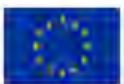


English for Mediation in Cross-Border Civil and Commercial Matters

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INTRODUCTION

This manual was initially written to be used by trainers and participants in courses taught to EU lawyers, judges and professional mediators. However, it was also written having in mind the possibility to use it as a stand-alone tool by users who would like to improve their English in this particular field.

The manual has been designed taking into account the current mainstream approach in teaching English for Specific Purposes (ESP), as will be explained further down. The foundations for the structure, distribution and organisation of the manual can be found within Content-Based Language Instruction (henceforth, CBLI; according to some schools, simply CBI), which is the concurrent study of language and subject matter. There is discussion amongst authors as to the relevance of language and of contents within this approach, but in the elaboration of this manual CBLI has been considered to be an approach that combines language and content teaching, even if there are differences in the emphasis placed on language and content.

In the manual the approach chosen has been top-bottom, which means that the contents move in progression from more general to more specific.

PURPOSE OF THE MANUAL

The manual was initially designed having in view the specific requirements of the actual courses that were to be taught, but it can just as well be used for courses of a similar nature. Thus its purpose was to assist trainees who wished to improve their English in this particular field, either for revision and consolidation or as remedial work (those needing extra help and practice to improve their knowledge of legal English in the specific subject area).

However, it was also written having in mind the possibility of using it as a stand-alone tool by any user who wishes to improve their level of English in this particular field.

The main purpose of the manual is to introduce users/trainees to the main difficulties of dealing with the specific topic covered in English, which is Mediation in Cross-Border Civil and Commercial Matters. It also aims to improve their knowledge of the vocabulary in this particular field, as well as to foster their four language skills: listening, speaking, reading and writing.

When the manual is used as a stand-alone tool, however, there is only one **‘caveat’**: it would be advisable to do a few exercises in pairs or groups (as we will see below, the best option would be to work with a colleague or some colleagues) so as to obtain some feedback on performance. These exercises are not numerous and will be specified below.

COURSE DESCRIPTION

It is important to describe the nature of the courses for which the manual was written, which will allow future trainers understand the main principles underlying its tenets, organisation and structure. Most participants were lawyers, judges and professional mediators and a few participants held different posts at Ministries of Justice or other bodies, institutions or associations. Courses had up to 30 participants from various EU Member States.

Some sessions and workshops were held with the whole group, whereas for some other sessions the group was split into different subgroups. The first day the whole group was together for the language introduction first and then for an introduction to the topic. From there on, in the mornings participants were split into two groups which had

sessions at the same time as the other one, but in different classrooms: one dealt with language and the other one with the legal topic. Finally, afternoon sessions were devoted to workshops in mediation, where all participants were divided into smaller groups for role-play practice in a mediation case. The workshops were co-taught by both the language and the legal expert(s) in unison.

The division of the main group **did not have to do with participants'** levels of English or of expertise; it tended to focus more on the separation of participants who (a) had a mother tongue in common so as to prevent them from resorting to translation or to communication in a language other than English (b) had the same (or similar) legal traditions; (c) had similar legal professions. The reason behind (b) and (c) is that the indisputable advantage of having different legal systems in one group is to allow for the exchange of experiences as well as of invaluable insight into how issues are dealt with in the different Member States. The subdivisions of the groups for role play activities had to do with previous experience in mediation as well as with language skills (the role of mediator tended to be allocated to those with previous experience in mediation and with the ability to speak English relatively fluently).

Courses were usually taught by two language experts and between three and four legal experts. This arrangement is based on the nature of the project. The first half of the course was taught by one language expert and some legal experts, and the second half was taught by a different language expert and other legal experts, although for the language part the same manual was used by both experts. The advantage of this variation of speakers is that it puts participants in contact with (a) different accents in English and (b) different approaches and teaching methodologies. Since English is the lingua franca in the EU as well as the working language of many EU institutions and bodies, it is not frequently that one has to communicate with native speakers of English. It is therefore important to be in touch with as many accents as possible, and these courses are a unique chance to be in contact with different accents, both by speakers and participants alike.

Courses were intensive and lasted 3 full days, evenly distributed across 4 days (with two half-days).

These unique courses are indeed an extremely interesting teaching challenge because they combine -as has been mentioned earlier- instruction both in English and in the subject matter of the course. This posed three considerable challenges:

1. Participants usually had rather different levels of English, which was a main factor in the making of the manual and which accounts for the way it has been designed. Some participants were fluent in English and had an excellent command of it in the four main skills (reading, listening, speaking and writing), being at the Common European Framework of Reference for Languages (CEFR) Level C1 (effective operational proficiency or advanced). Some participants even reached C2 (mastery or proficiency) either because: (a) they were native speakers of English who were interested in the topic of the course; (b) they had been brought up or had studied some years in an English-speaking country (c) they had held posts where they had to speak English on a daily basis or (d) simply because their level of English was excellent. Some others were rather good, reaching B1 (threshold or intermediate) or even B2 (vantage or upper intermediate), although in some cases this only applied to **some of the skills (usually 'receptive' or 'passive' skills, such as reading and listening)** but were lacking in the more **'productive' or 'active' skills (speaking and writing)**. Finally, some others (the rare exception) moved between A2 (waystage or elementary) and B1 (threshold or intermediate): they were not complete beginners but their abilities were rather limited, in particular with productive skills. Far from being a disadvantage, this particular combination of levels of English within groups can be used as an advantage in class. All participants were highly motivated, and the outcome

of this was that those whose level of English was lower felt positively challenged by the better ones, whereas the more advanced participants were happy to encourage and assist those whose level was lower. Thus, the difference in levels in the classroom played to the advantage of all participants as well as the trainer(s).

2. Different levels of expertise in the field. Trainers could not take for granted previous knowledge of the topic by participants; as it turned out, some had an extensive and valuable experience dealing with cases related to the course topic, whereas others had no experience at all, which was precisely the reason why they had registered for the course. Again, this can be used as an asset, since participants from several Member States can share procedures, experiences, methods and strategies which supplement the more theoretical part of the course. It was considered appropriate to adopt a low common denominator and thus to explain even basic concepts (it must not be forgotten that some participants did not ask for clarification because they were shy of their command of English).
3. Cultural factors at play. Given the fact that there could be up to 28 nationalities in a course, there were many intercultural factors at play, which trainers had to be aware of. Different cultures may have different expectations of a training event in terms of language, contents, approach, etc. Conversational styles (see Deborah Tannen's publications on the topic) have been proved to be different across cultures (turn-taking, pitch, degree of straightforwardness, physical closeness when speaking, etc.). Trainers had to be aware of all of these and to be able to identify expectations for each group (nationalities varied); on the basis of this, they had to reach a compromise solution with a common ground approach that could **satisfy participants' needs as much as possible** given the classroom diversity. Additionally, the courses dealt with mediation in cross-border family matters, where bilingual, bicultural mediators are an asset of extraordinary value.

METHODOLOGY

As regards the methodology employed in the actual design of the exercises of the manual, CBLI has been consistently employed. **According to Brinton, Snow & Wesche's definition** (Cenoz 2015), CBI (content-based instruction) is "the concurrent study of language and subject matter (...)". **Richards & Rogers also emphasize the role of language "as a vehicle for learning content" (2001: 208). However, Stoller (2008: 59) extends this definition** and considers that CBI would cover any approach that combines language and content teaching, even if there are differences in the emphasis placed on language and content (Cenoz 2015: 10). In this case CBLI is aimed at the development of use-oriented second language skills through concurrent teaching of specific contents and language use (Wesche 1993). Many recent legal English handbooks and manuals have adopted this content-based approach: Walenn (2009), Frost (2009), Wyatt (2006), Riley & Sours (2014) or Haigh (2015), to name but a few. In our view, this approach contributes to a closer and extremely fruitful cooperation between language experts and legal experts.

In relation to the venue and classrooms, for lecture-type lessons a traditional style auditorium or conference room may be adequate; however, for language lessons smaller classrooms are more suitable. As for layout, the physical arrangement of the classroom is essential. For the language sessions, a U-shaped arrangement is best, since participants can see one another as well as the trainer. For the workshops, participants needed several rooms in order to be able to carry out the mediation role play in smaller groups, and they usually chose a circular arrangement, or two semi-circles, to carry out the mediation role play.

Table name cards or tags (preferably first-name only) in big print are extremely useful. By using them, participants -who are usually unknown to one another-, can quickly and easily name colleagues. **Trainers should try to learn participants' names and call them by their first**

name. It is also crucial to ask trainees to sit in the same place throughout the training, thus encouraging visual memory skills. Additional factors such as good lighting and sound conditions (microphones and loudspeakers) must be thoroughly checked. As for microphones, they are a delicate subject to be carefully considered depending on the characteristics of the room, since they tend to distort the sound and make it more difficult for trainees to understand and grasp pronunciation issues with precision.

Trainers should be knowledgeable both in English, in cultural differences (**‘conversational styles’**) and in the course topic and should also be able to effectively transmit information in a clear, simple and structured manner, using a variety of teaching skills to motivate trainees. They should also keep in mind that interaction and flexibility are two of the most important factors, for the following reasons:

(a) participants wish to improve their oral production skills and they should be encouraged to do role play, discuss, exchange views, explain advantages and disadvantages, agree and disagree, give their opinion, etc.; thus, if an interesting debate comes up, the trainer should let it develop naturally rather than be concerned about the time allocated to each exercise;

(b) since this is an intensive course with many sessions, it is essential to be able to detect when trainees are tired and need a change in pace, rhythm or even type of activity (moving on to a different exercise which is lighter or more diverting).

Flexibility is of particular importance, since trainers need to adapt to the specific needs and interests of trainees, which will vary in each group, and the same applies to their language needs. The use of audiovisual material, especially as a short break in particularly intensive sessions, is of invaluable help.

As for the actual suggested tools and strategies used in class to implement CBLI methodology in the actual teaching of the materials, some recommendations may be (but are not restricted to) the following:

- clear pronunciation;
- adequate pace of speech;
- adapting to **the group’s learning rhythm**;
- repetition both of terms and of their pronunciation (repetition is essential for long-term learning);
- using alternative definitions and asking participants to define in their own words;
- using exemplification and asking trainees to provide examples;
- providing synonyms or near-synonyms (ensuring the difference between them is understood);
- using classification and sub-divisions;
- eliciting answers;
- double-checking if the concepts have been correctly understood by asking in a different way;
- recapping;
- spelling (or asking participants to spell) difficult words on the screen (or flipchart);
- role play;
- using unfinished sentences that trainees must finish;
- making intentional mistakes to see if participants identify them;
- using open-ended questions rather than closed ones;
- making use of prompts (e.g. asking them to start a sentence providing the first word);
- contradicting **participants’ statements** to gently push them to make a point or to defend their position using arguments;
- creating controversy to make participants intervene;
- making sure all trainees have an active role in every session by addressing them directly if necessary;

- using praise as encouragement;
- gentle error correction (making sure the nature of the mistake is fully understood);
- peer review (asking other participants to give feedback);
- departing from the order of the items within exercises;
- jumping the order of seating arrangements when doing exercises to keep participants alert;
- asking questions on secondary issues related to the exercise that is being done;
- changing the role assigned in the different workshops;
- changing the activity if participants are perceived to be tired, etc.

The list above is by no means a closed list, since given the heterogeneous nature of the groups' composition, trainers might have to employ a wide range of techniques with each group.

ORGANISATION OF THE MANUAL

There are 19 exercises in the manual, and each of them focuses on a particular (sub)area of the topic. There are also 4 Annexes: one on golden rules in mediation; one on paralinguistics in cross-border mediation; one on politeness theory applied to cross-border mediation and one on hedging devices for mediation.

At the end there is an Answer Key as assistance to trainees if there has not been enough time to do all the exercises, or for users to check their answers to the exercises in the manual.

The materials are not organised gradually from a grammatical point of view, since a content-based approach has been used. Rather, they resort to language issues (prepositions, premodification, passive structures, vocabulary, etc.) to deal with the different sub-topics of the course.

The first exercise is introductory in the sense that it focuses on general legal English. The remaining 18 exercises focus on specific vocabulary (and grammar) issues related to the topic. The exercises are as follows:

1. General legal vocabulary;
2. Pronunciation of frequent terms/expressions in civil and commercial matters;
3. General civil law terms;
4. Reading and giving an opinion (Draft Report on the implementation of Directive 2008/52/EC);
5. Premodification (The Implementation of the Mediation Directive 29 November 2016);
6. Listening comprehension (speech by Ms. McCarthy, MEP);
7. Reading (The Mediation Directive. European Implementation Assessment);
8. Prepositions (The Implementation of the Mediation Directive 29 November 2016);
9. Mediation vocabulary (I);
10. Mediation vocabulary (II);
11. Opposites (antonyms) from the Implementation of the Mediation Directive 2016;
12. Passive structures;
13. Giving your opinion on topics (mediation models);
14. Reading and answering questions (**mediator's skills**);
15. The subjunctive (the Implementation of the Mediation Directive 2016 and other sources);
16. Word building (Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters);
17. Multiple choice (CJEU ruling; consumer protection, ADR procedures);
18. Inversion (Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters);

19. Gap-filling (Regulation (EU) No 524/2013 on online dispute resolution for consumer disputes).

As can be seen above, the increased complexity of the exercises is directly related to the depth of analysis of the topic, not to grammar issues.

The reason for this top-bottom approach (from more general to more specific) is, as has been mentioned above, a content-based language training approach. Grammar is not the guiding principle of the manual, but subject matter is. Trainees/users should first become familiar with general legal terms in order to be able to have a reasonable command of them when the time comes, later in the manual, to deal with texts. There is also a progression from out-of-context vocabulary exercises to vocabulary in sentences, in excerpts or in texts.

SPECIFIC INSTRUCTIONS TO USE THE MANUAL

Trainers may choose what order they would like to follow in doing the exercises depending on the level of the group as a whole, both in English and in the topic of the course. We strongly recommend following the order of the manual, but individual group characteristics may call for a slightly different order. One group may be relatively fluent in English, but this does not necessarily mean that they will be acquainted with legal vocabulary; contrariwise, a particular group may be familiar with the terminology of the topic because a few of them may have experience in the field or for any other reason; this does not imply, however, that they may be able to speak English fluently when it comes to giving their opinion, disagreeing, etc. on matters that have to do with the topic. Consequently, trainers will have to assess on the first day during the introduction what level participants seem to have both in English and in their command of the terminology of the topic, and act accordingly. Additionally, as mentioned earlier, trainers may choose to skip an exercise which demands more attention or concentration because at that point participants seem to be tired; in that case, a more engaging exercise may be found in the manual.

Individual users may also choose the order they would like to follow in doing the exercises depending on their level both in English and in the topic of the course. We strongly recommend following the order of the manual, but some users may need a slightly different order. If users are not familiar with the topic of the manual, we recommend starting from the very beginning; if they already have some experience in dealing with the topic in English, they could start directly with exercise 3, but they may also skip the order depending on personal factors such as tiredness, available time, etc.

In view of the fact that this manual has a two-fold role, i.e., (a) a tool to be used in training events and (b) a stand-alone tool to be used by individual users, we include below a double recommendation for each exercise: (1) for trainers, on how to best exploit each exercise (**under “Trainer instructions”**) and (2) for end users, on how to tackle and make the most of each exercise (**under “User instructions”**).

Unless the level of the whole group is exceptionally good, it will be difficult to cover the whole manual given the short nature of the course and the fact that part of it has to be devoted to legal issues exclusively. However, this was taken into account in the making of the manual, and additional materials were intentionally included so that participants could have some extra activities to do after the course if they wished to do so.

A tip which will be applicable to all exercises done in an actual course is the following: trainers should try not to follow the order in which participants are sitting (jumping the order/sequence keeps them alert) and if possible they should call them by their names.

TRAINERS' INSTRUCTIONS

Introductory session

This is only applicable when the manual is used in training events.

It is essential to “break the ice” in the first session. Participants are normally not used to speaking English for so long and about such specialised legal topics, do not know one another, come from different countries, may be exhausted after a long trip, etc. Thus, the first session should be as relaxed and easy-going as circumstances will allow.

Ask participants to arrange themselves in pairs. Then give them 10 minutes (5 each) to find out professional information about their partner (country of origin/nationality; professional background; past and present position(s) held, experience, interest in the course, expertise in the topic, etc.). Then ask them, one by one, to introduce their partner. In order to prevent this activity from being boring, introduce unpredictability into this activity such as asking them unexpected questions (or, even better, requesting them to ask their partner questions), either of a purely professional nature (**such as why they say that they are “judges” and not “magistrates”; why they use the term “lawyer” instead of other alternatives**), or questions that are more personal (without ever trespassing the sphere of the most absolute discretion and respect), such as why they wanted to become judges instead of prosecutors, what they like to do in their free time, etc. Interspersing more specialised questions with general ones relaxes the atmosphere considerably. It is also important to start introducing in this session some pronunciation issues, as there will inevitably be some mispronunciations of legal terms. Fun examples of mispronunciations which cause misunderstandings in English may be used.

EXERCISE 1: General legal vocabulary

Give participants a few minutes to read the questions to themselves. Then ask them in turns to read out one question and to suggest an answer.

Trainers should try to elicit the answer from participants using the Socratic method rather than simply provide the answer to the question.

The really interesting part of this exercise (and its main purpose) is that participants realise the differences between national systems and their terminology, and this is what the trainer should exploit. As way of an example, emphasis could be placed on the differences between **the terms “The Judiciary” and “The Magistracy” in different Member States (e.g. what “the Magistracy” means in France, Romania, Italy or Portugal), or on the different meanings of “judge” as against “magistrate”, or “court” against “tribunal”.**

Emphasis should also be placed on the nuances of meaning in terms such as “lawyer”, “advocate”, “barrister”, “solicitor”, “attorney-at-law”, etc.

EXERCISE 2: Pronunciation of frequent terms/expressions in civil and commercial matters

Try to find out about some of the most frequent pronunciation pitfalls in English for some **European Union languages (aspirated “s” for speakers of Spanish or the pronunciation of letter “y”; problems making a difference between “v” and “f” for speakers of Dutch; problems making a difference between “v” and “w” for speakers of Lithuanian and Latvian; silent “h” for speakers of French; final consonants for speakers of Italian, etc.).**

Briefly explain some pronunciation differences between the main variants of English; it is recommendable to stick to two standard varieties: British English (RP –Received Pronunciation- or ‘BBC English’) and American English (GA-General American- or ‘Boston English’).

Ask participants to read out one item each; correct pronunciation mistakes (if any) and ask them to pronounce the term/expression again. You may, if you like, ask them to try and pronounce the expressions in British English and in American English so that they can hear the difference.

Ask participants to take down all the expressions whose pronunciation they were not aware of (or mispronounced), and ask 5 participants to pronounce once more the items they had difficulties with.

EXERCISE 3: General civil law terms

Participants are provided with a clue or prompt which is part of the correct term (initial letter, initial and final letters, prefixes, etc.), so this exercise is entertaining in the sense that it is similar to playing hangman.

Ask participants to read out one definition and to provide the appropriate term.

Tip 1: Focus on concepts that might differ in other Member States (*remedy* and *relief*, *tort* and *delict*, etc.).

Tip 2: Explain terms that may appear to be similar but which mean different things, such as *damages/damage*.

Tip 3: deal with concepts that might mean the same but where a different term might be used, such as *force majeure*.

At the end of the exercise, ask them if they disagree with any of the definitions and why.

EXERCISE 4: Reading and giving an opinion (Draft Report on the implementation of Directive 2008/52/EC)

Without looking at the manual, ask 5 participants to give their opinion on a few general topics that you can choose from current events. The other participants should tick from the table in this exercise the expressions they are using from the list and make a note of expressions used that are not on the list.

Are there many repetitions of some expressions? If that is the case, ask those 5 participants to rephrase their opinion using a different alternative.

Now ask participants to read the text on the findings on the implementation of the Mediation Directive and ask them to give their opinion on the different approaches by Member States. If they tend to use the same expressions, ask them to use alternative ones.

Now ask 7 random participants to answer questions 1-7 on the text.

EXERCISE 5: Premodification (The Implementation of the Mediation Directive 29 November 2016)

Explain what premodification (*table leg*) and postmodification (*leg of a table*) are in English and briefly run through **the main types (noun compounds, as in “war story”; adjectival premodification, as in “beautiful landscape” and mixed types, as in “a long, wandering forest path”)**. You may use internet resources, such as: <https://www.thoughtco.com/premodifier-grammar-1691527>; <https://english-grammarblog.blogspot.com/2016/12/premodifier.html>; <https://www.learngrammar.net/english-grammar/modifiers>, etc.

Then explain what collocations are; you may use resources such as <https://www.teachingenglish.org.uk/article/collocation-advanced-levels-2-classroom-activities>; <http://www.englishteachermelanie.com/study-tip-what-are-collocations/>, etc.

Participants are provided only with the last term in a sequence of two or more words. Ask them to read out each item and to provide the correct answer.

Discuss possible alternatives (*parent responsibility/parental responsibility; custody rights/custodial rights*, etc.).

EXERCISE 6: Listening comprehension (speech by Ms. McCarthy, MEP)

Ask participants to read the text. Explain any terms or expressions that they do not understand.

Go to <https://www.youtube.com/watch?v=41RFtZcCWDw>. Play the video three times to give them time to write the answers to the questions.

Ask participants to fill in the gap; remind them that the text indicates when there is more than one word missing.

Now ask them to read the whole transcript and to highlight the bits that they still hadn't caught after listening to the video. Ask them why they think they didn't catch those bits (accent by the speaker, speed of speech, mispronunciation...).

Write down a list of the arguments provided in favour of mediation and say whether you agree with them or not.

EXERCISE 7: Reading (The Mediation Directive. European Implementation Assessment)

Give participants about 15 minutes and ask them to read questions 1-11 and to provide an answer.

Then ask them to read the whole text to themselves or, if you like, you can ask some of them to read whole sentences or paragraphs so that they practice pronunciation.

Ask them to compare the information the text gives with the answers they had initially given.

Ask 5 of them to say in what cases their answer has been different from what the text says, in what sense and why.

Give synonyms for the terms and expressions under items 1 to 21.

Discuss, for each item, the differences (if any) both in meaning and in register between the synonyms provided; for example, the difference(s) between *facilitate*, *promote*, *encourage*, *strengthen*, *speed* and *expedite*, or between *multitude*, *collection*, *myriad*, *host*, *score* and *mass*.

EXERCISE 8: Prepositions (The Implementation of the Mediation Directive 29 November 2016)

Ask participants to read each sentence and to provide the missing preposition(s) in each.

Discuss possible options (*available to*, *for*) and the source of their mistakes (*aimed to*)

EXERCISE 9: Mediation vocabulary (I)

Give participants a few minutes to read the list of terms/expressions to themselves. Then ask them each to read out one definition (correct any mispronunciations) and to match it to the correct term/expression from the list. If the level of the group lends itself to it, you may

challenge them by suggesting other terms and asking them to provide the reason(s) why that would not be the correct option.

They can do extra practice at <https://quizlet.com/58600089/mediation-vocabulary-flash-cards/> or <https://www.quia.com/jg/1222332list.html>.

EXERCISE 10: Mediation vocabulary (II)

Give participants a few minutes to read the list of terms/expressions to themselves. Then ask them each to read out one definition (correct any mispronunciations) and to match it to the correct term/expression from the list. If the level of the group lends itself to it, you may challenge them by suggesting other terms and asking them to provide the reason(s) why that would not be the correct option.

They can do extra practice at <https://quizlet.com/58600089/mediation-vocabulary-flash-cards/> or <https://www.quia.com/jg/1222332list.html> and supplement it with https://assets.hcch.net/upload/guide28mediation_en.pdf.

EXERCISE 11: Opposites (antonyms) from the Implementation of the Mediation Directive 2016

Ask participants to do one term each. Focus on cases where they are doubtful or hesitant about the correct answer, either because of the spelling (*inpartial/impartial*) or the prefix (*unsustainable/insustainable; inenforceable/unenforceable*). Pay attention to difficult pronunciations, e.g. *inappropriate, non-compliance*.

EXERCISE 12: Passive structures

Explain how passive structures are built in English. You may use various internet resources (<https://www.ef.com/wwen/english-resources/english-grammar/passive-voice/>; <https://www.thoughtco.com/passive-voice-in-english-grammar-1211144>; <http://learnenglishteens.britishcouncil.org/grammar/intermediate-grammar/passive-forms>, etc.).

Ask participants to read out each sentence in the active voice and then to turn them into the passive voice (explaining when keeping the agent may be optional).

EXERCISE 13: Giving your opinion on topics (mediation models)

Use the materials in the manual to explain the different ways of expressing agreement and disagreement in English as well as certainty and uncertainty. Practice a few of those expressions with participants.

Ask participants to read out loud (correcting pronunciation issues) one model of mediation each, as well as their definitions: full voluntary mediation, voluntary mediation with incentives and sanctions, required initial mediation session and full mandatory mediation.

Give them time to read the information on what types of mediation each Member State has implemented in commercial and civil law disputes, family law disputes and labour law disputes.

Arrange participants in groups and ask them to talk about (1) whether they were aware of **their country's position as regards these mediation models**; (2) **what they have found surprising or unexpected** about the information provided.

Encourage debate on which model participants think would be most effective.

EXERCISE 14: Reading and answering questions (features of mediation)

Ask participants to read the main features of mediation from the manual.

Split participants into 3/4 groups and give each of them 2 features which they will have to discuss, expressing their opinion. Ask the members of each group to write down expressions that are used very often and tell them to try to find alternative expressions in order to avoid repetition.

EXERCISE 15: The subjunctive (the Implementation of the Mediation Directive 2016 and other sources)

Using the information in the manual, explain how the subjunctive works in English.

Ask participants to build the appropriate subjunctive in the sentences provided.

EXERCISE 16: Word building (Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters)

Give participants time to read the whole text to themselves. Explain any terms they do not understand.

Ask them to fill in the gaps with the correct form of the word in brackets.

EXERCISE 17: Multiple choice (CJEU ruling; consumer protection, ADR procedures)

Give participants time to read the whole text. Check if they understand all the terms.

Ask them to choose the correct answer.

To make sure that they fully understand, participants need to explain why the other possible answers would not be correct.

EXERCISE 18: Inversion (Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters)

Using the information in the manual, explain how inversion works in English.

Ask participants to do the appropriate inversion in each sentence provided.

EXERCISE 19: Gap-filling (Regulation (EU) No 524/2013 on online dispute resolution for consumer disputes)

Give participants time to read the whole text to themselves. Explain any terms they do not understand.

Ask them to fill in the gaps with the missing word. Sometimes a clue is provided; if it isn't, they will have to be able to provide the word using information from the context.

USERS' INSTRUCTIONS

EXERCISE 1: General legal vocabulary

Read the questions.

Try to provide the answers after reading the following web pages: https://e-justice.europa.eu/content_legal_professions-29-en.do; https://e-justice.europa.eu/content_judicial_systems_in_member_states-16-en.do.

Check your answers with the answer key.

Try to find out the reasons for your mistakes (if any).

EXERCISE 2: Pronunciation of frequent terms/expressions in civil and commercial matters

Read out each item twice and then check the pronunciation in the answer key. If you would like to hear some terms pronounced in British English and in American English, go to <https://dictionary.cambridge.org/>.

EXERCISE 3: General civil law terms

You are provided with a clue or prompt which is part of the correct term (initial letter, initial and final letters, prefixes, etc.), so this exercise is like playing hangman.

Read every definition carefully and then try to provide the term/expression for it.

Check your answers with the answer key.

At the end of the exercise, highlight those terms/expressions whose definition you do not agree on and provide your own definition.

Searching on the internet, find out more about concepts that might differ in your Member State (*remedy* and *relief*, *tort* and *delict*, etc.); try to find out the difference between *damages* and *damage*.

Do you also use the expression as *force majeure* in your country, or are there other alternatives?

EXERCISE 4: Reading and giving an opinion (Draft Report on the implementation of Directive 2008/52/EC)

Without looking at the manual, write down all the expressions you know in English to give an opinion. Now go to the table in this exercise and tick the expressions that were on the list and make a note of those that were not.

Now read the text on the findings on the implementation of the Mediation Directive and give your opinion on the different approaches by Member States, using different expressions from the table.

Answer questions 1-7 on the text and check your answers with the answer key.

EXERCISE 5: Premodification (The Implementation of the Mediation Directive 29 November 2016)

Learn about premodification (*table leg*) and postmodification (*leg of a table*) in English by using internet resources, such as: <https://www.thoughtco.com/premodifier-grammar->

1691527; <https://english-grammarblog.blogspot.com/2016/12/premodifier.html>; <https://www.learngrammar.net/english-grammar/modifiers>, etc. Learn about the main types of premodification (noun compounds, as in “war story”; adjectival premodification, as in “beautiful landscape” and mixed types, as in “a long, wandering forest path”).

Learn about collocations; you may use resources such as <https://www.teachingenglish.org.uk/article/collocation-advanced-levels-2-classroom-activities>; <http://www.englishteachermelanie.com/study-tip-what-are-collocations/>, etc.

Provide the correct answer for each item and think of possible alternatives (*parent responsibility/parental responsibility; custody rights/custodial rights*, etc.).

Check your answers with the answer key.

EXERCISE 6: Listening comprehension (speech by Ms. McCarthy, MEP)

Read the text and look up any terms or expressions that you do not understand.

Go to <https://www.youtube.com/watch?v=41RFtZcCWDw>. Play the video three times to have time to fill in the gaps. Try not to pause the video.

Remember that the text indicates when there is more than one word missing.

Now read the whole transcript and highlight the bits that you still **hadn't caught after** listening to the video and try to find the reason why you **didn't catch it (accent by the speaker, speed of speech, mispronunciation...)**.

Write down a list of the arguments provided in favour of mediation and say whether you agree with them or not.

EXERCISE 7: Reading (The Mediation Directive. European Implementation Assessment)

Read questions 1-11 and provide an answer.

Now read the whole text and compare the information the text gives with the answers you had initially given.

In what cases has your answer been different from what the text says, in what sense and why?

Give synonyms for the terms and expressions under items 1 to 21.

Are you capable of explaining some differences in meaning and in register between some **'synonyms'**? **For example**, the difference(s) between *facilitate*, *promote*, *encourage*, *strengthen*, *speed* and *expedite*, or between *multitude*, *collection*, *myriad*, *host*, *score* and *mass*.

EXERCISE 8: Prepositions (The Implementation of the Mediation Directive 29 November 2016)

Read each sentence and provide the missing preposition(s) in each.

Check your answers with the answer key. Highlight your mistakes and try to find out if their source is a literal translation from your own language.

EXERCISE 9: Mediation vocabulary (I)

Read the list of terms/expressions. Then match the definitions with the terms/expressions. Before checking the answer in the answer key, look up the terms on internet sources, such as <https://quizlet.com/58600089/mediation-vocabulary-flash-cards/>, <https://www.quia.com/jg/1222332list.html> etc.).

Check your answers with the answer key.

Try to find out the reasons for your mistakes (if any).

EXERCISE 10: Mediation vocabulary (II)

Read the list of terms/expressions. Then match the definitions with the terms/expressions. Before checking the answer in the answer key, look up the terms on internet sources, such as <https://quizlet.com/58600089/mediation-vocabulary-flash-cards/>, <https://www.quia.com/jg/1222332list.html> etc.).

Check your answers with the answer key.

Try to find out the reasons for your mistakes (if any).

You may see these terms/expressions in context on https://assets.hcch.net/upload/guide28mediation_en.pdf

EXERCISE 11: Opposites (antonyms) from the Implementation of the Mediation Directive 2016

Answer each of the items.

Check your answers with the answer key.

When you finish the exercise, make a list of all the antonyms you didn't know and read it through several times, trying to remember them. Are there any antonyms you did wrong because you were translating literally from your mother tongue?

EXERCISE 12: Passive structures

Read about how passive structures are built in English. You may use various internet resources (<https://www.ef.com/wwen/english-resources/english-grammar/passive-voice/>; <https://www.thoughtco.com/passive-voice-in-english-grammar-1211144>; <http://learnenglishteens.britishcouncil.org/grammar/intermediate-grammar/passive-forms>, etc.).

Turn each sentence into the passive voice.

Check your answers with the answer key.

EXERCISE 13: Agreeing and disagreeing with statements (Guide to Good Practice under The Hague Convention 1980) and comparing systems

Read in the manual the different ways of expressing agreement and disagreement in English as well as certainty and uncertainty. Practice a few of those expressions.

Read the four models of mediation as well as their definitions: full voluntary mediation, voluntary mediation with incentives and sanctions, required initial mediation session and full mandatory mediation.

Now read the information on what types of mediation each Member State has implemented in commercial and civil law disputes, family law disputes and labour law disputes.

Were you aware of your country's position as regards these mediation models?

What have you found surprising or unexpected about the information provided?

Which model do you think would be most effective and why?

EXERCISE 14: Reading and answering questions (features of mediation)

Read the key features of mediation (cross-border mediation in particular) from the manual.

Answer questions 1-9.

EXERCISE 15: The subjunctive (the Implementation of the Mediation Directive 2016 and other sources)

Using the information in the manual, read how the subjunctive works in English.

Build the appropriate subjunctive in the sentences provided.

EXERCISE 16: Word building (Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters)

Read the whole text to yourself a couple of times. Look up any words you do not know.

Fill in the gaps with the correct form of the word in brackets.

Check your answers with the answer key.

EXERCISE 17: Multiple choice (Guide to Good Practice under The Hague Convention 1980)

Read the text. If you do not know any terms, you may look them up.

Choose the correct answer.

Check your answers with the answer key.

EXERCISE 18: Inversion (Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters)

Using the information in the manual, read how inversion works in English.

Do the appropriate inversion in the sentences provided.

Check your answers with the answer key.

EXERCISE 19: Reading and giving an opinion (Draft report on the Implementation of Directive 2008/52/EC)

Read the whole text to yourself. Look up any terms you do not understand.

Fill in the gaps with the missing word. Sometimes a clue is provided **if it isn't, you will have** to be able to provide the word using information from the context.

ANNEX 1: Golden rules in mediation

This annex summarises some general recommendations for mediation.

ANNEX 2: Paralinguistics

Paralinguistics is an area of Linguistics which studies aspects of spoken communication that do not involve words. It is important for mediation because it involves more subtle aspects of mediation such as loudness, emphasis, pitch, speed of speech, tone, turn-taking, intonation, use of pause, physical closeness, facial or body expression or gestures, etc.

This annex deals, among other things, with kinesics (body motion), proxemics (space and distance) and haptics (physical contact) as well as with the two main communicative styles that mediators are likely to encounter at some point in the exercise of their profession, so that they are aware of how culture reflects itself on non-verbal communication.

ANNEX 3: Politeness

This annex deals with how culture has an impact on the language we use, which is something that cross-border mediators need to be aware of in order to avoid misunderstandings. The difference between the basic principles behind the two main conversational styles is covered (**'independence' vs. 'involvement'**) and **their reflection on communication styles/approaches** is explained.

ANNEX 4: Hedging

A **'hedge' is** a mitigating element (verb tenses, modal expressions, adverbs, structures, etc.) used to **'tone down' or to** lessen the impact of an utterance. They make what we say less direct and they are of great importance, because lack or scarcity of them may cause communication to break down when different conversational styles are involved.

Some examples of hedging devices are provided (adverbs, modals, other verbs, fixed **expressions...**) and an exercise on learning how to tone down statements is included for trainees or users to practise with.

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EXERCISES

1. An introduction to general legal vocabulary.

Test your command of general legal vocabulary by answering the following questions:

1. What is the difference between a “judge” and a “magistrate”?
2. Can you provide words that you think could be synonyms for “case”?
3. What do you call a ‘decision’ by a judge? Give all the names that you know and explain the difference between them.
4. What is the difference between “court” and “tribunal”?
5. What are the names for the parties in civil cases?
6. Can you give alternative expressions for “to take someone to court”?
7. What do you call the geographical area and the matters over which a judge/court has powers?
8. What other expressions do you know for “to give judgment”?
9. How many words do you know for “lawyer” and what is the difference between them?

2. Pronunciation: Frequent terms in mediation and civil and commercial matters.

[Sources: Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters and Regulation (EU) No 424/2013 on online dispute resolution for consumer disputes]

accordance acta iure imperii addressee adjudicatory nature administrative provision agreement alter- native method alternative dispute alternative dispute resolution appro- priate
mean arbitration area of freedom article authentic instrument civil and commercial law civil and commercial matter commercial judicial
proceeding competent court concern alternative dispute resolution method confidentiality confidentiality of mediation consensual resolution of consumer
dispute consideration of public policy consumer complaint scheme context of judicial proceeding course of judicial proceeding cross-border dispute cross-border dispute attempt date of compliance
directive dispute dispute attempt dispute resolution dissemination of information effect of mediation effective quality enforceability enforceability of
agreement enforcement of agreement enforcement of judgment establishment of basic principle expiry of limitation explicit consent extra-judicial procedure family law family law matter field of
consumer protection field of judicial cooperation formal recommendation free movement of person impartial and competent way internet judge seise request assistance judicial conciliation scheme
judicial proceeding juris- diction limitation main provision of national law market-based solution matter of parental responsibility mediation mediation
process mediation service mediator minimum degree of compatibility of civil procedural rule minimum quality criterion national law national legis- lation national rule
operation of extrajudicial procedure out-of-court body paragraph party possibility of mediation pre-contractual nego- tiations predictable legal framework prescription period
private international law proper functioning provision of mediation service psycho- logical integrity purpose of article purpose of paragraph quality of mediation quick extra- judicial resolution of dispute relevant
applicable law right of access settlement of dispute specific agreement structured process them- self third person time-limit training of mediator transposition transposition measure
use of mediation voluntary code of conduct voluntary process written agreement

Pronounce the following:

1. civil and commercial matters
2. consumer protection
3. judicial proceedings
4. cross-border dispute
5. alternative dispute resolution
6. confidentiality
7. neutrality
8. impartiality
9. out-of-court body
10. consensual resolution
11. mediation process
12. contract
13. mediation
14. relevant applicable law

15. explicit consent
16. minimum quality criterion
17. mediator
18. mediation service
19. training of mediator
20. public policy
21. enforcement of judgment
22. internet
23. settlement of dispute
24. code of conduct
25. pre-contractual negotiations
26. arbitration
27. consumer complaint scheme
28. sale of good
29. private international law
30. expiry of limitation
31. extra-judicial resolution of dispute
32. electronic commerce
33. judicial conciliation
34. extra-judicial procedure
35. time-limit
36. addressee
37. digital dimension
38. amicable settlement of dispute
39. contractual obligation
40. case management
41. cross-border element
42. data access control

43. data subject

44. database of out-of-court scheme

45. identifiable natural person

46. competent court

47. means of redress

48. recognition of settlement

49. legislative act

50. best practice

51. modern communication technology

52. legal dispute

53. quality control mechanism

54. mediation fee

55. mutual trust

56. trader

57. request

58. complainant party

59. sufficient time

60. service contract

61. competent authority

62. contact details

63. court

64. online sale

65. date of legal effect

66. protection of personal datum

67. electronic complaint form

68. indeterminate period of time

69. electronic link

70. online transaction

- 71. consumer awareness
- 72. multilingual online information
- 73. user-friendliness
- 74. jurisdiction
- 75. trader representative
- 76. electronic case management tool
- 77. contact point network
- 78. online market place
- 79. online transaction
- 80. binding nature
- 81. rule of professional secrecy
- 82. storage of data
- 83. feedback system

3. Civil terms.

Match the terms with the definitions.

1. I _____ ion of p _____ cy	The unlawful intrusion into the personal life of another person without just cause.
2. R _____ y	The manner in which a right is satisfied by a court when some harm or injury, recognised by society as a wrongful act, is inflicted upon an individual.
3. R _____ f	The redress, or benefit, given by a court to an individual who brings a legal action, for example an exemption from a tax or the return of property wrongfully taken by another, or enforcement of a contract.
4. _____ ng	Activity that transgresses moral or civil law, for example _____ doing.
5. F _____ d	A deliberate deception to secure unfair or unlawful gain, or to deprive a victim of a legal right, owing to which the party suffers damage.
6. Account of p _____ (s)	A gain-based remedy for money received where one person/entity has profited from a wrong at the expense of another; a sum equal to the amount the defendant has made through wronging the claimant. A litigant can claim it as an alternative to damages in certain circumstances (e.g. copyright infringement).
7. B _____ of duty	Failure to satisfy ethical, legal or moral obligation, especially when someone has the right to demand that satisfaction.
8. _____	A sum of money awarded by the court as compensation to the claimant for the wrong suffered.
9. V _____ s liability	Where one person is held responsible for the wrongdoing of another person (e.g. an employer is held liable for the delicts/torts of an employee that were committed in the course of his employment).
10. D _____ t ¹ / T _____ t	A private or civil wrong, resulting from a breach of a legal duty.
11. I _____ ion	Court order, usually issued to the defendant, to do or refrain from doing something.

¹ This is the preferred term in civil law systems. The second term is used in common law systems.

12. _____ performance	Order of a court which requires a party to perform a specific act, usually what is stated in a contract.
13. Duty of _____	A duty binding on one party to avoid acts or omissions which would be likely to injure another party.
14. N_____	Careless conduct that results in damage to another.
15. N _____ ce	A person or thing causing inconvenience or annoyance
16. Joint and _____ liability	When each party is independently liable for the full extent of the injuries arising from a wrongful act.
17. C_____	An agreement between parties which is legally enforceable.
18. _____ ity	When a person is legally able to enter into a contract and be bound by its terms.
19. C_____ tion	An act or promise by one party to a contract that constitutes the price for which the promise of the other party is bought.
20. T _____	When a contract is brought to an end either by breach, impossibility of performance, or some other reason.
21. Sp _____ c p_____	A court order to make someone carry out his/her obligations under a contract.
22. _____ damages	Where the parties themselves have determined the level of damages.
23. F _____ m_____	French expression to refer to events outside the control of the parties which prevent one or both of them from fulfilling their obligations under the contract and for which they cannot be held liable, for instance extraordinary events (a war, strike, riot, etc.), or an event described by the legal term “act of God” (earthquakes, floods, hurricanes, volcanic eruptions, etc.).
24. _____ or	Someone to whom a debt is owed.
25. P _____ sion	A term or clause in a contract.
26. _____ or	Someone who owes a debt.
27. A _____ ment	Proportionate reduction in the payment of debts that takes place when assets are insufficient to settle with creditors in full.

4. Giving an opinion

[Source: Draft report on the implementation of Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (the **Mediation Directive**)]

The following expressions are frequently used in English to give an opinion:

I think/believe that... / I don't think believe that...	It seems to me that...
In my opinion... / I am of the opinion that...	From my point of view... / I hold the view that...
I am sure / certain / I have no doubt that...	I have the feeling that... / My feeling on the subject is that...
My impression is that...	As for me...
My view / opinion / belief / conviction / impression is that...	I would say that...
I guess / bet / gather / imagine / presume / find / consider / think / feel / believe / assume...	In my view / eyes...
To my mind...	As far as I am concerned...
I am under the impression that...	It goes without saying that...
Speaking personally...	I dare say that...

(1) Below is a summary of the main findings on the implementation of the Mediation Directive. Say your opinion about the different approaches by Member States and then answer the questions after the text.

- 1 - Almost all Member States opted to extend the **Directive's** requirements to domestic
- 2 cases;
- 3 - A number of Member States allow the use of mediation in civil and commercial
- 4 matters, including family and employment matters, while not explicitly excluding
- 5 mediation for revenue, customs or administrative matters or for the liability of the
- 6 State for acts and omissions in the exercise of State authority;
- 7 - All Member States foresee the possibility for courts to invite the parties to use
- 8 mediation, with fifteen Member States introducing the possibility for courts to invite
- 9 parties to information sessions on mediation;
- 10 - Less than half of the Member States have introduced an obligation in their national
- 11 laws to spread information about mediation;
- 12 - Eighteen Member States introduced binding quality control mechanisms;
- 13 - Nineteen Member States require the development of and adherence to codes of
- 14 conduct;
- 15 - Seventeen Member States encourage training or regulate it in their national
- 16 legislation.

QUESTIONS

1. Why is it relevant that almost all Member States have extended the requirements of the Directive to domestic cases?
2. What are the matters for which mediation is not explicitly excluded by a number of Member States?
3. What is better in your opinion, to give to courts the possibility to invite the parties to use mediation, or to require courts to invite the parties to use mediation?
4. Are there mediation information sessions in your court? In what cases? Who gives such sessions?
5. Are binding quality control mechanisms a useful method for assessing the success of mediation schemes? What kind of quality controls do you think might really show if mediation works?
6. **What are 'codes of conduct'? Do you think that codes of conduct for mediators are important when implementing mediation?** Is 19 Member States with codes of conduct a sufficient number?
7. Do you think that mediator training needs to be regulated?

5. Premodification.

In English grammar, a premodifier is a modifier that precedes the head of a noun phrase. **They are either adjectives (“a cloudy day”), -ed or -ing participles (“a broken toy”, “a growing problem”) or other nouns (“road accident”). The head is always the last noun in the string.**

Premodifiers use fewer words than postmodifiers to convey roughly the same information (e.g. “table leg” as against “leg of a table”); however, the main problem is finding out the meaning relationship between the elements².

There are three main types of premodification: noun compounds (or compound nouns), adjectival premodification (either adjectives or participles) and mixed (which combines many possibilities (nouns, adjectives, adverbs, etc.).

(1) Noun compounds (or compound nouns)

They are structures of the type “noun as adjective”, where the noun(s) before the head behave grammatically as adjectives, so they do not have a plural form (with a few exceptions which are set phrases): *a sheep dog, a race horse, a flower garden, a chess board, a shoe shop, a war story, a mountain plant*. It is important to make a difference between “category” and “function”. All the nouns coming before the head are nouns as category, but they behave as adjectives.

Some compounds are hyphenated (“**water-bottle**”), some are written separately (“**meat pie**”), some have lexicalised as a single unit (“**headmaster**”) and some can be written in the three ways mentioned above (“**paper-clip**”, “**paper clip**”, “**paperclip**”).

In order to understand the meaning relationship between the units making up a noun compound, it is useful to resort to back-formation, which usually (but not always) involves a preposition: a conference room is a room for conferences. The most frequent meaning relationships between the units are the following:

- Place: *the office party* (the party at the office); *a Paris man* (a man from Paris).
- Time: *the nine o'clock news* (the news at nine o'clock); *afternoon tea* (tea in the afternoon). When reference is made to specific moment, the tendency is to use possession (genitive): *last Sunday's match, tomorrow's weather*. With numeral expressions, both options are possible: *a five minutes' rest* or *a five-minute rest, a three days' journey* or *a three-day journey*.
- Material: *an iron bridge* (a bridge made of iron), *chocolate ice-cream* (an ice-cream made with chocolate). Two exceptions: *wood* and *wool*, which are normally used in adjective form: *wooden* and *woolen*.
- Function: *a conference room* (a room for conferences); *a travel book* (a book about travelling); *car keys* (keys for the car).
- Direct Object: *an animal trainer* (a trainer of animals); *child care* (care of children).
- Attribute: *a woman driver* (a driver who is a woman); *a girl-friend* (a friend who is a girl).

² “(...) while a travel book is a book about travel, a telephone book is not a book about telephones. Copper wire and steel wire are wire made, respectively, of copper and steel. We cannot say the same about piano wire” (Trimble 1985: 131).

- Parts: *the table leg* (the leg of a table); *the car door* (the door of a car); *the river bank* (the bank of a river).
- Measures: *a ten-pound turkey* (a turkey that weighs –or costs- ten pounds); *a one-pound slice of cake* (a slice that weighs-or costs- one pound); *a five-litre bottle* (a bottle that can hold five litres).
- Container: *a milk bottle* (a bottle for milk vs. a bottle of milk); *a water glass* (a glass for water vs. a glass of water); *a matchbox* (a box for matches vs. a box of matches); *a coffee-cup* (a cup for coffee vs. a cup of coffee). In these cases, if premodification is used reference is made to the container, whereas the use of postmodification indicates reference to the content.
- Produced by or proceeding from: *chicken soup* (soup made with chicken); *lamb chop* (chop from a lamb), *fox fur* (fur of a fox). The genitive is required, however, when reference is made to a product obtained from an animal which is still alive: *cow's milk*, *a hen's egg*.
- Used by: *baby clothes*, *birdcage* or *a dog kennel*.

(b) Adjectival premodification

There are only adjectives before the noun head: “a beautiful day”, “a tall young man”.

(c) Mixed premodification

Here we may find not only a mixture of nouns and adjectives, but also other elements such as adverbs, prepositions, etc.: **“a truly intelligent man”, “extremely varied family topics”, “up-to-the-minute fancy place”, “compressed air blasting machine”, etc.**

Now practice with premodification using the appropriate form of the word in brackets:

[Source: “The implementation of the Mediation Directive 29 November 2016”. This study was commissioned, overseen and published by the European Parliament’s Policy Department for Citizens’ Rights and Constitutional Affairs at the request of the Parliament’s Committee on Legal Affairs. It is available on the European Parliament website www.europa.europa/studies free of charge. It is republished by ERA with the permission of the European Parliament]

1. _____ (pend) case
2. _____ (neuter) environment
3. _____ (non-comply) party
4. _____ (evaluation) process
5. _____ (power, commerce) entities
6. _____ (minority) disputes
7. _____ (privacy) mediation
8. _____ (consumption) confidence
9. _____ (refer) framework
10. _____ (system) structure
11. _____ (contract) obligations
12. _____ (in-house, complain) procedure
13. _____ (judge) proposal
14. _____ (start) point
15. _____ (business-relate) mediation
16. _____ (bind) nature
17. _____ (significant) limited
18. _____ (initiate, mediate) session
19. _____ (fill, volunteer) mediation
20. _____ (profession) mediator
21. _____ (law) dispute
22. _____ (reduce or extend, time) frame
23. _____ (statute) provisions
24. _____ (qualification) mediator
25. _____ (suffice) time
26. _____ (mediate) fee

27. _____ (practise) arrangement
28. _____ (succeed) rate
29. _____ (judiciary) proceedings
30. _____ (dispute, resolve) process
31. _____ (competence) authority
32. _____ (Europe, better) practice
33. _____ (non-consent) solution
34. _____ (prefer, dispute, resolve) process
35. _____ (apply) law
36. _____ (independence, law) advice
37. _____ (interest) party
38. _____ (law) aid
39. _____ (prescribe) period
40. _____ (equality, bargain) powers
41. _____ (expertise) opinion
42. _____ (court, basis) mediation
43. _____ (legislation) model
44. _____ (write) agreement
45. _____ (cost, law) procedure
46. _____ (judge) authority
47. _____ (legislation) provisions
48. _____ (pre-try) stage
49. _____ (speed) resolution
50. _____ (public, fund) mediation
51. _____ (volunteer) mediation
52. _____ (screen) process

6. Listening comprehension

Source: <https://www.youtube.com/watch?v=41RFtZcCWDw>

[Arlene McCarthy was a Member of the European Parliament for North West England for the Labour Party from 1994 to 2014]

Fill in the gaps:

(...) was a massive (1) _____ for our small businesses across Europe. Our (2) _____ when drawing up this report demonstrated that mediation is a very (3) _____ for consumers and businesses and I think the message today to Member States is that they need to do more to promote the (4) _____ of mediation.

They should provide more training for mediators, encourage the drawing up of (5) _____ of _____ and I believe this is the case because (6) _____ in mediation shows that across Europe there is a (7) _____ success rate with mediation cases; in fact, it's eighty percent if the parties voluntarily choose mediation. But still only one percent of parties are (8) _____ mediation in Europe. Again, the (9) _____ speak for themselves: going to the courts took on average an extra (10) _____ and _____ to _____ and _____ days, and extra legal costs of (11) _____ to _____ euros to solve a case.

The experience in my own Member State is that litigation worth (12) _____ euros took three hundred and thirty three days, costing on average (13) _____ euros, where a mediation would have taken a mere eighty seven days and cost a (14) _____ at nine thousand euros.

One mediator told me that last year he mediated (15) _____ in the UK. Within one week he solved those, and thirty were (16) _____. Mediation is therefore a (17) _____, _____ and _____ - _____ way to resolve disputes. It allows the parties greater control, it gives them more responsibility in resolving their disputes and I believe it's especially (18) _____ in family disputes concerning children, because of course it can dramatically (19) _____ the period of time required to reach agreement and this is better for their well-being and reduces anxiety, conflict and stress in the family.

To quote another very convincing case, a dispute over an (20) _____ and _____ worth 10 million pounds involving four parties, three (21) _____ (UK, Switzerland and France) was solved by a mediator in one day but by the time they got to mediation, five million euros had already been (22) _____ by the courts and (23) _____ across three different EU states and of course it would have taken another two years to try and solve this problem in court.

So today I want to encourage the Commission and Member States to continue to (24) _____ and implement the EU law and give consumers and businesses an (25) _____ to _____ legal disputes. Given the number of (26) _____ property cases we have in the EU, I would also like to use today as an opportunity to ask the Commission and Member States to make more use of mediation systems, to (27) _____ our constituents in disputes, such as the numerous cases we have in Spain and Cyprus. Establishing mediation procedure to bring an end to these (28) _____ and _____ disputes will of course increase the citizens' access to justice.

To conclude, we are (29) _____ satisfied with the work of the Member States in implementing this law (30) _____ at the time of drafting only seventeen Member States have a EU rule (31) _____ and we welcome, Commissioner Reading, the fact that you are starting (32) _____ against nine Member States.

7. Reading

[Source: The Mediation Directive. European Implementation Assessment. Ex-Post Impact Assessment Unit. European Parliament. 2016. It is republished by ERA with the permission of the European Parliament].

Pre-reading questions. Say your opinion about the following:

1. What impact do you think that the Mediation Directive had on Member States that already had extra-judicial dispute resolution systems in place?
2. What does the Mediation Directive address more: the mediation process or the procedural framework that facilitates using ADR?
3. What is the great achievement of the Mediation Directive as regards enforcement of agreements?
4. Does the Directive address mediation codes of conduct and mediator training?
5. Have any efforts been made to harmonise or align mediation processes across the EU?
6. Do you know whether your Member State has applied the provisions of the Mediation Directive to domestic disputes?
7. Would you say that the Directive intrudes the judicial world? Why?
8. Is mediation mandatory in your Member State? If so, in what cases?
9. What should the balance be between mediation and judicial proceedings?
10. How can a balance be reached between the requirements of the internal market, the **increasing mutual trust and Member States' national identities**?
11. Which would you say is the real success of the Mediation Directive?

Now read the following text:

1 Conclusions and future perspectives

2 In view of the directive's deadline for implementation (May 2011), the amount of time
3 that has since passed, should in principle allow for a good overview of its effectiveness
4 throughout the EU.

5 The most important observation that has been made in all studies and reports available
6 until now, is that in a large number of countries (15) the direct effect of the Mediation
7 Directive was limited because they already had functioning (albeit often different) extra-
8 judicial disputes resolution systems. A significant improvement, in the sense of
9 establishing a legal framework for mediation or re-arranging limited rules and practices in
10 place before the directive's adoption, was thus achieved in the remaining twelve. Denmark
11 opted out and is not bound by this EU act, but it does have its own system of unregulated
12 private mediation, as well as authorised court mediation. Interestingly, this distinction in
13 effectiveness escapes the usual north-south or east-west comparisons, and the date of
14 accession to the European Union also seems to have had no significance.

15 Looking at the real content of the Mediation Directive, it was shown that there is a very
16 limited number of legal obligations for the Member States, most of which are related not
17 to the process of mediation itself, but to the procedural framework that would facilitate
18 using alternative dispute resolution for the parties of a dispute.

19 In addition to the simple definitions of mediation and mediator, which did not raise any
20 problems in national laws and different practices, the directive has harmonised minimum
21 guarantees for enforcement of agreements reached through mediation (that is when all
22 parties agree), basic confidentiality principles (only covering the mediator and his/her
23 administrative staff), and stopping limitation and prescription periods from expiring.
24 These provisions have been implemented by all EU Member States, with only a few minor
25 differences.

26 An important factor in making mediation a real success story is its quality. The directive
27 has addressed this issue through:

- 28 - the encouragement of voluntary codes of conduct (and other quality control
29 mechanisms);
- 30 - initial and further training of mediators (which in some Member States is dealt with
31 within the framework of accreditation and registration);
- 32 - provision of information (especially for the general public).

33 Because each of these three elements was accompanied by a standard qualification, 'by any
34 means they [Member States] consider appropriate', and the directive also left the details to
35 national legislators, there is currently a multitude of solutions in the European Union,
36 involving both legal provisions and self-regulatory practices. The European Code of
37 Conduct for Mediators, established even before the adoption of the Mediation Directive,
38 and other coordination efforts undertaken by the European Commission (especially through
39 the European Judicial Network and provision of information on the internet),
40 contribute to a certain extent to some alignment of mediation processes in the EU.

41 Had the application of the Mediation Directive been restricted only to cross-border
42 cases (in accordance with its formal scope due to the legal basis), much of this
43 harmonisation, encouragement and alignment would have probably not taken place.

44 Fortunately, almost all Member States decided to apply its provisions (as limited as they
45 may be) also to domestic disputes. For comparison, both cross-border and domestic
46 consumer disputes were more recently covered by the ADR Directive and ODR Regulation,
47 which regulate in a more detailed way how to ensure an efficient, impartial and
48 competent assistance for interested parties in reaching an agreement instead of going to
49 court. Although it was based on a different legal basis (related to the internal market), the
50 implementation of the ADR/ODR package could probably affect any future modification of
51 mediation in general.

52 Apart from addressing the procedural and quality-related matters, the Mediation Directive
53 has had to cover, of course, the very basic element of inviting the parties to use
54 mediation, before or after the start of judicial proceedings. Thanks in part to the explicit
55 condition that any national legislation on compulsory mediation - or specific incentives or
56 sanctions - will not be affected, the directive made the smallest intrusion possible into the
57 realm of the judicial world, suggesting simply that the court 'may' invite the parties to
58 either use mediation, or at least attend information sessions. Member States have
59 implemented these provisions in various ways, including some limited areas (often in
60 family law) where the use of mediation is mandatory. Such examples, in addition to
61 the potential in savings of litigation costs, led some experts to propose a Europeanisation of
62 obligatory mediation, but this idea has very limited support among EU Member States.
63 Extending the obligation to inform parties about mediation possibilities is more likely to be
64 supported, especially in view of the positive results that it brings.

65 Overall, the Mediation Directive deserves to be credited for the promotion of amicable
66 settlement of disputes, especially in those countries which did not have mediation
67 regulated before. Its objective has thus, at least partially, been reached. Assessing whether
68 the balance between mediation and judicial proceedings has been ensured, and whether the
69 legal framework in all Member States is sufficiently predictable, depends not only on the
70 detailed rules and figures that are different in each jurisdiction, but also on the expected
71 point of that balance and level of that predictability, and these were not defined.

72 Looking at mediation in the broader context of possible harmonisation and/or unification
73 of civil procedure in the EU, an appropriate balance would also need to be found between
74 the requirements of the internal market and increasing mutual trust on the one hand (the
75 Mediation Directive being adopted on the legal basis still maintaining the former link,
76 while contributing to the latter not only in cross-border cases), and the need to respect
77 Member States' national identities on the other.

78 Further promotion of the use of mediation in the EU and facilitation of access to alternative
79 dispute resolution in each Member State, should in any case maintain their essential
80 character, which is that their success relies on a voluntary engagement of parties and their
81 will to accept the compromise agreement reached with the assistance of a third party.
82 Continuous exchange of best practices and results between the relevant national authorities,
83 legal practitioners and other stakeholders, does not exclude a useful revision of the
84 Mediation Directive, if a convincing argument to extend or deepen its limited scope
85 and content is made.

QUESTIONS ON THE TEXT

Give synonyms or near-synonyms for the following terms:

1. Deadline:
2. Overview:
3. Effectiveness:
4. Limited:
5. Significant:
6. To achieve:
7. To facilitate:
8. To raise:
9. Minor:
10. Provision:
11. Currently:
12. Multitude:
13. Contribute:
14. Extent:
15. To take place:
16. Detailed:
17. Ensure:
18. Impartial:
19. To cover:
20. Explicit:
21. Mandatory:
22. Amicable:
23. Partially:
24. Figures:
25. Balance:
26. Link:
27. Will:
28. Convincing:
29. Scope:

8. Prepositions

[Source: reproduced with permission. Guide to Good Practice under The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction. Mediation. Hague Conference on Private International Law, www.hcch.net]

Put in the correct preposition in each of the following sentences:

1. The Directive _____ Consumer ADR aims _____ ensure that consumers can, _____ a voluntary basis, submit complaints _____ traders _____ entities offering independent, fast and fair ADR.
2. Article 8 provides _____ the ADR procedures to be available both online and offline, available _____ consumers without charge or _____ a nominal fee, and to provide an outcome _____ 90 days.
3. The platform was launched in early 2016 _____ accordance _____ the provisions of the Commission Implementing Regulation (EU) 2015/1051.
4. The Mediation Directive encourages the use of mediation and is aimed _____ ensuring a balanced relationship _____ mediation and judicial proceedings.
5. The Guide is addressed _____ governments and Central Authorities as well as judges, lawyers, mediators, parties _____ cross-border disputes and other interested individuals.
6. The European Code of Conduct establishes a number of principles _____ which individual mediators _____ civil and commercial mediation may commit themselves: _____ a voluntary basis and _____ their own responsibility.
7. In order to measure the effectiveness of the different mediation models, two indexes should be taken _____ consideration: the number of mediations in relation _____ the number of cases in court and the mediation success rate.
8. As all available statistics confirm, _____ the majority of Member States mediation is _____ average still used in less than 1% of the cases _____ court.
- 9. According to Article 12 of the Directive, EU Member States were obliged to 'bring _____ force the laws, regulations, and administrative provisions necessary to comply _____ this Directive before 21 May 2011.**
10. Agreed solutions are more sustainable since they are more likely to be adhered _____ by the parties.
11. The most effective option would be to strengthen Article 5(2) of the Directive _____ requiring, not just allowing to require, the parties to go _____ an initial mediation session with a mediator before a dispute can be filed _____ courts in all new civil and commercial cases.
12. The mediated agreement or part of it may be _____ conflict _____ the applicable law or not legally binding and enforceable.
13. Although the Directive contains few compulsory rules, which all Member States complied _____, many took further actions to promote mediation.

9. Mediation vocabulary (I).

Match the appropriate term below with the definitions.

[Sources: 1. “Guide to Good Practice under The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction. Mediation”. Reproduced with permission. Hague Conference on Private International Law, www.hcch.net; 2. <https://www.jamsadr.com/adr-glossary/>; <http://expert-evidence.com/mediation-terminology-things-you-must-know/>]

TERMS	DEFINITIONS
1. Settlement	a. A mediation approach where the mediator has a much greater part to play in determining the outcome of the mediation, and the mediation approach is based much more on evaluating the legal position of each party.
2. Mediation	b. When two or more mediators are used in the same mediation process.
3. ADR	c. A private meeting of any two or more people involved in mediation.
4. Arbitration	d. A mediation approach where the mediator assists the two parties in coming to a resolution based on the information available. The mediator leads the process, but the parties are responsible for agreeing the outcome with the mediator's help .
5. Co-mediation	e. A proactive, structured, confidential process in which a neutral third party assists disputing parties in working towards negotiating a settlement.
6. Evaluative mediation	f. A form of alternative dispute resolution which involves an independent third party who will make a binding decision based on the evidence brought before him/her.
7. Facilitative mediation	g. A brief document setting out the key terms of the negotiated agreement or resolution.
8. Impasse	h. When parties reach an agreement on the claim without pursuing the matter through a trial.
9. Settlement agreement	i. A situation in which parties within mediation are unwilling or unable to reach compromise.
10. Caucus	j. Term commonly used to refer to a variety of alternatives to litigation, wherein a neutral party assists the disputing parties, includes a full range of dispute resolution processes between direct negotiation and litigation.

10. Mediation vocabulary (II).

Provide the term for each definition.

[Sources: 1. “Guide to Good Practice under The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction. Mediation”. Reproduced with permission. Hague Conference on Private International Law, www.hcch.net; 2. <https://www.jamsadr.com/adr-glossary/>; <http://expert-evidence.com/mediation-terminology-things-you-must-know/>; 3. “The implementation of the Mediation Directive 29 November 2016”. This study was commissioned, overseen and published by the European Parliament’s Policy Department for Citizens’ Rights and Constitutional Affairs at the request of the Parliament’s Committee on Legal Affairs. It is available on the European Parliament web site www.europa.europa/studies free of charge. It is republished by ERA with the permission of the European Parliament]

- | | | |
|--|---------------------------|-----------------------|
| a. mediator | g. joint session | l. indirect mediation |
| b. reframing | h. counselling | m. reality testing |
| c. irreconcilable | i. mediated agreement | n. resolution |
| d. impartiality | j. direct mediation | o. opening statement |
| e. (early) neutral evaluation | k. out-of-court mediation | |
| f. court based/court annexed mediation | | |

1. An agreement or partial agreement in mediation; this may be underpinned by a settlement agreement document.

2. An essential attitude for a mediator, which implies that they will not favour one party **or the other’s perspective and must treat both as equal.**

3. Part of the mediation process where parties are brought together.

4. An impartial third party who facilitates negotiations between disputing parties and may evaluate the relative merits of the claims and defences, without prejudice to the professional background or specific requirements they may have to fulfil in a given legal system.

5. **Oral presentations which take place after the mediator’s opening address that allow each party to present their case.**

6. A tool used by mediators to help parties test what they see by outlining to them the picture they have drawn of their position. This can help participants stay flexible and open-minded in the process.

7. A tool used by mediators to change around the order in which words and ideas are presented, in order for participants to see the point more clearly, differently or more positively.

8. A process that can be used to assist couples or families in dealing with relationship problems.

9. When the parties receive a non-binding expert evaluation of their legal situation.

10. Mediation in which both parties directly and simultaneously participate in the mediation sessions with the mediator, either face-to-face or using video/teleconferencing facilities.

11. Mediation in which the parties do not directly meet one another, but meet with the mediator separately.

12. Mediation services that are run by or through the court itself.

13. Mediation operated by a body not directly linked to the court.

14. The outcome of mediation, i.e. the agreed solution reached by the parties in **mediation (in some jurisdictions referred to as ‘memorandum of understanding’ to avoid any assumption as to the legal nature of the mediated result).**

15. **Something for which a solution is not possible (e.g. “_____ differences”) or which cannot be made compatible (e.g. “_____ judgments”)**

11. Opposites (antonyms).

Provide the opposites (antonyms) for the following words:

[SourceS: 1. “The implementation of the Mediation Directive 29 November 2016”. This study was commissioned, overseen and published by the European Parliament’s Policy Department for Citizens’ Rights and Constitutional Affairs at the request of the Parliament’s Committee on Legal Affairs. It is available on the European Parliament website www.europa.europa/studies free of charge. It is republished by ERA with the permission of the European Parliament; 2. Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters]

- | | |
|-----------------|-------------------|
| 1. Certain | 26. Appropriate |
| 2. Security | 27. Certainty |
| 3. Justice | 28. Written |
| 4. Proper | 29. Confidential |
| 5. Internal | 30. Effective |
| 6. Better | 31. Flexibility |
| 7. Necessary | 32. Partial |
| 8. Improve | 33. Available |
| 9. Simplify | 34. Minimum |
| 10. Interested | 35. Compliance |
| 11. Inclusion | 36. Concerned |
| 12. Internal | 37. Private |
| 13. Agreement | 38. Enforceable |
| 14. Voluntarily | 39. Recognition |
| 15. Likely | 40. Applicable |
| 16. Sustainable | 41. Compatibility |
| 17. Relevant | 42. Ability |
| 18. Predictable | 43. Information |
| 19. Likely | 44. Legal |
| 20. Frequent | 45. Sufficiently |
| 21. Formal | 46. Fortunate |
| 22. National | 47. Successfully |
| 23. Responsible | 48. Best |
| 24. Competent | 49. Equal |
| 25. Possibility | 50. Approval |

12. Passive structures

Passive structures are extremely frequent both in colloquial English and in specialised languages, where often the agent, that is, the person who does an action (*who*) is less important than the object (*what*), that is, what is done.

In passive structures the noun (or noun phrase) that would be the object of an active sentence (as in “**The gardener watered the flowers**”) becomes the subject of a sentence in the passive voice (“*The flowers were watered by the gardener*”).

Build the correct passive structure for the following sentences, which are in the active:

[Source: reproduced with permission. Guide to Good Practice under The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction. Mediation. Hague Conference on Private International Law, www.hcch.net]

1. One must emphasise that a requirement to attend a mediation session is not a requirement to resolve a case through mediation.

2. Italy used the full mediation model as a prerequisite to access to court for some civil and commercial dispute matters for almost two years.

3. One can lose precious time in attempting mediation in cases where one party is clearly not willing to engage in the mediation process.

4. Even where both parties agree to mediation, one needs to pay attention to specific circumstances.

5. One needs to pay attention to differences in bargaining power that are simply resulting from the power of each of the parties.

6. One should not see mediation and similar processes facilitating agreed solutions as a complete substitute for judicial procedures, but as a complement.

7. One has to emphasise that even where mediation and similar processes introduced at an early stage of an international commercial dispute are able to avoid litigation, one will **frequently require complementary 'judicial processes' to render an agreed solution legally binding and enforceable in the legal systems concerned.**

8. One needs to take safeguards to protect the rights of consumers in mediation.

9. One needs deeper analysis to assess the success of mediation across Member States.

10. Greece has adopted a voluntary mediation model with incentives only, but no sanctions.

11. When one offers mediation to the parties to an international commercial dispute, one needs to inform them that mediation is not their only recourse.

12. It is important to give the parties access to relevant legal information.

13. Giving your opinion on topics

Do this activity in pairs. Use the following table as a reference to discuss with your partner the questions/topics that come after it.

AGREEING AND DISAGREEING

Stating an opinion	Asking for an opinion
In my opinion...	What's your idea?
The way I see it...	What are your thoughts on all this?
To my mind...	How do you feel about that?
If you want my honest opinion....	Do you have anything to say about this?
According to ...	What do you think about...?
As far as I'm concerned...	Do you agree?
If you ask me...	Wouldn't you say/agree with me that...?

Agreement	Negative agreement
There are many reasons for...	Neither do I
There is no doubt that.../about it that...	Nor does she
I simply must agree with that.	Neither am I
I am of the same opinion (as...)	Nor am I
I completely/absolutely agree with...	I don't (think so)
I agree	Me neither (colloq.)
You're right	
So do I / So am I	
I share your concerns/views/fears about...	

Qualified disagreement	Disagreement
It is only partly true that...	There is more to it than that / than meets the eye
I can agree with that only with reservations.	The problem is that...
That seems obvious, but...	I (very much) doubt whether...
That is not necessarily so.	This is in complete contradiction to...
It is not as simple as it seems.	What is even worse, ...
Under certain circumstances...	I am of a different opinion because ...
I agree up to a point	I cannot share this / that / the view that...
I broadly agree, but...	I cannot agree with this idea.
There is some truth in..., but...	What I object to is ...
Yes/ok, however...	Unlike ... I think ...
That is a contentious/controversial issue	I don't think so
	I disagree/I don't agree
	To take issue with sth or sby's view/opinion
	'I don't like him'. ... 'Well, I do'.

CERTAINTY AND UNCERTAINTY

Certainty	Uncertainty
I am (absolutely) certain that...	I am not certain that.../ I am uncertain that... I am not sure / I am unsure that...
I am sure that	I imagine / I suppose/ I guess
I am convinced that...	I have (my) doubts about / I am dubious about...
I am (quite) confident that...	Probably / possibly / apparently...
I am (fully) satisfied that...	Perhaps...
I have no doubt that / I am in no doubt that...	Maybe...
He is, without (any) doubt...	To the best of my knowledge/As far as I am aware...
There is no doubt that...	Apparently...
There is no denying/disputing the fact that	Not to my knowledge
Certainly / Undoubtedly...	Not that I am aware of

FOUR MEDIATION MODELS USED IN IMPLEMENTING THE DIRECTIVE

[Source: “The implementation of the Mediation Directive 29 November 2016”. This study was commissioned, overseen and published by the European Parliament’s Policy Department for Citizens’ Rights and Constitutional Affairs at the request of the Parliament’s Committee on Legal Affairs. It is available on the European Parliament website www.europarl.europa/studies free of charge. It is republished by ERA with the permission of the European Parliament]

Read this text and then do the activity below:

(...) we have identified four distinct mediation models that Member States have used in implementing the Directive. (...) The four models are:

1. Full Voluntary Mediation: the parties can engage a mediator to facilitate the resolution of any dispute that they have not been able to settle by themselves. In this case, a mediation legal framework is not even required.
2. Voluntary Mediation with Incentives and Sanctions: the parties are encouraged to have recourse to mediation, thus fostering the practice. This model requires a mediation law in place.
3. Required Initial Mediation Session: the parties are required to attend an initial meeting with a mediator, free or at a moderate fee, to establish the suitability of mediation. This model, too, requires a mediation legal framework.
4. Full Mandatory Mediation: the parties must attend and pay for a full mediation procedure as a prerequisite to going to court. The mandatory aspect applies only to attending the full procedure, while the decision to reach a settlement is always voluntary.

Discuss with your partner each of the following statements related to the four mediation models in the EU and say whether you agree with the statements or not, and why:

1. Full voluntary mediation.

Discuss the following statements:

(...) when parties are amenable to begin a mediation, the process is more likely to be successful.

(...) both parties must agree to start a mediation, and oftentimes during a dispute, one or both of the parties may not be willing to attempt anything at all to find an amicable solution, including resorting to mediation.

(...) **data** has shown that voluntary mediation does not generate a meaningful number of mediations, neither does it appear to contribute significantly to creating a culture of mediation. Although a voluntary mediation model may result in a very high success rate, the number of mediations is extremely low.

(...) the natural human-reaction paradigm in a heated dispute—the fight or flight response (...) it is usual for the defendant not to have any motivation to resolve the dispute at the beginning and, following human nature in reaction to a heated dispute, he or she may tend either to fight back or to opt for flight.

2. Voluntary mediation with incentives and sanctions.

Discuss the following statements:

(...) benefits are often in the form of financial incentives for the parties coming to an agreement after mediation, such as reimbursement of court fees in Slovakia and Estonia, or the refund of a stamp duty as in Bulgaria and Latvia. Other fiscal advantages adopted **have been tax credits for the mediation fees paid, for instance in Italy up to € 500.**

Several Member States also provide for sanctions for the breach of different mediation obligations, such as an unreasonable refusal to consider mediation, as in Ireland and in Italy, if parties do not fulfil the requirement to attend an initial mediation session and go instead straight to court.

An unreasonable refusal by one party to participate in the introductory session describing the benefits of mediation is sanctioned in the Czech Republic by limiting the costs awarded by the court if it decides in favour of that party. Similar sanctions can be found in Slovenia. In Romania, the sanction used for non-compliance with mandatory information sessions regarding mediation benefits is the inadmissibility of the court case. In Hungary and the United Kingdom, before filing a court case, the parties must show that they have tried to settle the dispute – directly, or with the assistance of a mediator - and party that fails to bring proof of such efforts may bear the court fees of the other party, regardless of who wins in the litigation process.

3. Required initial mediation session.

Discuss the following statements:

While there may be many variations, a system requiring such a mediation session includes ensuring the following three key elements:

1. An initial mediation session with a mediator, at a very low cost, with possible sanctions in the subsequent court proceedings if a party does not attend this initial session in good faith;
2. Having the initial mediation session administered by a professional mediator and/or a dedicated mediation service provider;
3. The possibility of easily declining to proceed with the mediation process at the end of the initial session without any subsequent sanctions or any negative consequences at the trial.

Element 1: Initial mediation session

The first session is extremely important in that it helps to resolve two of the main barriers inherent in the voluntary mediation model. The first is the natural human-reaction paradigm in a heated dispute—the fight or flight response. When suing, or being sued, the immediate, natural instinct of parties is typically not to mediate and try to achieve consensus but rather to fight and take the dispute to court.

Element 2: Professional mediator

Some Member State systems require an information meeting where the parties may be advised about mediation and its benefits but which is not conducted by an experienced **mediator (...)** this kind of meeting may be useful to the parties in an informational sense but it lacks the benefit of the skills of an experienced mediator in identifying typical communication obstacles and potential dispute resolution strategies and tactics.

Element 3: Declining to proceed without subsequent sanctions or negative consequences at trial

(...) parties are not required to go through a full mediation process (and pay its full cost); rather, they are obliged only to participate in a session with a qualified mediator.

4. Full mandatory mediation.

Discuss the following statements:

(...) the concept of mandatory mediation seems to contradict a central tenet of the mediation process—that mediation is a voluntary process. Moreover, some cases are inappropriate for mediation and are recognized as such by judges. Those cases are, however, less common than most people imagine.

(...) it is extremely important to emphasise that a requirement to attend a mediation session is not a requirement to resolve a case through mediation. Reaching a mediation settlement is always on a voluntary basis. The main problem of the full mandatory mediation model is that the parties are obliged to participate in good faith in a full mediation proceeding, and normally to agree to pay mediation fees in full even when it is clear that the dispute will not be resolved.

Now look at the following tables and the data they offer. Check the specific information for your Member State and choose another MS that has a different system to compare it with:

Table 1: Commercial and Civil Law Disputes

Mediation Model	Member State
Full voluntary	Austria, Belgium, Cyprus, Estonia, Finland, France, Germany, Latvia, Lithuania, Luxembourg, Netherlands Portugal, Romania, Spain, Sweden, United Kingdom.
Voluntary with incentives and/or sanctions	Croatia, Estonia, Greece, Hungary, Ireland, Italy (in 92% of civil and commercial dispute matters), Malta, Poland Slovakia, Slovenia.
Required initial mediation session	Czech Republic, Italy (in 8% of civil and commercial dispute matters).
Full mandatory mediation	NONE.

Table 2: Family Law Disputes

Mediation Model	Member State
Full voluntary	Austria, Belgium, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Malta, Netherlands, Poland, Portugal, Romania, Spain, Sweden.
Voluntary with incentives and/or sanctions	Slovakia, Slovenia.
Required initial mediation session	Lithuania, Luxembourg, United Kingdom.
Full mandatory mediation	Croatia, Hungary.

Table 3: Labour Law Disputes

Mediation Model	Member State
Full voluntary	Belgium, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Luxembourg, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom.
Voluntary with incentives and/or sanctions	Greece.
Required initial mediation session	NONE.
Full mandatory mediation	Austria, Croatia, Lithuania, Malta.

14. Mediator's skills

[Source: reproduced with permission. Guide to Good Practice under The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction. Mediation. Hague Conference on Private International Law, www.hcch.net]

Read this excerpt and then reflect on the questions below:

The main features of mediation are the following:

1. It is voluntary.
2. It requires informed consent by the parties.
3. An assessment of suitability for mediation is necessary.
4. It must be neutral, independent, impartial and fair.
5. It has to be confidential.
6. Informed decision-making and access to appropriate legal advice by the parties is necessary.
7. It must be done by qualified mediators who –ideally- should be bicultural and bilingual.

Reflect on the following questions:

1. What is co-mediation? Is it necessary in civil & commercial cross-border cases?
2. What is the added value of the presence of two mediators in the room in an international mediation process?
3. What do you think is the difference between bi-cultural and bilingual mediation? Can someone be bilingual without being bi-cultural and the other way round?
4. What are the factors that make someone bilingual? And bi-cultural?
5. In bi-cultural, bilingual mediation, is it important that each mediator understands the language of the other party? Why?
6. What should the professional expertise of mediators be?
7. Does the gender of the mediators have any bearing on the mediation process? Why?
8. What is the relationship between nationality, culture and language? Does one automatically imply the other one?
9. What is non-verbal communication? Should it be “translated” in this type of mediation?

15. The subjunctive

The subjunctive has practically disappeared from general English, with perhaps the only exception of very formal/very academic language³.

Here are some important aspects to remember about the subjunctive:

1. It has the following structure: adjective/noun/verb + (that) + subject + the infinitive (without “to”). **Do not forget that** the verb does not show concordance with the subject.

It’s important that *the husband be* at the mediation meeting at 10.

The mediator demanded that *the wife calm down*.

What do you suggest *we do*?

2. In colloquial language it has been replaced by the verb in the present, in the past, with “**should**” or the verb + object + “**to**” (*It is essential that the evidence is considered; The court requested the applicant to send the form*).

The most frequent cases where the subjunctive is used are the following:

1. After adjectives such as “important”, “essential”, “crucial”, “advisable”, “urgent”, etc.

It is essential that both parties be present at the initial meeting.

It is crucial that the interplay of two legal systems be taken into account in cross-border mediation.

2. After verbs such as: “ask”, “advise”, “command”, “demand”, “insist”, “order”, “propose”, “recommend”, “request”, “require”, “suggest”, “urge”.

We will recommend that both parties attend a first meeting.

3. After nouns, in expressions like the following:

There is also the recommendation that both parties attempt Alternative Dispute Resolution.

There is the obligation that the agreement be approved by a judge.

The use of the subjunctive seems very awkward when it involves a passive structure, a negative structure or a continuous tense, as in the following examples:

It is important that the defendant be waiting for her lawyer in the courtroom.

He insisted *that mediation not be* resorted to in this case.

They recommended *that the agreement be reached* as soon as possible.

³ There are a few cases when it is used in general English (for example, fixed expressions: ‘God save the Queen’, ‘so be it’, ‘God bless you’, etc.). It is also occasionally seen in clauses expressing a condition, such as *If I be found guilty...* This usage is old-fashioned and excessively formal but it is still found in some common fixed expressions such as *if need be, be it an example or a real case...*

Now use the subjunctive in the following sentences (in some cases you will need a passive structure):

[Sources: 1. “The implementation of the Mediation Directive 29 November 2016”. This study was **commissioned, overseen and published by the European Parliament’s Policy Department for Citizens’ Rights and Constitutional Affairs at the request of the Parliament’s Committee on Legal Affairs**. It is available on the European Parliament website www.europarl.europa/studies free of charge. It is republished by ERA with the permission of the European Parliament; 2. Reproduced with permission. Guide to Good Practice under The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction. Mediation. Hague Conference on Private International Law, www.hcch.net]

1. It is advisable that in order to measure the effectiveness of the different mediation models, two indexes _____ (*take*) into consideration.
2. It is recommended that potential mediation cases _____ (*screen*) for the presence of elements that might bring about a lack of impartiality by mediators.
3. In particular, in its implementation resolution, the Parliament should consider asking that the Commission _____ (*send*) a letter to each EU government.
4. It is highly recommended that, before the mediation agreement is finalised, a limited time for reflection _____ (*give*) to the parties to enable them to obtain specialist legal advice on the full legal consequences.
5. In April 2011 the Council welcomed the Principles for the establishment of mediation **structures (...) and agreed that the Principles** _____ (*present*) for discussion at the Meeting of the Special Commission.
6. It is essential that **the Member State’s** Central Authority _____ (*cooperate*) both in general matter and in specific cases, including for the purposes of promoting the amicable resolution of commercial disputes.
7. In civil and commercial mediation there is the recommendation that all appropriate steps _____ (*take*) to encourage the parties to a cross-border civil or commercial dispute to find an agreed solution.
8. All Member States demand that parties in need of a mediation _____ (*not, deny*) access to justice.
9. It is necessary that the parties _____ (*be*) aware that the exclusion of any matters from the scope of the mediation at this stage does not constitute an obstacle to taking up these matters in separate mediation sessions at a later stage.
10. It is important that parties _____ (*be*) well informed about the law applicable to the subject matter dealt with in mediation as well as the law applicable to the mediation process itself.
11. It is important that the parties _____ (*have*) access to relevant legal information.
12. It is strongly recommended that, before the mediated agreement is finalised, _____ (*there is*) a **‘time-out’ for the parties to obtain specialist legal** advice regarding the full legal consequences of what they are about to agree on.

16. Word building

Choose the most appropriate word form for each gap. There is a clue for you in brackets:

[Source: Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:136:0003:0008:En:PDF>]

1 Article 2

2 Cross-border disputes

3 1. For the purposes of this Directive a cross-border dispute shall be one in which at least one
4 of the parties is domiciled or (1) _____ (*habitual, reside*) in a
5 Member State other than that of any other party on the date on which:

6 (a) the parties agree to use (2) _____ (*mediator*) after the dispute (3)
7 _____ (*arise*);

8 (b) mediation is ordered by a court;

9 (c) an (4) _____ (*oblige*) to use mediation arises under national law; or

10 (d) for the purposes of Article 5 an (5) _____ (*invite*) is made to the parties.

11 2. Notwithstanding paragraph 1, for the purposes of Articles 7 and 8 a cross-border dispute
12 shall also be one in which (6) _____ (*judge, proceed*) or arbitration
13 following mediation between the parties are initiated in a Member State other than that in
14 which the parties were domiciled or habitually resident on the date (7) _____
15 (*reference*) to in paragraph 1(a), (b) or (c).

16 3. For the purposes of paragraphs 1 and 2, domicile shall be determined in (8)
17 _____ (*accord*) with Articles 59 and 60 of Regulation (EC) No 44/2001.

18 Article 3

19 Definitions

20 For the purposes of this Directive the following definitions shall apply:

21 **‘Mediation’ means a structured process, however named or referred to, whereby two or more**
22 **parties to a dispute attempt by themselves, on a (9) _____ (*volunteer*) basis, to**
23 **reach an agreement on the (10) _____ (*settle*) of their dispute with the assistance of**
24 **a mediator. This process may be initiated by the parties or suggested or ordered by a court or**
25 **prescribed by the law of a Member State.**

26 It includes mediation conducted by a judge who is not responsible for any judicial
27 proceedings (11) _____ (*concern*) the dispute in question. It excludes attempts
28 made by the court or the judge seised to settle a dispute in the course of judicial proceedings
29 concerning the dispute in question.

30 Article 5

31 Recourse to mediation

32 1. A court before which an (12) _____ (*act*) is brought may, when appropriate and
33 having regard to all the circumstances of the case, invite the parties to use mediation in order
34 to settle the dispute. The court may also invite the parties to attend an information session
35 on the use of mediation if such sessions are held and are easily (13) _____
36 (*availability*).

37 2. This Directive is without prejudice to (14) _____ (*nationality*) legislation making
38 the use of mediation compulsory or subject to incentives or sanctions, whether before or
39 after judicial proceedings have started, provided that such legislation does not prevent the
40 parties from exercising their right of (15) _____ (*acceed*) to the judicial system.

41 Article 6

42 (16) _____ (*Enforce*) of agreements resulting from mediation

43 1. Member States shall ensure that it is possible for the parties, or for one of them with the
44 explicit (17) _____ (*consensual*) of the others, to request that the (18)
45 _____ (*contain*) of a written agreement resulting from mediation be made (19)
46 _____ (*enforceability*). The content of such an agreement shall be made enforceable
47 unless, in the case in question, either the content of that agreement is contrary to the law of
48 the Member State where the (20) _____ (*request*) is made or the law of that
49 Member State does not provide for its enforceability.

50 2. The content of the agreement may be made enforceable by a court or other competent
51 authority in a judgment or (21) _____ (*decide*) or in an authentic instrument in
52 accordance with the law of the Member State where the request is made.

53 3. Member States shall inform the Commission of the courts or other authorities (22)
54 _____ (*competent*) to receive requests in accordance with paragraphs 1 and 2.

55 4. Nothing in this Article shall affect the rules applicable to the (23) _____
56 (*recognise*) and enforcement in another Member State of an agreement made enforceable in
57 accordance with paragraph 1.

58 Article 7

59 (24) _____ (*Confide*) of mediation

60 1. Given that mediation is intended to take place in a manner which respects confidentiality,
61 Member States shall ensure that, unless the parties agree otherwise, neither mediators nor
62 those involved in the (25) _____ (*administer*) of the mediation process shall be
63 compelled to give (26) _____ (*evidential*) in civil and commercial judicial
64 proceedings or arbitration regarding information arising out of or in (27) _____
65 (*connect*) with a mediation process, except:

66 (a) where this is necessary for overriding considerations of public policy of the Member State
67 concerned, in particular when required to ensure the (28) _____ (*protect*) of the
68 best interests of children or to prevent harm to the physical or psychological integrity of a
69 person; or;

70 (b) where (29) _____ (*disclose*) of the content of the agreement resulting from
71 mediation is necessary in order to implement or enforce that agreement.

72 (...)

73 Article 8

74 Effect of mediation on (30) _____ (*limit*) and (31) _____ (*prescribe*)
75 periods

76 1. Member States shall ensure that parties who choose mediation in an attempt to settle a
77 dispute are not (32) _____ (*subsequent*) prevented from initiating judicial
78 proceedings or (33) _____ (*arbiter*) in relation to that dispute by the (34)
79 _____ (*expire*) of limitation or prescription periods during the mediation process.

17. Multiple choice

Choose the most appropriate option:

[Source: CURIA.

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=191706&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=50314>

JUDGMENT OF THE COURT (First Chamber) 14 June 2017

(Reference for a (1) _____ — Consumer protection — Alternative dispute resolution (ADR) procedures — Directive 2008/52/EC — Directive 2013/11/EU — Article 3(2) — Applications by consumers to (2) _____ in the context of payment order (3) _____ instituted by a credit institution — Right of access to the judicial system — National legislation providing for mandatory recourse to a mediation procedure — Obligation to be (4) _____ by a lawyer — Condition for the admissibility of proceedings (5) _____ the courts)

- | | | |
|--------------------------|---------------------------|----------------------------|
| 1. a. judgment | b. preliminary ruling | c. sentence |
| 2. a. set an order aside | b. place a judgment aside | c. put an injunction aside |
| 3. a. process | b. procedure | c. proceedings |
| 4. a. assisted | b. attended | c. backed |
| 5. a. opposite | b. in front of | c. before |

In Case C- 75/16,

REQUEST for a preliminary ruling under Article 267 TFEU (6) _____ the Tribunale Ordinario di Verona (Verona District Court, Italy), made by decision of 28 January 2016, received (7) _____ the Court on 10 February 2016, in the proceedings

- | | | |
|----------|---------|-------|
| 6. a. to | b. from | c. by |
| 7. a. at | b. in | c. on |

Livio Menini,

Maria Antonia Rampanelli

v

Banco Popolare Società Cooperativa,

1. This request (8) _____ a preliminary ruling concerns the interpretation of Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR) (OJ 2013 L 165, p. 63), and of Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (OJ 2008 L 136, p. 3).

- | | | |
|----------|--------|-------|
| 8. a. of | b. for | c. to |
|----------|--------|-------|

2. The request has been made in proceedings between (i) Livio Menini and Maria Antonia Rampanelli and (ii) Banco Popolare Società Cooperativa concerning payment of the (9) _____ on a current account held by Mr Menini and Ms Rampanelli at the Banco Popolare, following the (10) _____ of credit facilities by the (11) _____.

- | | | |
|---------------------|------------------|-----------------|
| 9. a. debit balance | b. balance debit | c. debt balance |
| 10. a. issuance | b. grant | c. give |
| 11. a. last | b. later | c. latter |

(...)

The dispute in the main proceedings and the questions referred for a preliminary ruling.

19. Banco Popolare granted Mr Menini and Ms Rampanelli current-account credit facilities on the basis of three successive contracts, (12) _____ enabling them to buy shares, including those (13) _____ by Banco Popolare itself and other companies belonging to it.

- | | | |
|-----------------------------|-----------------------|------------------------|
| 12. a. with the purposes of | b. to the purposes of | c. for the purposes of |
| 13. a. issued | b. given out | c. released |

20. On 15 June 2015, Banco Popolare obtained (14) _____ requiring Mr Menini and Ms Rampanelli to pay a sum of EUR 991,848.21, corresponding to the balance which, it claimed, remained (15) _____ under a contract signed on 16 July 2009 for the opening of a current account guaranteed by a mortgage. Mr Menini and Ms Rampanelli applied to have that order for payment set aside and (16) _____ (17) _____ of the relevant provisional enforcement measures.

- | | | |
|-------------------------------|-------------------------|------------------------|
| 14. a. a sentence for payment | b. an order for payment | c. an order of payment |
| 15. a. owing | b. pending | c. outstanding |
| 16. a. sought | b. sought | c. requested |
| 17. a. a halt | b. a stay | c. a pause |

21. The (18) _____ court, the Tribunale Ordinario di Verona (Verona District Court, Italy), (19) _____ that, under national law, such an application to have an order set aside is admissible only on condition that the parties have first initiated a mediation (20) _____, pursuant to Article 5(1bis) and (4) of Legislative Decree No 28/2010. The referring court also establishes that the dispute before it falls within the scope of the Consumer Code, (21) _____ by Legislative Decree No 130/2015 transposing Directive 2013/11 (22) _____ Italian law. Mr Menini and Ms Rampanelli should be regarded as **'consumers'**, within the meaning of Article 4(a) of that directive, having (23) _____ contracts which may be classified as **'service contracts'** within the meaning of Article 4(d) of that directive.

- | | | |
|--------------------|--------------|--------------|
| 18. a. referring | b. reference | c. referred |
| 19. a. establishes | b. notes | c. indicates |

- | | | |
|---------------------|---------------|--------------|
| 20.a. proceeding | b. process | c. procedure |
| 21. a. by amendment | b. as amended | c. amended |
| 22.a. in | b. to | c. into |
| 23.a. concluded | b. signed | c. agreed |

22. According to the referring court, it is not clear that the fact that Directive 2013/11 expressly refers to Directive 2008/52 means that the first of those directives was (24) _____ to (25) _____ Member States to provide for mandatory use of a mediation procedure rather than the ADR procedure (26) _____ Directive 2013/11 as regards disputes involving consumers. When Article 5(2) of Directive 2008/52 permits Member States to provide for mediation as a condition for the admissibility of legal proceedings, it is not mandatory since it leaves that choice (27) _____ the Member States.

- | | | |
|-----------------------|----------------|----------------|
| 24.a. directed | b. meant | c. intended |
| 25.a. capacitate | b. entitle | c. empower |
| 26.a. provided for by | b. provided in | c. provided at |
| 27. a. for | b. to | c. with |

23. That said, the referring court takes the view that the (28) _____ of Italian law on mandatory mediation are contrary to Directive 2013/11. According to the referring court, that directive (29) _____ a single, exclusive and harmonised system for disputes involving consumers, (30) _____ the Member States as to achievement of the objective pursued by that directive. That directive should therefore apply also to the procedures covered by Directive 2008/52.

- | | | |
|--------------------|----------------|----------------|
| 28.a. dispositions | b. resolutions | c. provisions |
| 29.a. establishes | b. institutes | c. establishes |
| 30.a. tying | b. binding | c. tying |

24. The referring court also points out that Article 9 of Directive 2013/11 leaves the parties the choice not only of whether or not to take part in the ADR procedure, but also of (31) _____ from it (32) _____, with the result that mandatory use of mediation, provided for by national law, would put the consumer in a (33) _____ position (34) _____ if such use were merely optional.

- | | | |
|-----------------------|--------------------|----------------------|
| 31. a. retiring | b. departing | c. withdrawing |
| 32.a. to any stage | b. at any stage | c. in any stage |
| 33.a. less favourable | b. more favourable | c. lesser favourable |
| 34.a. as | b. that | c. than |

25. Finally, according to the referring court, the mandatory mediation procedure provided for in national law is (35) _____ to Article 9(2) of Directive 2013/11, in so far as, in the national procedure, the parties may not withdraw from the mediation procedure at any time unconditionally if they are not (36) _____

with the performance or operation of that procedure. They may do so only by (37) _____ on a valid reason; otherwise they will be (38) _____ a fine which the court is required to impose, even if the party who withdrew from the mediation procedure was successful (39) _____ of the legal proceedings.

- | | | |
|------------------|--------------------|------------------|
| 35.a. contrary | b. opposite | c. in opposition |
| 36.a. happy | b. satisfied | c. content |
| 37.a. lying | b. leaning | c. relying |
| 38.a. liable to | b. accountable for | c. probable for |
| 39.a. to the end | b. in the end | c. at the end |

26. In those circumstances, the Tribunale Ordinario di Verona (District Court, Verona) decided to (40) _____ and to (41) _____ the following questions to the Court of Justice for a preliminary ruling:

- | | | |
|-------------------------|-------------------------|-----------------------|
| 40.a. pause the process | b. stay the proceedings | c. stop the procedure |
| 41.a. refer | b. send | c. transmit |

‘1. In so far as it provides that Directive [2013/11] “**shall** be without prejudice to Directive [2008/52]”, must Article 3(2) of Directive 2013/11 be (42) _____ as meaning that it is without prejudice to the possibility for individual Member States of providing for (43) _____ mediation (44) _____ in those cases which do not fall (45) _____ of Directive 2013/11, that is to say the cases referred to in Article 2(2) of Directive 2013/11, contractual disputes (46) _____ contracts (47) _____ sales or service contracts, as well as those which do not concern consumers?

- | | | |
|------------------------|------------------|----------------------------|
| 42.a. understood | b. construed | c. comprehended |
| 43.a. obligatory | b. forced | c. compulsory |
| 44.a. exclusively | b. solely | c. uniquely |
| 45.a. within the scope | b. in the area | c. within the jurisdiction |
| 46.a. risen out of | b. rising out of | c. arising out of |
| 47.a. other than | b. another than | c. other that |

2. In so far as it guarantees consumers the possibility of (48) _____ complaints (49) _____ traders to appropriate entities offering alternative dispute resolution procedures, must Article 1 of Directive 2013/11 be interpreted as meaning that it precludes a national rule which requires the use of mediation in one of the disputes referred to in Article 2(1) of Directive 2013/11 as a precondition for the admissibility of legal proceedings by the consumer, and, (50) _____, as precluding a national rule that requires a consumer taking part in mediation relating to one of the abovementioned disputes to be assisted by a lawyer and to (51) _____ the related costs, and allows a party not to participate in mediation only on the basis of a (52) _____ reason?’

- | | | |
|---------------|---------------|---------------|
| 48.a. serving | b. handing in | c. submitting |
|---------------|---------------|---------------|

- | | | |
|---------------------|-----------------|-----------------|
| 49. a. against | b. to | c. on |
| 50. a. at any event | b. in any event | c. on any event |
| 51. a. assume | b. carry | c. bear |
| 52. a. convincing | b. valid | c. valuable |

(...)

On those grounds, the Court (First Chamber) (53) _____ rules:

- | | | |
|---------------|-----------|-------------|
| 53. a. hereby | b. herein | c. hereinto |
|---------------|-----------|-------------|

Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR) must be interpreted as not precluding national legislation, such as that (54) _____ in the main proceedings, which prescribes recourse (55) _____ a mediation procedure, in disputes referred to in Article 2(1) of that directive, as a condition for the admissibility of legal proceedings relating to those disputes, to the extent that such a requirement does not (56) _____ the parties _____ exercising their right of access to the judicial system.

- | | | |
|------------------------------|----------------------------|--------------------------|
| 54. a. in dispute | b. at issue | c. in issue |
| 55. a. of | b. for | c. to |
| 56. a. prevent ... to | b. prevent ... from | c. prevent ... of |

(57) _____, that directive must be interpreted (58) _____ national legislation, such as that at issue in the main proceedings, which provides that, in the context of such mediation, consumers must be assisted by a lawyer and that they may withdraw from a mediation procedure only if they (59) _____ the existence of a valid reason (60) _____ of that decision.

- | | | |
|--------------------------|--------------------|----------------------|
| 57. a. in the other hand | b. on another hand | c. on the other hand |
| 58. a. as precluding | b. to preclude | c. like precluding |
| 59. a. exhibit | b. demonstrate | c. proof |
| 60. a. in sustain | b. on support | c. in support |

18. Inversion

[Source: “Guide to Good Practice under The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction. Mediation”. Reproduced with permission, Hague Conference on Private International Law, www.hcch.net/]

Read the following paragraph on page 27 of the “The Mediation Directive. European Implementation Assessment”:

“Had the application of the Mediation Directive been restricted only to cross-border cases (in accordance with its formal scope due to the legal basis), much of this harmonisation, encouragement and alignment would have probably not taken place. Fortunately, almost all Member States decided to apply its provisions (as limited as they may be) also to domestic disputes. For comparison, both cross-border and domestic consumer disputes were more recently covered by the ADR Directive and ODR Regulation, which regulate in a more detailed way how to ensure an efficient, impartial and competent assistance for interested parties in reaching an agreement instead of going to court.”

“HAD THE APPLICATION OF THE MEDIATION DIRECTIVE BEEN RESTRICTED ONLY TO CROSS-BORDER CASES (...), MUCH OF THIS HARMONISATION, ENCOURAGEMENT AND ALIGNMENT WOULD PROBABLY NOT HAVE TAKEN PLACE.”

This structure is called **‘inversion’**. In this kind of structure the order is reversed and the verb phrase or the operator comes before the subject (*Only once have I been in court*). Verbs that are not modal verbs or that are not the verbs *to be/to have* place the operator before the verb, as in a question (*At no time did defence lawyer interview the witness; Only then did the claimant react to the submissions by the defence lawyer*). In legal English you will find inversion in the following cases⁴:

1. As a conditional clause (instead of an *if*-clause):

Had the prosecutor been aware of the existence of a witness...

Should the court issue judgment in the afternoon...

Were the judge to dismiss the case...

2. In subject-operator inversion, in the following cases:

- a) Degree expressions with *so* and *such*.

So anxious was Mary about being summoned to court that she could hardly breathe for a while.

Such was the relevance of the new case that the judge had to adjourn another case before him.

- b) Negative and restrictive opening elements: *neither, nor, never, nowhere, on no condition, not only, hardly, no sooner, rarely, seldom, little, less, only*, etc.

Rarely have I seen contempt of court in all my years of practice.

Little did the defendant know that new evidence was about to be produced.

‘I wasn’t aware that it was the right moment for submissions.’ ‘Nor was I’.

⁴ In general English you may have seen it in formulaic expressions such as *So help me God; Long live the Queen, etc.*

Now do inversion in the following sentences:

1. National courts rarely provide mediation assistance in such cases.

Rarely _____

2. There have seldom been so many civil cases where mediation is resorted to.

Seldom _____

3. In complicated commercial cases, parties must never be left alone with each other throughout the mediation sessions.

In complicated cases, never _____

4. Some Member States will never support compulsory mediation in civil cases.

Never _____

19. Gap-filling

[Source: Regulation (EU) No 524/2013 on online dispute resolution for consumer disputes. <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0524&from=EN>]

Fill in the gaps with the missing word. Sometimes there is a clue for you:

(7) Being able to seek easy and (1) _____-cost dispute (2) _____ can boost **consumers'** and **traders'** (3) co_____ in the digital Single Market. Consumers and traders, however, still face barriers to finding (4) _____-of-court solutions in particular to their disputes arising from cross-border online (5) tra_____. Thus, such disputes currently are often left unresolved.

(8) ODR offers a simple, efficient, fast and low-cost out-of- court solution to disputes arising from online transactions. However, there is currently a (6) _____ of mechanisms which allow consumers and traders to (7) _____ such disputes through (8) _____ means; this leads to consumer detriment, acts as a barrier, in particular, to cross-border online transactions, and creates an uneven playing field for traders, and thus hampers the overall development of online (9) _____.

(9) This (10) _____ should apply to the out-of-court resolution of disputes initiated by (11) _____ resident in the Union against (12) _____ established in the Union which are covered by Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes (Directive on consumer ADR).

(10) In order to (13) _____ that the ODR platform can also be used for ADR procedures which allow traders to (14) _____ complaints against consumers, this Regulation should also (15) _____ to the out-of-court resolution of disputes initiated by traders against consumers where the relevant ADR procedures are offered by ADR entities listed in accordance with Article 20(2) of Directive 2013/11/EU. The (16) _____ of this Regulation to such disputes should not impose any obligation on Member States to ensure that the ADR entities offer such (17) _____.

(11) Although in particular consumers and traders carrying out cross-border online transactions will (18) _____ from the ODR platform, this Regulation should also apply to domestic online transactions in order to allow for a true level playing field in the area of (19) _____ commerce.

(13) The definition of (20) '_____' **should cover natural persons who** are acting outside their trade, business, craft or (21) pr_____. However, if the (22) _____ is concluded for purposes partly within and partly (23) _____ the **person's** trade (24) _____ purpose contracts) and the trade purpose is so limited as not to be predominant in the overall context of the supply, that person should also be considered as a consumer.

(14) The definition of 'online sales or service contract' should cover a sales or service contract where the trader, or the trader's (25) _____, has offered goods or services through a (26) _____ or by other electronic means and the consumer has ordered those goods or services on that website or by other electronic means. This should also cover cases where the consumer has (27) _____ the website or other information society service through a mobile electronic device such as a mobile (28) _____.

ANNEXES

FOOD FOR THOUGHT:

Not judging other people's communicative style(s) through the eyes of our own culture is paramount for a successful mediation process.

In order to do that, we need to be familiar with different communicative styles across the EU.

ANNEX 1: GOLDEN RULES IN MEDIATION

Emotional intelligence is the ability to recognise and analyse one's emotions as well as the emotions of other people.

1. Avoid being **defensive** (don't say things like "*It's not my fault*" or "*That's your fault*"). Find a way to apologise without necessarily admitting fault.
2. Try not to be too straightforward by using introductory structures (*'I was thinking, one possibility might be...'*).
3. Give indication that you understand the parties' concerns by using sympathetic language.
4. Introduce your view as a question (direct or indirect) rather than as a statement.
5. Use continuous forms rather than simple forms, they suggest flexibility (*'I was wondering...'*).
6. Tone down refusals by using negation + a positive word (*'That is not very realistic'*) or negation with prefixes (*'a bit unrealistic'*).
7. Use comparatives to soften a statement (*'It might be better to...'*).
8. Avoid specific or unrealistic promises or compromise –keep future commitments vague and/or general at the initial stages of mediation.
9. Manage anger in yourself and in the parties. Pacify the parties (they need to take it out on someone and it will be you).
10. Do not be judgmental or biased. Show balance and neutrality in the language you use.
11. Plan a realistic schedule or timetable for the mediation process.
12. Show that the process is open and avoid communicating separately with either party.

13. Do not use over-formal or legalistic language which will make the parties distance themselves from you. Use temperate, simple and cordial language.
14. Keep track of times and do not let one party monopolise interventions. Both must have equal opportunity to explain.
15. Define points of agreement and points of dispute.
16. Always be positive in your attitude and in your language. Avoid negativity.
17. Understand the conventions that govern behaviour in different cultural environments.
- 18. Be aware of people's values and beliefs**, and be ready to identify and deal with cultural clashes.
19. Be sensible towards cultural stereotypes that may affect communication and interfere with it.
- 20. Be aware of the parties' possibly different communicative styles.**

ANNEX 2: PARALINGUISTICS



Source: <http://awinlanguage.blogspot.com.es/2013/05/brown-and-levinsons-politeness.html>

Paralinguistics is an area of Linguistics which studies aspects of spoken communication that do not involve words. Non-verbal communication is part of our culture and as such, it is usually unconscious **and reflects the concept of “politeness” that we have in our culture.**

We are usually not aware that we are getting across implicit information with things such as loudness (high or low), emphasis (monotone/flat or multitoned/varied), pitch (higher or lower), speed **or “pace”** (fast or slow), articulation (how clear your voice is), tone (enthusiastic, monotone, sarcastic, etc.), turn-taking, intonation (rising or falling), use of pause (**hesitation, disagreement, uncertainty, uneasiness...**), **physical closeness, facial or body expression or gestures** (nodding, smiling, etc.), pronunciation (BrE vs. AmE, etc.), etc.

The problem is not what we do or say (which is acceptable within our own culture), but how people from other cultures perceive these signs and interpret them according to their own world view → misunderstandings.

Examples:

Style A	Style B
Soft-spoken.	Quite loud.
Emphasis used only when needed.	(Ab)use of emphasis.
Pace and rhythm in speech.	High speed when talking.
Correct articulation (no need to rush speech).	Little attention paid to articulation (speed is more important).
Monotone.	(Ab)use of tone.
Turn-taking respected (a sign of politeness) –no interruptions.	Invasion of turn-taking (a sign of interest) –frequent interruptions.
Moderate and adequate use of pauses in speech.	Few pauses in speech (silence is awkward).
<p>PERCEPTION OF STYLE “A” BY STYLE “B”:</p> <p>Extremely polite, too cold, too distant, uncaring, cryptic, too impartial, ambiguous, impassionate, inexpressive, slow speakers, too serious, lack of sense of humour, little interest in the other person, uncaring, impassive, inattentive.</p>	<p>PERCEPTION OF STYLE “B” BY STYLE “A”:</p> <p>Impolite, taking liberties, vehement, impulsive, explicit disrespectful, impertinent, too forthright and expressive, fast speakers, loud, noisy, irritating, too passionate, categorical, too intrusive with the other person, gregarious.</p>

PARALINGUISTICS covers areas such as:

- KINESICS is the interpretation of communication through body motion such as facial expressions (eye contact, gestures, etc.), movement related to a part of the body (hands, arms, etc.) or the body as a whole (body positioning, etc.).

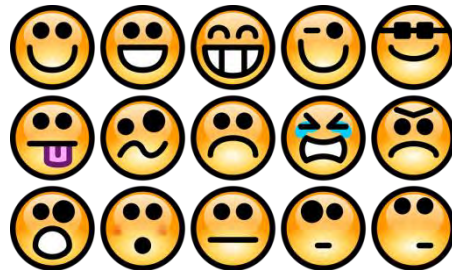


Image: labelled for non-commercial re-use

Style A	Style B
Limited amount of facial expressions.	Large amount of facial expressions that accompany verbal exchange.
Restrained facial response in meetings/classroom, etc.	High facial interaction in meetings/classroom, etc.
Tendency to move little.	Quite restless.
Restrained hand movement.	Intense hand and sometimes arm movement.
PERCEPTION OF STYLE “A” BY STYLE “B”: Careless, cryptic (no face reading), inexpressive, remote, distant, cold.	PERCEPTION OF STYLE “B” BY STYLE “A”: Too vehement, too obvious (face reading), passionate, too involved, angry/upset.

- PROXEMICS studies how space and distance influence communication (for example if our personal space is invaded).

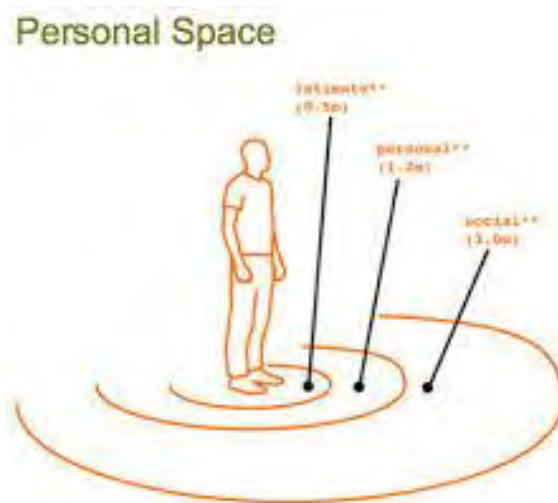


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- Intimate space⁵ (50-70cms approx.): embracing, whispering.
- Personal space (1-2 metres approx.): interaction among good friends.
- Social space (2 metres on): interaction among acquaintances.
- + Public distance: public speaking.

Style A	Style B
Spaces on the picture above show standard measures (invasion is an intrusion).	Spaces on the picture above are much shorter (invasions are regular practice).
Personal space is quite large and respected as a sign of respect (e.g. hand-shaking with stretched-out arm).	Personal space is shorter and frequently invaded as a sign of friendliness (e.g. hand-shaking at a short distance).
Reasonable distance kept in verbal exchanges.	Physical closeness in verbal exchanges.
Intimate space is hardly ever invaded (even by good friends).	Intimate space is sometimes invaded by people who are no more than acquaintances.
Social space is respected.	Intense hand (and sometimes arm) movement.
PERCEPTION OF STYLE “A” BY STYLE “B”: Remote, distant, cold, inexpressive, too formal.	PERCEPTION OF STYLE “B” BY STYLE “A”: Intrusive, invasion of personal space, disrespectful.

⁵ There is also the concept of “intimate crowd” (e.g. a lift): we don’t welcome strangers but we know that we have no choice in that matter and neither do they. So the solution we find is ‘ignoring’ them as human beings (“dehumanisation”) by avoiding eye contact, having blank face expressions and using minimal gestures and movement to avoid involvement.

- HAPTICS studies the role of touch in communication.

Style A	Style B
Very little physical contact unless there is a justifiable reason to do so.	Very frequent touching (patting, kissing, hugging) as a sign of friendliness and/or caring.
PERCEPTION OF STYLE "A" BY STYLE "B": Too remote, cold and impassive.	PERCEPTION OF STYLE "B" BY STYLE "A": Too feely/touchy/physical, too intrusive.

ANNEX 3: POLITENESS THEORY

[Authors used as sources: Brown & Levinson, Tannen, Leech, Mills, Maha, Alba Juez, Grice, Yule, Cummings, etc.]

It is not just *what* we say, it is *the way* we say it.



Source: <https://www.pinterest.es/pin/149181806389671015/?lp=true>

The way we view politeness in a culture has an enormous impact on the way we communicate (conversational style).

One example is how indirect a given culture is in its language (direct requests, giving specific and truthful answers, etc.).

In Deborah Tannen's words, "conversational style makes or breaks relationships". That happens because in general terms, the way we think is the way we talk.

Even within the same culture, misunderstandings happen all the time. Please read the following excerpt from Deborah Tannen's book *That's not What I Meant!* (2011, William Morrow Paperbacks; reprint edition) and say whether you have ever had a similar experience:

One of the biggest troublemakers in my marriage was the seemingly innocent question 'Why?' Having grown up in a family in which explanations were offered as a matter of course, I was always asking my husband 'Why?' He had grown up in a family in which explanations were neither offered nor sought, so (...) my continually asking 'why?' seemed to him an effort to show him up as incompetent. We often had conversations like this:

My husband: *'Let's go to my sister's tonight'*

Me: *'Why?'*

My husband: *'All right, we don't have to go'*

Then he would be angry with me for not being willing to do this for him, and I'd be angry with him because he had changed his mind on the spot and refused to explain why he wanted to go or why he didn't.

That's why the frequently heard advice to 'be honest' doesn't help much: we were being honest. But our ways of being honest were different –and mutually unintelligible.

KNOWLEDGE ABOUT CONVERSATIONAL STYLES IS ESSENTIAL IN CROSS-BORDER MEDIATION.

In broad terms in the European Union there are basically two conversational styles that focus their attention (and the language) on two different aspects:

Style A	Style B
<p>INDEPENDENCE (reflected mostly as privacy and reserve)</p> <p>'Negative face': desire to remain autonomous.</p> <p>Negative politeness: non-imposition.</p>	<p>INVOLVEMENT (reflected mostly as caring and openness)</p> <p>'Positive face': desire to be appreciated.</p> <p>Positive politeness: desire to be liked.</p>

Style A (independence) in language	Style B (involvement) in language
Direct communication (going to the point): time is money, no small talk and no questions on personal issues.	Indirect communication (beating around the bush): no hurry, more emphasis on building relationships through small talk or asking about personal issues (family, holidays, etc.).
Letting interlocutor be, not paying extra attention to anyone (equilibrium).	Paying particular attention to interlocutor (caring) and making him/her feel special.
Formality required.	Formalities waived as soon as possible (first-name terms).
Not necessarily asking people's opinions and not taking for granted agreement.	Counting on him/her (<i>What do you think? Do you agree?</i>) or taking for granted agreement (<i>It's so difficult for us women, isn't it?</i>).
Strictly truthful, no need to sympathise in order for communication to be successful.	Exaggeration used to show interest, approval or sympathy.
Interest shown only if truly felt.	Pretence to be interested in all that concerns interlocutor (questions asked, interruptions as proof of interest).
Use of group markers only is necessary.	Use of group markers: intimate forms of address (<i>sweetheart, love</i>) and diminutives.
No desire to pretend agreement with interlocutor unless really felt (open disagreement: <i>Don't you think she's too young?</i> - 'No' // 'Am I wrong?' 'Yes').	Avoidance of confrontation: pretence of agreement/covert agreement.
Truthfulness: no promises that are not kept.	Extreme desire to please interlocutor: making offers/promises that are unlikely/uncertain to be kept.
Being realistic.	Being pessimistic with oneself to play down one's importance (<i>Oh, it's nothing really</i>).
Sticking to the truth or saying nothing- no need to please the other person.	Complimenting even if it means, for example, not being truthful about others people's appearance to make them feel good.

Being straightforward about things you don't like .	Saying you don't mind certain things when you do.
Never giving explanations/apologies unless truly needed (underlying principle: don't bother others with personal circumstances).	Desire not to offend interlocutor (apologies + explanations), for example, giving unasked-for explanations when entering a classroom late.
No insistence. (underlying principle: you mean what you say and you say what you mean).	Invitations / offers must be declined (out of politeness) at least a couple of times (underlying principle: 'Don't be a nuisance').
Silence is acceptable and even positive (feeling comfortable with someone).	Silence is negative, awkward or uncomfortable.
More attention is paid to the content or a message than to the form of the message.	More attention is paid to the form or a message than to the content of the message.
Respect shown by respecting turn-taking (no need to speak fast).	Interest shown by not respecting turn-taking (need to speak fast because you <i>will</i> be interrupted).
Not socially acceptable to talk about (or show) emotions or affections in public.	Socially acceptable (and appreciated) to talk about (or show) emotions or affections in public.

ANNEX 4: HEDGING

A **'hedge'** is a mitigating element (verb tenses, modal expressions, adverbs, structures, etc.) used to **'tone down'** or lessen the impact of an utterance. They make what we say less direct.

Having an excellent command of hedging devices is an essential part of mediation; if hedges are not used, communication will very probably break down at some point.

Examples of hedging devices:

ADVERBS:

- Apparently (it appears that)
- Approximately/roughly (not completely accurate)
- Arguably (it could be argued that)
- Commonly
- Fairly (not used with comparative adjectives)
- Likely/unlikely (probability/improbability)
- Normally (a bit tricky because of what its opposite suggests)
- Not necessarily (not always)

- Perhaps
- Probably
- Possibly
- Quite (not used with comparative adjectives, comes before a/an)
- Rather (can be used with comparative adjectives and expresses surprise or negative opinion)
- Reasonably (to some extent, fairly)
- Relatively (fairly, in comparison)
- Reportedly (it is reported that)
- Slightly (can be used with comparative adjectives)
- Sometimes
- Supposedly (it is generally believed that)
- Usually
- Widely

MODALS (especially past or conditional tenses)

- Can (probability)
- Could (more cautious)
- May (probability)
- Might (more cautious)

OTHER VERBS

- Appear
- Assume
- Believe
- Contribute
- Doubt
- Estimate
- Facilitate
- Help
- Indicate
- Look
- Seem
- Suggest
- Tend

FIXED EXPRESSIONS

- Approximately
- As a rule
- In a way
- For practical purposes
- In many respects
- In principle / as a rule
- Insofar as
- In the sense that
- More or less
- On balance
- To some extent
- Up to a point

FIXED EXPRESSIONS WITH *THAT* CLAUSES

- It is widely accepted that...
- It appears that ...
- It seems that...
- It is possible / likely / probable that...
- It has been suggested that ...

Exercise: ‘tone down’ the following statements:

1. I can do that
2. Haven't you prepared what I asked you to do?
3. I don't think so
4. I don't agree
5. You are wrong
6. That's impossible
7. I cannot do that
8. You have made a mistake

9. **Don't say that**
10. **We can't do that**
11. Bring the documents
12. Omit the details
13. Go to the point
14. **That's not a good idea**
15. **I don't see the point**
16. **That's irrelevant**
17. **I'll do it**
18. **That's not right**
19. Be careful with such statements
20. I disagree
21. I disagree
22. **You don't know that**
23. **That's wrong**
24. Listen to me
25. **That's not what I said**

ANSWER KEY

EXERCISE 1

1. What is the difference between a “judge” and a “magistrate”?

These terms are specific to each Member State. In some countries, magistrates sit in first-instance courts while judges sit in second instance courts. However, in some systems it works the other way round. In other systems, (such as Spain), all judges start off as judges when they are appointed and when they become promoted the first time, they become magistrates. In yet other systems the distinction has more to do with whether the judge sits alone or in bench. To complicate matters even further, in the UK magistrates are lay judges who sit in first instance criminal courts only, while judges are professional.

So the safest option for professional judges would be the word “judge”. One can always add adjectives such as “senior” or “higher rank” if need be.

2. Can you provide words that you think could be synonyms for “case”?

Action –very common.

(Law)suit –frequent in the UK and in the US but not so much in continental civil law systems.

Proceedings –always in the plural and after the matter starts.

Claim –more specific in the UK (it refers to where the proceedings start).

Matter/issue –**“matter” is a near-synonym** depending on the context but is more frequently used to refer to **an “area of law”**; **“issue” is more of a synonym for “dispute.**

3. What do you call a ‘decision’ by a judge? Give all the names that you know and explain the difference between them.

Sentence (criminal only, punishment/penalty imposed).

Ruling (not final; on matters that come up in the course of the proceedings).

Finding (on facts, not final).

Order (mostly civil with some exceptions; it is a type of decision, sometimes provisional and sometimes final; sometimes all that comes out of court is an order, sometimes the order is found within the judgment, and sometimes they are two different documents, it depends on the national systems).

Injunction (civil; a type of decision ordering somebody to stop doing something or preventing somebody from doing something).

Warrant (mostly criminal but in some jurisdictions -like the US- there are civil warrants).

Resolution: for bodies, organisations, committees, etc. (e.g. the UN).

4. What is the difference between “court” and “tribunal”?

These two terms have different meanings across the Member States. At the international level: **‘tribunals’ are** ad hoc (temporary and with a specific purpose, e.g. Tribunal for the Former Yugoslavia, Eastern Timor, Rwanda).

5. What are the names for the parties in civil cases?

‘Claimant’ and ‘defendant’ (‘plaintiff’ is for the US and some other common law systems).

6. Can you give alternative expressions for “to take someone to court”?

To sue someone; to file proceedings/a claim/a lawsuit against someone; to begin/start/initiate/institute/commence/bring proceedings against someone.

7. What do you call the geographical area and the matters over which a judge/court has powers?

Jurisdiction for both things, although ‘competent’ can be used in continental law systems as an adjective: “competent judge/court”, “competent authority”.

8. What other expressions do you know for “to give judgment”?

To deliver/issue/hand down/pronounce/render judgment or to rule on something

9. How many words do you know for “lawyer” and what is the difference between them?

Lawyer (somebody who meets the national requirements to be able to practise law).

Solicitor and barrister (UK-specific).

Attorney (full name: attorney-at-law; US term except for “Attorney General”).

Counsel (name given to the parties’ lawyers in court in the UK).

Advocate (someone who can appear on someone else’s behalf in court, who can represent clients).

Legal/law practitioner (most neutral option).

Legal advisor (doesn’t necessarily mean a lawyer).

EXERCISE 2

- | | |
|-----------------------------------|---------------------------------------|
| 1. civil and commercial matters | /ˈsɪvl ænd kəˈmɜːʃəl ˈmætəz/ |
| 2. consumer protection | /kənˈsjuːmə prəˈtɛkʃən/ |
| 3. judicial proceedings | /dʒuˈdɪʃəl prəˈsiːdɪŋz/ |
| 4. cross-border dispute | /krɒs-ˈbɔːdə dɪsˈpjuːt/ |
| 5. alternative dispute resolution | /ɔːlˈtɜːnətɪv dɪsˈpjuːt ˌrɛzəˈluːʃən/ |
| 6. confidentiality | /ˌkɒnfɪdənsɪˈæləti/ |
| 7. neutrality | /njuːˈtrælɪti/ |
| 8. impartiality | /ɪmˌpɑːʃɪˈælɪti/ |

9. out-of-court body	/aʊt-ɒv-kɔ:t 'bɒdi/
10. consensual resolution	/,kɒn'sensjʊ(ə)l ,rezə'lu:ʃən/
11. mediation process	/,mi:di'eɪʃən 'prəʊses/
12. contract	/'kɒntrækt/
13. mediation	/,mi:di'eɪʃən/
14. relevant applicable law	/'relɪvənt 'æplɪkəbl lɔ:/
15. explicit consent	/ɪks'plɪsɪt kən'sent/
16. minimum quality criterion	/'mɪnɪməm 'kwɒlɪti kraɪ'tɪərɪən/
17. mediator	/,mi:di'eɪʃən/
18. mediation service	/,mi:di'eɪʃən 'sɜ:vɪs/
19. training of mediator	/'treɪnɪŋ ɒv 'mi:diətə/
20. public policy	/'pʌblɪk 'pɒləsi/
21. enforcement of judgment	/ɪn'fɔ:smənt ɒv 'dʒʌdʒmənt/
22. internet	/'ɪntə.net/
23. settlement of dispute	/'setlmənt ɒv dɪs'pju:t/
24. code of conduct	/kəʊd ɒv 'kɒndʌkt/
25. pre-contractual negotiations	/pri:-kən'træktʃʊəl nɪ,gəʊʃɪ'eɪʃənz/
26. arbitration	/,ɑ:bɪ'treɪʃ(ə)n/
27. consumer complaint scheme	/kən'sju:mə kəm'pleɪnt ski:m/
28. sale of good	/seɪl ɒv gʊd/
29. private international law	/'praɪvɪt ,ɪntə:'næʃənəl lɔ:/
30. expiry of limitation	/ɪks'paɪəri ɒv ,lɪmɪ'teɪʃən/
31. extra-judicial resolution of dispute	/'ekstrədʒu(:)'dɪʃəl ,rezə'lu:ʃən ɒv dɪs'pju:t/
32. electronic commerce	/ɪlek'trɒnɪk 'kɒmə(:)s/
33. judicial conciliation	/dʒu(:)'dɪʃəl kən,sɪlɪ'eɪʃən/
34. extra-judicial procedure	/'ekstrədʒu:'dɪʃəl prə'si:dʒə/

35. time-limit	/taɪm-'lɪmɪt/
36. addressee	/,ædrɛ'si:/
37. digital dimension	/'dɪdʒɪtl dɪ'menʃən/
38. amicable settlement of dispute	/'æmɪkəbl 'setlmənt ɒv dɪs'pju:t/
39. contractual obligation	/kən'træktʃʊəl ,ɒblɪ'geɪʃən/
40. case management	/keɪs 'mænɪdʒmənt/
41. cross-border element	/krɒs-'bɔ:də 'elɪmənt/
42. data access control	/'deɪtə 'ækses kən'trəʊl/
43. data subject	/'deɪtə 'sʌbdʒɪkt/
44. database of out-of-court scheme	/'deɪtəbeɪs ɒv aʊt-ɒv-kɔ:t ski:m/
45. identifiable natural person	/aɪ'dentɪfəəbl 'nætʃrəl 'pɜ:sn/
46. competent court	/'kɒmpɪtənt kɔ:t/
47. means of redress	/mi:nz ɒv rɪ'dres/
48. recognition of settlement	/,rekəg'nɪʃən ɒv 'setlmənt/
49. legislative act	/'ledʒɪslətɪv ækt/
50. best practice	/best 'præktɪs/
51. modern communication technology	/'mɒdən kə,mju:nɪ'keɪʃən tek'nɒlədʒi/
52. legal dispute	/'li:gəl dɪs'pju:t/
53. quality control mechanism	/'kwɒləti kən'trəʊl 'mekənɪzəm/
54. mediation fee	/,mi:di'eɪʃən fi:/
55. mutual trust	/'mju:tʃʊəl trʌst/
56. trader	/'treɪdə/
57. request	/rɪ'kwest/
58. complainant party	/kəm'pleɪnənt 'pɑ:ti/
59. sufficient time	/sə'fɪʃənt taɪm/
60. service contract	/'sɜ:vɪs 'kɒntrækt/
61. competent authority	/'kɒmpɪtənt ɔ:'θɔ:rtɪ/

62. contact details	/ˈkɒntækt ˈdiːteɪlz/
63. court	/kɔ:t/
64. online sale	/ˈɒnˌlaɪn seɪl/
65. date of legal effect	/deɪt ɒv ˈliːgəl ɪˈfekt/
66. protection of personal datum	/prəˈtektʃən ɒv ˈpɜːsnl ˈdeɪtəm/
67. electronic complaint form	/ɪlekˈtrɒnɪk kəmˈpleɪnt fɔ:m/
68. indeterminate period of time	/ˌɪndɪˈtɜːmɪnɪt ˈpɪərɪəd ɒv taɪm/
69. electronic link	/ɪlekˈtrɒnɪk lɪŋk/
70. online transaction	/ˈɒnˌlaɪn trænzækʃən/
71. consumer awareness	/kənˈsju:mər əˈweənəs/
72. multilingual online information	/ˌmʌltɪˈlɪŋgwəl ˈɒnˌlaɪn ˌɪnfəˈmeɪʃən/
73. user-friendliness	/ˈjuːzə-ˈfrendlɪnɪs/
74. jurisdiction	/ˌdʒʊərɪsˈdɪkʃən/
75. trader representative	/ˈtreɪdə ˌreprɪˈzentətɪv/
76. electronic case management tool	/ɪlekˈtrɒnɪk keɪs ˈmænɪdʒmənt tu:l/
77. contact point network	/ˈkɒntækt pɔɪnt ˈnetwɜ:k/
78. online market place	/ˈɒnˌlaɪn ˈmɑːkɪt pleɪs/
79. online transaction	/ˈɒnˌlaɪn trænzækʃən/
80. binding nature	/ˈbaɪndɪŋ ˈneɪtʃə/
81. rule of professional secrecy	/ru:l ɒv prəˈfeʃənl ˈsiːkrəsi/
82. storage of data	/ˈstɔːrɪdʒ ɒv ˈdeɪtə/
83. feedback system	/ˈfiːdbæk ˈsɪstɪm/

EXERCISE 3

1. invasion of privacy; 2. remedy; 3. relief; 4. wrong; 5. fraud; 6. account of profit; 7. breach of duty; 8. damages; 9. vicarious liability; 10. delict/tort; 11. injunction; 12. specific performance; 13. duty of care; 14. negligence; 15. nuisance; 16. several; 17. contract; 18. capacity; 19. consideration; 20. termination; 21. specific performance; 22. liquidated damages; 23. *force majeure*; 24. creditor; 25. provision; 26. debtor; 27. abatement.

EXERCISE 4

1. OPEN-ENDED ANSWER
2. REVENUE, CUSTOMS, ADMINISTRATIVE MATTERS AND LIABILITY OF STATES FOR ACTS OR OMISSIONS IN THE EXERCISE OF THEIR AUTHORITY
3. OPEN-ENDED ANSWER
4. OPEN-ENDED ANSWER
5. OPEN-ENDED ANSWER
6. CODES OF CONDUCT ARE SETS OF RULES OUTLINING THE NORMS, RULES AND RESPONSIBILITIES OF AN INDIVIDUAL, PARTY, ORGANISATION, PROFESSION, ETC.
7. OPEN-ENDED ANSWER

EXERCISE 5

1. pending case; 2. neutral environment; 3. non-compliant party; 4. evaluative process; 5. powerful commercial entities; 6. minor disputes; 7. private mediation; 8. consumer confidence; 9. reference framework; 10. systematic structure; 11. contractual obligations; 12. in-house complaint procedure; 13. judgment proposal; 14. starting point; 15. business-related mediation; 16. binding nature; 17. significantly limited; 18. initial mediation session; 19. full voluntary mediation; 20. professional mediator; 21. legal dispute; 22. reduced or extended time frame; 23. statutory provisions; 24. qualified mediator; 25. sufficient time; 26. mediation fee; 27. practical arrangement; 28. success rate; 29. judicial proceedings; 30. dispute resolution process; 31. competent authority; 32. European best practice; 33. non-consensual solution; 34. preferred dispute resolution process; 35. applicable law; 36. independent legal advice; 37. interested party; 38. legal aid; 39. prescription period; 40. equal bargaining powers; 41. expert opinion; 42. court-based mediation; 43. legislative model; 44. written agreement; 45. costly legal procedure; 46. judicial authority; 47. legislative provisions; 48. pre-trial stage; 49. speedy resolution; 50. publicly funded mediation; 51. voluntary mediation; 52. screening process.

EXERCISE 6

1. loss; 2. findings; 3. valuable tool; 4. benefits; 5. voluntary codes of conduct; 6. best practice; 7. seventy per cent; 8. taking up; 9. figures; 10. three hundred and thirty one to four hundred and forty six; 11. twelve to thirteen thousand; 12. two thousand; 13. fifty one thousand; 14. fraction; 15. a hundred and fifteen disputes; 16. cross-border; 17. flexible, speedy and cost-effective; 18. beneficial; 19. shorten; 20. estate and will; 21. jurisdictions; 22. swallowed up; 23. lawyers; 24. strengthen; 25. alternative to costly; 26. disputed; 27. assist; 28. costly and lengthy; 29. largely; 30. albeit; 31. in place; 32. infringement proceedings.

EXERCISE 7

1. *Deadline*: time limit, limitation period, qualifying period.

2. *Overview*: analysis, examination.
3. *Effectiveness*: performance, success.
4. *Limited*: finite, constrained, qualified.
5. *Significant*: relevant, important, momentous, serious.
6. *To achieve*: accomplish, attain, bring about, obtain, gain.
7. *To facilitate*: further, promote, ease, encourage, strengthen, speed, expedite.
8. *To raise*: increase, advance, boost, augment.
9. *Minor*: irrelevant, lesser, secondary, unimportant, accessory, trivial.
10. *Provision*: supplying, procurement, providing, giving.
11. *Currently*: presently, at present, right now, nowadays, at the moment.
12. *Multitude*: collection, myriad, number, lot, infinity, host, mass, score.
13. *Contribute*: help, assist, aid, add, benefit, encourage, promote, support.
14. *Extent*: amount, length, measure, scope.
15. *To take place*: occur, happen, arise, materialise, take effect.
16. *Detailed*: comprehensive, exhaustive, precise, meticulous, thorough.
17. *Ensure*: make sure, secure.
18. *Impartial*: equitable, neutral, unbiased, fair-minded.
19. *To cover*: include, encompass, comprise, introduce, incorporate.
20. *Explicit*: straightforward, express, direct, unequivocal, overt.
21. *Mandatory*: binding, compulsory, imperative, obligatory, indispensable.
22. *Amicable*: friendly, cordial, harmonious, peaceful.
23. *Partially*: partly, in part, to a certain extent/degree.
24. *Figures*: numbers, amount.
25. *Balance*: harmony, proportion, parity, evenness.
26. *Link*: connection, relationship, bond, tie.
27. *Will*: readiness, wish, determination, intention, mind, resolution.
28. *Convincing*: persuasive, reasonable, plausible, solid.
29. *Scope*: ambit, sphere, area, field.

EXERCISE 8

1. on, to, on, against, to; 2. for, to, at, within; 3. in, with; 4. at, between; 5. to, to; 6. to, in, on, under; 7. into, to; 8. in, on, in; 9. into, with; 10. in, at; 11. by, through, with; 12. in, with; 13. with.

EXERCISE 9

1. h; 2. e; 3. j; 4. f; 5. b; 6. a; 7. d; 8. i; 9. g; 10. c.

EXERCISE 10

1. n; 2. d; 3. g; 4. a; 5. o; 6. m; 7. b; 8. h; 9. e; 10. j; 11. l; 12. f; 13. k; 14. i; 15. c.

EXERCISE 11

1. uncertain; 2. insecurity; 3. injustice; 4. improper; 5. external; 6. impracticable; 7. illegal; 8. worsen; 9. complicate; 10. uninterested; 11. exclusion; 12. external; 13. disagreement; 14. involuntarily; 15. unlikely; 16. unsustainable; 17. irrelevant; 18. unpredictable; 19. unlikely; 20. infrequent; 21. informal; 22. international; 23. irresponsible; 24. incompetent; 25. impossibility; 26. inappropriate; 27. uncertainty; 28. unwritten/oral; 29. non-confidential; 30. ineffective; 31. inflexibility; 32. impartial; 33. unavailable; 34. maximum; 35. non-compliance; 36. unconcerned; 37. private; 38. non-enforceable; 39. non-recognition; 40. inapplicable; 41. incompatibility; 42. ability; 43. misinformation/disinformation; 44. illegal; 45. insufficiently; 46. unfortunate; 47. unsuccessfully; 48. worst; 49. unequal; 50. disapproval.

EXERCISE 12

1. It must be emphasised that a requirement to attend a mediation session is not a requirement to resolve a case through mediation.
2. The full mediation model was used by Italy as a prerequisite to access to court for some civil and commercial dispute matters for almost two years.
3. Precious time can be lost in attempting mediation in cases where one party is clearly not willing to engage in the mediation process.
4. Even where both parties agree to mediation, attention needs to be paid to specific circumstances.
5. Attention needs to be paid to differences in bargaining power that are simply resulting from the power of the each of the parties.
6. Mediation and similar processes facilitating agreed solutions should not be seen as a complete substitute for judicial procedures, but as a complement.
7. It has to be emphasised that even where mediation and similar processes introduced at an early stage of an international commercial dispute are able to avoid litigation, **complementary 'judicial processes' will frequently be required to render an agreed solution** legally binding and enforceable in the legal systems concerned.
8. Safeguards need to be taken to protect the rights of consumers in mediation.
9. Deeper analysis is needed to assess the success of mediation across Member States.
10. A voluntary mediation model with incentives only, but no sanctions, has been adopted by Greece.
11. When mediation is offered to the parties to an international commercial dispute, they need to be informed that mediation is not their only recourse.
12. It is important that the parties are given access to relevant legal information.

EXERCISE 13

Open-ended answers.

EXERCISE 14

Open-ended answers.

EXERCISE 15

1. be taken; 2. be screened; 3. send; 4. be given; 5. be presented; 6. cooperate; 7. be taken; 8. not be denied; 9. be; 10. be; 11. have; 12. there be.

EXERCISE 16

1. habitually resident; 2. mediation; 3. has arisen; 4. obligation; 5. invitation; 6. judicial proceedings; 7. referred; 8. accordance; 9. voluntary; 10. settlement; 11. concerning; 12. action; 13. available; 14. national; 15. access; 16. enforceability; 17. consent; 18. content; 19. enforceable; 20. request; 21. decision; 22. competent; 23. recognition; 24. confidentiality; 25. administration; 26. evidence; 27. connection; 28. protection; 29. disclosure; 30. limitation; 31. prescription; 32. subsequently; 33. arbitration; 34. expiry.

EXERCISE 17

1. b; 2. a; 3. c; 4. a; 5. c; 6. b; 7. a; 8. b; 9. a; 10. b; 11. c; 12. c; 13. a; 14. b; 15. c; 16. a; 17. b; 18. a; 19. b; 20. c; 21. b; 22. c; 23. a; 24. a; 25. b; 26. a; 27. b; 28. c; 29. a; 30. b; 31. c; 32. b; 33. a; 34. c; 35. a; 36. b; 37. c; 38. a; 39. c; 40. b; 41. a; 42. b; 43. c; 44. b; 45. a; 46. c; 47. a; **48. c; 49. a; 50. b (“a” is possible as well); 51. c; 52. b; 53. a; 54. b (“a” is possible as well);** 55. c; 56. b; 57. c; 58. a; 59. b; 60. c.

EXERCISE 18

1. Rarely do national courts provide mediation assistance in such cases.
2. Seldom have there been so many civil cases where mediation is resorted to.
3. In complicated commercial cases, never must parties be left alone with each other throughout the mediation sessions.
4. Never will some Member States support compulsory mediation in civil cases.

EXERCISE 19

1. low; 2. resolution; 3. confidence; 4. out; 5. transactions; 6. lack; 7. resolve; 8. electronic; 9. commerce; 10. Regulation; 11. consumers; 12. traders; 13. ensure; 14. submit; 15. apply; 16. application; 17. procedures; 18. benefit; 19. online; 20. consumer; 21. profession; 22. contract; 23. outside; 24. dual; 25. intermediary; 26. website; 27. accessed; 28. telephone.