



## SUMMARY ABOUT ANSWERS TO QUESTIONNAIRE FROM RESPONDENTS IN ITALY

### ABOUT TRAINING NEEDS AND PRACTICE EXPERIENCE FOR LAWYERS AND MEDIATORS IN CROSS BORDER FAMILY CASES

University of Genova sent the questionnaire to 20 lawyers, 20 mediators. We received answers from 2 lawyers and \_2\_ mediator; most of the interviewed (11) were both mediators and lawyers.

To the question "Which country are you from" we received the following numbers and answers:

- Latvia
- Lithuania
- Austria
- Italy 100%
- Other

#### Questions for mediators

1. To the question No. 1 "What are your needs in further mediation trainings? Please write 3 topics in which you want to develop your further expertise in the field of mediation" we received the following answers:
  - Psychology and psychology of conflict
  - Communication techniques (with specific reference to managing impasses; active listening; managing silence; Body language)
  - Negotiation techniques
  - Online mediation and communication
  - Legal aspect
  - LGBT conflicts and mediation

*In conclusion: most of the interviewed indicated training needs connected both with communication and negotiation techniques (also regarding online mediation) and psychological aspects (related to family relationships); worthy of attention the indication concerning mediation and LGBT couples*

2. To the question No. 2 "Have you ever mediated a dispute with participation of lawyers?" we received the following numbers:

- Yes
- No

The answer (100%) is explainable in view of the ordinary participation of lawyers in Italian mediation

3. To the question No. 3 "If Yes, what were the main benefits and challenges of such interaction?" we received the following answers:

**Benefits:** better chances to work on legal aspects; concentration on practical aspects; research of more practicable solutions; efficacy and validity of the agreements (lawyers take the responsibility for

**Challenges:** lawyers create obstacles to mediation; lawyers influence parties and have bias against mediation

*In conclusion, the perception related to the interaction is positive (as it can favour the conclusion of enforceable and stable agreements and allow the mediator to concentrate on conflicts, leaving to the lawyers the management of legal aspects); but it becomes challenging when lawyers are not trained in mediation/negotiation and mediators do not understand lawyers' needs*

*The different perception of **time** (and remuneration) for mediators and lawyers is also perceived as a challenge connected to the interaction between mediators and lawyers*

4. To the question No. 4 “What are the main differences of the role of the lawyer in mediation to compare with litigation?” we received the following answers:

In litigation lawyers are competing and act by themselves; they act as they shall win the case and *defend* the clients, competing to protect the *rights* of the clients (adversarial attitude) and concentrating on a single objective; in mediation lawyers should cooperate, as they need to act with others; lawyers shall negotiate (looking for win-win solution), in the interest of the client assisting the client in understanding what is the best achievable result.

5. To the question No. 5 “What knowledge and skills in your opinion lack mediators while they are coordinating mediation, which involves lawyers?” we received the following answers:

Mediators mainly lack:

- knowledge of legal issues and procedural rules concerning the enforcement of agreements and their application; Competence in the facilitation of communication; Flexibility: they are not flexible when acting with lawyers (they think that lawyers are always an obstacle and tend to exclude them); Awareness of the importance of having lawyers at the table (nobody can be excluded from the mediation table); Ability to interact with lawyers (especially if they are not prepared to negotiate); Awareness of relational and professional implications that might interfere with mediation

*In conclusion, according to the answers we collected, mediators seem to lack the ability to deal with lawyers (unless they are already expert in negotiation) and to treat legal issues that are relevant in mediation.*

6. To the question No. 6 “What knowledge and skills in your opinion lawyers lack while they are participating in mediation?” we received the following answers:

Lawyers mainly lack the ability to identify themselves with others; Communication and listening competences; Negotiation and mediation competences and strategies (they are afraid of mediation because they do not know how it works)

*In conclusion, according to the answers we have collected, lawyers seem to lack an effective awareness of the change of mentality that is needed in mediation and of the advantages of reaching an enforceable agreement in mediation*

7. To the question No. 7 “Do you agree with a statement, that mediation should involve only parties to a dispute and participation of lawyers often makes mediation process more complicated?” we received the following numbers:

- Yes (27,3 %)
- No (72,7 %)

Those who did not agree (72,7%) reported that:

- the interaction between lawyers and mediation might benefit the efficacy of mediation and the agreements.
- lawyers and mediators have different roles and clients always need to consult their lawyers before making an agreement.
- if lawyers are well trained and have good negotiation skills, they might help the parties to be more objective and help both parties and the mediator not to forget important issues

Those who did agree (27.3%) with the statement think that

- lawyers complicate the matter and interfere with negotiation

8. To the question No. 8 “What are the most difficult challenges in cross-border family mediations?” we received the following answers:

The interviewed (some of them did not answer because they have not direct experience) identified the following:

- Cultural differences/different cultural approaches; Language; Difficulties in communication; Costs; difficulties in managing joint parenting issues; relevant differences in the legal regime of family law; complexity related to the enforcement and recognition of agreements; difficulties in communication

*In conclusion, the most difficult challenges seem to be related to cultural and legal differences that mediators should manage in cross border mediation*

## Questions for lawyers

1. To the question No. 9 “What are your needs in further mediation / negotiation trainings? Please write 3 topics, in which you want to develop your further expertise in the field of mediation / negotiation” we received the following answers:

Lawyers training needs are mainly related to:

- Negotiation and communication techniques (i.e.: Communication and listening; making questions – use of language and body language; Reframing; strategies for stimulating creativity) and Soft skills
- Cognitive psychology
- Multicultural family mediation techniques
- Online communication techniques

2. To the question No. 10 “How can you describe a role of the lawyer in the mediation process?” we received the following answers:

Lawyers think that their role should be:

Professional advice and support, helping clients understand the matter in dispute and create a negotiation strategy; interpreter of the client’s needs and guarantor of his/her rights as a legal advisor

*In conclusion it seems that the role of lawyers might be described as precious if lawyers are cooperative and in any case as essential in defending the client’s interests (preventing the acceptance of inadequate offers/ impulsive speaking)*

3. To the question No. 11 “What knowledge and skills in your opinion lack mediators while they are coordinating mediation, which involves lawyers?” we received the following answers:

Mediators lack:

- Knowledge of legal issues and ability to evaluate the legal aspects of the dispute, with regard to the judicial alternatives to mediation agreements.
- Competence in communication
- Flexibility (many have only one model of mediation in mind)
- Ability to manage lawyers who are not competent in negotiation and to involve them in the negotiation, instead of acting against or excluding them

*In conclusion it seems that mediator do not trust lawyers and lack the ability and the necessary flexibility to interact with lawyers*

4. To the question No. 12 “What knowledge and skills in your opinion lack lawyers while they are participating in mediation?” we received the following answers:

According to the collected answers, lawyers mainly lack: empathy; listening, communication and Negotiation techniques; Willingness to confront themselves and exchange ideas; Understanding of mediation; trust in mediation and mediators

*In conclusion lawyers lack the ability and awareness of behaving in a different setting other than the courtroom and the willingness to change their mental schemes built on litigation*

5. To the question No. 13 “Do you agree with a statement, that mediation should involve only parties to a dispute and participation of the lawyers often makes mediation process more complicated?” we received the following numbers:

- Yes  
 No 100%

Lawyers who answered do not agree for reasons connected with the perceived role of lawyers in the recognition and enforcement phase: if lawyers did not participate, this phase could be more expensive and time consuming; they think that competent lawyers might help parties stay in mediation and get the aimed results; and that participation of lawyers is important because they might reassure the client that the agreement is adequate, it satisfies his/her interests and at the same time it guarantees her/his rights

6. To the question No. 14 “What are the most difficult legal challenges in cross-border family mediations?” we received the following answers:

The most difficult Challenges are related to: Language; Managing in person meetings and cultural differences

### Questions for all professions

1. To the question No. 15 “What are your needs in trainings about cross-border family cases?” we received the following answers:

Training on national and international rules and regulations and different legal systems;  
Family dynamics; Dealing with minors  
Linguistic trainings  
Training for Managing cultural differences (i.e.: education and communication in the countries of origin of the parties)

*In conclusion: both legal and technical training is needed, as well as cultural insights to deal with people from different countries*

2. To the question No. 16 “Please write what legal problematics you have encountered in cross-border family cases (from your experience or theoretical knowledge)” we received the following answers:

Dealing with Jurisdiction and applicable law; recognition and enforcement of decisions and agreements.

Dealing with Family issues, and especially with family abuses; minors; alimony; parenthood – Dealing with problems related to distance: managing the life of minors – visiting in different countries

3. To the question No. 17 “Please write what mediation problematics have you encountered in cross-border family cases (from your experience or theoretical knowledge)” we received the following answers:

Managing distance and related logistical problems. Issues related to minors and child’s custody; child abduction and Alimony

4. To the question No. 18 “Please write examples of good practice from your experience in cross-border family cases (for instance, good cooperation between lawyer and mediator, clarification of opinion of the child, fast court procedure, good translation of documents, support from the Ministry of Justice, etc.)” we received the following answers:

Using the same language; Translation of documents; institutional Cooperation and Support of the Ministry of Justice

**Please make your own conclusions about this survey and the main outcomes. What are the main trends, the most interesting aspects and the main tendencies?**

*Participation of lawyers is perceived and can be very positive (mainly in terms of legal validity and enforceability of agreements and guarantees for the parties) as far as lawyers are cooperative and well trained and mediators are capable to deal with them and with legal issues.*

*Challenges and problems in cooperation are mainly due to the lack of knowledge on both sides; biases; mistrust; misleading perception of respective roles; different mental schemes and different language (concerning disputes) and lack of flexibility.*

*To improve cooperation of **lawyers** in mediation, the training shall concentrate on:*

- ▶ Knowledge of the process of mediation
- ▶ Rules governing the enforcement of agreements (advantages of mediation)
- ▶ Mental scheme and attitude (adversarial vs cooperative)
- ▶ Break down of prejudices against mediation
- ▶ Roles – changing roles
- ▶ Communication and negotiation techniques for lawyers
- ▶ Use and perception of time
- ▶ Soft skills

*The lack of cooperation is also due to the inability of **mediators** to work with lawyers and with legal issues. Therefore, further training shall concentrate on:*

- ▶ Ability to communicate with lawyers (legal terminology)
- ▶ Flexibility (different models of mediation)
- ▶ Perception of the role, interest and needs of lawyers (personal and professional)

- ▶ Ability to involve lawyers (understanding how they deal with a dispute)
- ▶ Legal rules (at least general principles regarding family law; jurisdiction; recognition and enforcement of agreements and judicial decisions, confidentiality)
- ▶ Ability to overcome cultural differences and speak common languages

*These further steps to create trust and develop cooperation between lawyers and mediators can also be indicated:*

- ▶ Common training aimed at understanding respective roles/ trust/ overcome common prejudices
- ▶ Common training on managing **time** in mediation
- ▶ Develop common **language** (regarding both mediation, disputes and family law)
- ▶ Create (*online*) **common dictionaries** to be used in cross border family mediation (legal terminology translated in different languages (English/Italian/German...); and mediation terminology translated in different languages)
- ▶ Develop new “common” **models of mediation** (jointly built by mediators and lawyers: e.g.: different rules of participation for different stages of mediation)

*Specific needs related to cross border family mediation shall also be considered for further training, with specific regard to:*

- Online communication and mediation (to promote efficient online communication and overcome logistical difficulties connected with distance)
- Language issues
- Cultural issues
- LGBT issues