

Specific Programme
“Civil Justice” 2007 - 2013



Funded by The European Union

Lawyers in ADR

Roles, responsibilities and opportunities for
 Lawyers in Alternative Dispute Resolution (ADR)

UPCOMING EVENTS

2009

DATE	EVENT	LOCATION
3-4 November	Training of Trainers	Rome
6 November	Conference	Amsterdam

2010

DATE	EVENT	LOCATION
11 February	Conference	Paris
24-25 February	Conference and Training of Trainers	Athen
3-4 March	Training of Trainers	London
19-20-21 April	Conference and Training of Trainers	Utrecht
23-24 April	Conference and Training of Trainers	Prague
12 May	Conference	Madrid
13 May	Training of Trainers	Barcelona
27-28 May	Training of Trainers	Paris
3 June	Conference and Training of Trainers	Ljubljana
9-10 June	Final Conference and Training of Trainers	Bruxelles

The dates may be subjected to changes.



A project of
**JAMS INTERNATIONAL
 ADR CENTER**

In cooperation with

Utrecht University
 (Netherlands)

University of Deusto
 (Spain)

UEAPME
 (Belgium)

ACB Group B.V.
 (Netherlands)

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Knowledge center

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Mediation Advocates Summit & Train-the-Trainers Course*

Rome, 3-4 November 2009

Tuesday, November 3, 2009

14.00 – 14.45

Welcome and Intro

- Presentation of “Lawyers in ADR” by Giuseppe De Palo and Chris Poole; Participants Introduction

14.45 – 15.30

Mediation Advocacy “Live Theater”

15.30 – 16.00

Networking and Coffee Break

16.00 – 17.00

- Plenary Discussion Moderated by Jay Welsh

17.00 – 17.50: 1st teaching module

Barriers in Unassisted Legal Negotiations – Presenter: Giuseppe De Palo

- Facilitated Discussion

17.50 – 18.00

Q&A

20.00 – 22.00

Dinner at “Babette” Restaurant, Via Margutta 1-3 (Walking distance from the training center)

Wednesday, November 4, 2009

9.00 – 10.30: 2nd teaching module

ADR Client Counseling – Presenter: Angelo Anglani

- Facilitated Discussion

10.30 – 11.00

Coffee Break

11.00 – 12.30: 3rd teaching module

Drafting Mediation Clauses and Mediation Agreements (cross borders implications) – Presenter: Tim Hardy

- Facilitated Discussion

12.30 – 13.00

Plenary discussion

13.00 – 14.15

Lunch Break

14.15 – 15.45: 4th teaching module

Toolkit Mediation Advocacy Game - Presenter: Manon Schonewille

- Facilitated Discussion

15.45 – 16.30

Closing Circle and Adjournment

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Mediation in Civil and Commercial Matters in Italy: The Strong Legislative Push¹

In June 2009, the Italian Senate approved an important reform of the civil process system (Law 18/2009, No. 69),² which also contains rules regulating and promoting recourse to mediation in civil and commercial disputes. These rules have been the subject of a scrupulous debate within the Italian Parliament. Through them, the Italian Parliament wants to abide by the rules of the European Directive on Mediation of 21st May 2008³ (the “EU Directive”). According to the rules approved by the Italian Senate, the Italian government had to adopt within 6 months (i.e. by January 2010) one or more decrees that will follow with specific principles and rules. The first of these decrees approved by the Italian government on 28 October 2009 was the decree to introduce mediation into the Italian legal system. In Italy, mediation will finally play an important role in the settlement of future disputes arising in all civil and commercial matters.

The decree applies to all disputes arising in civil and commercial issues (Art. 2).

Mediation and conciliation have two different meanings under the new law (Art. 1). Mediation is the *activity* carried out by an *impartial third party* to assist two or more parties to join an amicable settlement to their dispute; or to suggest a proposal that can settle the controversy. Impartiality and neutrality are the main duties imposed to mediators by law (Art. 14). Conciliation describes the positive outcome of the whole procedure, that's to say the settlement of the disputes after mediation.

The law addresses various aspects of mediation, including procedural rules (Articles 3 to 15); accreditation of mediation organizations (Articles 16 to 19); tax benefits and duty of information (Articles 20 to 21).

Concerning procedural rules mediation is considered to be an *informal way* (articles 3 and 8) to settle disputes that will be regulated by the internal Mediation Rules adopted by each private or public-sponsored mediation body, registered in the National Register. Professionalism and efficiency are the two main requirements for mediation organizations wanting to appear on the National Register. Separate sections of the Register will be established for specialised mediation bodies having, for instance, specific skills in international matters (Art. 16).

All Mediation Rules adopted by mediation organizations will guarantee the confidentiality of the mediation procedure and the impartiality and capacity of mediators appointed by the body to carry out a fast procedure (Art. 3).

The procedure must last no more than 4 months (Art. 6) and it is a compulsory step before starting any controversy in the main areas of conflicts: banks, health liability, insurances, finance, family agreements, co-ownership, leases, and libel, real estate rights, and

¹ Draft of 2nd November 2009

² See in particular Article 60, Law No. 69 dated 18 June 2009 - <http://www.parlamento.it/parlam/leggi/09069l.htm>

³ See Directive 2008/52/EC - <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:081:0040:0041:EN:PDF>

inheritances. This means that these kinds of disputes have to pass through the mediation process before entering the door of a Court (Art.5).

Lawyers have the duty to inform the client about the possibility to use mediation to solve his or her disputes while specifying all tax benefits of mediation procedure. The information must be given by a written document signed by the client that can be joined to the writ of summons. If the document is not joined, the judge informs the party about mediation. (Art.7)

The judge may, in any case, suggest to the parties during the proceedings to solve the dispute by the use of mediation.

An important aspect of mediation procedure is now regulated by law. **Mediation confidentiality**⁴, is standardized, either during the process (Art. 9) or out of the mediation procedure (Art. 10). All people working for the mediation body has the duty to keep secret all information received or offered during the mediation process. The same principles apply to information exchanged during private sessions (caucus), where the mediator cannot offer the information to the other party, if she or he has not so agreed.

But the more important profile is the *substantive* protection finally recognized for mediation confidentiality⁵. According to article 200 of the Code of Criminal Procedure, mediators cannot be obliged to testify about information obtained during their work. To testify about information obtained during a mediation will result in the mediator committing a crime. Information and declarations exchanged during the mediation procedure cannot be used as a proof during Court proceedings started to solve the same dispute.

Another crucial profile of mediation has also been regulated by the new law. What previously was defined as the 'weakest' aspect of mediation - the **enforcement of mediation agreements**⁶ now is monitored under the new law. Till now, the agreements reached during voluntary out-of-court mediation were considered private agreements that could not be enforced directly. If they were enforced it was only through an action for breach of contract. One exception was the mediated agreements in corporate and financial matters, usually reached through the assistance of registered organizations, that were judicially enforceable. Now, according to article 12 of the Decree this principle apply to all agreements in civil and commercial matters resolved through the mediation process handled by mediation bodies registered to the National Register.

After validation of the mediation agreement, by the president of the court where the mediation organisation has its main office, the agreement then contains an enforcement action empowering the parties to levy execution.

⁴ S. CARMELI, "Mediation confidentiality: the Italian legal landscape", in *Mediation Committee Newsletter* April 2009, p. 27-28, where – face to the legislative gap - we already suggested to apply to mediators by analogy the provisions on the professional secret under article 200 of the Code of Criminal Procedure.

⁶ S. CARMELI, "Enforcement of mediation agreements in Italy" in *Mediation Committee Newsletter* December 2007, pagg.23-24.

If the parties do not reach an agreement, the mediator has to suggest a proposal for them, which they are free to adhere or not to adhere in order to settle the dispute. This proposal has to be sent by a written document to the parties and if they do not answer, their silence is considered a refusal of the proposal (Art. 11), with negative consequences for the allocation of process fees (Art.13). The winning party of a trial - who has not accepted the proposal of the mediator - can be condemned by the judge to pay fees to the counterpart.

Contrary to legal proceedings, all mediation acts, documents and agreements enjoy tax benefits (Art. 17).

Aware of lack of information and with the aim to promote the use of mediation, the Italian Government will undertake advertising campaigns, especially via internet, on the mediation process and on registered mediation bodies that only can handle the mediation procedure under Italian Law.