

BETTER ACCESS TO JUSTICE IN TURKEY CONFERENCE

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The Regulation of ADR in the European Union

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The Regulation of ADR in the European Union

- The Impact of Civil Law and Common Law on ADR
- EU has 27 Members with 25 Civil Law jurisdictions
- EU has 27 Members with 2 Common Law jurisdictions



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- The Common Law and ADR
- Nil in Parliament
- Nil in 'Common Law' – the 'historically adopted' law
- Case Law – some since 1998 – 50 cases in all?



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- **The Civil Law jurisdictions**
- Consider the UN Resolution 2002 No.57/18
- Consider the EU Directive
- Consider the globalisation of EU business
- Consider the globalisation of world business
- ADR (to include mediation) is being adopted in most EU countries



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- A discussion on the extremes of ADR legalised usage. Compare:-
- 0% - The UK and Ireland – Uncontrolled except by mutual understanding and agreement
- 0% - 50% - Turkey – A new law in the making
- 100% - Bulgaria – A law which works



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1. The EU Directive on Mediation in Civil and Commercial matters

- Member States to implement by May 2011
- Cross Border disputes
- Structured Process
- Initiated by the parties or on Court initiative
- Mechanisms to ensure quality



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1. The EU Directive on Mediation in Civil and Commercial matters

- Mediator training to provide effective, impartial and competent delivery
- Confidentiality
- Impact of time limitations and prescription
- Member States to encourage development of mediation in States



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2. Comparison between the EU Directive and the Bulgarian legislation on mediation

- Bulgarian legislation
 - Law on mediation and Ordinance № 2
 - EU Directive on mediation – in process of transposition
- Scope
- Definition of Mediation and Mediator



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– Principals of mediation

- Voluntary recourse, equal treatment of parties, neutrality and impartiality of mediators
- Confidentiality



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– Ensuring the quality of mediation

- European Code of Conduct for Mediators
- Training of mediators
- Organisations providing mediators training



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- **Mediation procedure**
 - Recourse to mediation
 - Substance of the mediation procedure in Bulgaria
 - Enforceability of agreements
 - Effect of mediation on limitation and prescription periods



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- **Information for the general public**
 - Uniform Register of Mediators
 - Statistics
 - CEPEJ



*European judicial systems
Edition 2008 (data 2006):
Efficiency and quality of justice
European Commission for the Efficiency of Justice
(CEPEJ)*

Figure 28. Number of accredited mediators per 100.000 inhabitants in 2006

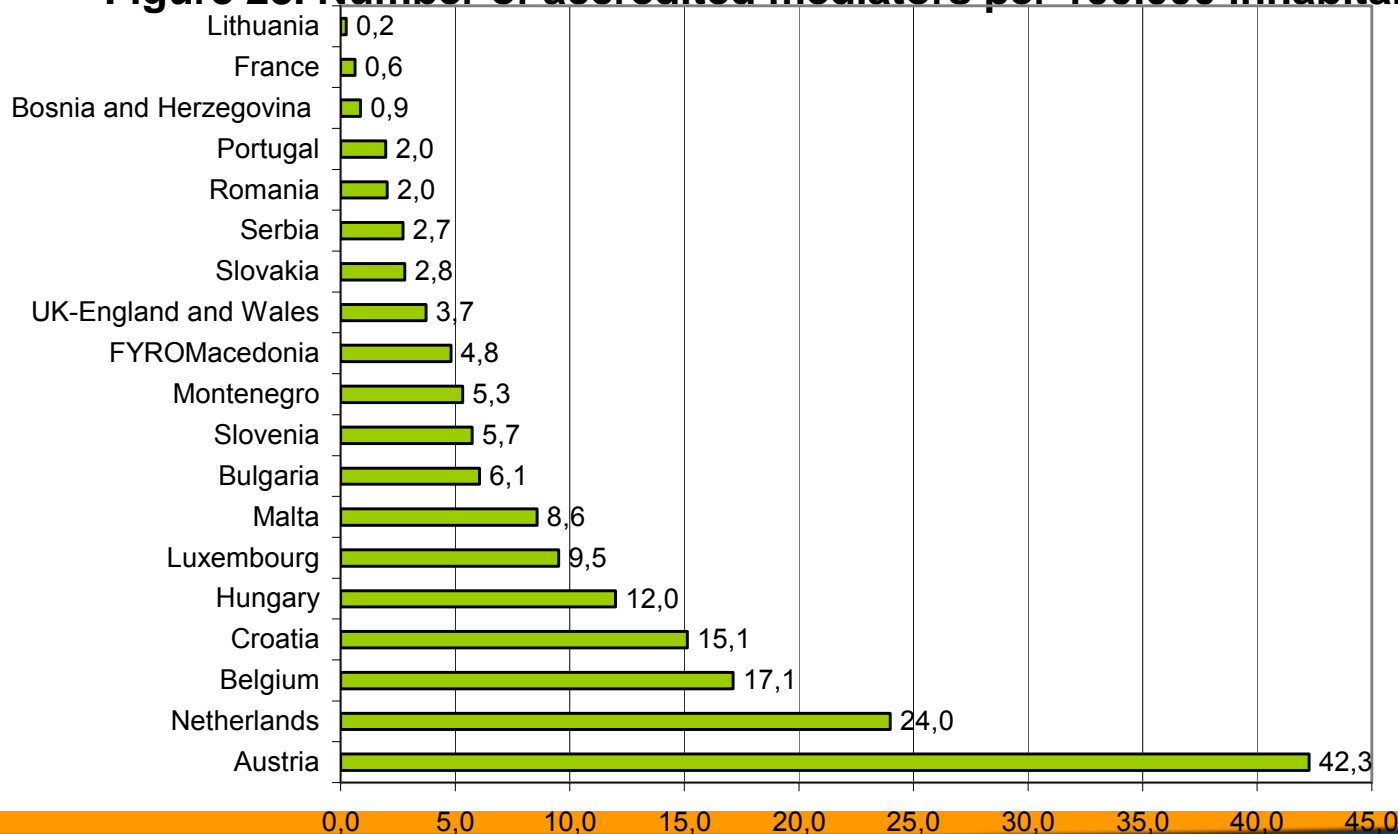


Table 48. Legal aid for mediation procedures (Q143)

Legal aid for mediation procedures	
YES	NO
Belgium	Austria
Croatia	Bosnia and Herzegovina
Denmark	Bulgaria
Finland	Czech Republic
France	Germany
Greece	Hungary
Luxembourg	Iceland
Malta	Ireland
Monaco	Italy
Montenegro	Latvia
Netherlands	Lithuania
Norway	Poland
Russian Federation	Portugal



Serbia	Romania
Slovenia	Slovakia
Spain	Switzerland
Sweden	
Turkey	
FYRO Macedonia	
UK-Northern Ireland	
UK-Scotland	
UK-England and Wales	
22	16

Only those countries which have a mediation procedure are included in this table



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3. The Draft Law of Mediation in Turkey

- Civil Law disputes
- Voluntary process with trained mediators
- Ministry of Justice to keep record of mediators and mediation activity
- Mediation may be before or during litigation
- Court guidance



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3. The Draft Law of Mediation in Turkey

- (MoJ) Head of Mediation Department to keep Register of mediators and mediation activity
- Mediators may be removed from the Register
- Minimum of 150 hours training after 4 years University education
- Training covers pure mediation plus behavioural psychology and other matters to be determined by the Registrar



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3. The Draft Law of Mediation in Turkey

- Parties determine outcomes and settlement agreements enforceable through Courts
- Confidentiality is all important – up to 2 years imprisonment for actionable breach!
- MoJ – Head of Mediation Department to support mediation development

