Programme: JUST/2016/SPOB/OG/NETW

14. Accessible online: <http://www.couples-europe.eu/>

15. Accessible online: <http://the-vulnerable.eu/?lang=en>

16. Accessible online: <http://www.successions-europe.eu/>

border notarial practice: European Authentication Map, European Legislative Observatory, bilingual forms for checking notarial powers of attorney from another Member State, matrimonial agreements, passport for legal persons, etc.

This network is composed of national interlocutors from 22 countries (Austria, Belgium, Bulgaria, Croatia, Czech Republic, Estonia, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia and Spain) and could in the future include CNUE observer members (such as: Turkey, Serbia, Montenegro, Macedonia). Notaries from any two different countries may ask their national interlocutor for any necessary information relating to a cross-border case arising in the course of their daily practice. The reply – which does not have the value of a legal opinion but is informative only – is drafted in cooperation with the interlocutor of the country with which the foreign element of the cross-border case is connected. The interlocutors are notaries or employees of the national chambers of notaries and appointed by the President of their notariat. In addition, the ENN provides the notaries of Europe with common tools – information on legislation and procedures at European level and working instruments. This secure online platform allows European notary-mediators to conduct professional exchanges entirely electronically. In addition, thematic forums, one of which is entirely dedicated to mediation, offer a virtual public space for the exchange of messages on cross-border notarial mediation. Allowing notaries to exchange views on specific topics in transnational mediation, they can ask open questions and exchange ideas and experiences on this subject with their European colleagues.

Thus, the ENN is a unique platform resolutely focused on providing support for notaries confronted with cross-border issues within the European Union, and is entirely dedicated to the service of practising notaries who can join this network at any time¹⁷. As regards the logistical framework, it is important to stress the importance of providing cross-border notary-mediators with **technical support**. In this respect, the need for visual means of communication was stressed, especially when mediation sessions cannot be held in one place, and therefore the need for videoconferencing equipment. The European Notarial Network has already integrated this software within its platform, the corollary is to ensure that mediation centres and cross-border

notary-mediators have the tools to use them and also that they are trained in their use. This use appears very particular in its implementation within the framework of a process where sometimes and predominantly there will be plenary sessions where everyone must be able to see and hear each other at all times, limited sessions between the co-mediators or professionals involved and agreed sessions of particular caucuses with one or other of the parties.

The second technical support to be highlighted relates to the use of languages, which will often be multiple in a cross-border context. This question was also addressed during the workshops, mainly in the experimentation of their implementation. In this context, it was noted that there was no ideal solution. If a common language could be found, which is however not the native language of all the speakers, although that can often facilitate communication between the mediation professionals, the disadvantage of this is that parties will be in a situation of weakness in the negotiation and also that the mediation process will be deprived of one of its major assets, namely communication which includes any mode of expression and takes into account the cultural sensitivities of each party. During the experimental workshop held in Paris, the absence of a common language was revealed and therefore the need for interpretation. The use of professional interpreters offers the advantage of reliability but is handicapped by its cost, and it makes exchanges cumbersome. As far as cost is concerned, it will be necessary to avoid holding too many sessions and it will be bearable only in particular contexts, unless subsidised. As regards the interpretation from one language into the other by the mediators, this was considered at the Paris workshop to be a more interesting option because it was more rooted in the process and could be part of a technique used by mediators specifically in mediation, which is that of repetition or rewording of what has just been said. It remains to avoid the pitfall of making one and/or the other co-mediator play a role of representation of one of the parties. Research on the effectiveness of digital instant interpretation tools currently on the market may be timely. As far as cross-border (co-)mediators are concerned, it is obvious that in most cases they will have to be able to master a second language to ensure that the process runs smoothly. Reference is made here to the reports of the workshops held, all of which experienced this linguistic difficulty and the need for support in this regard.



European Notarial Network:

unique platform resolutely focused on providing support for notaries confronted with cross-border issues within the European Union, and is entirely dedicated to the service of practising notaries who can join this network at any time.

¹⁷ To apply to join the ENN as a practising notary, please send an email to info@cnue.be



Countries covered by the ENN

Finally, as the last point of the logistical framework, it is necessary to highlight the need felt and confirmed during the workshops to have the support of one or more contact points at European, national or even regional level. From a first angle, it is a place, an address available to the public in the broadest sense of the term where any information or guidance could be given to citizens seeking a cross-border mediation framework but also with regard to any potential prescriber of mediation. From a second angle, this or these contact point(s) could provide logistical support to the cross-border notary-mediator. The logistic character being understood here in its intellectual acceptance: to centralise a maximum of information on the experiences and lessons drawn from the processes already held and referral to works or people of reference; but also of course material logistic support. Such support is particularly requested within the framework

of the implementation of the mediation process but it should remain available to cross-border notary-mediators throughout the process helping these notary-mediators to manage this process and its framework as well as possible until the agreement is finalised and applicable. This or these contact point(s) could be entrusted with the task of referencing cases of cross-border notarial mediation, keeping documents (mediation reports, mediation agreements) and providing expert advice to the various notary-mediators, notarial mediation centres and participating national notariats.

2 Promotional framework

Sophisticated organisation of cross-border notarial mediation is not sufficient in itself. Its implementation and development depend on mechanisms for referring the parties in a conflict to a notary (or notarial body) who is an expert in cross-border mediation. Such guidance may also be prescribed on the advice of a notary, who has - as part of his duty to advise - the capacity to identify situations potentially subject to mediation. From the workshops held, three promotional mechanisms or frameworks emerged: a. mediation clauses; b. the prescription of mediation; and c. communication to the general public.

a. Mediation clauses

The initiation of a mediation process sometimes results from a legal requirement, sometimes from a court decision, and sometimes from the common will of the parties. The proportion of each of these circumstances varies from country to country. It depends on national contexts in terms of regulations and the integration of the mediation culture. From the workshops held within the framework of the Mediation for Notaries – Notaries for Mediation project, however, there was a general willingness to give priority to the **development of the use of mediation clauses**; a natural orientation on the part of notaries as drafting professionals. Knowing also that even in an already judicialised context, the existence of a mediation clause in an earlier act could influence the judge with respect to sending the parties for mediation.

Apart from any binding measure, this desired multiplication of mediation clauses should find its major support in **model clauses** to be made available to drafters of acts. With regard to mediation in cross-border situations, it will be necessary to find a framework to support the research, drafting and dissemination of reliable documents, one such framework being the CNUE's Mediation working group. In this context, the drafters should take advantage of the various discussions held on this subject during the workshops held in early 2018. Interesting considerations at this level can be found in the report on the workshop held in Ljubljana and in the French report on the practice of mediation in France. Thus:

- ✓ The advisability of inserting mediation clauses both in acts of unilateral will (wills) and in acts containing contracts, without forgetting the contract incorporating the agreement resulting from mediation to frame any dispute that might arise from the execution over time of this mediation agreement;
- ✓ Consider the drafting of mixed clauses that combine both reference to mediation and – in the absence of agreement from mediation – arbitration, or even to a mandatory third decision;
- ✓ When seeking clauses to be included in acts governing cross-border situations, take into account national regulatory and mediation practice contexts;

- ✓ Although a mediation clause cannot deprive the parties of the right to have recourse in the last instance to the courts, feelings vary as to the degree of constraint to be given to these mediation clauses. Thus, for example, at the Ljubljana workshop, it was argued that these clauses should be limited to “legally non-binding contractual provisions”;
- ✓ The legal fields in which these mediation clauses can be found will vary according to the country, in particular according to the place given to mediation;
- ✓ Similarly, the clauses should vary according to the type of obligations in the contracts. Thus in France a mediation clause seems excluded in sale promises or in successive performance obligations (unless drafted specifically and adapted only to certain effects of the contract)..



b. The prescription of mediation

The **prescription of cross-border notarial mediation** should logically emanate frequently from notarial actors, but should also be prescribed by other professionals and other sectors.

As regards the prescription by notarial actors (notaries, notarial office staff, professional bodies), while this was supported during the various workshops held, it was more particularly during the workshop organised in Brussels that the importance of an approach in this direction was stressed. Thus, while the experienced notary mediators were experimenting with the implementation of international notarial mediation, the other half of the participants – i.e. notaries whose expertise is recognised in other fields but who have little or no information and training in mediation – participated in an information and awareness-raising session on cross-border notarial mediation. We only prescribe what we know and what we believe in. Hence the importance of developing this type of information and awareness-raising workshop in the future and of bringing notaries who are potential prescribers into contact with notaries who are experts in mediation. This aspect is part of the proper exercise by all notaries of their duty to advise in situations where, when they notice a conflict, they will have learned to offer the parties the tools enabling them to resolve it.

Moreover, the notarial world should not underestimate the interest and the capacity of prescription that it can arouse among other professionals: lawyers, judicial officers, company lawyers, accountants, social workers, etc. The expertise of notaries in a multitude of fields makes them the most appropriate professional mediator in many circumstances. Especially since, as mentioned above, the establishment of the cross-border mediation process will have to find a specific role for everyone in the process: expert, advisor, co-mediator. Indeed, as has already been said, cross-border notarial mediation is open to these non-notarial actors, as shown by certain mediation centres set up by the notariat, particularly in Spain and France, and which bring together notarial and non-notarial mediators. Finally, the prescription of mediation by the judge, or even by the court registry services, is essential first of all because it symbolically asserts the legitimacy of the process as a complementary alternative to the jurisdictional process. In addition, the justification of a reliable expertise will encourage the court to turn to the notariat. What

has been said previously concerning prescription by notaries is true for other professional prescribers. These prescribers will only entrust mediation to notarial mediators if they are aware of the appropriateness of the mediation process and have assurances about the quality of these actors. Finally, with regard to courts, it will in any event be necessary to take account of the legal framework within which they act, whether this framework is national or determined by the rules of international jurisdiction.



c. Communication to the general public

The Mediation for Notaries – Notaries for Mediation programme aimed to make the practice of mediation better known to European notaries, particularly in a cross-border context. Efforts were therefore quite naturally focused on **internal communication objectives**. The workshops allowed meetings between notaries who are experts in the field and other interested parties but who do not (yet) have the necessary knowledge and training. The organisation of the workshops and the establishment of a network of notary mediators via the ENN laid the first foundations for European notarial cooperation in mediation, for the benefit of citizens. Moreover, notaries' journals are excellent tools for reflection and liaison between notaries wishing to be informed and contributors who are bearers of a message; for example the interview with Yves Behets-Wydemans, Chair of the CNUE's Mediation working group, on the importance of notarial mediation at European level¹⁸.

Obviously, a **long-term communication strategy** would be incomplete if it were to focus only on the internal aspect. The general public must be another priority target of an ambitious strategy in favour of notarial mediation. Ultimately, the efforts made will make it possible for citizens who wish to resort to an alternative method of dispute resolution to increasingly solicit the notary. In this respect, it should be noted that the national notariats have already embarked on this path (see for example the information website set up by the French notariat - <https://mediation.notaires.fr/> - and the Italian notariat - <http://www.adrnotariato.org> -) and provide full information for citizens.

At CNUE level, the ambition was to proceed initially with a census of European notaries who were experts in mediation. This identification can then be promoted to the general public on tools such as the European Directory of Notaries (www.notaries-directory.eu). All project results are made available on the CNUE public website (<http://www.notaries-of-europe.eu/index.php?pageID=15571>) and are also promoted on other CNUE external communication media (annual report, social networks). On the website mentioned, a page dedicated to notarial mediation has been set up to make visitors aware of the actions

implemented by the profession: <http://www.notaries-of-europe.eu/index.php?pageID=4800>.

On a **more prospective level**, it will be useful in the near future to list all the “general public” communication initiatives implemented in the various European countries familiar with the notarial system. In this way, the notariats and the CNUE will be able to reflect on the implementation of a **common strategy at European level**. By establishing common objectives and messages, identifying target audiences and developing an action plan, European notariats will have the means to achieve their ambitions. This will provide the coherence and visibility that are essential to enhance the practice of notarial mediation in the Member States.



¹⁸. Mr Yves Behets-Wydemans, interview by Gilda Benjamin, “De l’importance de la médiation notariale au niveau européen”, Notarius Printemps-Été 2018, Fednot, pp.60-66.

3 Training framework

The Mediation for Notaries – Notaries for Mediation project was mainly aimed at supporting the information, experimentation and promotion of mediation by notary-mediators in cross-border situations.

This project was the result of an experimental workshop held and organised by the CNUE's Mediation working group in Paris in September 2016, which, beyond the positive observation of a common basic culture regarding the practice of mediation, had revealed the need for framework references as to the rules, processes and logistics necessary and specific to cross-border mediation. The present project co-financed by the European Commission has fortunately developed these frameworks.

Although we currently have the **basic tools** (to be developed, of course) that will enable the cross-border notary-mediator to integrate both organisational and legal parameters into a practice that must be possible today, the fact remains that, as is the case at the level of a national mediation, continuous training specific to the notary practising international mediation is essential. The experimental workshops held as part of the project were an opportunity to raise various issues to be worked on in the context of consolidating, developing and maintaining a common culture of mediation practice. It will be useful to draw inspiration from them in the organisation of these continuous training courses.

Particular attention should be paid to ensuring that these cross-border mediation continuous training courses are recognised by the various national authorities responsible for monitoring training.

The creation of a team of notary experts in cross-border mediation ensuring a dynamism maintained by regular meetings and a quality label, is an expectation that is reflected in the workshops held. So, training, intervision and exchanges of experience are the essential grounding for the development of this cross-border notarial service. This is the next major step in this development.

“...training, intervision and exchanges of experience are the essential grounding for the development of this cross-border notarial service.”

CONCLUSION

This guide is the result of the exchanges and experiences of the five cross-border workshops held as part of the co-funded project “Mediation for Notaries – Notaries for Mediation”. It gives a **first echo** to this work and is intended as an initiator and point of reference for the professionals confronted with the (question of) cross-border (notarial) mediation. Its proper use must of course be supplemented by the various reports, minutes, tables and others documents to which it refers. We will be attentive to readers’ feedback to complement it, if necessary, with a more exhaustive and detailed inventory of the various problems encountered. We hope that in the future we will be able to flesh out the lessons to be learned from the experience of cross-border notarial mediation.

That said, the conclusions to be drawn at this stage from the co-funded project, and more particularly from the preparation of this guide come together under two themes: a positive dynamic with multiple approaches on the one hand and common aspirations on the other.



1. A positive dynamic with multiple approaches

The exchanges and experimentations within the framework of this project gave rise to tensions between two poles: on the one hand there was the pole consisting of a community of concepts as to the content and the framework principles of mediation, generating here coherence in the participants' approaches, and on the other a pole consisting of singularities in the approaches and many proposed possibilities. This tension created a **dynamic energy** bringing various orientations, solutions and decisions, not to mention the aspirations to which we will return later. Thus, for example, faced with the common need for a procedural framework and legal information, attitudes varied as to the place to be given to the pragmatism at the start of a mediation, and the importance to be given to time at each stage of the process.

As much as the organising and invited delegations felt close and even familiar in the reflections that the variety of laws gave rise to and found meaning in a shared framework and practice, it also became clear that each national notariat is still at different stages in the search for the appropriate significance to be given to (cross-border) mediation in their organisational policy. Orientations that the joint reflections should underlie and nurture with convergence. Thus reflections encouraged by a guided visit in situ in the Rome premises of a notarial mediation centre and in the Brussels premises of an individual practice.

Further coherence in the attitudes born from experimentation, and the multitude of paths evoked to integrate the problems relating to language, to the place (physical or virtual), etc. of mediation.

2. Common aspirations

The dynamic launched by the European notariat to support the establishment of cross-border notarial mediation has been reinforced and accelerated by the interest that the co-funded Mediation for Notaries – Notaries for Mediation project has aroused, mainly through and on the occasion of the workshops organised, among the various participating notariats, both organisers and guests. This invigorated interest is expressed by **aspirations** of which the most frequent concern sometimes the **logistical framework**, sometimes the **promotional framework**, sometimes the **formative framework**.

The establishment of contact and coordination point(s) and the provision of technical (technological) support call for the development of the logistical framework.

The concern to develop the prescription of mediation by non-mediator notaries, to have mediation clauses and to bring to the

ears of professionals and the general public all the work to develop a reliable cross-border notarial mediation service fall within the development of the promotional framework.

The most obvious aspiration of cross-border notary-mediators is to train and be recognised as a community of experts whose quality will depend on the communication tools that will support this network in its search for regular contacts (international cooperation is the fruit of a dynamic to be maintained) and training frameworks ensuring continuous training at European level orientated towards cross-border mediation and recognised by the authorities of their respective states. In this respect, it should be noted that the cost of participating in a project such as Mediation for Notaries – Notaries for Mediation» may have been an obstacle for some notariats and that for others co-funding by the European Union was an essential element for their participation. This dimension will have to be taken into account when setting up this network and the continuous training to be given to it.

The increase during the course of the project in the number of the national notariats that took part to varying degrees shows the knock-on effect that this Mediation for Notaries – Notaries for Mediation project has succeeded in generating.

Finally, both the project Drafting Committee and Steering Committee should be allowed here to express heartfelt **thanks** to those who have made this new development of cross-border notarial mediation possible: to the European Commission, which has welcomed the European notariat's concern to be involved in the development of cross-border mediation within the Union and for having financially supported this project; to all the European notariats; to the CNUE President and Directors, who have relayed and supported the impetus of the CNUE Mediation working group; to the national notariats of the five countries participating in the project and organisers of workshops (Spanish, French, Slovenian, Italian and Belgian notariats); to the notariats that became involved during the adventure by participating in the workshops, by occasionally joining the Steering Committee (Romanian, Polish, German, Croatian, Dutch, Greek and Macedonian notariats) or by answering our questionnaire (Austrian, Belgian, French, German, Greek, Hungarian, Latvian, Dutch, Polish, Romanian Slovenian and Spanish notariats); to the notaries and notarial mediation bodies that were involved in the preparation and holding of the workshops and the drafting of the documents requested; to all the notary-mediators who voluntarily participated in these experimental workshops for no fee; and to those who, in various capacities within the national notarial bodies or within the Council of the Notariats of the European Union, contributed to the implementation of the project.

Bibliography

Yves Behets-Wydemans, interview by Gilda Benjamin,

“De l’importance de la médiation notariale au niveau européen”, *Notarius Printemps-Été* 2018, Fednot, pp.60-66

Professeur Daniel Courbe,

“Pratiquer le changement : entre défi, désir et résistance...”, *THIERS La Revue de La Médiation Familiale*, n°18, Avril-Mai 2017, ISSN 2112-6984, pp.47-58

Fernando Rodriguez Prieto,

“El testamento motivado con el recurso a la mediación. Un poderoso instrumento para evitar y encauzar el conflicto sucesorio”, *El Notario del Siglo XXI*, n°79, Mayo-Junio 2018, Colegio Notarial de Madrid

Rodrigo Tena,

“La designación de la Fundación Notarial SIGNUM como contador-partidor” *El Notario del Siglo XXI*, n°74, Julio-Agosto 2017, Colegio Notarial de Madrid, pp.178-180

Juan Carlos Martínez Ortega,

“Actuación notarial en los acuerdos de mediación familiar”, *INTERNOS*, n°80, Segundo Trimestre 2017, FEAPEN (Asociación Estatal de Empleados de Notarías), pp.12-13

Directed by Cyril Nourissat, with contributions from Natalie Fricero, Yves Behets Wydemans, Isabelle Arseguet-Meunier, Damien Brac de la Perrière, Patrick Wautelet, Jacques Beghain, Thomas Clay and Christian Lefebvre,

“Médiation et arbitrage : enjeux pour la pratique notariale européenne”, *La semaine juridique – notariale et immobilière, Juris-Classeur Périodique (JCP)*, 23 décembre 2016, N° 51-52, ISSN 0242-5785, 1344-1353 (pp.23-58)

Antonio Capiello,

“Mediation: economics concepts and some examples of rational framework for legal professionals”, 2018

Antoine Petit and Caroline Giraud-Sterba,

“La médiation au service des missions du notaire”, *Médias et Médiation*

Revised European Code of Notarial Conduct,

revised version adopted by the CNUE General Assembly on 11 December 2009

Ernesto Quinto Bassi,

“La conciliazione clausole contrattuali”, *ADR NOTARIATO SRL and the National Council of the Italian Notariat*, 2007

Maria Luisa Cenni, Ernesto Fabiani, Mauro Leo,

“Manuale della mediazione civile e commerciale, Il contributo del Notariato alla luce del d.lgs. n. 28/2010”, *Edizioni Scientifiche Italiane*, 2012

Andreas Schmitz-Vornmoor,

Rechtlich unverbindliche Vertragsklauseln als Wegweiser im Konflikt, *ZKM* 2/2018, pp. 48-52

Andreas Schmitz-Vornmoor,

“Vertragsgestaltung im Kontext Mediation/ADR”, veröffentlicht in *Klowait/Gläßer*,

MediationsG

2. Auflage 2017, pp.100-143

Andreas Schmitz-Vornmoor,

Rechtlich unverbindliche Vertragsklauseln als Wegweiser im Konflikt, *ZKM* 02/2018, pp.48-52

Marco Krogh,

“La trascrizione dell’accordo conciliativo accertativo dell’usucapione”, dans *ETUDES CNN* n. 718/2013/C del 31-01-2014

Clarissa Fonda,

“La medizione delle controversie – analisi della disciplina e prime applicazioni pratiche”, Vol. I *CEDAM*, 2011, ISBN- 978-88-13-30777-6

CONSIGLIO NAZIONALE DEL NOTARIATO,

“Manuale della mediazione civile e commerciale”, *Il contributo del Notariato alla luce del d.lgs. n. 28/2010»* a cura di Maria Luisa Cenni, Ernesto Fabiani, Mauro Leo, *Edizioni Scientifiche Italiane*, 2012

CONSIGLIO NAZIONALE DEL NOTARIATO,

“La Conciliazione clausole contrattuali”, a cura di Ernesto Quinto Bassi, 2003

Accessible online:

- www.enr-rne.eu¹⁹
- www.coupleseurope.eu
- <http://the-vulnerable.eu/?lang=en>
- www.successions-europe.eu
- <https://mediation.notaires.fr/>
- <http://www.adrnotariato.org>
- www.notaries-directory.eu
- <http://www.notaries-of-europe.eu//index.php?pageID=15571>
- <http://www.notaries-of-europe.eu//index.php?pageID=4800>

¹⁹ The ENN is co-funded by the European Commission's Directorate General for Justice and Consumers (DG JUST) and coordinated by the Council of the Notariats of the European Union (CNUE) through this European Union Programme: JUST/2016/SPOB/OG/NETW

Annexes

DASHBOARD

In the event that the parties to a cross-border dispute wish to participate in mediation, once they are aware of the possibility of using mediation as a mechanism to resolve their conflict, several elements must be taken into account.

A. Contacts

1. The language(s) of communication chosen: the mediators (in their bilateral contacts; during the session; in the written documents); the parties and their advisers; other contributors (see below)
2. Location(s) of communication: videoconferencing; travel for all; etc., variable depending on the stages of the process and the specificities of each case
3. The remuneration of the contributors; the parties liable for payment.

These choices must meet legal or regulatory provisions (or even judicial in case of “judicial” mediation) applicable in one and/or the other country(ies) concerned. For example: the language of written documents subject to judicial homologation; does the place of mediation determine the applicable legal and ethical framework; existence of compulsory tariffs, etc.

B. Guarantees

1. The requirement to ensure jurisdiction *ratione materiae* in the legal orders concerned
2. The requirement to evaluate the degree of competence of the “foreign” mediator proposed by the other party: training; recognised title; experience, etc.
3. The requirement to ensure the application of the founding rules of mediation: independence and impartiality of the mediator; professional secrecy; ethical monitoring; the fate of documents and information obtained in the mediation, etc.
4. The requirement to control the consequences of the initiation of mediation on existing relationships: suspension of current procedures; possible prior suspension of the execution of contested decisions; suspension of interest claimed, etc.
5. The requirement to comply with formal requirements provided for (or not) by applicable law(s) and regulations: mediation protocol; notification of the court; minutes of meetings; mediation agreement, etc.
6. The requirement for the effectiveness of the agreements that can be obtained (see below)

These requirements reveal the importance of determining the national law applicable to the proposed mediation.

Consult all the project documents
at the following link:



C. The role of the people involved

1. Translators: if there are any, they will probably be professionals: what about one of the mediators...?
2. Lawyers
3. Notaries: those of each of the parties (in their respective countries and elsewhere); a notary appointed by the court; a notary consulted as an expert on his/her national law, etc.
4. Experts: real estate, financial, tax

D. The agreement sought

1. Who writes it? The mediators (together)? The lawyers? The Judge? A notary?
2. In what form? Private agreement (succinct or detailed arrangements)? In what form? Authentic (relating to the entire agreement or to one party with a view to ensuring the land registration of a property or the enforceability of an undertaking)? Multiple documents?
3. What form is required for access to certain registers (land or other)? (in each country concerned)
4. What is the probative force (in each country concerned)?
5. What is the expected enforceability (in each country concerned)?



COMPARATIVE FAQ TABLE

QUESTIONS	COUNTRIES	
	Austria	Belgium
1. What is the regulatory framework (law) for the practice of mediation in your country (please indicate the reference of the law)	Federal law on mediation in civil law matters (Bundesgesetz über Mediation in Zivilrechtssachen)	Law of 21 February 2005 (Judicial Code, Part VII)
2. Is there a specific dedicated regulatory framework for notarial mediation in your country?	Yes	Code of ethics for notarial mediation (Royal Decree 18/4/2017)
3. If the answer is yes to the above question (#2), is this regulatory framework applicable to all notarial mediations?	Yes	Yes
4. Shall notary be officially recognised / accredited as a mediator in your country to conduct a notarial mediation?	Yes	Yes
5. If the answer is yes to the above question (#4), what is the authority which recognises officially the notary-mediator in your country? (Please provide the name of such authority)	The Ministry of Justice, which maintains a list of registered mediators.	Federal Mediation Commission
6. Can a notary - coming from abroad and recognised as a notary-mediator in his/her country - ply in your country?	Yes, as a mediator	As 'non-accredited' mediator: yes (but neither benefit nor constraints of the legal framework of the Judicial Code (C.J.) Part VII except article 1734 § 1 al. 2 C.J.) / As 'accredited' mediator: no
7. If the answer is no to the above question (#6), what are the conditions for a mediator coming from abroad to ply as a notary-mediator in your country? (Please briefly describe the necessary conditions or state "not applicable")	X	Yes, possibility of approval by procedure at the Federal Mediation Commission
8. Is there a dedicated training in your country to be officially recognised / accredited as a notary-mediator?	Yes	Yes
9. Can a training for notarial mediation followed abroad be recognised as a permanent training in your country?	It depends. Training must conform to the standard of the Regulation "Verordnung des Bundesministers für Justiz über die Ausbildung zum eingetragenen Mediator (Zivilrechts-Mediations-Ausbildungsverordnung - ZivMediat-AV)" See the text: https://bit.ly/2MP9ZVg	In principle, yes; the Commission assesses each individual case
10. Does a code of ethics (Code de déontologie) apply to plying notarial mediation in your country?	Yes	Yes, Code of ethics for notarial mediation (A.R. 18/4/2017)
11. Do the following ethical principles apply in the frame of a notarial mediation in your country:	X	X
a. independence of the mediator	Yes	Yes (1726 §13° C.J.)
b. impartiality of the mediator	Yes	Yes (idem)
c. confidentiality	Yes	Yes (1728 §1 C.J.)
d. legality or ethics check / control	Yes	Yes (6 §3 Code of ethics; 1733/1736 C.j.)
e. consequences for supporting documents and information obtained during the mediation	Yes	X
f. professional secrecy	Yes	Yes (1728 §1 C.J.)
12. Are there specific rules or a regulatory framework about the fee of a notarial mediation?	No	Tariff and modalities to be agreed in the mediation protocol (1731 §2, 6° C.J.; 10 Code of Ethics)
13. Are there specific rules or a regulatory framework about the remuneration of the notary-mediator(s)?	No	Idem
14. Is the signing of a mediation protocol by the mediator(s) and the parties compulsory before the start of the notarial mediation process?	No	Yes (1731 C.J.; 6 §1 Code of ethics)
15. Domains in which the notarial mediation can take place:	X	Points a. - g.: see 1724 C.J.
a. patrimonial family law	Yes	Yes
b. matrimonial family law	Yes	Yes (if homologation is requested, the judge also checks the interest of minor children)

COUNTRIES				
France	Germany	Greece	Hungary	Italy
Order 2011-1540 of 16/11/2011	Mediationsgesetz vom 21.7.2012 (BGBl. I S. 1577)	Law 4512/	Act LV of 2002 on the practice of mediation;	Legislative Decree n. 28 of 4 March 2010 amended by Decree-Law n. 69 of June 21 of 2013. The decrees of the Ministry of Justice n. 180 of the 18 of October of 2010 and n. 145 of 6 July 2011 govern the mediation bodies and their functioning as well as the costs of a mediation procedure
No	No	No	No	No
X	X	X	X	X
Yes	No	Yes	Yes	Yes
Committee of the conseil supérieur	X	Minister of Justice	Ministry of Justice	Ministry of Justice
No	Yes	Yes	Yes	No if it is a mediation provided for by Legislative Decree no. 28/2010; Yes, if it is an optional mediation provided for by the Mediation Center Rules
Not applicable in notarial context	X	X	X	A 58-hour training course and a notarial mediation practice must be followed in Italy, except that the Mediation Body's Rules provide for other possibilities, especially with regard to voluntary mediation.
Yes	No	Yes	Yes	Yes
It depends	It depends	Yes	Yes	It depends
Specific: no	No	Yes	Yes	No, the notary-mediator must follow the guidelines established by the National Council of Notaries even if he must in any case follow the European code of ethics established for the mediator.
X	X	Yes	Yes	X
Yes	Yes	Yes	Yes	Yes
Yes	Yes	Yes	Yes	Yes
Yes	Yes	Yes	Yes	Yes
Yes	Yes	Yes	Yes	Yes
Yes	Yes	Yes	Yes	Yes
Yes	Yes	Yes	Yes	Yes
It depends	Yes	Yes	No	Yes
It depends	No	Yes	No	Yes
Yes	No	Yes	Yes	Yes
X	X	X	X	Almost all areas that concern the rights available, except criminal mediation, and mediation in labor law that have special rules. Family mediation also has specific regulations in Italy
Yes	Yes	Yes	No	Yes
No	Yes	Yes	No	It depends

QUESTIONS	COUNTRIES	
	Austria	Belgium
c. successions	Yes	Yes
d. company law	Yes	Yes
e. property law	Yes	Yes
f. trade law	Yes	Yes
g. social law	Yes	Yes
16. Is notarial mediation compulsory for some domains?	No	No
17. If the answer is yes to the above question (#16), could you please indicate for which domain? (Please provide the domains' names or state "not applicable")	X	Not applicable
18. Is notarial mediation delegated by a judge a used procedure in your country?	No	Yes
19. Is notarial mediation led by notaries promoted in your country?	Yes	Yes (by the Federal Mediation Commission and by the Royal Federation of Belgian Notaries)
20. Are there incentives to resort to mediation with a notary in your country?	X	No (not explicit)
21. Can the mediator write the mediation agreement?	Yes	Yes
22. Can the notary-mediator write the act(s) subsequent to the mediation agreement?	Yes	Yes
23. Is there a disciplinary authority for the notary-mediator in your country?	Yes	Yes (Federal Mediation Commission 1727 § 6 C.J. and Provincial Notary Chambers, art. 12 Code of Ethics)
24. Must the notary-mediator take out an insurance for a professional mediation activity?	No, not specifically. Notaries are covered by their professional liability insurance, which also applies to mediation activities.	Mediation activity covered by the notary's professional civil insurance
25. Is the notary-mediator responsible for the archiving of the mediation agreement?	Yes	No
26. Are contractual mediation or arbitration clauses systematically used in the notarial acts of your country?	No	No
27. Are there legal minimum or maximum time limits for the notarial mediation period?	No	No (unless judicial mediation 1734 § 1 C.J.)
28. Must/Can the mediation agreement be validated by a Court?	No	It can be approved
29. Can a mediation agreement be validated by a notary?	Yes	It can be authenticated by notarial document
30. Are there legal provisions that prescribe the mandatory presence of a lawyer during a notarial mediation process?	No	No
31. Are there legal provisions that limit the possibility to have an expert intervening during a notarial mediation?	No	Possibility (even recommendation) of involvement of an expert: yes; it is subject to obligations of secrecy and confidentiality 1728 § 2 C.j.
32. Can a non-notarial mediation agreement give access to the land registry in your country?	It depends. The agreement must comply with the requirements of the land register according to the Grundbuchsgesetz.	The private agreement: no; the judgment of homologation of a private agreement: yes (but risk of non-validity of the real estate transfer); legal certainty leads to the generalised use of the notarial document, if transfer of real estate rights in rem
33. Can a foreign notarial mediation agreement give access to the land registry in your country?	It depends. The agreement must comply with the requirements of the land register according to the Grundbuchsgesetz.	If the agreement is in the form of a notarial deed and is in French, Dutch or German: yes (but risk of non-validity of the transfer and professional liability of the foreign notary for non-compliance with prior tax and administrative formalities); legal certainty leads to the generalised use of the Belgian notarial document
34. Is the notarial mediation agreement enforceable to register a mortgage in your country?	It depends. The agreement must comply with the requirements of the land register according to the Grundbuchsgesetz.	if Belgian notarial document: yes / if foreign notarial act: above under 33
35. In your country, is mediation carried out by notaries in individual practice or can it be carried out by individual notaries?	Yes	Yes, most common practice
36. Can mediation be carried out by regional/national mediation bodies or centres for notaries in your country?	No	Such centres exist, but not common practice

COUNTRIES				
France	Germany	Greece	Hungary	Italy
Yes	Yes	Yes	Yes	Yes
Yes	Yes	Yes	Yes	Yes
Yes	Yes	Yes	Yes	Yes
Yes	Yes	Yes	Yes	Yes
Yes	Yes	Yes	No	Yes
No	No	Yes	No	Yes
X	X	Family matters	X	co-ownership, rights in rem, shares, hereditary successions, «family pacts», rental, commodat (ready-to-use), rental of factories, compensation for damage that comes from the movement of vehicles and boats, medical liability and defamation with the press or with other half of advertising, insurance contracts, banking and financial contracts
Yes	it exists in the law but is used very rarely	No	Yes	Yes
Yes	No	No	Yes	Yes
Yes	Yes	No	Yes	Yes
Yes	Yes	Yes	Yes	Yes
It depends	Yes	No	No	Yes
Specific: no	Yes	Yes	Yes	Yes
No, already covered by professional civil liability insurance	included in professional insurance for notarial activity	No	No	Normally it is the body with which the mediator works who will sign an insurance contract for the mediator. Nothing prevents the mediator, especially if he works hard to sign a personal insurance contract
No	Yes, if notarized	No	No	No
Yes, in theory	No	No	It depends	Yes
No	No	Yes	Yes	Yes
It depends	No	Yes	Yes	It depends
Yes	It must be notarized, if the law makes this mandatory or if the law makes this mandatory or if the subject-matter of the contract requires notarial authentication.	No	Yes	Yes
No	No	Yes	No	Yes
No	No	No	No	No
No	No	No	No	No
No	It depends	No	No	In theory it is possible, but it is necessary that the agreement is also in Italian and that it observes the prescriptions imposed by the notary law Italian and the Italian civil code. In practice, we will do this by using what is called the «deed of deposit» signed by an Italian Notary who receives the foreign notary agreement.
Yes	It depends	No	No	Yes, but it must contain the prerequisites provided by the Italian Civil Code
It depends	Yes	Yes	Yes	Yes
Yes	Yes	No	No	Yes

QUESTIONS	COUNTRIES		
	Latvia	Netherlands	Poland
1. What is the regulatory framework (law) for the practice of mediation in your country (please indicate the reference of the law)	Mediation Law, https://bit.ly/2Dm9iU0	None; only in divorce cases the judge can refer to a mediator	<p>Civil and Family Law Articles 10, 981, 103, 1041, 1831-15, 187, 2021, 210, 2591, 436, 4452, 5702 of the Law of November 17th 1964 – Code of civil procedure Articles 123, 124, 125, 568 of the Law of April 23rd 1964 – Civil Code</p> <p>Labour Law Article 244 and the following of the Law of June 26th 1974 – Labour Code Articles from 10 to 14 of the Law of May 23rd 1991 on collective dispute resolution</p> <p>Criminal Law Articles 23a, 107, 178a, 335, 339, 387, 618, 619 of the Law of June 6th 1997 - Code of Penal Proceedings Articles 53, 56, 59, 6, 66, 69 of the Law of June 6th 1997 - Criminal Code Articles 3a, 32 of the Law of October 26th 1982 - Juvenile Matters Proceedings</p> <p>Administrative Law Articles 13, 35, 83, 96a and the following of the Law of June 14th 1960 – Code of Administrative Procedure</p>
2. Is there a specific dedicated regulatory framework for notarial mediation in your country?	No	No	No
3. If the answer is yes to the above question (#2), is this regulatory framework applicable to all notarial mediations?	X	X	X
4. Shall notary be officially recognised / accredited as a mediator in your country to conduct a notarial mediation?	Yes	No	Yes, but on general principles for mediators
5. If the answer is yes to the above question (#4), what is the authority which recognises officially the notary-mediator in your country? (Please provide the name of such authority)	Council of Certified Mediators	X	President of the regional court (list of permanent mediators)
6. Can a notary - coming from abroad and recognised as a notary-mediator in his/her country - ply in your country?	Yes	Yes	It depends. In civil cases any person who has full legal capacity and fully enjoys public rights can be a mediator (with the exception of a retired judge). A separate category of mediators are permanent mediators - in addition has to fulfil additional conditions, as: no criminal record, at least 26 years old, knowledge of Polish language and having knowledge and skills in conducting mediation. To sum up – yes, but not a permanent mediator.
7. If the answer is no to the above question (#6), what are the conditions for a mediator coming from abroad to ply as a notary-mediator in your country? (Please briefly describe the necessary conditions or state "not applicable")	X	X	X
8. Is there a dedicated training in your country to be officially recognised /accredited as a notary-mediator?	Yes	There is no official framework for notaries-mediators, but to become a member of the notaries-mediators specialists the notary has to follow courses	No, only general ones for mediators
9. Can a training for notarial mediation followed abroad be recognised as a permanent training in your country?	Yes	Yes	Yes, any training, which expands skills in conducting mediation
10. Does a code of ethics (Code de déontologie) apply to plying notarial mediation in your country?	Yes	Yes	No. Conducting mediation by a notary is a separate occupation for which one must have the consent of the Council of the Notary Chamber (art. 19 of the act - the notary law)
11. Do the following ethical principles apply in the frame of a notarial mediation in your country:	X	X	Polish notarial mediators follow the Code of Ethics of Polish Mediators, based upon the Standards of Conduct for Mediators adopted by the ADR Board in June of 2006.
a. independence of the mediator	Yes	Yes	Yes

COUNTRIES		
Romania	Slovenia	Spain
Law 192/1006 on mediation and on the Organisation of the profession of mediator, published in the Official Gazette of Romania, Part I, No. 441 of 22 May 2006, with its subsequent amendments.	The Law on alternative dispute litigation (ZARSS)	Law 5/2012, July 6 ^a about Mediation
No. There are special regulations for mediators, who may also be notaries, lawyers, members of the professions or any person who has higher education, has three years of work experience, has graduated from a course for mediators and has been authorised as a mediator. Higher education/work experience need not be in a legal field. Interprofessional mediation between notaries is regulated by the Law no. 36/1995 on notaries and notarial activity and by the Regulations for the application of this law.	Yes	No
X	Yes	It depends
Yes	Yes	X
The Mediation Council	Ministry of Justice	Ministry of Justice
It depends	Yes	Yes
Citizens of the Member States of the European Union, the European Economic Area or the Swiss Confederation who hold a document of qualification in the profession of mediator obtained in one of these States may have access to the profession in Romania, after recognition of these documents by the Mediation Council, under the conditions laid down by law.	X	Yes
No. There is specialised training to become a mediator, which is also available to notaries.	Yes	Yes
For such training in the states mentioned in the answer to question 7, please see the above answer.	It depends	Yes
There is a Code of Ethics for Notaries and another Code of Ethics for Mediators.	Yes	It depends. It is voluntary
Please note that the answers below refer to mediation in general	X	X
Yes	Yes	Yes

QUESTIONS	COUNTRIES		
	Latvia	Netherlands	Poland
b. impartiality of the mediator	Yes	Yes	Yes
c. confidentiality	Yes	Yes	Yes
d. legality or ethics check / control	Yes	Yes	No. only on the basis of general liability for damage
e. consequences for supporting documents and information obtained during the mediation	Yes	Yes	Yes
f. professional secrecy	Yes	It depends	Yes
12. Are there specific rules or a regulatory framework about the fee of a Notarial mediation?	Yes	No	On general rules for mediation
13. Are there specific rules or a regulatory framework about the remuneration of the Notary-mediator(s)?	Yes	No	On general rules for mediation
14. Is the signing of a mediation protocol by the mediator(s) and the parties compulsory before the start of the Notarial mediation process?	Yes	Yes, though Not regulated by law	No
15. Domains in which the Notarial mediation can take place:	X	X	X
a. patrimonial family law	Yes	Yes	Unspecified
b. matrimonial family law	Yes	Yes	Unspecified
c. successions	Yes	Yes	Yes
d. company law	Yes	Yes	Yes
e. property law	Yes	Yes	Yes
f. trade law	Yes	Yes	Yes
g. social law	Yes	Yes	unspecified
16. Is Notarial mediation compulsory for some domains?	No	No	No
17. If the answer is Yes to the above question (#16), could you please indicate for which domain? (Please provide the domains' names or state "Not applicable")	X	X	X
18. Is Notarial mediation delegated by a judge a used procedure in your country?	Yes	In certain divorce cases	Yes
19. Is Notarial mediation led by Notaries promoted in your country?	No	Yes	Yes, by members of Notarial mediation centres
20. Are there incentives to resort to mediation with a Notary in your country?	No	Yes	If a settlement is reached before the trial begins, the party will receive a refund 100% of the court fee. On later stage of court proceedings (after a start of a hearing by the court), the party will receive a refund of 75% of the court fee

COUNTRIES		
Romania	Slovenia	Spain
Yes	Yes	Yes
Yes	Yes	Yes
It depends. Law 192/2006: If the dispute submitted to mediation presents problems of a legal nature or any other specialised, difficult or controversial field, the mediator may, with the agreement of the parties, seek the opinion of a specialist in the field. Code of Ethics: The mediator will not offer legal or specialised advice to the parties, but may advise the parties to seek independent or specialised legal advice.	Yes	Yes
	Yes	Yes
Yes	Yes	Yes
Yes	Yes	Yes
No	Yes	No
No	No	No
Yes	Yes	Yes
Please note that there are no special provisions for Notarial mediation. The answers below refer to mediation in general.	Yes	X
	Yes	Yes
Yes	Yes	Yes
Yes	Yes	Yes
Yes	Yes	Yes
Yes	Yes	Yes
Yes	Yes	Yes
Yes	Yes	Yes
X	Yes	It depends
No	No	No
X	X	X
The judge may recommend to the parties that mediation be used. The mediator could be a Notary, or any other person who has higher education in any field and who has been authorised as mediator.	Yes	It depends
	Yes	No
No	Yes	No
No	No	No

QUESTIONS	COUNTRIES		
	Latvia	Netherlands	Poland
21. Can the mediator write the mediation agreement?	Yes	Yes	No, the settlement is worked out by the parties
22. Can the notary-mediator write the act(s) subsequent to the mediation agreement?	Yes	Yes	Yes
23. Is there a disciplinary authority for the notary-mediator in your country?	Yes	Yes, the notarial disciplinary court	No
24. Must the notary-mediator take out an insurance for a professional mediation activity?	Yes	Yes	No
25. Is the notary-mediator responsible for the archiving of the mediation agreement?	Yes	Yes	No
26. Are contractual mediation or arbitration clauses systematically used in the notarial acts of your country?	It depends on the expressions of intent of participants (Clients)	No	No
27. Are there legal minimum or maximum time limits for the notarial mediation period?	No	No	No, although mediation proceedings, which took place under the court's decision should not last longer than three months. At the mutual request of the parties or for other important reasons this period may be extended if it facilitates the settlement of the matter
28. Must/Can the mediation agreement be validated by a Court?	No	It depends	X
29. Can a mediation agreement be validated by a notary?	Yes	It depends	X
30. Are there legal provisions that prescribe the mandatory presence of a lawyer during a notarial mediation process?	No	No	No
31. Are there legal provisions that limit the possibility to have an expert intervening during a notarial mediation?	No	No	No
32. Can a non-notarial mediation agreement give access to the land registry in your country?	Yes	X	Land registers in Poland are public, everyone has access (unless the question was whether or not you can transfer ownership of the real estate on the basis of a settlement in the mediation – then no, only by notarial deed)
33. Can a foreign notarial mediation agreement give access to the land registry in your country?	Yes	X	As above
34. Is the notarial mediation agreement enforceable to register a mortgage in your country?	It depends on the expressions of intent of participants (Clients)	It depends	No, the form of a notarial deed or documents based on banking law is required
35. In your country, is mediation carried out by notaries in individual practice or can it be carried out by individual notaries?	Yes	Yes	Yes
36. Can mediation be carried out by regional/national mediation bodies or centres for notaries in your country?	No	No	Yes

COUNTRIES		
Romania	Slovenia	Spain
Yes, all mediators can draft the mediation agreement.	Yes	Yes
It depends	Yes	Yes
There is no special authority for mediating notaries, but there are disciplinary authorities for each profession.	Yes	No
Notaries are obliged to take out insurance for their professional activity as notaries. They can also take out insurance as mediator.	Yes	Yes
Yes	No	No
No	No	It depends
In principle and in view of the fact that mediation is not mandatory, no. It has consequences that refer to the obsolescence of civil action in a dispute that is already before a court and there are special rules for mediation in criminal matters.	No	No
Yes	No	It depends
The mediation agreements will be verified as to the fulfilment of the material and formal conditions, the notary being able to make the necessary modifications and additions, with the agreement of the parties. In order to authenticate a mediation agreement, the parties to the agreement are present personally or represented by a legal representative or by a conventional representative on the basis of an authenticated power of attorney, to sign before the notary and for the fulfilment of all material and legal conditions during the notarial authentication.	Yes	Yes
No	No	No
It depends	Yes	No
It depends	No	No
It depends	It depends - if contains all the necessary conditions required by Slovene law.	It depends
It depends	Yes	It depends
In Romania, mediation can be exercised by any notary who has been authorised as a mediator.	Yes	Yes
Disputes between notaries concerning the practice of the profession, professional relations, between partners or concerning cooperation between the various forms of practice of the profession shall, before any other judicial procedure, be submitted to mediation or, where appropriate, arbitration by the Board of Directors of the Territorial Chamber in the district in which the notary works. Disputes between notaries of different Chambers, between notaries and Chambers, between Chambers, notaries and the Union, as well as between Chambers and the National Union of Notaries are submitted, before any other judicial procedure, to mediation or arbitration by the Board of the Union.	Yes	Yes



Co-funded by the European Union

The content of this practical guide represents the views of its authors only and is under their exclusive responsibility. The European Commission accepts no responsibility for any use that may be made of the information contained in this guide.