



European Mediation Training for Practitioners of Justice

A Guide to European Mediation

Association for International Arbitration (ed.)



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INTRODUCTION

The European Mediation Training for Practitioners of Justice (EMTPJ) is a project of the Association for International Arbitration (AIA). Its ultimate goal is to introduce "European Mediators" and to promote cross-border mediation in civil and commercial matters. EMTPJ was launched in 2010 with the support of the European Commission and in close cooperation with the University of Warwick, UK and HUB Brussels. In 2012 the course is conducted for the third time.

EMTPJ should become a milestone for mediation in Europe as it is a unique training for at least three reasons. First, its content is recognized not only by the Belgian Federal Mediation Commission but also by many mediation centres in and beyond Europe, which allows successful participants to apply for accreditation across the globe. Second, an important feature of the course is its multinational environment and this refers to students as well as to the lecturers. Thanks to such diversity, people explore different cultures and mediation traditions. Third, the EMTPJ is a comprehensive 100 hours training that lasts for two weeks, including an assessment day. Such an intensive program gives participants an opportunity to build a close relationship as they spend quite a lot time together.

This book is a compilation of the presentations, course materials and articles that address diverse topics associated with mediation. The topics vary from the general aspects of mediation to such specific issues as refusal to mediate and multiparty mediation.

The first part of the book begins with the article "Mediation as an ADR Method" by Alessandro Bruni. The author makes a brief explanation of what mediation is and its main characteristics. He also highlights the difference between ADR methods and makes an overview of skills a mediator needs during the mediation process, such as communication skills, an ability to actively listen to what the parties are saying, patience, and the art of questioning, among others.

In "International Mediation", Paul Gibson discusses the real challenges for the mediator in working through the often complex cross-cultural issues that underpin the dispute. The author also addresses three areas of international mediation: (1) social and anthropological aspects of cross-border or international mediation; (2) applicable rules and code of conduct; and (3) legal and strategic considerations.

The article "The Role of Law in Interaction: Mediation, ADR and Legal Thinking" by Frank Fleerackers focuses on the obligation of Member States to encourage the training of mediators. This legal education is necessary to equip mediators with the tools and practical knowledge for their mediation careers.

The article "Theory and Practice of Contract Law in Europe" by Andrew Colvin examines the present state of contract law in Europe, the instruments available for the practitioner in Europe, and some of the projects proposed to bring out an European contract law.

The article "Recent Developments in European Mediation and ADR" by Johan Billiet and Dilyara Nigmatullina consists of two parts. First part examines the EU Mediation Directive: its scope, current state of compliance with it by the Member States and its three main objectives as well as the interrelation and applicability to European mediation and mediators of the EU Services Directive and the EU Professional Qualifications Directive. The second part concentrates on the recent proposals of the European Commission on the Directive on ADR for consumer disputes, and the Regulation on online dispute resolution for consumer disputes.

The article "Refusing to Mediate: A Selection of Evolutions in Europe" by Philippe Billiet focuses on the current pro-mediation stance in Italy, England and the Netherlands. For this purpose, the author divides the article in three parts: (1) the obligation to mediate in Italy; (2) abusive refusal to mediate in England, which compared to Italy, has no compulsory mediation procedures and English courts have declined to compel mediation; (3) abusive refusal to mediate in the Netherlands, where the author makes a comparison with different rulings over labour disputes.

Linda Reijerkerk and Marga Schreuder in their article titled "The Mediation Process" emphasize that the mediation process is dynamic, and it aims to facilitate the participants in clarifying information, working through their emotions, restoring communication, assisting in negotiation and resolving their disputes themselves. Authors present the "mediation circle", used by the Centre for Conflict Management in the Netherlands, as an effective road map to guide the mediator and the parties through the process.

"EU Ethics in Mediation" by Arthur Trossen explains what ethics are and why mediators need them in their daily life. For him, the aim of ethics in mediation is to adjust the mediator's behaviour. Mediation and ethics vary from culture and among EU states, therefore, it is important to understand the ethics of mediation and unify them in a way that is acceptable for each mediator in any Member State.

"No Feelings Please, We Are Executives" by Theo Van Dijk, discusses the connection between rationality, emotions, and feelings during the arbitration and mediation processes. For the author, it is important that arbitrators and mediators have knowledge of the relationship between these concepts in order to have an effective process.

"Persistent Positions" by Jacques de Waart focuses on the technique known as "peeling the onion", which aims to effectively intervene with persistent positions. The author shows and explains the hidden power of this technique in the mediation process. This skill gives the perfect image of solid shells you can peel off one by one until you arrive at the deepest centre, which is the problem in dispute and the solution for it.

Deadlock can be one of the in issues in the mediation process. In "How to Deal with a Deadlock", Phillip Howell-Richardson, describes deadlock as one of the critical stages that may need to be undertaken in mediation and explains what strategies can be used to overcome impasse.

“Multiparty and Group Mediation” by Linda Reijerkerk explains the challenges that a mediator encounters in multiparty mediations and the strategies that can be used in this type of mediations. To explain the basic theories in group mediation, the author illustrates them with case situations and examples.

The conclusion that Willem Meuwissen makes in the final article of the book, titled “The Function of Party Experts and Party Counsel in Civil and Commercial Mediation”, is that guiding parties to and through a mediation is a fascinating professional activity and that the bond and goodwill, created within the successful negotiation team, guarantees the professional’s concern of a prolonged and profitable professional relationship with the principal.

This book is complemented by a DVD that contains a video made during one of the regular practical sessions during the EMTPJ course of 2011. The video consists of two parts: mock mediation and several interviews of the participants.

In 2011, practical classes of the EMTPJ were conducted by Willem Meuwissen and Philippe Billiet. The style of mediation taught and utilized throughout practical sessions is facilitative.

Those conducting mediation, are participants of the EMTPJ 2011 course: Paul Gibson from Australia, John Gunner from the UK and Randolph Jones from the USA (named in the order they appear on the screen). The parties and their counsel are also attendees of the EMTPJ 2011 training. The off-screen voice is of Linda Reijerkerk – one of the lecturers of the EMTPJ 2011 course.

We wish you to enjoy the book and hope to see you at one of our next EMTPJ trainings!

Johan BILLIET

President of the Association for International Arbitration

The course "European Mediation Training for Practitioners of Justice"©, organised by the Association for International Arbitration, can be regarded as a milestone for mediation in Europe because, among others, it allows successful participants to apply for accreditation throughout the whole EU and establishes, thereby, a category of truly 'European Mediators'.

The book and the enclosed DVD are the result of this 100-hour course program, divided into theoretical and practical parts. The topics in the book vary from more general, such as differences between mediation and litigation or role of a mediator, to such specific practical issues as a refusal to mediate, dealing with deadlocks, and multiparty mediation. Articles in this book have been authored by recognized mediation professionals working in different jurisdictions across the EU and providing EMTPJ training sessions.

This book may be regarded as the unique guide on mediation in Europe and on how to become an EU qualified mediator. It is of particular interest for those willing to practice mediation.

The enclosed DVD contains a mock mediation conducted during a regular practical session of EMTPJ 2011, which is commented by one of the EMTPJ lecturers.

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ISBN 978-90-466-0499-1



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