



ევროკავშირი  
საქართველოსთვის  
The European Union for Georgia



# WORKSHOP ON ALTERNATIVE DISPUTE RESOLUTION Keys to successful mediation

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[www.eugipp.eu](http://www.eugipp.eu)

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## i. Criteria to identify situations favouring mediation or other ADR solutions

### 1. Nature of the cause:

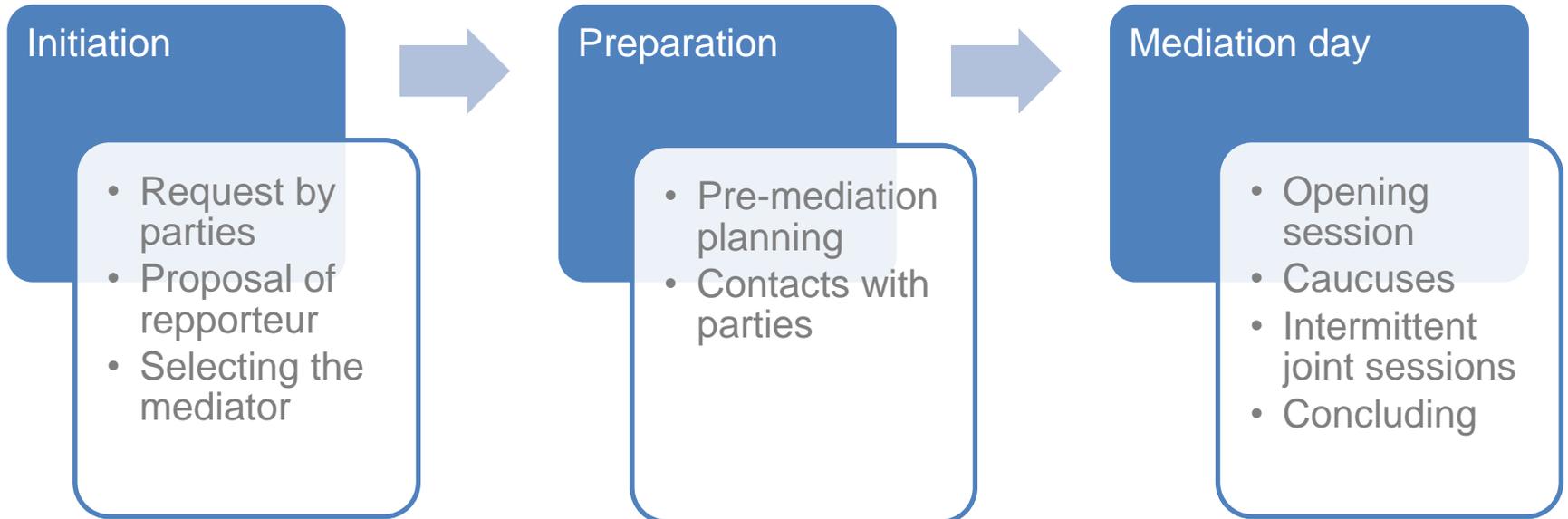
- Judgement **difficult to enforce**
- The dispute only represents a **part of other underlying /not expressed conflicts.**
- Need of a **tailored approach** that recognises and validates the underlying emotional issues driving the case and therefore produces a more complete resolution.
- **Possibility of a coexistence of rights**, once the markets of both parties have been considered, taking into account territories, goods and services.

## i. Criteria to identify situations favouring mediation or other ADR solutions

### 2. Favourable legal framework conditions:

- **No impediment** or obstacle to the parties being referred to mediation at this stage of the proceedings.
- Other **pending proceedings** involving the same parties or one of the parties on the same or cross related issues.
- It is highly probable that (a) **third party/ies** will be required to **join the action**.
- Existence of a **mediation clause** regulating potential dispute resolution.

## ii. Procedural steps of the mediation process



## ii. Procedural steps of the mediation process : INITIATION

### Unilateral request

- **One** of the parties asks for mediation
- Request is **transmitted to the other party**
- Proposal to mediate the dispute is either **accepted or declined**
- If **accepted**, the **mediation** process is **triggered**
- If **declined**, ordinary **appeal proceedings resume**

## ii. Procedural steps of the mediation process: INITIATION

### Joint request

- **Both** parties agree to mediate
- A **request is sent** to the ADRS
- Parties agree jointly on a **mediator/co-mediators** and may be guided by the ADRS
- Proceedings at the EUIPO are **suspended** pending the mediation process

## ii. Procedural steps of the mediation process : INITIATION

### Proposal of rapporteur

- Rapporteur in appeal proceedings **selects** those **appropriate** for mediation
- Communication sent to both parties **proposing mediation**
- If **accepted** by both parties, the process will continue in the same way as with a joint request
- If **declined** by one or both parties, ordinary appeal proceedings **resume**

## ii. Procedural steps of the mediation process : INITIATION

### Choice of mediator

- List of EUIPO **mediators** + bios available on EUIPO website
- **ADR Service** can help in the selection

## ii. Procedural steps of the mediation process : PREPARATION

### Pre-mediation planning

Mediator sends the parties a **letter of introduction**:

- Requesting selection of the **mediation venue** (or **online**)
- Asking for a **range of available dates** within a certain timeframe for the mediation
- Requiring identification of **attendees** at the mediation
- Recommending that **business decision-takers** be present (authority to bind)
- Attaching the **mediation agreement** (including **confidentiality annex**) for signature
- Setting timeframe for receiving a **summary of the case**

## ii. Procedural steps of the mediation process : PREPARATION

### Pre-mediation contacts

Mediator **calls parties** (representatives) individually:

- **Follows up** on the letter of introduction, **clarifying** and **responding** to questions
- **Explains** how the **mediation process** will **unfold** on the selected day (emphasizing the need to block the entire day)
- The mediator will **explore** important points of the case summary, with key background issues such as:
  - History of **previous negotiations** (including offers made)
  - Party's ideas for settlement

## ii. Procedural steps of the mediation process : PREPARATION

### Pre-mediation contacts

Several calls with the representatives and their clients may be necessary to:

- **Ensure** that the **right people** will **attend the mediation** and **remain available**
- Establish **rapport** and trust with the parties and their representatives
- Drive the process efficiently, professionally and impartially
- Get the parties to try to **shift** their focus from **past** grievances to **forward looking** possible **solutions**
- **Coach** the parties how to get the best out of the mediation process

## ii. Procedural steps of the mediation process : MEDIATION DAY

### MEDIATION DAY

1. Initial **joint session**
2. Alternating **individual private sessions** with the parties
3. Possible **intermittent joint sessions** (particularly as bargaining progresses)
4. **Concluding the mediation process**

## ii. Procedural steps of the mediation process : MEDIATION DAY

### 1. Initial joint session

- Mediator explains his/her role and sets the ground rules for the day
- Parties make opening statements
- Initial comments and discussion
- Mediator draws up a list of issues with the parties

## ii. Procedural steps of the mediation process : MEDIATION DAY

### 2. Private sessions

- Exploration phase
- Bargaining/negotiation/offers phase

=> CONFIDENTIALITY needs to be carefully managed!

## ii. Procedural steps of the mediation process : MEDIATION DAY

### 3. Intermittent joint sessions

- Advanced bargaining
- Acknowledging progress
- Overall picture and making the pie bigger
- Joint problem solving

## ii. Procedural steps of the mediation process : MEDIATION DAY

### 4. Concluding

- Drafting heads of the agreement → don't leave without getting key points agreed on in writing
- Finalising detailed settlement terms (lawyers)
- Next steps
- Mediator destroys all notes
- Agreement - formal closure of IP litigious proceedings (resume and withdrawal)
- No agreement – resume proceedings

### iii. Useful EUIPO resources

ADR webpage <https://euipo.europa.eu/ohimportal/en/adr-service>

The screenshot shows the EUIPO website's 'Law & practice' section. The 'Practice' menu is expanded, showing 'Trade mark and Design guidelines', 'Appeal', and 'ADR Service'. A red arrow points to the 'ADR Service' link. Below the menu, there is a 'Search for case law' box with a 'Search' button. On the left, there are news items: '29 JUN Montenegro implements CP3', '29 JUN EUIPO-European Commission meeting', '25 JUN International IP Enforcement Summit 2021', and '25 JUN Ombudsman Award 2021: the EUIPO shortlisted'. At the bottom, there is a banner for the 'ETMD EDUCATION PROGRAMME for practitioners for paralegals' with the text 'Apply before 30 June 2021'.

The screenshot shows the EUIPO website's 'Alternative Dispute Resolution' page. The page features a header with the EUIPO logo and navigation tabs. The main content area includes a title 'Alternative Dispute Resolution', a text box describing the ADRS, and a photo of two people shaking hands. A right-hand sidebar contains a 'Practice' menu with 'ADR Service' highlighted, and a 'Tools & documents' section with links to 'EU quality products registries' and 'Overview of GC/CJ case law 2019-2021'. A 'Print this page' button is at the bottom right.

**Alternative Dispute Resolution**

The ADRS offers mediation, conciliation, assisted negotiation and expert determination, which may be used in combination with one another or separately.

Operating under the auspices of the EUIPO Boards of Appeal, the **Alternative Dispute Resolution Service (ADRS)** acts as a modern IP dispute resolution hub offering a full spectrum of ADR tools to businesses and individuals active in the EU and, as the case may be, beyond. The ADRS offers mediation, conciliation, assisted negotiation and expert determination, which may be used in combination with one another or separately.

### iii. Useful EUIPO resources

## Types of ADR services

#### Types of ADR services offered

The ADRS offers the services below, which can be used in combination with one another or separately, according to the needs of the interested parties.

Mediation

Show

Conciliation

Show

Assisted Negotiation

Expert Determination

 [ADR services comparison chart](#)



Mediation

Conciliation

Hide

Conciliation is a voluntary process in which a conciliator **proactively suggests possible solutions** to the dispute. These proposals will be discussed, negotiated and fine-tuned with the parties, who remain at all times free to accept or decline the proposed solution.

The conciliator will be in charge of guiding the conciliation process and will submit a proposal for the settlement of the dispute, if he or she considers there is a reasonable prospect that it could be accepted by the parties and an end put to the dispute. It must be stressed that the decision to conciliate is purely voluntary and requires the consent of all parties to the dispute.

The procedure differs from mediation in that the conciliator makes proposals as to how the dispute could be swiftly settled whereas in mediation the mediator usually does not make proposals but works with the parties to assist them in formulating their own proposals.

When suitable, conciliation may be suggested by the Rapporteur of a case pending at the Boards of Appeal. However, it can also be requested by one or both parties, using a unilateral or joint request form. In all cases, the consent of all parties to the dispute will be needed.

Detailed documentation on all aspects of the conciliation process can be accessed by clicking on the links below.

-  [Decision No 2014-2 of the Presidium of the Boards of Appeal of 31 January 2014 on the friendly settlement of disputes by the competent Board as amended on 1 July 2020 \("Decision on Conciliation"\)](#)
- [Conciliation request form](#)
- [Conciliation confidentiality agreement](#)



## iii. Useful EUIPO resources

### Mediators CV



**Nunzio BAMBARA**  
Nationality: Italian  
Languages: IT, EN, ES, FR, DE  
[Full CV](#)



**Christoph BARTOS**  
Nationality: Austrian  
Languages: EN, DE, ES  
[Full CV](#)



**Sophia BONNE**  
Nationality: Belgian  
Languages: NL, EN, FR, DE, ES  
[Full CV](#)



**Marita BRA**  
Nationality: Greek  
Languages: EN, FR, ES, EL  
[Full CV](#)



**Klaudia MISZTAL**  
Nationality: Polish  
Languages: PL, EN, ES  
[Full CV](#)



**Cinzia NEGRO**  
Nationality: Italian  
Languages: IT, EN, ES, FR  
[Full CV](#)



**Sophie PÉTREQUIN**  
Nationality: French  
Languages: FR, EN, ES  
[Full CV](#)



**André POHLMANN**  
Nationality: German  
Languages: DE, EN, ES  
[Full CV](#)



**Alexandra CRAWCOUR**  
Nationality: British  
Languages: EN, DE, ES, IT  
[Full CV](#)



**Stefano di Natale**  
Nationality: Italian  
Languages: IT, EN, ES, FR  
[Full CV](#)



**Julia GARCÍA MURILLO**  
Nationality: Spanish  
Languages: EN, ES, FR  
[Full CV](#)



**Plamena GEORGIEVA**  
Nationality: Bulgarian  
Languages: BG, EN  
[Full CV](#)



**Susy SCARDOCCHIA**  
Nationality: Italian  
Languages: DE, EN, ES, IT  
[Full CV](#)



**Kamar SIDAT HUMPHREYS**  
Nationality: British  
Languages: EN, ES, FR  
[Full CV](#)



**Antje SÖDER**  
Nationality: German  
Languages: DE, EN, ES  
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**Sven STÜRMANN**  
Nationality: German  
Languages: DE, EN, ES  
[Full CV](#)



**Gordon HUMPHREYS**  
Nationality: British  
Languages: EN, FR, ES  
[Full CV](#)



**Philipp von KAPFF**  
Nationality: German  
Languages: DE, EN, ES, FR  
[Full CV](#)



**Arkadiusz MAKAR**  
Nationality: Polish  
Languages: PL, EN  
[Full CV](#)



**Virginia MELGAR**  
Nationality: French  
Languages: FR, EN, ES  
[Full CV](#)



**Katarzyna ZAJFERT**  
Nationality: Polish  
Languages: PL, EN, ES, FR  
[Full CV](#)

### iii. Useful EUIPO resources

## Model ADR Contractual clauses

### Model ADR contractual clauses

The ADRS provides model ADR contractual clauses to facilitate party agreement to settle potential disputes amicably.

Parties wishing to refer to EUIPO ADR are encouraged to include an appropriate ADR clause into any commercial contract in connection with IP rights. This allows contracting parties to agree that, in case any future dispute arises, they will use an alternative form of dispute resolution (such as mediation) as a step prior to court proceedings.

The recommended clauses have been drafted with the support of the ADR Stakeholder Advisory Board (SAB), reflecting best practices for mediation and other dispute resolution modalities.

You can download the model contractual clauses [here](#)

## iii. Useful EUIPO resources

### ADR Networks

#### ADR Networks

As part of the efforts to promote the services offered, several networks have been established with groups that play an active, participative and advisory role in the initiatives the ADRS intends to take.

**Stakeholders Advisory Board (SAB)**



**Chambers of Commerce**



**Network of IP Judges of the EUTM and RCD Courts on mediation**



### iii. Useful EUIPO resources

## ADR Pledge

### Take the ADR pledge

The ADRS has drafted ADR Mediation Pledges designed for different addressees: user associations, business associations, companies and law firms.

The idea is that pledgees seek to **encourage the use of mediation and other ADR mechanisms** whenever possible with a view to reducing the negative consequences of disputes involving IP.

Therefore, the pledge is essentially a statement of intent on the part of the pledgee to explore and consider, whenever appropriate, use of mediation or other ADR mechanisms before pursuing other dispute resolution processes.

#### EUIPO ADR Pledge for IP disputes for Law Firms

English (en)



Download PDF

#### EUIPO ADR Pledge for IP disputes for Companies

English (en)



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#### EUIPO ADR Pledge for IP disputes for Business Associations

English (en)



Download PDF

#### EUIPO ADR Pledge for IP disputes for User Associations

English (en)



Download PDF

### iii. Useful EUIPO resources

#### ADR Brochure



### iii. Useful EUIPO resources

## Mediation Brochure





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