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**EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE
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**Mediation Development Toolkit
Ensuring implementation of the CEPEJ Guidelines on mediation**

Mediation Awareness and Training Programme for notaries

Document elaborated jointly with the Council of the Notariats of the European Union (CNUE)



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Introduction

The notariat has been active in the field of mediation for many years.

By virtue of their general duty to listen and advise, notaries are natural actors in facilitation of parties' agreements on various legal aspects. They spontaneously adopt the position of advisor-conciliator between the parties because of the intrinsic characteristics of their profession. Notaries are independent, transparent and neutral in their advisory role. The parties contact a notary for important events in their lives: buying a home, for marriage or registered partnership, divorce, regarding inheritance, the creation of a company, etc. On these occasions, the notary, a trusted and impartial person, advises the parties on their rights and duties, on the choice of the best legal solution for their situation, and on the legal and financial effects of the commitments made, with the aim of authenticating the parties' wishes in a notarial instrument

In some cases, they can also reduce disputes, tensions between the parties or even conflicts, resolving a case without the need for legal action. Notaries are thus involved in conflict prevention and in contributing to social peace. In such cases, they carry out a preventive justice function that relieves the courts of their workload. This role in preventive justice and in the alternative settlement of conflicts between parties is fully in line with the notaries' mission.

The Council of the Notariats of the European Union (hereinafter CNUE) has undertaken several actions to raise awareness and promote mediation. This was achieved in particular with the implementation of *the Mediation for Notaries – Notaries for Mediation project*¹. This project led, among other things, to the adoption of a Practical Guide to Cross-border Notarial Mediation. In order to increase the notarial profession's awareness of mediation, the CNUE is pursuing this action in cooperation with the CEPEJ.

For the purposes of this document, the term "mediator" refers to the trained mediation professional in order to avoid confusion with other professionals and to ensure the quality of mediation services. If a notary wishes to practice mediation as a mediator-professional, they should undergo the training programme to this end ("Guidelines on designing and monitoring mediation training schemes" adopted by the CEPEJ in June 2019, constitute an important basis for the elaboration of such training (CEPEJ (2019)8).

This awareness and training programme is intended to give better understanding for notaries about mediation and related subjects and provide the necessary knowledge and skills.

Chapter 1: General framework

To date, the European notariat has worked on several instruments to facilitate the use of mediation in a cross-border environment. This includes the following work:

- Recommendation Rec(2002)10 of the Committee of Ministers to Member States on mediation in civil matters (adopted on 18 September 2002) which provides under point 22 that "States should encourage the setting up of mechanisms to promote the use of mediation to resolve issues with an international element".
- Guidelines for a better implementation of the existing recommendation concerning family mediation and mediation in civil matters– CEPEJ(2007)14E which state under point 21 that "Member States and/or mediation stakeholders should provide adequate training programmes for mediators and, taking into account the disparities in training programmes, set up common standards concerning the training."
- The Practical Guide to Cross-border Notarial Mediation, developed as part of the Mediation for Notaries – Notaries for Mediation project, co-funded by the European Commission. This guide includes lessons learned from five cross-border workshops on civil and commercial mediation held in Belgium, France, Italy, Slovenia and Spain.
The first section of the Practical Guide is devoted to the notary-mediator and the particular situations requiring a cross-border approach. The Guide also highlights the need to establish a common procedural framework. The Comparative Dashboard setting out the elements to be taken into account in the event of recourse to mediation for a cross-border conflict is also a very useful tool when notaries are confronted with a cross-border mediation case.

¹ The European project Mediation for Notaries – Notaries for Mediation, co-funded by the European Commission, was coordinated by the CNUE under the call for projects JUST-AG-2016-02.

- The Mediation Action Plan 2019-2020, adopted by the CNUE General Assembly on 29 March 2019, which focuses, *inter alia*, on priorities relating to training for notary-mediators and the development of training tools.
- Exchanges of good practice in mediation between CNUE member notariats in 2015.

Chapter 2: General aims of the mediation awareness and training programme for notaries

Initial training is a basic training course aimed at developing professional mediation skills.

Thus, any initial mediation awareness training for notaries should include at least the following elements:

- Basic knowledge on conflict theory, escalation and de-escalation of conflicts
- Knowledge of alternative dispute resolution (ADR) which encompasses, *inter alia*, negotiation, mediation and arbitration (being able to identify the appropriate method for a given situation)
- General principles and aims of mediation
- Different types of mediation (facilitative, evaluative, transformative, relationship-based models, narrative mediation)
- Procedure and phases of the mediation process
- Communication and negotiation techniques and skills applied during mediation (solution-orientated approaches)
- Mediation techniques
- Psychology applied to mediation
- Efficient referral to mediation
- Agreements to mediate, mediation clauses and mediated settlement agreements
- Integration of mediation and mediation related services into professional practice of notaries
- Deontological aspects in relation to mediation
- Development of relevant skills (soft skills)
- Particularities of mediation in civil and commercial matters, family mediation
- Development of different types of mediation documents
- Intercultural mediation

When developing the content of initial training and the training method the educational background and the practical expertise of the notaries who take part should be taken into account.. It should be recalled that in the exercise of their mission, notaries play a specific role as advisor-conciliator between the parties, which allows them to be fully able to provide the parties with relevant information and advice.

In order to redirect the parties, if necessary, towards this alternative method of mediation, it would be appropriate to work on the formulation of mediation clauses in notarial acts. This will help to promote mediation among the public and raise notaries' awareness.

The cross-border aspect of a situation should also be included in this training. A foreign element may be present at the beginning of a mediation process or may appear during the mediation. This issue should therefore be included in the teaching programme².

In addition to the theoretical elements, the training must also contain practical exercises allowing participants to put the training provided into practice. The interactive aspect, role plays/simulations, group work and case studies should be an integral part of the training content. It is advisable that an adequate amount of time shall be dedicated to experiential learning – practical exercises and discussions.

Evaluation measures should be provided for in order to guarantee the content of the training. It is recommended that the practical exercises contained in the training be provided or coached by practising notary-mediators with sufficient experience in this field.

A continuous awareness programme should include revisiting or refreshing the notaries' knowledge, repeating parts of the training programme. This update (or refresher) may also be important in some Member States in order to maintain the accreditation as mediator granted by national authorities.

² To this end, the Practical Guide to Cross-border Notarial Mediation (CNUE 2018) is a practical tool that can be made available to notaries to enable them to manage a mediation case with a foreign element as effectively as possible.

Chapter 3: Specific aims relating to national and international legislation

In order to ensure that mediation runs smoothly throughout the stages, it is important to be aware of the existing framework in this area in the various Member States and at European and international level.

It is therefore necessary to:

- ensure knowledge of the international legal framework relating to mediation;
- improve notaries' "mediator capacities" through the use of mediation tools (e.g. active communication and negotiation, emphasising the parties' interests and conflict resolution).

In some Member States, mediation by a notary may be carried out on a voluntary basis or ordered by the court. In the latter case, the term court-annexed mediation is used. That being said, mediation is by definition based on the voluntary agreement of the parties to participate in it. A party cannot be forced to participate in mediation or to find an absolute solution if that party does not wish to do so.

Given the specificities of national legislation, the legal framework is an essential element to be taken into account.

Chapter 4: Duration of the training

For initial mediation training, a minimum training period of 40 hours should be recommended. The main areas of knowledge and skills to be included in this basic training or initial training are listed in the core curriculum in Appendix to this document.

As part of this initial training, the tool "Guidelines on designing and monitoring mediation training schemes" adopted by the CEPEJ in June 2019, is also to consider.

In addition to the basic training, in the appendix there are also two other curricula, devoted respectively to family mediation and mediation in civil and commercial matters. For each of these training curricula, a minimum duration of thirty hours is recommended, which includes a practical and theoretical part of the training.

With regard to continuous training (refresher training), a minimum duration of eighteen hours (18 hours) per year is recommended. This continuous training may include a theoretical part (updating, etc.) and a practical part (practical case studies, role-playing, etc.).

Chapter 5: Resources in terms of trainer-participants

The resources required will depend on the group size. For a quality and interactive training session, it is advisable to favour a medium-sized group, for example, a maximum of 15 participants could constitute a good average.

For the size of the group, a distinction should be made between the theoretical part and the practical exercises that take place during the training; the latter should take place in small subgroups.

As far as trainers are concerned, at least two trainers should supervise the group. This requirement will allow, on the one hand, to do the practical exercises and, on the other, to observe the participants during the different parts of the training. The observation phase of role plays during practical exercises is fundamental to the quality of teaching.

A participatory and interactive method will be followed by a debriefing on the practical cases and possible solutions for improvement.

Trainers should come from practice. They should be active notary-mediators. Experts or specialists (such as non-notaries mediators or specialists in communication or negotiation techniques, or psychologists, or other professionals and/or scholars) may also be invited to provide certain teaching units.

Chapter 6: Suitable premises

Training should be organised in premises that allow interaction between participants.

During a training course, it should also be possible to have several rooms available (to prepare practical exercises, etc.).

Chapter 7: Recommended handbooks

- Practical Guide to Cross-border Notarial Mediation, developed as part of the *Mediation for Notaries – Notaries for Mediation* project
- Comparative Dashboard setting out the elements to be taken into account in the event of recourse to mediation for a cross-border conflict (annexed to the above-mentioned Practical Guide)
- The platform of notary-mediators that exists on the CNUE's European Notarial Network provides notaries with an efficient network of contacts, as well as many tools and resources that can be consulted online. It makes it possible to answer notaries who are confronted with cross-border issues
- Toolkit for the development of mediation, such as the "Guidelines on designing and monitoring mediation training schemes" CEPEJ(2019)8, adopted by the CEPEJ on 14 June 2019. The tools are available at the following website: <https://www.coe.int/en/web/cepej/cepej-work/mediation>

Chapter 8: Recommendations to organisations representing the notarial profession

The platform for cooperation between notary-mediators that has existed within the European Notarial Network since the beginning of 2018 aims to facilitate contact between notary-mediators. It is up to the member notariats to set up a contact point.

With the assistance and support of European organisations, professional notarial organisations and national institutions of the profession should provide appropriate training programmes for notaries.

Based on the attached training curricula, the member notariats in several Member States could also establish common training in mediation.

A "mediation" contact point could also be designated within each CNUE member notariat.

Appendix to the Mediation Awareness and Training Programme for notaries

CORE CURRICULUM ON MEDIATION ORGANISATION AND CONTENT

The basic training curriculum for notaries should cover at least the following main areas of knowledge and skills. A period of minimum forty hours (40 hours) is recommended to provide this basic training.

I. General and specific skills (Knowledge development)

1. Mediation – (philosophy, concept and general principles of mediation)

- a. Traditional and alternative dispute resolution methods, including conciliation and arbitration
- b. Mediation and the different types of mediation (e.g. individual, collective or team mediation, large group mediation)

2. Psychological aspects of mediation

- a. Conflict analysis and management (concept and definition), objective and subjective aspects (elements relating to the content and relational elements of a conflict)
- b. Psychological aspects specific to the parties (values, perceptions, needs, motivations, expectations and emotions)
- c. Introduction to personality theories to understand the psychological positions of people in conflict
- d. Psychological aspects during the mediation process (understanding the roles of the parties, the mediator, atmosphere of trust, emotional management)
- e. Dispute resolution models: facilitation, negotiation, arbitration, reconciliation
- f. Case analysis skills, including the appropriate choice of a conflict resolution strategy and methods

3. Sociological aspects of cross-border mediation

- a. The sociological evolution of organisations and institutions
- b. The evolution of social relations in general
- c. The question of the evolution of values/interests/norms

4. Basic principles of mediation

- a. Voluntary nature
- b. Confidentiality
- c. Independence, impartiality and neutrality of the mediator (quality)
- d. Autonomy and control of the process by the parties
- e. Equality of the parties
- f. Creativity and sustainability (relationship preservation)
- g. Flexibility-rapidity
- h. Cost-effectiveness ratio
- i. Uncertainty of outcome

5. The legal framework for mediation

- a. European and international national provisions (legislation on mediation, including judicial mediation, voluntary mediation, etc.)
- b. The different types of mediation and their scope of application: family, civil-commercial or economic, intercultural
- c. Cross-border mediation; what approaches in cross-border situations
- d. Ethical aspects of mediation - Code of Conduct

6. Communication

- a. General aspects: importance of communication, definitions and functions
- b. Communication (active listening, rewording and summary) and negotiation skills during mediation (solution-orientated approaches)
- c. Communication strategies
- d. Useful techniques in mediation (reframing, needs identification, creativity, etc.), discussion management
- e. Specific mediation techniques (strategy, caucus technique, etc.)
- f. Use of new technologies in mediation (videoconferencing, etc.)

- g. How to defuse a situation where communication is difficult between parties
- h. How to motivate the parties to find a solution together
- i. Implementation of specific methods to guide the parties towards a solution

7. The mediation process - methods and different phases

- a. Problem-solving technique: structured intervention methodology (from the initial problematic situation to the signing of the agreement)
- b. Information meeting: role of the mediator, distinction between advice and information, information on the mediation process and explanation of the rules of the game
- c. Gathering information from the parties (presentation of views by the parties, list of issues to be addressed, points of agreement and disagreement)
- d. Negotiation and possible options
- e. Preparation of the draft agreement
- f. Signature and implementation of the agreement

8. Interaction between professionals who may be involved in mediation

- a. Mediators, judges, lawyers, users of mediation, child specialists and other stakeholders in mediation
- b. The different categories of mediation (judicial, voluntary, etc.) and possible interactions and cooperation

II. Practical skills

In this respect, an important part of the training should be devoted to case studies, role-playing, coaching, debriefing, discussions and exercises.

Practical exercises during the training should include the following elements:

- a. The steps and skills in the mediation process
- b. Communication skills
- c. Negotiation skills
- d. Mediation skills and the application of mediation principles
- e. Role-playing/situation exercises

Interactivity, based on learner participation, should be encouraged. To this end, various teaching methods should be used for this part, in particular:

- a. Videos
- b. Interactive exercises
- c. Concrete case analyses and interventions in specific situations
- d. Individual work
- e. Discussions, group exercises
- f. Discussions in pairs
- g. Role-playing games

A mutual evaluation takes place at the end of the training.

**SAMPLE CURRICULUM FOR FAMILY MEDIATION
ORGANISATION AND CONTENT**

A period of thirty hours minimum (30 hours) should be recommended for this training in family mediation.

1. Introduction – law

- a. Reminder of the principles in cross-border matters
- b. European family law / Private international law
- c. Role of the parties' counsel in family matters
- d. Role of the parties' experts in family matters
- e. Specific situations (domestic violence, child victims of abuse or sexual abuse, addiction, intercultural dimension, etc.)

2. Family Psychology and Sociology

- a. Psychological and sociological aspects of families
- b. Psychological effects of family conflicts
- c. Inter-family relations

3. Family mediation

- a. Specific models of family mediation and exercises (e.g. succession, divorce, division of property, child custody and financial aspects); cases of cross-border situations
- b. Mediation in family relationships
- c. Mediation in specific situations
- d. Cross-border mediation
- e. Interdisciplinary cooperation, e.g. psychologists, child specialists
- f. Children participation in mediation

This module should consist mainly of exercises, role plays and case studies.

A mutual evaluation takes place at the end of the training.

**SAMPLE CURRICULUM FOR CIVIL AND COMMERCIAL MEDIATION
ORGANISATION AND CONTENT**

A period of thirty hours minimum (30 hours) should be recommended for this training in civil and commercial mediation.

The theoretical part should be limited to six hours and the rest should be devoted to practice; mainly exercises, role plays and case studies or simulations.

1. Theoretical part

- a. Theory and practice of law of obligations and contracts
- b. European law on contractual and non-contractual obligations
- c. Conflict in civil matters
- d. Conflict in commercial matters
- e. Role of advice of the parties in civil and commercial mediation
- f. Role of experts of the parties in civil and commercial mediation
- g. Theory and practice of interest-based negotiation
- h. Cross-border mediation
- i. Enforcement of agreement

2. Practical elements: exercises and role-playing

- a. Mediation cases in civil and commercial matters
- b. Cases of civil disputes (e.g. rental disputes)
- c. Cases of dispute in commercial matters

A mutual evaluation takes place at the end of the training.