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COMPREHENSIVE ANALYSES OF CURRENT CONTEXT, BARRIERS AND OPPORTUNITIES FOR DEVELOPING MEDIATION WITH RECOMMENDATIONS HOW TO PROMOTE AND IMPLEMENT MEDIATION IN UKRAINE

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Contracting Officer's Representative: Oleksandr Piskun, Democracy Project Management Specialist, Office of Democracy and Governance

Development Objective 1: More Participatory, Transparent and Accountable Government Processes

Author: Aleš Zalar, President of the European Centre for Dispute Resolution (ECDR)

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CHAPTER 1

INTRODUCTION AND OVERVIEW

This Report is aimed to present the following mediation issues:

1. Identification of the list of EU countries with best practices and most effective models of mediation;

2. Review of different models of implementation of mediation in selected EU countries as well as strengths and weaknesses of various approaches concerning mediation development;

3.Comprehensive analysis of current context, barriers and opportunities for developing mediation with recommendations how to promote and implement mediation in Ukraine.

The findings of facts and recommendations in this Report are based upon:

- Facts-finding mission, which was implemented according to the attached agenda in the period from 1st -5th April 2019;
- Previous reports on mediation development in Ukraine, submitted by the USAID New Justice Programe;
- Comparison of fact findings with model rules, guidelines, desk books, research papers and similar documents, related to design and implementation of court-related and out of court mediation;
- Best practice examples of mediation policy approaches from EU Member States;
- Bibliography as presented at the end of this report;
- Individual research, evaluation and opinion as regards necessity and feasibility of proposed improvements of mediation system.

For the purposes of this report:
Mediation means any proceedings by which the parties attempt to reach through a neutral third person (mediator) the amicable settlement of a dispute arising out of or in relation to contractual or other legal relationship.
Court-annexed mediation means mediation program or scheme, authorized and used within a court system, controlled by the court in which cases are referred to mediation only by the court.

Court-connected mediation means program or scheme, linked to the court system but not being part of it in which cases are either referred by the courts or from out of the court.
Judicial mediation means program or scheme within which only judges could act as mediators.

Court-related mediation means program or scheme which is either judicial, court-annexed or court-connected.
Accreditation means a process of formal and public recognition and verification that an individual, or organization or program meets defined criteria or professional standards.
Certification (also referred as recognition, licensing, credentialing, registration) means that accrediting body is responsible for the validation of an assessment process, for verifying the ongoing compliance with the criteria and standards set through monitoring and review, and for providing processes for the removal of accreditation, where criteria or standards are no longer met.

In this report I strongly advocate for the introduction of comprehensive mediation policy approaches as an important part of the rule of law reform in Ukraine as well as I call for radical change in the way how mediation stakeholders should educate and encourage disputants to consider mediation. Mediation policy recommendations are drafted on the assumption that a balanced relationship between mediation and litigation should be achieved by considering litigation as the last resort. Legal, political and cultural context of Ukraine requires a clear regulatory framework for mediation to be adopted as a pre-condition for faster mediation development. Mediaiton training market in Ukraine has mushroomed but this, in turn, contributed to increased gap between mediation supply and mediation demand. The latter is still rather symbolic. Thus, I suggest to integrate mediation in the court structure as a standard dispute resolution option for litigants.
I believe that so called justice model of mediation which views mediation as an extension of the service of courts, is more appropriate for the infancy stage of mediation development in Ukraine than the marketplace model.In marketplace model litigants pay (sometimes reduced) market fee rates. One of key challenges for Ukrainian state authorities will be to ensure appropriate funding for justice model of mediation since even the mediations are to be outsourced to external mediators (for example to mediation center at chamber of commerce), the justice system shall bear the costs of mediation.

Recommended policy approach should be tested first at selected courts as laboratories for judicial reforms. These tests should take a form of pilot court-annexed mediation schemes.Based on performance evaluations of pilot court-annexed mediation schemes the next stage of mediation development should be planned, aimed at mandating all the civil and commercial courts of Ukraine to adopt and implement appropriate court-related mediation schemes.
Marketplace mediation development should be encouraged at the same time, In particular by chambers of commerce, that's why I recommend launching a special commercial mediation project at Kyiv Chamber of Commerce.
Both, justice and marketplace mediation developments would need strong support from international donors but I'm convinced that Ukraine has a great potential to make mediation a standard appetizer on the menu of dispute resolution options for disputants.

CHAPTER 2

MEDIATION MODELS AND THEIR FEATURES

This part of the Report highlights mediation models and their key features as being developed and implemented in five (5) selected European countries: Slovenia, United Kingdom, Italy, Germany and Finland.
After in-depth comparison of the mediation regulatory framework and practice in all EU Member States, it became clear that it is worth to present systems of those countries, which have a different legal tradition and which are in different stage of mediation development. The following criterion was considered:
to present policy approaches in civil and common law jurisdictions;
to compare approaches in old and young democracies;
to identify approaches in Central and in Eastern Europe;
to select countries with extensive and with limited regulatory approach;
to identify countries with judicial, court-annexed and court-connected as well as marketplace mediation models;
to point out differences in regulating mediation profession;
to identify best practice policy approaches as regards incentives and smart sanctions for mediation demand and refusal.

Comparative research revealed four different mediation policy approaches. Slovenia and Finland are representatives of courts-driven mediation development, UK represents marketplace driven mediation development, mediation movement in Italy was government-driven while in Germany it was a kind of combination of all three abovementioned approaches.
Each policy approach is addressed in a way that in section 1 briefly highlights history of mediation development, in section 2 the issue of mediation profession, in section 3 relevant issues of marketplace mediation, in section 4 relevant issues of court-related mediation and in section 5 key lessons learnt.

SLOVENIA

SECTION 1: MEDIATION DEVELOPMENT

Mediation initiative in Slovenia started back in the year 2001 as a bottom –up initiative since District Court in Ljubljana launched first pilot court-annexed mediation scheme. At that time there was no regulatory framework for mediation at all. Nevertheless, mediation scheme was considered as very successful in terms of voluntary take-up and number of mediated settlements and received in the year 2003 the special recognition from the Council of Europe (CoE) and European Commission as the most innovative court program and was recommended as a model court-annexed mediation scheme to other CoE Member States. Gradual development of court-annexed pilot mediation schemes by other Slovenian courts contributed significantly to awareness, trust and confidence to mediation by both, professional and general public. The justice model of mediation gradually evolved into a marketplace model with some institutional and many individual private mediation providers.
It is not a surprise therefore that Slovenia was the first EU member State which implemented the EU Directive on Certain Aspects of Mediation in Civil and Commercial Matters by adopting the Mediation in Civil and Commercial Matters Act (hereinafter the Mediation Act). The Mediation Act regulates basic issues of mediation process but not the mediation profession which is mainly self-regulated.

SECTION 2: MEDIATORS

Anyone can call himself/herself a mediator in Slovenia however it is an established practice that mediators do not start practicing mediation without previous training. The term mediator means any third person who is approached to conduct mediation, irrespective of his title or profession and irrespective of the manner in which he or she has been approached to conduct mediation and accepted the request. There is no public authority for and no public registry of accredited marketplace mediation providers and no formal legal accreditation requirements for private mediators. Nevertheless, some private institutional providers, such as European Centre for Dispute Resolution (ECDR), have adopted rules on accreditation and register of mediators.
Private mediators set their fee as they see fit in the free market.
On the other hand, mediators in court- related schemes must meet certain conditions and criteria to be accredited. They are subject to removal from Registry of mediators if they act in contravention of court-related mediation rules, Code of conduct or if they don't attend in-service mediation training courses as determined by the Ministry of Justice.
The Ministry of Justice, the ADR Council at the Ministry of Justice as independent advisory body and the courts have shared responsibility for accreditation of mediation providers in court-annexed and court-connected mediation schemes. For example, the president of each court accredits mediators in court-annexed mediation schemes while ADR Council is authorized to issue approval to private mediation providers to accrediting mediators in court-connected mediation schemes.
The Ministry of Justice is responsible for maintaining a central registry of accredited mediators in both, court-annexed and court-connected schemes. Accredited mediators in court-related mediation schemes are remunerated upon the Decree on Remuneration and Reimbursement of Expenses for Mediators (OG 22/2010).

SECTION 3: MARKETPLACE MEDIATION

A notable characteristic in Slovenia is that parties may vary or exclude the application of most of provisions of Mediation Act except the "ius cogens" provisions concerning mediator's duty to be impartial and provisions concerning the effect of mediation on prescription and limitation periods. This characteristic is based upon the general principle that mediation process is, in principle, voluntary and that the mediation process itself should be flexible and the parties should be permitted to regulate it as they deem appropriate. The default position remains that the procedural provisions of Mediation Act apply unless otherwise agreed by the parties. Thus, Mediation Act implemented also the policy approach as suggested in the UNCITRAL Model Law on International Commercial Conciliation.
The freedom of the parties to regulate the mediation process includes, for example, the freedom to agree and apply mediation rules contained in mediation clauses or mediation agreements. Most often such rules are adopted by institutional mediation providers and offered to disputants. Out of court mediation is in fact predominantly triggered through mediation clauses, inserted in civil or commercial contracts, before a dispute has arisen. Thus, it is of utmost importance that the Mediation Act provides that mediation clauses and agreements are legally binding and enforceable. A court should dismiss a lawsuit, upon the objection of the party, in case that the other party disregarded binding mediation clause in the contract.
Family disputes are normally referred to mediation upon mediation agreement after a dispute has arisen. The codes of conduct of various mediation providers serve as a guide on how mediation should be conducted. Unless otherwise agreed by the parties a mediator conducts a process as he/she deems appropriate, taking into account the circumstances of the case, the wishes of the parties and the need for a quick and lasting solution.

SECTION 4: COURT-RELATED MEDIATION

Court-related mediation is regulated by a separate law, namely the Alternative Dispute Resolution Act (hereinafter ADR Act), adopted in the year 2009. Slovenia is the only European country which adopted the law which mandates courts to design and implement court-related mediation schemes. The ADR Act in article 5 par.1 provides: " A court may adopt and implement ADR programs as an activity, directly organized at court (court-annexed programs) or upon a contract with ADR provider (court-connected programs)." All courts in Slovenia decided to adopt court-annexed mediation scheme therefore court-connected ones have not yet be tested at all.

According to article 6 of the ADR Act each first instance and appellate court shall have adopted a mediation program, in which detailed principles, rules and forms of proceedings are set out.

The law considers all disputes arising from civil, commercial, family, workplace, consumer and other disputes as prima facie suitable for mediation.

The ADR Act provides that a court shall offer mediation in every case unless a judge considers that in a particular case this would not be appropriate. Thus, court-related mediation in Slovenia is considered as presumed.

Court-related mediation could be triggered in three different ways:

- the parties may request the court to order a stay of litigation because they wish to attempt mediation with a private mediation provider;
- a court may invite the parties to provide their consent to referring a dispute to either court-annexed or court-connected mediation scheme;
- or the case is referred to mediation by the court against the will of litigants, after all the parties have attended mediation information session. Litigants may opt out from mediation but they bear a risk of being penalized by the court upon request of the other party by litigation cost sanction if the court considers refusal to mediate as unreasonable. When deciding whether objection to the referral to mediation was clearly unreasonable, the circumstances of each case should be taken into account, especially the following:
  - the nature of the dispute;
  - the decisive factors in the dispute;
  - whether or not the parties attempted to settle a dispute through negotiations or other friendly manner;
  - the costs that would arise from mediation;
  - the possibility that suspension of litigation would affect the result of a trial;
  - the probability of a successful settlement through mediation.

The law doesn't require litigants and their lawyers to consider mediation as pre-litigation step but does impose a duty on them to consider mediation after case filling.

SECTION 5: KEY LESSONS LEARNT

Mediation is widely recognized and practiced in Slovenia. Due to free of charge court-related family mediation schemes and low-cost court-related mediation schemes in civil and commercial disputes, disputants prefer to participate in court-annexed mediation schemes. It could be stated that marketplace mediation was a victim of success of court-related mediation. In a period from 2009-2011 more than 5000 court cases per year were settled in court-related mediation however in recent years mediation take-up is declining because courts significantly reduced judicial backlogs and waiting time for a trial which was a strong incentive for mediation demand. Private mediations were and still are rare with the exception of family mediation.

Balanced relationship between litigation and mediation was aimed through key incentive, provided by the ADR Act that every first and second instance court must launch a mediation scheme and that parties to

the dispute must be invited to mediation unless a judge decides otherwise. Automatic invitation to mediation, issued by courts, occurs in an earliest stage of litigation, namely after case filling and before the defendant answers to the plaintiff's legal action. Another important fact which contributed to mediation development is that sitting and retired judges as well as practicing lawyers are welcomed to serve in capacity of mediators in court-related schemes if they successfully complete 40 hours training course for mediators. Sitting judges serve on a pro-bono basis unless they perform mediations out of the work time of the court while other court-accredited mediators get paid from the budgets of courts.

ENGLAND AND WALES

SECTION 1: MEDIATION DEVELOPMENT

In England and Wales interest in mediation for civil and family disputes has increased steadily since the early 1990's. Major reforms in English civil procedure took place in 1999 following the publication of Lord Woolf s Access to Justice Report in 1996. This report was watershed in the development of mediation for non-family civil disputes. It was not proposed that ADR should be compulsory either as an alternative or as a preliminary to litigation, but Lord Woolf felt that the courts should play an important part in providing information about the availability of ADR and encouraging its use in appropriate cases.[1]
This encouragement is underpinned by the court's power to "punish" unreasonable behavior in litigation by denying parties their legal costs or other financial penalties:
"The court will encourage the use of ADR at case management conferences and pre-trial reviews and will take into account whether the parties have unreasonably refused to try ADR or behaved unreasonably in the course of ADR".
Under new civil procedure rules, implemented in April 1999, the courts have substantial case management powers, including the power to order parties to attempt mediation or another form of ADR and to interrupt ("stay") proceedings for this to occur. Judicial case management includes encouraging the parties to use an alternative dispute resolution procedure if court considers that appropriate and facilitating the use of such procedure. Failure to cooperate with a judge's suggestion regarding ADR can result in cost penalties being imposed on the recalcitrant party.[2] "The court will encourage the use of ADR at case management conferences and pre-trial reviews and will take into account whether the parties have unreasonably refused to try ADR or behaved unreasonably in the course of ADR".

The emphases on ADR in court rules has been strengthened by the publication of 6 pre-action protocols, each of which encourage attempts at settlements, including consideration of ADR, before beginning court proceedings. The further update of the civil procedure rules includes the requirement that parties to any dispute should follow a reasonable pre-action procedure intended to avoid litigation, before making any application to court. This should include negotiations with a view to settling the claim and cost penalties can be applied to those who do not comply.[3]
In 2011 MoJ released a consultation on reforming civil justice in England and Wales (Solving disputes in the County Courts: creating a simpler, quicker and more proportionate system). The consultation was about bringing mediation before any litigation and had three proposals. Of those only the second was adopted – to require cases below the small claims limit (currently £5,000 but about to be increased,

[1] The Hon. Lord Woolf, Interim report to the Lord Chancellor on the Civil Justice System in England and Wales, June 1995, Lord Chancellor's department, Chapter 18, Para. 4, p. 136.
[2] Factors to be taken into account when deciding cost issues include »the efforts made, if any before and during the proceedings in order to try and resolve the disputes« (Parts 1 and 44 Civil Procedure Rules).
[3] Hazel Genn: Contemporary experience of mediation in England and Wales; European Commission for the Efficiency of Justice: Mediation, CEPEJ (2003)25 (d1), Strasbourg, 3rd October 2003.

initially to £10,000) to be referred automatically to mediation. The government suggested that mediation will 'for the first time...be seen as part of the actual court process'.
Relevant laws are therefore Civil Procedure Rules with amendments from 2011.
The EU Mediation Directive was implemented differently into legislation of England and Wales, Scotland and Northern Ireland, but only concerning cross-border disputes.

SECTION 2: MEDIATORS

There are neither single accreditation provision governing mediators nor requirement for a mediator to be legally qualified. The mediation profession tends to be heavily populated by solicitors and barristers. There is also no requirement for a mediator to be a member of a panel accredited by the Civil Mediation Council which provides a registration for mediation institutional providers which is considered to be a mark of quality assurance. As of 11th January 2012, to gain registration, a mediation institutional provider must:

have a panel of at least six trained civil or commercial mediators;
require successful completion by its mediators of an assessed training course. Precise training requirements include performance assessment and minimum 40 hours of training, including role play;
ensure that if a mediator is not professionally qualified in a discipline that includes law, he demonstrates a grasp of basic contract law before undertaking civil or commercial mediation;
standards of accreditation of the mediation organizations are therefore considered around the following criteria;
adequate mediator training;
code of conduct;
complaints handling and feedback;
supervision and mentoring;
insurance;
efficient administration;
allocation of mediators

Any person may call themselves a mediator and may practice regardless of any training or accreditation. Mediation market operates substantially by reputation and experience rather than on the basis of formal accreditation. Accreditation status does not impact on the rights and obligations of a mediator.

SECTION 3: MARKETPLACE MEDIATION

Ad hoc referrals to mediation by lawyers are the most common form of referral in England and Wales. Besides cost sanction for unreasonable refusal to mediate the most significant mediation trigger is positive experience of mediation among lawyers and parties. Failure of a solicitor (lawyer) to advise client on the relevance and application of mediation may give rise to a cause of action against the solicitor.
A mandatory element could come out of the contract between parties though. Commitment to mediate, a bare agreement to agree, to agree to negotiate, or to settle a dispute in good faith is generally unenforceable. However, UK has a common law system and an important case Cable + Wireless PLC v IBM UK Ltd to relay on. Court has recognized the agreement to engage in an ADR process as being breached by one of the parties for not doing so. In such cases, with clear and strong grounds, courts may stay or adjourn proceedings. Mediation contract clauses as commonplace source of referrals to mediation in commercial and other contracts, are binding provided they meet certain criteria:
a clear contractual obligation to participate in mediation;
a clearly defined methodology for appointing the mediator;

a clearly defined mediation process to be followed, including by importing standard rules of procedures of mediation institutional provider.
Mediation agreements are standard forms of regulating the relationship between the parties and the mediator. They are considered as private contracts, establishing the scope of the dispute, confidentiality, disclosure, privileges, duration of mediation, suspension of limitation period, date and venue of mediation, timetables for production of documents, fees, applicable code of conduct etc.

SECTION 4: COURT-RELATED MEDIATION

Court-related mediation in England and Wales started as bottom-up initiative. Several pilot mediation schemes operated within respective jurisdictions. Courts in England and Wales designed variety of court-related mediation models from completely voluntary (London 1996-1999), selective court direction (Commercial Court ADR orders Guildford scheme), voluntary program with background pressure (London 2001-2005, Birmingham), court referred model (Court of Appeal scheme, Exeter) to quasi compulsion court annexed mediation scheme (ARM London 2004-2005, Exeter);

Court-related mediation is currently being used in England and Wales for small claims disputes. This form of mediation is therefore available in a number of first instance courts and courts of appeal for business, family, civil, commercial and criminal justice and cross-border matters.
Small claims claimants are referred to a mediation service before they proceed with their court claim. [4]
However, this is not a form of mandatory mediation. This only means a mediator is contacted to find out if mediation is really suitable for the case. Judges should encourage parties to use ADR and to mediate. In addition, courts may provide short information handouts and mediation suitability questionnaires to the parties about the mediation process.
The encouragement of litigants to mediate is underpinned by the court's power to "punish" unreasonable behavior in litigation by denying parties their legal costs or other financial penalties:
"The court will encourage the use of ADR at case management conferences and pre-trial reviews and will take into account whether the parties have unreasonably refused to try ADR or behaved unreasonably in the course of ADR".

SECTION 5: KEY LESSONS LEARNT

A notable feature of mediation in England and Wales is lack of detailed governing regulation. Mediation began with practice not with legal and regulatory framework. It grew mainly out of business environment and not through the introduction of court reforms. It was essentially demand-led and not supply-led.
Private mediations, including pre-filling mediations are growing in England and Wales. In 2012 a study[5] showed that 8,000 commercial and civil cases are mediated annually, at a collective case value of £7.5 billion. More than 90% were settled on the day of mediation or shortly after. British litigations are expensive compared to other European countries'. Therefore, the saved amount is bigger (around £2 billion a year). In 2010 over 75% of all civil and commercial cases were settled before trial. If mediation would be used even more widely, Home Secretary, Kenneth Clark, said another 87,000 cases could potentially be resolved earlier. UK's practice is the best when comparing to the countries with high cost of going to court. To achieve time and cost savings no bigger than 19-24% success rate is needed[6].

[4] http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/493042/IPOL-JURI_ET(2014)493042_EN.pdf, p. 67
[5] Mediation Audit conducted by the Centre for Effective Dispute Resolution (CEDR), available on www.cedr.com
[6] 'The Cost of Non ADR-Surveying and Showing the actual costs of Intra-Community Commercial Litigation', the ADR Center, for the European Parliament's Committee on Legal Affairs to explore and quantify the impact that litigation has on the time and costs to the 26 Member States' judicial systems, PE 453.180.

CEDR's biannually audit survey (2016) estimated the number of commercial mediations in UK over a twelve-month period at approximately 10.000.
On the other side, courts are still not systematically referring parties to mediate because of misunderstanding the connection between party's right to access to the court under European Convention on Human Rights and compelling a party to mediate. Even if a court refers a party to mediation that does not mean party needs to make a settlement or even mediate. The process itself is still rather voluntary.

ITALY

SECTION1: MEDIATION DEVELOPMENT

In 2009 the Italian Parliament delegated to the government the power to regulate mediation in civil and commercial matters. The legislative decree 28/2010 introduced mandatory pre-filling mediation. The main goal of this decree was to decrease an enormous court backlogs. Another ministerial decree 180/2010 established a register of mediation organizations and list of certified mediation trainers.
The Constitutional Court of Italy in a judgement No. 272 from 6th December 2012 declared unconstitutionality of provision concerning mandatory mediation.
With the Law no. 98 from 9th August 2013 the mandatory mediation was reintroduced again however the policy approach differs from the previous one.
Mediation became procedural pre-condition for instituting certain civil and commercial cases at court in a way that parties must be assisted by a lawyer and that mediated settlement agreement became directly enforceable instrument. In addition, first mediation meeting of a preliminary and introductory nature is almost free of charge for the parties, since they have to pay only 48 EUR of administrative costs. The law also introduced a provision giving a judge a power to order rather than to invite parties to mediation.
Thus, mediation in Italy could be: mandatory, voluntary, required by contract or corporate laws and last but not least, ordered by a court.

SECTION 2: MEDIATORS

An individual can act as a mediator only if he/she is accredited by the Ministry of justice and is enrolled in the list of mediators of the accredited mediation organization. The law places the burden of verifying a mediator's qualifications on mediation organization. Among other requirements, a mediator must complete initial training course and assist an experienced mediator in at least 20 mediations in the first two years of accreditation. Upon approval of mediator's qualifications, a mediation organization forwards the application for accreditation to the State register. Application must be accompanied by the mediator's declaration of availability. Once accredited, a mediator is supervised by mediation organization.
Lawyers, enrolled in a Bar Registry, are considered as mediators by law. The accreditation requirements for lawyers therefore differ from those for non-lawyers. Lawyers are not required to undertake the full fifty hours training course to be accredited as mediators but a shorter, normally fifteen hours course. Similar difference in length of training applies for continuing professional development of mediators. Lawyers-mediators also assist and observe only two mediations before being accredited.
Non-lawyers mediators shall hold university diploma that requires no less than three years of study and shall pass final evaluation test (theoretical and practical), lasting a minimum of four hours, which follows initial training.
Mediation organizations must be accredited at the Ministry of Justice and be enrolled in the Register. Mediation organization is required to act professionally, efficient, independently, impartial and should ensure confidentiality in the provision of mediation services. The regulations of procedure of mediation organization shall provide for binding criteria concerning the appointment of mediators and assignment of cases. Every accredited organization is also required to hold an insurance policy covering not less than

500.000 EUR. An important feature of the Italian mediation system is that only mediation organization can appoint a mediator. The parties can't formally influence the appointment of a mediator although they are not prevented to express their preference.

SECTION 3: MARKETPLACE MEDIATION

Italian model provides some, rather unique incentives for disputants to consider mediation. Parties are granted tax credit equal to the fees paid to mediation organization up to a maximum of 500 EUR. If the mediation is unsuccessful, the tax credit is reduced by 50%.
In addition, no fee is payable to mediation organization in cases where no agreement is reached at the first mediation session. Where mediation is mandatory precondition for court proceeding, participation at that meeting by the requesting party is considered enough to comply with the legal requirement even if the other party doesn't show up or if both parties agreed not to continue with mediation.
Lawyers have a legal duty to inform and advise clients about mediation and have to certify to the court that they implemented this duty. A client must sign this document as well.
Private mediations in Italy grew significantly because of mandatory pre-trial mediations which are conducted by mediators, accredited at mediation organizations. The law specifies prima-facie disputes, which are eligible for mandatory mediation.
Mediation clauses and agreements to mediate are enforceable in courts. They could be incorporated in contracts, in by-laws or in the deed of incorporation of companies, associations etc.

SECTION 4: COURT-RELATED MEDIATION

Courts in Italy did not develop systematic bottom-up approach to mediation development. Only few modest attempts of pilot mediation schemes were reported. The most significant one was the mediation scheme at Court of Appeals in Milano which operated in close cooperation with Milan Chamber of Commerce.
No court-annexed mediation scheme was set up in Italy. Italian judiciary relies on court-connected mediation model where parties are referred to a private mediation provider. This might be the reason why Italian judges were rather reluctant to invite parties to attempt mediation. As reported in January 2012 Ministry of Justice statistics, only two percent of cases that were filed with mediation organizations, were referred to mediation by a judge.
The law authorizes each local Bar Association to set up a mediation organization in the premises of the local first instance courthouse. The registration procedure for such mediation organization is simplified. Only those cases which are mandatory referred to mediation upon the law or upon the order of a judge, may take place in the premises of the court.
Since Decree Law 63/2013 empowered the courts to order mediation this includes a party's duty to undertake effective mediation before going to trial or even on appeal. Failure to attend mediation without justification could be sanctioned by a judge who may order the defaulting party to pay the state treasury an extra sum equaling the court fees.
Another important feature of Italian mediation system is that a mediator may make a formal settlement proposal. Should the final judicial decision correspond entirely to mediators proposal, the judge shall refuse to award the portion of legal costs relating to the period, following the proposal to the successful party where this party refused mediator's proposal. In such a case a judge can also award fees and costs to the unsuccessful party and require the defaulting party to pay an amount, equal to court fees to the State treasury.

SECTION 5: KEY LESSONS LEARNT

The Italian experience with mediation is rather controversial. Mediation development was not market-driven or courts-driven but government-driven. First phase of mandatory pre-filling mediation which had to be performed under umbrella of private mediation institutional providers significantly contributed to both, mediation demand and supply side. More than 700 mediation organizations have been accredited and registered in Italy during this phase. Several ten thousand of mediations are performed per year. The development of legislation has been influenced by the economic crisis and by the need for the competitive and more efficient system of dispute resolution given the time needed for disposition of judicial cases. Italy is the leading country in Europe with mandatory pre- filling mediation in civil and commercial disputes. The way how Italy tried to balance incentives for voluntary mediation take-up and coercive measures is to certain extent unique (e.g. tax incentive for disputants).Nevertheless, some best policy approaches, developed in US, could be identified, for example, duty of lawyers to inform clients about mediation benefits and options, duty of lawyers and their clients to certify with the court about their performed consideration of mediation, or discretionary power of a judge to order referral to mediation against the will of one or both parties to a dispute. It seems that in given mandatory pre-filling regulatory context mediation became a viable option for disputants in Italy because of robust obligations, imposed on lawyers together with benefits for lawyers, such as introduction of "mediator by law" and mandatory representation of parties by lawyers at first mediation sessions.
The role of courts and judges in mediation development was and still is rather modest. Judges don't need to consider eligibility of cases for mediation since the law defined prima-facie eligibility of categories of civil and commercial disputes for mediation. Discretionary powers of judges to order mediation to litigants and suspend litigation process for three months are, on the other hand, used rarely. When they are used, mediations are conducted within court-connected mediation model. The only element of court-annexed model is that mediations take place within the premises of the court and thus providing litigants with their "day in court".

GERMANY

SECTION 1: MEDIATION DEVELOPMENT

Mediation development in Germany was and still is rather slow. There are many reasons why it is so, starting with strong trust and confidence of the society to the efficient and independent courts and judges, federal structure of the state, authority to provide funding by federal states (germ. Laender) lacking of clear and concise regulatory framework for mediation at the federal level until the year 2012 and also because of legal culture
Another important aspect was a strong tradition, supported by civil procedural code that judges shall hold settlement conferences with litigants and their lawyers in order to pursue an amicable solution of a dispute.
Germany was among the last EU Member States which transposed and implemented the EU Mediation Directive by passing the Mediation Act, entered into force on 26th July 2012. It regulates mediation not only in civil and commercial but also administrative disputes in both, domestic and cross-border cases. Mediation is defined in the Mediation Act as a voluntary process. The law neither requires disputants to attempt mediation before or after case filling or it authorizes judges to compel litigants to refer their disputes to mediation. No specific incentives, aimed at encouraging the disputants to opt for mediation like duty to consider mediation, mediation information session or low cost of mediation are defined by the law.

SECTION 2: MEDIATORS

Lawyers frequently act as mediators. Every lawyer may carry the title mediator if his/her training is accepted by the local Bar Association. Nevertheless, mediation profession is not reserved for lawyers. The Mediation Act doesn't distinguish between lawyers and other professionals, acting as mediators. Nevertheless, the law distinguishes between mediators and certified mediators. Certified mediator must complete a course of training whereby this training meets requirements of relevant statutory order. These requirements are set by the Statutory Order on Training and Further Education of Certified Mediators, adopted on 21 August 2016. Certified mediator must successfully complete 120 hours of initial training, conduct one mediation or co-mediation within a period of one year after that training which has to be reviewed by a supervisor-mediator, must pass forty hours of continuing training within four years and conduct four mediations or co-mediation within a period of two years.
Mediation certificate is awarded by a training institution. The only requirement stipulated for institutional trainers are having completed professional education or university degree and possessing a technical knowledge to teach. Trainers themselves do not have to be certified mediators themselves.
The main goal of distinction between mediators and certified mediators is to provide quality assurance to disputing parties. German approach to regulation of mediation profession is therefore a soft one and is driven by position, which is widely supported by the mediation community worldwide that the free market and not the state should decide who is a good mediator. An important testing tool for the disputants as regards mediator's qualifications and competences is therefore introduced term of certified mediator. According to the Mediation Act parties may ask a mediator to provide evidence of certification status and/or detailed explanations of mediator's experience and previous trainings.
The law does not specify any ground for revoking mediation certificate. There are also no sanctions to prevent unqualified mediators or mediators who have not completed their training, from offering mediation services.

SECTION 3: MARKETPLACE MEDIATION

Leading principle of voluntariness of mediation itself implies that mediation in Germany is practiced solely in private context. The parties of a dispute enjoy a broad contractual freedom in Germany therefore mediation could be triggered by a mediation clause in contract, drafted by the parties and their lawyers or by referring to model clauses as offered by institutional providers of mediation. The law doesn't prescribe any restrictions concerning the eligibility of disputes for mediation. Mediation agreements after a dispute has arisen are rare due to strong tradition and legal culture which trust to German courts much more than to other dispute resolution providers.

SECTION 4: COURT-RELATED MEDIATION

Before the Mediation Act was enacted there were several pilot court-based mediation schemes operating within respective jurisdictions of German provinces. These schemes were considered as judicial mediation models because sitting judges acted as mediators.
However, the Mediation Act in article 9 prescribed that all operating court-related mediation schemes shall not be extended past 1st August 2013. The Mediation Act placed mediation in the private sector. Nevertheless, the Civil Procedural Code established so-called conciliation judge. A pending court case may be referred to conciliation judge who is not a mediator and the process is not subject to the provisions of Mediation Act. This judge conducts a proceeding similar to conciliation, settlement conference or may draw the process from mediation. The conciliation judge proceeding is separate from the trial and is conducted by a judge who shall not decide in the subsequent trial when the parties don't reach a friendly settlement within conciliation proceedings. Conciliation judge may, unlike the mediator, assess legal arguments and make settlement proposals to disputants.

Last but not least, a judge may at his/her discretion issue a non-binding referral order to mediation which should be performed by out of court mediation provider. Occasionally such referrals occur when litigants provide their consent but in general, court-connected mediation is rather an exception than a rule.

SECTION 5: KEY LESSONS LEARNT

Mediation in Germany has not reached yet the phase of adulthood. However, mediation techniques and practices were deeply incorporated into court-based settlement and conciliation proceedings, conducted by judges. These proceedings are not considered as mediation since different laws and regulations apply. In fact, no specific incentives for disputants exist to refer their dispute to private mediation or to court-connected mediation. Instead, litigants are strongly encouraged to participate in judicial conciliation proceedings and judges regularly conduct these proceedings. That's why several hundreds of judges in Germany were trained also as mediators. The conciliation proceedings became even more popular since the law ensured that a judge-conciliator cannot adjudicate the same case when there is no settlement within conciliation.
The Mediation Act, although adopted rather late when comparing with other EU Member States, did not contribute much to demand for mediation in Germany despite clear definitions of key mediation issues concerning mediation process. Mediation profession is left to self-regulating regime except as concerns certified mediators but the main disadvantage of the regulatory framework of mediation in Germany remains little or no incentives (including smart sanctions) for disputants to consider mediation (a) before a dispute has arisen and (b) before a case is filled with the court after a dispute has arisen. That's why, marketplace mediation in Germany remains underdeveloped.

FINLAND

SECTION 1: MEDIATION DEVELOPMENT

Finland has a long tradition on mediation. Specific areas such as labor disputes and criminal matters have long been under the influence of solving disputes with the help of mediation. Court-annexed mediation was formally first introduced in 2006 with the Act on court-annexed mediation (1015/2005) and amended provisions in the CJP on Settlement Certification in court (amendment Act 664/2005). According to the Mediation Act, court-annexed mediation is a procedure voluntary to the parties and managed by the judge, aiming at a situation where parties themselves find a satisfactory resolution of their conflict.
Mediation itself, as a form of alternative procedure to reach settlements in civil proceedings, which proved to be beneficial since 1993, quickly needed a new legislative framework. The Act on Court Mediation enforced in 2011 and Act of Confirming settlements in Courts (394/2011) implemented the EU Mediation Directive into Finland's justice system and legislation.

SECTION 2: MEDIATORS

There is no general accreditation or recognition system of mediators in Finland. However, the Mediation Act prescribes general requirements for court mediators and out of court mediators. Court mediators could be solely judges of the court at which a case is pending. They must successfully complete initial mediation training course. As from 2014, co-mediation in child custody matters is practiced in a way that one co-mediator is not a judge but a family therapist or psychologist.
Private mediators could be lawyers or non-lawyers trained for mediation although the Mediation Act doesn't prescribe any training standards.

Mediation Act prescribes that all settlements in court-annexed mediation can be certified if the parties request the court to do so. Moreover, the Mediation Act[41] states that such settlements can gain enforceability only if the mediator undertook certain mediation training provided by MoJ. When the court confirms a settlement, the decision is then enforceable on the basis of the Finnish Enforcement Code (2007/705). Thus, indirectly, training certificate provides advantage for mediators who operate on a free market.

SECTION 3: MARKETPLACE MEDIATION

Under the Finnish law the parties do not have a statutory obligation to refer a dispute to mediation before case filling or after case filling at court The Mediation Act's provisions on out of court mediation are rather scarce. The process should be defined by mediation clauses in contracts and mediation agreements. In practice commercial agreements often contain best effort clauses to settle a future dispute but it is unlikely that such clauses would be considered as binding and enforceable to start with mediation. An interesting feature of private mediation in Finland is that mediation may be initiated unilaterally by one party to the dispute. Request must be filed at mediation institutional provider or court which than explores willingness of the other party to mediate.
The law doesn't provide any key principles of private mediation, unlike with those, laid down for court-related mediation. The only legal requirement is that mediation shall be conducted by a trained mediator.

SECTION 4: COURT –RELATED MEDIATION

Ensuring balance between mediation and litigation Finland offers two procedures to settle disputes in civil proceedings: the promotion of settlement in a civil procedure and court-annexed mediation. A judge is required to investigate the prospects of settling a civil case during its preparation. Judges may also propose settlement. Mediation can be suggested by courts on their own initiative if the proceedings are already pending. Otherwise parties can file application for mediation before or during legal proceedings. Parties do not have a duty to consider mediation prior to litigation. According to the Bar Association Code of Conduct clients counsel is however required to consider if the dispute can be resolved by the use of any ADR procedure, due to counsel's duty to facilitate the best possible solution. According to the Mediation Act the commencement of court-annexed mediation requires the consent of all parties. However, the courts decide on the commencement of mediation (if the matter is amenable to mediation).
Court-annexed mediation in Finland is a voluntary process under the management of the judge. Mediation cases become pending in court either by a request for mediation or by way of a specific mediation application. The request can also be made later during preparatory stage in court proceedings. However, the court is the one to decide if mediation is to be undertaken. Mediation can solve disputes in all types of civil cases, although it cannot be used in all situations. Mediation can be declined for example when the parties are not equal, because one of the parties is incapable of pursuing his/hers own interests in an appropriate manner. Court-annexed mediation is performed as both, evaluative and facilitative effort of a judge.

SECTION 5: KEY LESSONS LEARNT

One of the key incentives for mediation in Finland is that judges are performing mediations at courts and that disputants may refer their disputes to judicial mediation no matter whether the case is registered at court or not. This approach is unique in Europe and worldwide but obviously contributes to high mediation take-up. Mediation in Finland is considered as presumed not only because of established tradition and disputing culture but also because a party, who unreasonably refuses to mediate, can face serious cost sanctions at the end of a trial, subject to the court's discretion.

The parties bear their own costs arising from court-annexed mediation. A party cannot in proceedings concerning the matter of mediation, claim the opposing party for costs arisen from mediation. Nevertheless, mediation in Finland is not costly since judges-mediators perform mediation on a pro-bono basis and don't charge mediation fees.
In Finnish court-annexed mediation approximately 68% of cases end up with a settlement. Since 2011 court-annexed mediation has evolved rapidly. Voluntary nature of mediation proved to be efficient enough for the brilliant results in disputes of all civil and commercial matters. Cost efficiency has proven to be one of the most important benefits for parties and courts.
Mediation has become a broader process than just a judicial procedure. Even unconventional methods such as peer mediation in Finnish schools, workplace mediation and family mediations proved that mediation itself (not only as regulated by the Mediation Act) is an efficient problem-solving technique. To conclude, the case of Finnish court- annexed mediation should be considered as one of role models to all seeking knowledge about its benefits. Nevertheless, one should bear in mind that success story of judicial mediation in Finland was possible only in the context of highly independent, professional and well-reputed judiciary.

MEDIATION STATISTICS

This part of the Report highlights part of recent findings of the European Commission for the Efficiency of Justice (CEPEJ) concerning the impact of CEPEJ Guidelines on civil, family, penal and administrative mediation.
The main limits of this study have been:

1. the lack of verified statistics on mediations processes in most of the 47 Member States;
2. the non-uniformity of the meaning of "mediation processes" across the Member States;
3. the difficulties encountered by CEPEJ national correspondents to collect information in all four field mediations (civil, family, penal and administrative) that produced a not uniform quality of answers gathered (in some cases the correspondents gave detailed answers and comments in only one or two fields of mediation).

Despite all the limits mentioned, the CEPEJ- GT-MED believes that the analysis of the data, even though in most cases they are not based on verified statistics, and above all of the comments and recommendations can highly contribute to the accomplishment of the mandate of the CEPEJ.

CIVIL MEDIATION

The number of mediation processes administered in a State is the preeminent indicator of the impact of a variety of mediation tools, including the CEPEJ Civil Guidelines and Recommendation. Respondents were asked if official data was available in their state (Q6). States were almost split half and half on the availability of official data on the number of civil mediation processes administered and settled in 2016. As anticipated, there is a general lack of data on the number of mediation processes among the 47 Member States.

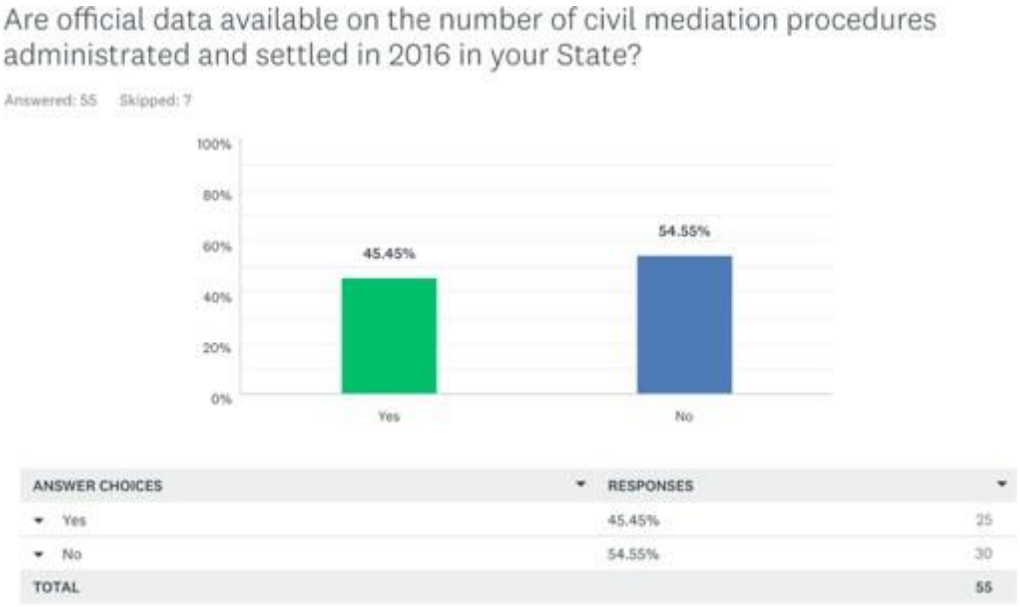

Figure 3: Answers of Question 6 of the questionnaire.

When official data were available, respondents were asked for the number of civil mediations administered in 2016 and the ones settled in 2016. If official data was not available, respondents were asked to provide an expert estimate.

The below table shows the numbers, the official data is in bold, while the other data are the estimates provided by the national correspondents. Whether the data came from an official source or it was estimated, the numbers were compared with the number of yearly incoming cases in First Instance Courts from CEPEJ report on the "Efficiency and quality of justice"[7] in order to have a rough indication of the impact of mediations in those jurisdictions.

Country	Nr. of civil mediations	Nr. mediation settled	Success Rate	Nr. of incoming civil cases (Q 91.2.2)	Balanced Relationship Index
Albania	**790**			15.944	4,95%
Armenia	6	5	83,3%	NA	
Bosnia and Herzegovina	**1.931**	**1.877**	97,2%	158.046	1,22%
Croatia	531	NA	-	165.741	0,32%
Denmark	718	312	43,5%	41.717	1,72%
Finland	**1.870**	**1.209**	64,7%	10.677	17,51%
Georgia	24	11	45,8%	34.309	0,07%
Greece	150	120	80,0%	241.418	0,06%
Hungary	**919**	**500**	54,4%	180.382	0,51%
Italy	**183.977**	**21.397**	42,2%[4]	1.585.740	11,60%
Latvia	**135**	**108**	80,0%	45.127	0,30%
Republic of Moldova	**149**	**93**	62,4%	74.562	0,20%
Montenegro	**287**	**NA**	-	27.383	1,05%
Norway	**2.037**	**1.301**	63,9%	19.382	10,51%
Poland	**6.638**	**437**	6,6%	1.226.470	0,54%
Romania	250	180	72,0%	1.526.483	0,02%
Serbia	**196**	**NA**	-	226.039	0,09%
Slovenia	**970**	**115**	11,9%	59.996	1,62%
Spain	**951**	**-**	-	1.004.976	0,09%
Macedonia	**137**	**26**	19,0%	55.232	0,25%
Turkey	**4.097**	**3.875**	94,6%	2.075.081	0,20%
Ukraine	600	400	66,7%	714.359	0,08%

Table 1: Answers of Question 7 and 8.

By dividing the number of mediations by the number of incoming cases, we obtain the "Balanced Relationship Index" between mediations and judicial procedures. This index has been used to measure the effectiveness of the success of a mediation model in a given jurisdiction[8]. From the data gathered from the national correspondents, only Italy, Finland and Norway have an index above 10%, while for the majority (85%) of the 21 States listed the index is much below 1%.

7 Question 91.2.2 1st inst courts Incoming cases_Civil (and commercial) litigious cases (including litigious enforcement.

It is worth noting that 15 States out of 21 reported less than 1.000 mediations per year, with the lowest reporting States being Armenia with 6 civil mediations administered in 20

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8 The average of 42,2% success rate is calculated over the number of mediations procedures where both parties participated to a second meeting as reported in the slide 13 of the presentation of the statistics on 2016 mediations elaborated by the Italian Minister of Justice.

Only Poland, Turkey, Norway, Bosnia and Herzegovina, Finland and Italy reported more than1.000 mediations. Italy reported having 183,977 civil mediations administered in 2016. This can be explained by the fact that legislation in Italy requires a first mediation meeting with an easy opt-out for a certain category of cases, resulting in a major increase in the number of mediations.

Even considering the limitation of the statistics validity due to the general lack of official data available on civil mediation in Europe, the CEPEJ-GT-MED believes that the data gathered and above all the comments received well describe the status-quo of the very limited recourse to civil mediation in the vast majority of the Member States.

FAMILY MEDIATION

The number of mediation processes administered in a State is an indicator of the impact of a variety of mediation tools, including the CEPEJ Family Mediation Guidelines and Recommendation. Respondents were asked if official data was available in their state and if so, to provide the number of mediation that were administrated and settled in their State in 2016. The majority of states do not have or do not make official data available on the number of family mediations. However, several respondents provided estimates if official data was not available.

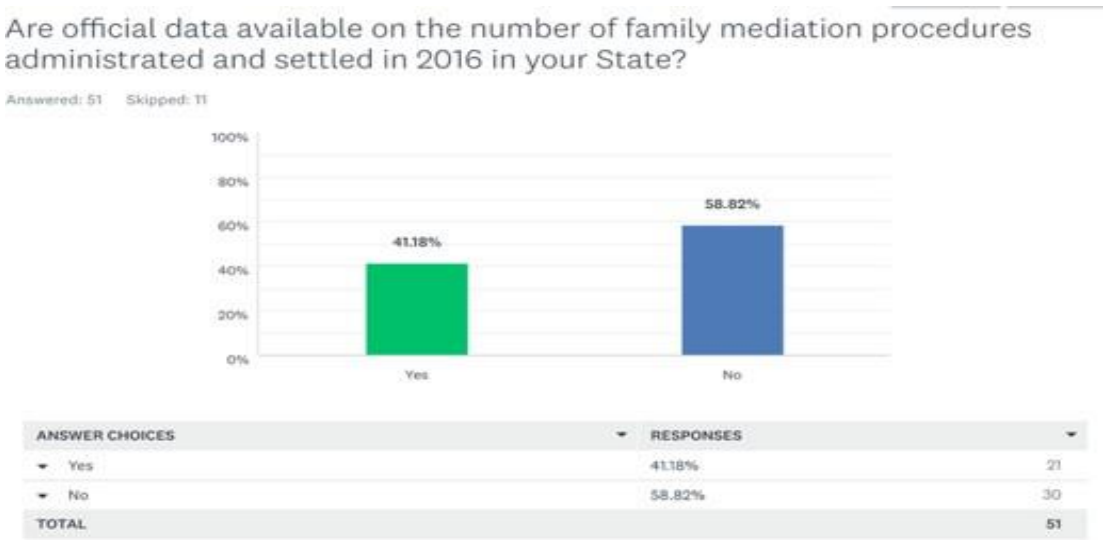

Figure 6: Answers of Question 13 of the questionnaire.

Of the States that reported the number of family mediations administered, either official or estimated, the lowest number of reported family mediations in 2016 was 33 family mediations administered in **Moldova** and 36 administered in **Turkey**. The highest incidences of mediations are from **Spain** with7.336 and **Poland** reporting over 4,000 administered family mediations in 2016, followed by **Hungary** with 2,500 family mediations, **Ireland** with over 2,000 family mediations administered in 2016 and **Finland**, **Norway**, and **Poland** with over 1,000. **Poland** indicated that the Family Mediation Guidelines/Recommendation had an important impact on it, and that it placed a high value on promoting family mediation which can be presumed to result in the high incidence of family mediations administered.

Country	Nr. of Family Mediations	Nr. Mediation Settled
Albania	527	527
Armenia	0	0
Bosnia and Herzegovina	0	0
Croatia	108	111
Denmark	510	208
Finland	807	720
Georgia	7	4
Greece	70	40
Hungary	2.500	1.500
Ireland	2.249	1.236
Latvia	135	108
Republic of Moldova	33	11
Montenegro	231	98
Norway	2.100	1.740
Poland	4.316	1.915
Slovenia	130	15
Spain	7.336	-
Sweden	100	50
Turkey	36	36
Ukraine	2.000	1.900

Table 2: Answers of Question 14 and 15 of the questionnaire.

Albania and Denmark reported over 500 family mediations administered in 2016. Croatia, Latvia, Montenegro, Romania, Slovenia, and Sweden all indicated around 100 family mediations administered in 2016. Armenia and Bosnia Herzegovina expressly indicated that no family mediation processes had been initiated as of yet.

Even considering the limitation of the statistics validity due to the general lack of official data available on family mediation in Europe, the CEPEJ-GT-MED believes that the data gathered and above all the comments received well describe the status-quo of the very limited recourse to family mediation in the vast majority of the Member States.

PENAL MEDIATION

The number of mediation processes administered in a State is an indicator of the impact of a variety of mediation tools, including the CEPEJ Penal Mediation Guidelines and Recommendation.

Respondents were asked if official data was available in their state and if so, to provide the number of mediation that were administrated and settled in their State in 2016. The majority of states do not have or do not provide official data on the number of penal mediations. However, several respondents provided estimates if official data was not available.

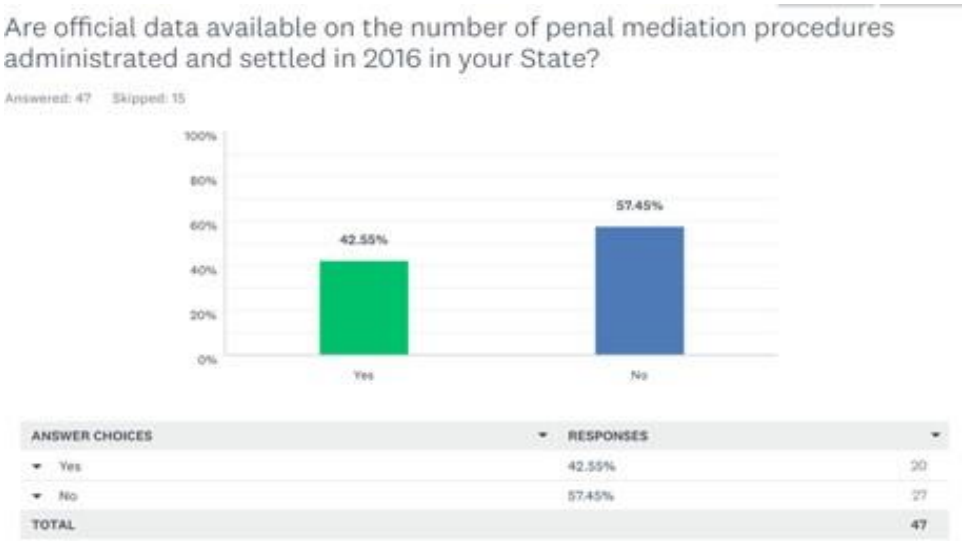

Figure 9: Answers of Question 20 of the questionnaire.

Of the States that reported the number of penal mediations administered, either official or estimated, the lowest number of reported penal mediations in 2016 is Moldova with 16 penal mediations administered and Montenegro with 41.

Country	Nr. of Penal Mediations	Nr. Mediation Settled
Albania	322	157
Armenia	0	0
Bosnia and Herzegovina	10	10
Czech Republic	982	NA
Georgia	720	287
Ireland	0	0
Latvia	1265	605
Republic of Moldova	16	11
Montenegro	41	39

Poland	4176	2338
Serbia	28	NA
Slovak Republic	1043	902
Slovenia	772	475
Sweden	500	0
Turkey	12261	7817
Ukraine	175	75

Table 3: Answers of Questions 21 and 22 of the questionnaire.

Turkey and Poland are outliers, not only do they both have mediation in penal matters, they both have large numbers of penal mediations. Turkey had over 12,000 penal mediations in 2016 and Poland had over 4,000 in 2016. Slovakia also indicated it had administered over 1,000 penal mediations.
Even considering the limitation of the statistics validity due to the general lack of official data available on penal mediation in Europe, the CEPEJ-GT-MED believes that the data gathered and above all the comments received well describe the status-quo of the very limited recourse to penal mediation in the vast majority of the Member States.

ADMINISTRATIVE MEDIATION

The number of mediation processes administered in a State is an indicator of the impact of a variety of mediation tools, including the CEPEJ Administrative Guidelines and Recommendation.

Respondents were asked if official data was available in their state and if so, to provide the number of mediations that were administrated and settled in their State in 2016. The majority of states do not have or do not provide official data on the number of administrative mediations. However, several respondents provided estimates if official data was not available.

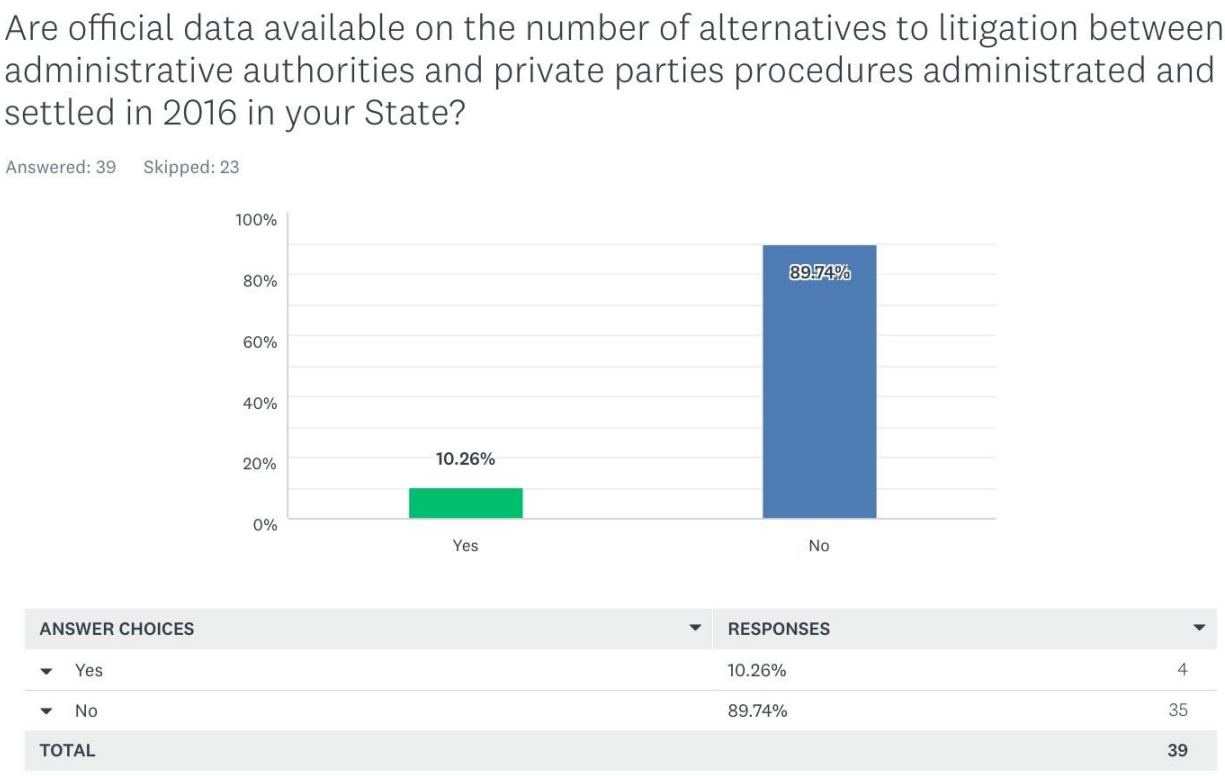

Figure 12: Answers of Question 27 of the questionnaire.

For the States that reported the number of administrative mediations administered, either official or estimated, Moldova with 6 and Poland with 8 administrative mediation processes administered in 2016 reported the lowest incidence of administrative mediation.

Country	Nr. of Administrative Mediations	Nr. Mediation Settled
Albania	861	670
Armenia	0	0
Bosnia and Herzegovina	15	15
Georgia	0	0
Ireland	0	0

Republic of Moldova	6	4
Montenegro	9175	4414
Poland	54	30
Serbia	1	NA
Sweden	0	0
Ukraine	240	200

Table 4: Answers of Questions 28 and 29 of the questionnaire.

Montenegro reported the highest incidence number of administrative mediations in 2016 with over 9,000 administrative mediation processes in 2016. Albania reported 861 administrative mediation processes in 2016 and Ukraine reported about 200 administrative mediation processes. The remainder of states do not have or do not provide data on the number of administrative mediations. Some States like Denmark noted that administrative mediations are included in the number of civil mediations and are not counted separately.

Another reliable source concerning mediation statistics in EU Member States is the EU 2018 Justice Scoreboard. Figure 35 (see: https://ec.europa.eu/info/sites/info/files/justice_ scoreboard_2018_en.pdf) shows data concerning promotion and incentives for using ADR methods in three categories of disputes: civil and commercial disputes, labor disputes and consumer disputes. Aggregated data is based on 13 different indicators: 1) website providing information on ADR, 2) publicity campaigns in media, 3) brochures to the general public, 4) court provides specific information sessions on ADR upon request, 5) ADR/mediation coordinator at courts, 6) publication of evaluations on the use of ADR, 7) publication of statistics on the use of ADR, 8) legal aid covers costs (in part or in full) incurred with ADR, 9) full or partial refund of court fees (including stamp duties), 11) if ADR is successful, no lawyer for ADR procedure required, 12) judge can act as mediator, and 13) agreement reached by the parties becomes enforceable in court.
These indicators could serve as guidance to the authorities of Ukraine as to which mediation incentives/measures are generally considered in Europe as effective. Recommendations how to implement mediation measures around three main indicators: availability, accessibility and awareness, are inserted in CEPEJ Mediation Development Toolkit, available at: https://rm.coe.int/mediation-development-toolkit-ensuring-implementation-of-the-cepej-gui/16808c3f52

CHAPTER 3

MEDIATION – BEST PRACTICE PRINCIPLES, STANDARDS AND MEASURES IN EUROPE

ELI/ENCJ Statement in Annex 2 provides the following checklist of issues to be taken into account when making mediation compulsory prerequisite to court-based dispute resolution process (mandatory pre-filling mediation).

Issues to be considered:

Which types of dispute are prima facie eligible for ADR, and if eligible, which type of ADR process is the most appropriate for the particular dispute?

Is ADR or a specific ADR process most suitable for one particular form of dispute or for multiple different forms of dispute e.g. small claims, family disputes, community disputes, workplace disputes?

The level of public awareness, trust and confidence in ADR, or in any specific form of ADR process?

The availability and accessibility of qualified ADR service providers?

Whether there is any available system of quality assurance e.g. registration, licensing, accreditation, monitoring and evaluation of ADR practice;

Whether the ADR process is free of charge or whether it is available at a modest or reduced charge at the pre-commencement stage?

The availability of legal aid?

Whether the parties' right to opt out of an ADR process is to be retained?

Whether to include a duty to participate in good faith in the ADR process?

The likely duration of the ADR process?

What kind of interactions, if any, between the pre-commencement ADR process and formal litigation are required and/or allowed?

Whether the parties are likely to participate in the ADR process, and whether any resolution made as a result of it will be capable of enforcement?

What kind of incentives or requirements may exist for disputants and/or their lawyers prior to the commencement of litigation?

The ethical duty of lawyers to inform and advise their clients about ADR or any specific form of ADR.

Any duty of disputants and their lawyers to consider ADR, and any specific form of ADR, and to certify that they have done so.

Any duty of disputants to participate in an ADR, or specific form of ADR, information session.
Any duty of disputants to participate in a specific form of ADR prior to commencing litigation.

ELI/ENCJ Statement in Annex 2 provides the following checklist of issues to be taken into account when considering **whether recommend or require parties to take part in mediation** following commencing of proceedings (voluntary/mandatory post-filling mediation).

Which kinds of ADR-related powers may be entrusted to Courts and Judges?

A duty or discretion to require parties to take part in a relevant form of ADR information session.
A duty or discretion to consider whether a claim is eligible for ADR, e.g. a screening process.
A duty or discretion for courts:
to design and incorporate their own ADR scheme or schemes within their formal court processes, e.g. court-annexed mediation, and if so, should such a scheme or schemes operate in first instance courts and/or in appeal courts;
either as an alternative to or in addition to court-annexed scheme or schemes, to refer disputes to a private ADR process i.e. a court-connected mediation provider; and
either as an alternative to or in addition to court-annexed or court-connected ADR schemes, to recommend parties to utilise a specific form of ADR process that is carried out by a private provider of the parties' choice.
A duty (automatic referral) or discretion (presumptive referral in all cases unless there is a reason not to refer in a specific case) to refer cases to a specific form of ADR.

What kind of legal requirements, incentives and smart sanctions may be available for disputants and their lawyers?

The ethical duty of lawyers to inform and advise their clients about ADR.
The duty of disputants and their lawyers to consider ADR or a specific form of ADR and certify to the court that they have done so.
The duty of lawyers to provide their clients and the court with an estimated comparison of the cost of any specific form of ADR and of litigation.

A duty of represented parties to participate by their lawyers at any telephone screening conference for any specific form of ADR.
A duty of disputants to participate at either an in-court or out-of-court information session for any specific form of ADR.
A duty of disputants to participate at a non-binding form of ADR post-commencement of litigation eg, a non-binding mediation.
A retained right to opt-out from any mandatory post-commencement ADR referral scheme.
A litigation cost sanction for any unreasonable refusal to consider participation, or to participate in good faith in any specific form of ADR.
Any increase in lawyers' fees arising from participation in a specific form of ADR.
The availability of legal aid for compulsory referral to a specific form of ADR.
The mandatory participation in any specific form of ADR as a condition for granted legal aid for litigation.
The full or partial reimbursement of court filing fees if parties have used any or any specified form of ADR to resolve their dispute and/or have resolved their dispute.
Any free of charge or low-cost court-annexed or court-connected ADR scheme.

European best practice in relation to the approach the courts and judges should adopt is, according to the ELI/ENCJ Statement, the following:
In encouraging ADR, Courts and Judges should have regard to the following principles:

(1) To the extent permissible under the law of the Member State, Courts and Judges should seek to integrate ADR processes into the justice system, treating them as complementary systems.

(2) Courts and Judges should make best efforts to extend an appropriate degree of institutional comity and respect towards ADR processes, entities and practitioners.

(3) Courts and Judges should be provided with training and continuing professional education in ADR, so that they understand those domestic and EU ADR processes currently available in their Member State.

(4) Courts and Judges should inform parties and legal professionals about the availability and potential merits of available ADR processes and give them the opportunity to consider using such process before and during litigation.

(5) Courts and Judges should consider whether to require the parties or their legal representatives to assess the relative costs and incentives of ADR and litigation, or should consider doing so themselves, so as to compare the benefits of each in light of the parties' wishes and interests.

(6) Courts and Judges should consider the parties' concerns about speed, cost, and the fair determination of their legal rights as well as non-financial considerations such as the provision of apologies and the preservation of business, familial and other relationships.

(7) When considering the appropriateness of ADR processes, Courts and Judges should have regard to the financial circumstances of the parties and their ability to access legal advice or funding.

(8) Courts and Judges referring parties to a particular ADR process or making an order for ADR should consider the appropriateness of the process to the dispute in the light of factors, including the nature of the dispute and the characteristics of the parties. Relevant factors concerning the nature of the dispute include: the subject matter, procedural history, and

the complexity of the dispute. Relevant factors concerning the characteristics of the parties include: the relationship between them, their interests and wishes, their ages and legal capacity, any history or fear of violence by a party, mental illness and intellectual disability, power and informational imbalance, and familiarity with the relevant Member State and its legal system and language.

(9) Courts and Judges should give reasons for any discretionary decision to make an order requiring ADR and explain the ADR process (and any opt-out options), what the parties should expect and prepare for, and how the ADR process relates to the litigation. Referral orders should, when appropriate, also address the principle of confidentiality and the duty of the parties to participate in ADR in good faith.

(10) Judges should consider, in the context of the engagement of an ADR process, whether a dispute is likely to raise a question of law that might more appropriately be determined by a court.

(11) To the extent permissible under the law of the Member State, Courts and Judges should have regard to parties' unreasonable refusal or failure to engage, in good faith, in ADR processes, if exercising a costs jurisdiction and a procedural discretion.

In encouraging or referring cases to ADR processes, Courts and Judges should have regard to the following principles regarding the standards of those ADR processes:

(12) Courts and Judges should, where appropriate, consider the general level of public confidence in the suitability and quality of ADR processes outside the court structure and their state of development in the relevant Member State.

(13) Courts and Judges should, where appropriate, consider whether there are fair and transparent processes available for the parties to choose an ADR provider when their case is referred to that process.

(14) Before referring a dispute to an ADR process within the court structure, ie to a court-annexed process, Courts and Judges should ensure that the following factors are satisfied: specific levels of training and experience for ADR neutrals who carry out such processes; the existence of written ethical principles covering the conduct of ADR neutrals; the specification of the cost of the ADR process; the identification of the method of and any limitations on the ADR process; and a specified mechanism for a complaints procedure in relation to the performance or ethical violation of an ADR neutral in respect such a process.

(15) Before referring a dispute to an ADR process outside the court structure (whether to a court-connected ADR process or to a private ADR process unconnected to the court), Courts and Judges should have regard to the quality and independence of that process and its suitability to the particular dispute and to the parties.

(16) Save as prescribed by the law of the Member State, Courts and Judges should ensure that the confidentiality of ADR processes is preserved, including in relation to the court in charge of the case.

In encouraging or referring cases to ADR processes, Courts and Judges should have regard to the following principles regarding the standards of those ADR processes:

(17) Courts and Judges should, where appropriate, consider the general level of public confidence in the suitability and quality of ADR processes outside the court structure and their state of development in the relevant Member State.

(18) Courts and Judges should, where appropriate, consider whether there are fair and transparent processes available for the parties to choose an ADR provider when their case is referred to that process.

(19) Before referring a dispute to an ADR process within the court structure, ie to a court-annexed process, Courts and Judges should ensure that the following factors are satisfied: specific levels of training and experience for ADR neutrals who carry out such processes; the existence of written ethical principles covering the conduct of ADR neutrals; the specification of the cost of the ADR process; the identification of the method of and any limitations on the ADR process; and a specified mechanism for a complaints procedure in relation to the performance or ethical violation of an ADR neutral in respect such a process.

(20) Before referring a dispute to an ADR process outside the court structure (whether to a court-connected ADR process or to a private ADR process unconnected to the court), Courts and Judges should have regard to the quality and independence of that process and its suitability to the particular dispute and to the parties.

(21) Save as prescribed by the law of the Member State, Courts and Judges should ensure that the confidentiality of ADR processes is preserved, including in relation to the court in charge of the case.

(22) Before referring a dispute to an ADR process within the court structure, ie to a court-annexed process, Courts and Judges should ensure that the following factors are satisfied: specific levels of training and experience for ADR neutrals who carry out such processes; the existence of written ethical principles covering the conduct of ADR neutrals; the specification of the cost of the ADR process; the identification of the method of and any limitations on the ADR process; and a specified mechanism for a complaints procedure in relation to the performance or ethical violation of an ADR neutral in respect such a process.

(23) Before referring a dispute to an ADR process within the court structure, ie to a court-annexed process, Courts and Judges should ensure that the following factors are satisfied: specific levels of training and experience for ADR neutrals who carry out such processes; the existence of written ethical principles covering the conduct of ADR neutrals; the specification of the cost of the ADR process; the identification of the method of and any limitations on the ADR process; and a specified mechanism for a complaints procedure in relation to the performance or ethical violation of an ADR neutral in respect such a process.

(24) Before referring a dispute to an ADR process outside the court structure (whether to a court-connected ADR process or to a private ADR process unconnected to the court), Courts and Judges should have regard to the quality and independence of that process and its suitability to the particular dispute and to the parties.

(25) Save as prescribed by the law of the Member State, Courts and Judges should ensure that the confidentiality of ADR processes is preserved, including in relation to the court in charge of the case.

(26) Courts and Judges should ensure that all contemplated ADR processes respect the rights of the parties under Article 6 of the European Convention on Human Rights and Article 47 of the EU Charter of Fundamental Rights.

In encouraging or referring cases to ADR processes, Courts and Judges should have regard to the following principles regarding the preservation of access to justice:

(27) Courts and Judges should, so far as possible, ensure that parties understand whether an ADR process is mandatory or voluntary, and that consent to a voluntary ADR process is fully informed and freely given.

(28) Courts and Judges should, so far as possible, ensure that parties understand the nature of the ADR process, its relation to the legal proceedings, and how their rights might be affected by their conduct in the ADR process.

(29) Courts and Judges should consider whether the need to preserve the parties' access to justice necessitates any ancillary court orders such as the interruption or suspension of an applicable limitation or prescription period and remind the parties, when applicable, that they might need to act to interrupt or suspend an applicable limitation or prescription period.

(30) Courts and Judges should inform the parties of any issues that may arise as to the national and/or international enforcement of the outcome of an ADR process.

The Checklist deservs some comments in light of Ukrainian mediation context. For example, mandatory pre-filling mediation might be premature and could have negative effect on mediation development because of lack of settlement tradition, low level of public and professional awareness about mediation benefits and because of insufficient pool of trained and experienced mediators.
Mediation quality assurances in terms of accreditation and registration of mediators may easily turn into over-regulated mediation profession instead of self-regulatory approach.
Another risk is when focus is solely or predominantly on creating mediation demand after case fillings at courts while marketplace mediation issues are neglected. Unless the mediation regulatory framework provides for enforceability of mediation clauses in (commercial) contracts before a dispute has arisen and enforceability of mediation agreements after a dispute has arisen, out of court mediation has little prospects for development. Impact of mediation on limitation and prescription periods, principles of disclosure and confidentiality, admissibility of evidence in court proceedings as well as issue of enforceability of mediated settlements are key regulatory issues to be covered by the applicable law should private mediation be on rise.
As concerns court-related mediation again, much depends on whether court-annexed, court-connected or judicial mediation model is applied.
For example, state budget restrictions have often negative impact on operation of court- annexed mediation schemes. Also, best mediators are not interested to serve in low fee or no fee court-annexed mediation schemes. Case management time limits don't allow lengthy mediations in complex disputes. In such schemes parties usually cannot select a mediator who is appointed by the court.
On the other side, as concerns mediation in court-connected mediation, when parties are referred to private mediation provider, they often can't afford mediation because they have to pay mediator's market fee. Litigation in court-connected mediation is more expensive when parties don't reach mediated settlement. Since litigants are sent away from the court to attempt mediation, judges are rather reluctant to issue referral order. Mediation quality control is weak in court- connected mediation

schemes while judicial referrals to private mediation providers may cause appearance of unethical judicial money channeling and perception of judicial corruption.
However, even judicial mediation, performed by sitting judges being trained as mediators, has some drawbacks. Judges as mediators are sometimes considered as bad listeners, hard to ignore the law, too evaluative and too coercive. Litigants often assume that there is inappropriate proximity of a judge-mediator to assigned judge. Shifting judicial duties from judge-mediator to other judges of the same court could sometimes cause internal tensions and problems because of increased judicial workload of judges non-mediators.
General concerns about mediation are also that mediation sometimes means denial of independent judicial determination and that parties settle their dispute without having access to legal advice and representation. Furthermore, mediation providers are time to time inadequately qualified therefore mediation is underused not only because of its's voluntary nature without incentives but also due to absence of mediation quality assurances.

CHAPTER 4

BARRIERS AND OPPORTUNITIES FOR DEVELOPMENT OF MEDIATION IN UKRAINE

MEDIATION POLICY: THE ROLE OF MINISTRY OF JUSTICE (MOJ)

The role of MoJ in mediation development should be significantly increased. Past attempt to draft the Law on Mediation was suprinsigly not initiated by the MoJ but by the Parliament. The representatives of MoJ only participated in the Working group of the Committee for judicial and legal policy of Verhovna Rada. which drafted the Law on Mediation. MoJ also actively participated in the process of amending the Law on Mediation.

As it was stressed already in my previous Report on Mediation in Ukraine (2015), the MoJ should be a key policy- maker concerning the regulatory framework for mediation from the outset of policy planning. Leaving judicial policy governance and ownership to the Parliament in the past could be assessed as one of contributing factors to non-adopted Law on Mediation.

Firm mediation policy in hands of the MoJ would require expert assistance therefore I could only repeat strong recommendation from my previous Report that the MoJ should create Alternative (Appropriate) Dispute Resolution or Mediation Council, composed of recognized domestic and international mediation/ADR experts. ADR/Mediation Council should serve as an advisory body to the MoJ.

One of the first tasks of the ADR/Mediation Council should be drafting the Strategy and Action Plan on mediation development. This should be a policy paper in which all key components of court-related and out of court mediation should be addressed, including but not limited to: regulatory framework, capacity issues, mediation quality assurances, communication matrix with awareness campaign,funding sources of mediation programs, mediation demand incentives, specifics of marketplace and justice mediation etc.The MoJ should present the Strategy and Action Plan as a guide for drafters of the law on mediation with clearly defined policy goals. These goals shoud be user-oriented, state-oriented and mixed. Leading policy goal should be making litigation the last resort and mediation as presumed.

Position of the MoJ that the law should (more) explicitly authorize judges to refer cases to mediaiton could be supported although general legal requirement in the CPC that judges must assist litigants to reach amicable setltements of their claims is to be considered as sufficient ground for mediation referals already today.Should such judicial referrals to mediation occur they should respect statutory timeframe for scheduling the first hearing as prescribed by the CPC.

Since not just referral authority and duty of judges to consider eligibility of dispute for mediation but in particular incentives for mediation demand by litigants and smart (cost) sanctions for unreasonable refusal to consider or attempt mediation before and after case filling need some legal basis, the MoJ should make another policy decision whether to regulate these procedural aspects in the Law on Mediation or in the respective procedural codes or in the separate Law on ADR/Mediation in judicial disputes. Again, ADR/Mediation Council could provide valuable advice and assistance on this issue.

Following key mediation policy directions the MoJ should appoint an expert Working Group with a task to prepare first draft Law on Mediation. It is strongly recommended that USAID as international donor through Nova Pravosuddya Justice Sector Reform ensures on going off site and if feasible, on-site expert support to the ADR/Mediation Council and to the Working Group. As the "founding father" of mediation in Slovenia and as the former minister of justice I'd gladly provide my advice if deemed appropriate

The Working Group should complete its task of drafting the law and performing public consultations until autumn 2019 and the MoJ could submit the draft law to the newly composed Parliament soon after parliamentary elections in 2019. This recommendation should be considered as of the highest priority.

A good opportunity for accelerated adoption of regulatory framework for mediation represents the intention of the MoJ to consider signing and ratifying the UN Convention on the Enformcement of

International Settlement Agreements (Singapore Convention). The fact that mediated settlement is not yet binding and enforceable in Ukraine is one of the key barriers for making mediation an attractive dispute resolution option.Thus, the MoJ should pay specific attention to this regulatory issue.
Another important aspect of mediation development which has not been explored yet by the MoJ is to integrate mediation in the procedures conducted by Free Legal Aid Centres which operate under MoJ. Not only that free legal aid system should include access of eligible applicants to free of charge mediation and free of charge representation of parties of mediation by lawyers but it could also establish mandatory "bona fide" (good faith) participation in mediation by the applicant for free legal aid before and/or after the case is filed at the court should the other party provide the consent for mediation. Council of Europe (CoE), European Network of Councils for Judiciaries (ENCJ), Consultative Council of Judges of Europe (CCJE), Commission of Europe for the Efficiency of Justice (CEPEJ), European Law Institute (ELI) strongly encourage Member States to consider granting free legal aid upon condition of participating in free of charge mediation. Not only that such an approach ensures increased access to justice for indegious disputants but it also ensures considerable financial savings of the state budget.

Recommendations:

1. The MoJ should internaly define and externaly (publicly) declare its role in mediation development as a key mediation policy gatekeeper.
2. MoJ should create Alternative (Appropriate) Dispute Resolution or Mediation Council, composed of recognized domestic and international mediation/ADR experts. ADR/Mediation Council should serve as an permanent advisory body to the MoJ.
3. ADR/Mediation Council should draft and MoJ should approve Strategy and Action Plan or Roadmap for mediation development which shall address development of both, pre- filling and post- filling court-related mediation as well as out of court mediation, aimed at defining goals (improved access to justice, decreased court backlogs, earlier and increased number of settlements, saved time and money of litigants, ensured higher compliance, provided most appropriate dispute resolution process for specific types of cases), performance areas (regulatory, self-regulatory, non-regulatory), target groups (judges, litigants, lawyers, businesses, general public, media, public sector bodies) measures/actions (including robust public awareness campaign), performance indicators, timing, SWOT analysis etc.
4. The MoJ should appoint an expert Working Group with a task to prepare first draft Law on Mediation based upon strategic directions from the Strategy/Action Plan/Roadmap.
5. As regards mediation issues which need to be regulated, drafters should follow recommendations from the Bill Marsh's Report on policy issues arising from draft mediation laws in Ukraine (2015) and from Aleš Zalar's Report on draft regulatory framework for mediation in Ukraine (2015).
6. Nova Pravosuddya Justice Sector Reform should provide on going off site and if feasible, on-site expert support to the ADR(Mediation Council and Working Group.
7. Draft Law on Mediation and related amandments of procedural codes should be submitted to the Parliament after general parliamentary elections in Ukraine in the autumn 2019.
8. The MoJ should initiate the proceeding of signing and ratifying the UN Convention on the Enformcement of International Settlement Agreements (Singapore Convention).
9. The MoJ should integrate mediation in the decision-making procedures conducted by Free Legal Aid Centres concerning applications for free legal aid.
10. The MoJ should consider implementation of other recommendations, addressed to MoJ in Chapter 6–ADR Poicy Recommendations of the Report on Draft Regulatory Framework for Mediation in Ukraine (2015), page160-162..

MEDIATION POLICY:THE ROLE OF THE PARLIAMENT

Due to political and professional dissent the Parliament of Ukraine did not adopt the law on mediation yet. It is unanimous position of all key mediation players (political, professional) in Ukraine that the law on mediaiton, providing for general mediation framework, needs to be adopted. Justified concerns were expressed during fact-finding mission as to the past intention to prohibit public state and even local officials and servants to act as mediators due to alleged prevention of corruption.This approach should be avoided in the future because it violates recognized European standard that mediator could be any person regardless his/her profession or denomination.

The law which would ensure general legal framework for voluntary mediation, is a preferred regulatory approach. Mandatory mediation would be in given circumstances considered as premature except as concerns possibility of introducing conditional legal aid where eligible applicant would be compelled to participate in mediation if other party to a dispute opts for mediation as well. Nevertheless, it should be noted that possible discretionary referral to mediation by a judge against the will of parties, following performed screening of eligibility of a dispute and of parties for mediation and based on completed mediation information session,is considered as a voluntary model of mediation when the parties retain their unconditional right to opt-out from mediation.

Described prevailing general position of mediation stakeholders is to be supported.Limited capacities of mediation providers, weak quality assurances and low level of awareness about mediation in the society call for gradual development of mediation policy from voluntary mediation model towards presumptive mediation model.

As already suggested above, it is not recommended that the Parliament again takes over the responsibility of drafting a law on mediation.Expert drafting should be done by the working group of the MoJ. At the same time amandments of other laws need to be drafted in order to enable judges to suspend litigation and refer disputes to mediation (e.g. procedural codes, law on legal aid).This process might take some time anyway therefore it is not very likely that the Parliament would be willing and able to adopt the draft Law on Mediation in the first reading before autumn 2019. Unless current convocation of the Parliament adopts the law in the first reading before parliamentary elections later in 2019, newly elected MP's wouldn't be allowed to continue with the legislative process concerning the same law. Thus, it is recommended that the MoJ submits new draft law on Mediation to the new convocation of the Parliament. Normally such legislative process accelerates final adoption of the law. Whether such draft law should be formaly submitted to the legislative process by the Government or by political groups which support the draft law is a matter of political decision.

The Law on Mediation is an important part of the overall rule of law reform in Ukraine. The urgent need to pass this law should be therefore addressed in regular monitoring reports of the EU concerning implementation of the Association Agreement between the EU and Ukraine and related Association Agenda. Discussions in the parliamentary Committee for Judicial and Legal Policy during the fact-finding mission revealed that such recommendation would be taken by the Parliament very seriously and would have a positive impact on political consent building.

Recommendations:

1. The Parliament of Ukraine shall adopt general legal framework for voluntary mediation with effective incentives for mediation demand for disputants and their lawyers.
2. The Parliament shall adopt amandements to applicable procedural codes to regulate interactions between mediation and litigation.
3. Due to pressing need to regulate mediation a new convocation of the Parliament should consider adopting the appropriate legislation as a matter of high urgency.
4. Competent insitutions and representatives of the EU should address the issue of mediation in Monitoring and Progress Reports as a key part of the legal and judicial reform as envisaged by the

Association Agreement and Association Agenda between the EU and Ukraine and to be implemented by the Parliament of Ukraine.

MEDIATION POLICY:THE ROLE OF THE HIGH COUNCIL OF JUSTICE (HCOJ) AND OF THE HIGH QUALIFICATION COMMISION (HQC)

One of the key reasons why courts and judges are reluctant to design and implement court-related mediation schemes is that they are afraid of risk of being penalized in disciplinary or qualification examination proceedings because of engagement in unlawful activity since the law on mediation was not adopted yet in Ukraine. This barrier should be overcomed by a clear public mediation policy statement of the HCOJ that judges are invited and welcomed to be trained as mediators, to design court-related mediation schemes, to refer cases to mediation and to act as mediators in court-related mediation schemes.

It seems that also lack of coordinated support of both, HCOJ and HQC as important institutional players for mediation development within the court system doesn't encourage courts to design court-related mediation scheme. Mediation referrals and mediated settlements as performance targets for courts and judges are important incentives for court-related mediation development. Unfortunately HQC did not included yet this criteria in the recommended system of evaluation of performance of judges and courts.and consequently HCOJ didn't adopt such a regime yet. There is no idenitified barrier to include mediation referrals and mediated settlements into quantitative and qualitative criteria/indicators for monitoring and evaluation of performance of courts and judges.

Court-related mediation needs a clear framework structure within which it operates. Courts up to date didn't develop practice to design mediation scheme in a form of a special program on court-related mediation. Attached model court-annexed mediation program rules could guide courts and HCOJ when drafting and adopting the rules of mediation program/scheme.

Any court-related mediation program rules should be approved by the HCOJ therefore a mediation policy statement, issued by the HCOJ and by which meidaiton and litigation would be put on an equal footing, could significantly encourage courts to launch mediation schemes. Since two (2) members of HCOJ are mediators they could prepare a draft public statement of HCOJ on importance of mediation. This statement should take a form of a consultative opinion. It could be addressed to courts and judges on one side but also to the Government (Ministry of justice) and the Parliament on the other side because it is necessary that HCOJ warns political players on relevant external barriers for mediation development (absence of appropriate regulatory framework) and to require active participation of HCOJ's expert members in drafting of the law on mediation.

Recommendations:

1. HCOJ should issue a policy statement in a form of an **consultative opinion** in which the following issues should be addressed:

a) the importance of integration of mediation in the litigation proceedings and of their balanced relationship;

b) that judges are invited and welcomed to be trained as mediators, to design court-related mediation schemes, to consider eligibility of disputes for mediation, to organize mediation information sessions, to refer cases to mediation upon informed consent of the parties and to act as mediators in court-related mediation schemes, when appropriate and feasible;

c) that courts are invited to submit to HCOJ proposed pilot court-related mediation schemes as designed by any court in order to approve its implementation;

d) the need of adopting general regulatory framework for (voluntary) mediation and the interest of HCOJ to contribute with expertize of the members of HCOJ during drafting the law on mediation and of amendments to related procedural laws by the Working Group;

2. HQC and HCOJ should make a coordinative effort to integrate mediation referrals and mediated settlements into quantitative and qualitative criteria/indicators for monitoring and evaluation of performance of courts and judges.
3. HCOJ should consider implementation of other recommendations addressed to HCOJ in Chapter 6–ADR Poicy Recommendations of the Report on Draft Regulatory Framework for Mediation in Ukraine (2015), page166.

MEDIATION POLICY: THE ROLE OF COURTS AND JUDGES

a) Court settlement conference

The Civil Procedural Code (CPC) introduced judge-hosted settlement conference in civil, commercial, family,administrative cases. Judges are compelled to offer settltemnt conference to litiigants but it is voluntary for litigants. Parties very rarely provide their consent for settlement attempt. Even judges reported that they consider this procedural event as an additional burden and they would instead rather refer a case to mediation. Invitation to settlement conference should occur very early after case filling. Settlement attempt suspends the litigation for 1 month and this period could not be extended.This conference is possible solely at first instance courts proceedings therefore settlement opportunities, facilitated by judges, are rather limited. Since a judge could not continue adjudicating a case if he/she facilitated (failed) settlement discussions, this settlement proceedings is often misunderstood as mediation even among judges. It is a confidential proceedings. During settlement conference judges are allowed to have separate meetings (cacus) with litigants however they must devote equal time to each party. Judges are in practice reluctant to caucus because they're afraid of complaints aginst them, filed by dissatisfied litigants and their lawyers. Settlement confenrence is by nature an evaluative process in which judges refer to the case law in similar cases and give consideradion to the case history and merits of the case concerning parties rights not interests.
Returned 50% of filling fee to litigants when they settle a case during judge-hosted settlerment conference is welcomed regulatory approach but it should apply also when litigants settle a dispute in mediation irrespective of a stage of litigation (including the appellate stage).
Introducing mediation in litigation should not have disruptive effect. On the contrary. Mediation and settlement conference should be complementary. Judges are not and should not be prevented to act as mediators in court cases.If there is no settlement in mediation, of course, the judge-mediator shall not adjudicate the same case. Nevertheless, the added value of court-related mediation option for litigants would be a list of trained and accredited mediators by the court, composed of well-reputed sitting judges, retired judges, practicing lawyers (advocates) and other professionals, including non-lawyers, among whome litigants could select and appoint mediator they wish.

b) Court-related mediation

Predominant position of judges in Ukraine is that currently there is not enough legal basis for referral court cases to mediation. Unlike with some central and eastern European countries legal culture and tradition in Ukraine do not encourage evolutive interpretation of general legal principles in sofar that mediation could develop without some legal basis in the statutory law. The non-written rule that everything is forbidden unless specifically allowed represents a strong impediment for mediation development. It seems that in given circumstances legal lacuna or gap concerning court-related mediation could be filled only within the structure of the experimental, pilot court-annexed mediation scheme.However, even pilot court-annexed mediation scheme needs some regulatory framework. Since courts do not have explicit regulatory powers to define internal principles, standards and rules of operation of mediation scheme it wouldn't be realistic to expect that courts take a pro-active bottom-up approach. On the contrary; Unless judicial authorities such as HCOJ, HQC and Supreme Court provide clear mediation policy directions

to lower courts there will be little if no progress concerning design and implementation of court-related mediation schemes.
Lesson learnt from the previous attempts of selected courts (e.g. in Volyn and Odesa Districts), to provide litigants with information about mediation indicate that just information about mediation benefits will not raise desired mediation demand since literaly no case was referred to mediation in Volyn District and only 9 in Odesa District. Litigants need stronger incentives for mediation take-up, such as free of charge mediation, duty of lawyers and litigants to consider mediation and certify with the court in wrtitting that they have done so and trust and confidence in those, who serve as court appointed mediators. Judges rightly suggested that at least first mediation session should take place within the premises of the court so that litigants would be provided with their "day in court".
Taking into account early developmental stage of mediation in Ukraine it is suggested to start with court-annexed mediation schemes within which a court ensures and supervises the quality of mediation scheme. Mediations should be organized, administered and should take place in the premises of the court unless litigants decide otherwise.It is unlikely that judges would, without reluctance, refer court disputes to court-connected mediation scheme, operated by the private mediation provider. From the point of view of perception of corruption, it would be too risky for judges to direct litigants to concrete institution or individual on a free market.
The list of mediators in court-annexed mediation scheme should be established and maintained by the court.
The statutory duty of a judge to schedule first hearing in 60 days after case filling allows that court could offer both settlement options, judge-hosted settlement conference and court-annexed mediation. Should both parties opt for mediation, no suspension of litigation is needed (to avoid allegations of contra legem activity of judges) but a judge should warn the parties and their lawyers that first hearing will be scheduled in 60 days after case filling unless the case will be settled until that time. Nothing prevents mediation to run in parallel with litigation (mediation shadow proceedings) if the parties to a dispute decide so.
Informed consent of litigants for mediation should be obtained either through written invitation, issued by the court or at the mediation information session, offered by the court. For example, mediation information session at the District Court in Odesa could be easily organized within recently established Community Justice Center which is supported by the State Judicial Administration. Should that court establish its own Mediation Centre (instead of referring litigants to Mediation Centre at Commercial Court in Odesa) an approval of State Judicial Administration would be a pre-condition because of a need to ensure sustainable funding.
Namely, decision for court-annexed mediation option presupposes sustainable funding of such mediation scheme. Mediation should be free of charge for the parties (at least in family disputes) or first three hours of mediation should be for no cost of the parties. Nevertheless, mediators who would work for the court-annexed mediation scheme should get paid for rendered services according to the tariff, set up by the program rules. The state budget should ensure sustainable funding. International donors could financialy contribute only the first year of operation of the pilot scheme, or ideally, until the Law on Mediation, providing state funding, is enacted.Certain flexibility of mediator's fee system would be appropriate, for example, a duty of a mediator to provide 2-3 mediations per year on a pro bono basis while for the rest performed mediations he/she should get paid.
Judicial training institutions should also provide low cost or no cost initial training programs for those who whish to serve in court-annexed mediation schemes. One of the significant barrier for candidates for mediation training was and still is an expensive training course for mediators (approximately 15.000 Ukrainian hryvnias)
Pilot court-annexed mediation scheme(s) should be launched at those first instance courts where leadership (court president, deputy-president) is progressive and where judges has been already trained in mediation therefore their enthusiasm could drive the attitude of lawyers and their

clients. Likelihood of successful implementation of project's goals in such judicial envoirement will be greater. However, judges must be skilled in designing and implementing mediation programs therefore a specific training on how to design and implement a court-related mediation scheme should be offered to judges.

While recommending to opt for court-annexed mediation model, nothing should prevent courts to follow court-connected mediation model. In particular smaller courts might not have enough capacity to organize mediation scheme under court's umbrella. Should they establish a referral system to private institutional provider a specific attention must be paid to program quality assurances.

Recommendations:

1. It is suggested to consider courts in Lutsk and in Odesa as eligible candidates for the pilot court-annexed mediation scheme.
2. When drafting programe of court-annexed mediation courts and judges should be guided by attached model Program of ADR at the District Court of Ljubljana which received special recognition of the Council of Europe and European Commission as best practice model (Crystal Scale of Justice Competition).
3. Courts and judges should be guided also by recommendations addressed to courts in Ukraine in Chapter 6–ADR Poicy Recommendations of the Report on Draft Regulatory Framework for Mediation in Ukraine (2015), page162-166..
4. Court leaders, judges and candidates for accredited mediators of a pilot court-annexed mediation scheme should be offered a study visit at various courts in Ljubljana, Slovenia which should include a specialized training course to obtain additional knowledge about design, management and administration of court-annexed mediation programe.Draft program of study visit and training couold be prepared and implemented by the European Centre for Dispute Resolution (ECDR).
5. Regardless the preferred model of court-related mediation, it is recommended to apply principles, standards and checklists as suggested in the most recent Statement of the European Law Institute (ELI) and of the European Network of Councils for the Judiciary (ENCJ) on the Relationship between Formal and Informal Justice: the Courts and Alternative Dispute Resolution (2018)
6. Mediators who serve in on-line court project of Kyivskyy District Court should be offered specialized training concerning the skills and ethical principles for mediatiors when conducting mediation on-line.
7. Nova Pravosuddya Justice Sector Reform should consider to providing appropriate funding for implementation of above recommendation number 4 and to temporary contribute to implementation of court-annexed mediation schemes.

THE ROLE OF THE ADVOCATES, BAR ASSOCIATIONS AND PROFESSIONAL ORGANIZATIONS OF MEDIATORS

Practising lawyers (advocates) have diffusive views concerning mediation as it was a case in every country of the world during infancy stage of mediation development. Many are still concerned that mediation will deprive them of their businesses (ADR as sintagma for alarming diminished revenues) while others believe that as advocates they are mediators per se.

Although mediation could work without clear legislative framework allowing for it, it is a legal culture and tradition in Ukraine which requires legislation on mediation. Thus, advocates see absence of the Law on Mediaiton as a key reason for slowed down process of mediation development. In particular interaction between litigation and mediation needs to be regulated. Courts should exercise discretion to schedule mediation information sessions to provide informed consent of litigants.

Nevertheless, Mediation Center at Bar Association in Lutsk already provides mediation a in disputes between advocates or between advocate and his/her client. Mediation Committee was established at the Bar Association in Odesa, being composed of solely practicing lawyers-mediators. It maintains a list of mediators. Judges and advocates were trained as mediators. This is a positive trend which should be gradually spread across the whole country through peer to peer information, advice and education.
Advocates in Odesa have also opportunity to participate in mediation advocacy training programs on how to represent clients in mediation which could be considered as an advanced approach.
Since advocates are gatekeepers of mediation and Odesa Bar Association demonstrated great interest and support for further mediation development it is recommended that Odesa Bar Association and Kyivskyy District Court and Commercial Court in Odesa enter the Memorandum of Cooperation aimed at launching pilot court-related mediation scheme. NAMU and Academy of mediators of Ukraine, which are very active mediation players and promotors of self-regulation of mediation profession should be partners of that pilot project. Funding of such a mediation scheme should be ensured due to limited financial resources of courts. Sustainability of any court-related mediation scheme would be put at risk when mediators work only on a pro-bono basis.

Recommendations:

1. Bar Associations should enter Memorandum of Understanding/Cooperation with courts before launching court-related mediation scheme in order to publicly endorse such a scheme, define commitments of advocates.and provide platform for regular exchange of informations or suggestions concerning the implementation of that scheme.
2. Bar Associations should also consider recommendations addressed to them in Chapter 6– ADR Poicy Recommendations of the Report on Draft Regulatory Framework for Mediation in Ukraine (2015).
3. Associations of mediators and providers of mediation should consider recommendations from the Report on self-regulatory issues of mediation in Ukraine 2018 (Chapter 2, sections C and D).

Marketplace commercial mediation

First attempts to develop private institutional providers of mediation in the field of commerce are promising. Kyiv Chamber of Commerce is leading institution which already set up the Mediation Center in the year 2014.It is run by dedicated and enthusiastic people. Nevertheless, only 1 case was referred to mediation up to date.
Two key barriers for commercial mediation development were outlined during fact-findning mission: absence of law on mediation and low level of mediation awareness in commercial envoirement which includes distrust to neutrals who have no state authority.
Neither corporations nor SME's and companies with limited liability practice insertion of mediation clauses in commercial contracts which is the most effective method for raising mediation take-up. General distrust to commercial courts in Ukraine could be turned into advantage for mediation demand however absence of any liability regime for mediators prevents companies (in particular SME's) to opt for mediation. Thus, it is recommended that mediation centers at chambers of commerce set up their own transparent accreditation and registration system for mediators based upon best practice examples from Europe.
Since commercial mediation is still struggling to become a viable option of dispute resolution for businessmen, in-house lawyers and advocates it is of utmost importance that champions of mediation, such as it is Kyiv Chamber of Commerce, receive full support of international donors at their mediation development endeavours. Project beneficiaries should be two: Kyiv Chamber of Commerce and selected commercial court in Kyiv. The goal could be to ensure mediation demand before a dispute has arisen and afterwards Disputes could be refered to Mediation

Center at Kyiv Chamber of Commerce either by disputants themselves upon mediation clauses and mediation agreements and by the commercial court upon consent of litigants.

Recommendations:

1. A special project, funded by USAID or alternatively, by EBRD, aimed at supporting commercial mediation at Kyiv Chamber of Commerce and at Kyiv Commercial court, should be launched.

2. The following project components are recommended:

- robust public awareness campaign with deliverables such as:mediation weeks, international mediation conferences, frequently asked questions and answers about mediation, case assessment toolkit, interactive web site, mediation hot telephone line, free of charge assistance at drafting mediation clauses and mediation agreements, mediation self-test, mock mediation video, mediation first pledge;
- development of accreditation and registration model for commercial mediators,establishment of a roster of domestic and international commercial mediators, specialized trainings such as specifics of mediation in intellectual property disputes, train the mediation trainers program, mediation advocacy program;
- revising and drafting mediation rules, med-arb and arb-med rules, rules of on-line mediation (ODR), rules of mediation in consumer disputes;
- designing of pilot court-connected mediation scheme at selected commercial court in Kyiv based upon signed Memorandum of Understanding/Cooperation between Mediaiton Center at Kyiv Chamber of Commerce and commercial court (see also recommendations concerning the role of courts and judges above).

3. Kyiv Chamber of Commerce should invite key stakeholders from business sector (domestic and foreign companies, corporations, other Chambers of Commerce, insurance companies, banks and other players) to sign and subscribe to a Mediate First Pledge by which they'd express their commitment to consider mediation in future or existing disputes

MEDIATION AS SOCIAL AND COMMUNITY SERVICE

It was reported that granting social support and other social services is rather a birocratic process therefore mediation couldn't penetrate much into this system. Nevertheless, free of charge family mediation is provided in practice through social service.Obvious impediment for sustainable mediation development is lack of clear regulatory framework which should, among other, ensure funding of mediation programs. Without appropriate state funding mediation will stay less attractive for mediators because they can't charge for their provided services.

Significant challenge is also related to desired shift in criminal justice policy from punitive to restorative justice approach. Victim-offender mediation, penal mediation would require change of prosecutorial and judicial philosophy and mindset. Thus, training on standards, recommendations, best practices in the field of mediation in criminal matters is needed first.

Peer and school mediation programs in elementary schools were developed as stand alone programs in certain places (e.g. in Kovel). Further support of these efforts is needed to educate parents and teachers because skepticism towards mediation is still present among many of them. Formal integration of mediation in training curriculum of schools requires certain top-down command. The continuation of school and peer mediation programs largely depends on funding which is not sustainable.but on the other hand there is an opportunity to obtain support from the local government for such mediation programs. The problem is also that no performance evaluation system has been developed yet. Introducing post training review sessions, intervisions and indicators/criteria for monitoring, measuring and evaluating the impact of such mediation

programs as they are, for example, successfully practiced in the region of Western Balkans,should be part of future expert assistance to school and peer mediation providers in Ukraine. It is therefore suggested to explore chances for cooperation with the European Centre for Dispute Resolution (ECDR) which has an extensive experiences in relation to design and implementation of school and peer mediation programs in that region.
Another notable barrier is related to non-existence of training standards, accreditation standards and service provider standards. These are typical elements of self-regulatory regime but it is clear that mediation profession in Ukraine needs further technical and expert assistance at drafting the abovementioned standards.
Ukraine has not yet developed community mediation centers for disputants. The frequent goal of such centers is to serve a greater number of low-income people who do not meet eliginbility criteria for free legal aid and could hardly afford litigation costs therefore they often give up and are consequently deprived of access to justice. Another goal is to help pro se disputants in certain type of cases (divorce, child custody, housing, landlord-tenant, employment, disputes of racial, ethnic or religious origin) Last but not least community mediation centers function as point of education of public about mediation and provide mediation outreach. Further technical assistance is recommended to set up such a mediation centre to serve as a model. In a first stage a manual or guide for setting up a community mediation centre could be drafted, based upon best practice examples worldwide (see A Manual for Legal Serices and Pro Bono Mediation Programs, American Bar Association, 2007).

Recommendations:

1. State authorities should provide funding for mediation programs which are integrated in social services and school curriculums to ensure sustainability of mediation programs.
2. Local authorities should support mediation programs in schools and in community mediation centers.
3. Training institutions should design curriculum and offer training courses on standards, skills, knowledge and best practices in the field of mediation in criminal matters.
4. Expert technical assistance by international donors is needed to establish a system of monitoring and evaluation of peer and school mediation programs, which would follow best practice examples from Europe.
5. A pilot project on establishment of a community mediation centre should be launched based upon cooperation agreement between selected mediation provider,local authorities and international donor organization.

Education and training on mediation, accreditation, registration of mediators and mediation awareness raising

Training curriculums are not accredited or certified by a national peak body however NAMU is drafting a framework training program which might provide guidance to training providers as to standards of mediation curriculum design and implementation. This approach seems promising.
There is no unified position among various mediation stakeholders whether or not to establish a national accreditation and registration system for mediators. Should Ukraine decide to opt for rather self-regulatory approach of mediation profession it is recommended to establish accreditation system at least for those mediators who will serve in court-related mediation schemes once established.
During the fact-finding mission it was reported that NAMU maintains public register of mediators, members of NAMU .Any public roster of mediators contributes to accessibility of mediation therefore such an approach is to be further encouraged among institutional providers of mediation.
Past numerous initiatives of education, training and mediation awareness raising should continue. Both, general and professional public need further information and knowledge about mediation.

Judges are regulary trained on mediation but they use some of gained skills of mediator only rarerly if/when conducting judge-managed settlement conference.
All recommendations concerning training of mediators and quality standards for provision of mediation services from the Report on self-regulatory issues of mediation in Ukraine (Chapter 2, sections C and D) remain relevant and due consideration should be given to their implementation by mediation stakeholders.In addition, International Mediation Institute (IMI) Training Standards Task Force Recommendations should be followed as well.
A good example of the role of law schools in educating young lawyers about mediation was identified at the Law Academy in Odesa. This Academy is providing research on mediation, PhD study course, specialized training course on ADR, students participate at ICC mock mediation competitions in Paris and Vienna, law professors contributed to drafting the Law on Mediation and of Code of Conduct of Mediators.
Law schools in Ukraine should follow such pro-mediation educational approach. They could also consider setting up mediation centers at law schools (see mediation Center at Tbilisi State University in Georgia), mediation clinics programs for students (see mediation clinical education curriculums of private and public law schools in Serbia) and invite prominent domestic and international visiting lecturers-experts in various fields of mediation.to share their knowledge and experiences with students.

Recommendations:

1. Law schools in Ukraine should integrate mediation course into their curriculums as a mandatory course for students and organize their practical training in the format of mediation legal clinics.
2. Pilot mediation legal clinics could be established at selected law schools in Ukraine upon technical assistance projects which would support exchange and cooperation agreements with identified European universities or law schools.
3. All recommendations concerning training of mediators and quality standards for provision of mediation services from the Report on self-regulatory issues of mediation in Ukraine 2018 (Chapter 2, sections C and D) remain relevant and due consideration should be given to their implementation by mediation stakeholders.
4. Mediation associations (NAMU, Academy of mediators and others) and other mediation providers, including courts, should upgrade and maintain public rosters of available mediators in order to ensure two key mediation promises: promise of opportunity for amicable setttement and promise of process integrity.
5. Mediation associations and other providers should develop model standards for accreditation and registration system for mediators who serve in court-related mediation schemes. and model standards for provision of mediation service in court-related mediation schemes.Expert assistance to this task should be provided by the Nova Pravosuddya Justice Sector Reform.

BIBLIOGRAPHY

BOOKS

1. CE Mota and C Esplugues, Civil and Commercial Mediation in Europe: Cross-Border Mediation (Intersentia, 2014)
2. N.Alexander,S.Walsh,M.Svatos, EU Mediation Law Handbook (Kluwer Law 2017)
3. G Palo and MB Trevor, EU Mediation, Law and Practice (OUP 2012)
4. M Pel, Referral to Mediation; A Practical Guide for an Effective Mediation Proposal (Sdu Uitgevers, 2008)

ARTICLES

1. Nadja Alexander, 'Mediation on trial: Ten verdicts on court-related ADR' [2004] Law in Context 8-24
2. Wayne D Brazil, 'Court ADR 25 Years after Pound: Have We Found a Better Way' [2002] 18 Ohio St J on Disp Resol 93-149
3. Markus B Zimmer, 'Overview of Alternative Dispute Resolution: A Primer for Judges and Administrators' [2011] 4 IJCA 47–57

STUDIES, GUIDELINES AND PRACTICE DIRECTIONS

1. Statement of the European Law Institute and of the European Network of the Councils for the Judiciary: The Relationship between Formal and Informal Justice: the Courts and Alternative Dispute Resolution (ELI 2018)
2. European Commission for the Efficiency of Justice /CEPEJ), Mediation Development Toolkit, Council of Europe, 2018
3. Council of Europe, Guidelines for a Better Implementation of the Existing Recommendation Concerning Family Mediation and Mediation in Civil Matters (European Commission for the Efficiency of Justice, 2007)

4. European Commission, Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions — The 2016 EU Justice Scoreboard (Directorate-General for Justice and Consumers, 2016)

5. European Commission, Lessons Learnt from the Implementation of the EU Mediation Directive: the Business Perspective (Directorate-General for Internal Policies, Policy Department C: Citizen`s rights and constitutional affairs, 2011)

6. European Commission, »Rebooting« the Mediation Directive: Assessing the Limited Impact of its Implementation and Proposing Measures to Increase the Number of Mediations in the EU (Directorate-General for Internal Policies, Policy Department C: Citizen`s rights and constitutional affairs, 2014)

7. European Commission, The Slovenian Legislation Implementing The EU Mediation Directive (Directorate-General for Internal Policies, Policy Department C: Citizen`s rights and constitutional affairs, 2011)

8. European Commission, Quantifying the Cost of not Using Mediation – a Data Analysis (Directorate-General for Internal Policies, Policy Department C: Citizen`s rights and constitutional affairs.

ANNEX

1. A program of alternative dispute resolution at the district court of Ljubljana
2. Itinerary Visit to Ukraine by ADE Experts Mr Aleš Zalar and Mr Frank Laney, USAID New Justice Program Kyiv- Lutsk- Kovel- Odesa- Kyiv
3. Statement of the European Law Institute and of European Netework of Councils for the Judiciary – The Relationship between Formal and Informal Justice: the Courts and Alternative Dspute Resolution