



## **SUMMARY ABOUT ANSWERS TO QUESTIONNAIRE FROM RESPONDENTS IN AUSTRIA ABOUT TRAINING NEEDS AND PRACTICE EXPERIENCE FOR LAWYERS AND MEDIATORS IN CROSS BORDER FAMILY CASES**

The University of Graz sent the questionnaire to three organizations [Verband Steirischer Rechtsanwaltsmediatoren, Anwaltliche Vereinigung für Mediation und kooperatives Verhandeln, forum Wirtschaftsmediation].

### **We received 15 answers:**

12 people (5 lawyers and 7 mediators) filled out the questionnaire.

Additionally we interviewed 3 experts (2 lawyers and 1 mediator) and collected more in depth information.

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

- Latvia
- Lithuania
- Austria (15)
- Italy
- 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:

#### **Questionnaire:**

Networking  
Get to know cultural differences

#### **Interviews:**

- Exchange of intercultural experiences (what are NO-GOs for mediators when dealing with specific cultures?)
- Legal framework of countries of the parties
- How to deal with lawyers participating in the mediation process
- Online Mediation tools
- Network meetings between the different participants (court, lawyers, mediators)

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

- Yes (6 in the questionnaire; 1 in the interview)
- No (1)

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

**Questionnaire:**

Lawyers have been partly escalating and partly de-escalating.

It is great for the mediands that they know that their legal advisor is there.

Lawyers cannot work from outside, are part of the process and understand the connections and reactions much better.

**Interviews:**

Benefits:

- Mostly in complex cases (e.g. commercial mediations or mediations about family businesses) **legal advice is needed**, in this regard lawyers help to move the process forward
- Find realistic ideas and options

Challenges:

- Lawyers defend the interests of their parties (“stuck in their role as party representatives”). If they do not have knowledge on mediation, they tend to disturb the process, e.g. they answer questions of the mediator which were asked to the parties. More restraint from them would be needed.
- Lawyers have no interest in forms of appropriate dispute resolution
- They have economic interests.

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:

**Questionnaire:**

Court: legal representative

Mediation: legal advisor

**Interview:**

Mediation: Lawyers support their clients to find a viable and future-oriented solution

Litigation: Lawyers represent only the interests of their clients and summarize all their rights in an address to the jury.

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:

**Questionnaire:**

Some mediators don’t understand the role of lawyers in court, which they also have in mediation settings. You have to explain this change of role, and then it is usually very well understood.

**Interview:**

- Possibly at what stages and in which way to include lawyers in the process
- Possibly how to deal with lawyers that are constantly interfering the process (but still attaining an appreciative attitude) – this also depends on how self-confident the mediators occur
- Lawyers should meet mediators with other professional backgrounds (for example psychologists or social worker) eye-to-eye and respect them with all their methods.

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:

**Questionnaire:**

Lawyers don't understand the “other” mediating work. Some want to carry the legal proceedings into the mediation and continue there.

**Interview:**

- They are not trained how they should act during mediation
- They need self-awareness, experience and exercise
- Understanding and acknowledgment of their role (more restraint) and the mediator's role (leader) in the process
- Basic understanding of the process
- Understanding that outcome is independent from jurisdiction (mediation wants to achieve “win-win” solution)
- Mostly a question of attitude

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:

**Questionnaire:**

- Yes (1 person)
- No (1 person)

**Interview:**

- It depends on the case, the knowledge of the mediator and the lawyer. If the case is legally rather complex, the lawyers have a basic understanding of mediation and/or the mediator knows how to incorporate them in the process, lawyers can be a great help in moving forward. However, if the lawyers do not support the idea of mediation and only participate because the parties wanted them to, it is rather difficult to work with them.
- In any case the mediator should encourage the mediands to integrate family members and friends who have resources to solve the conflict.

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

**Questionnaire:**

Does the involvement of lawyers complicate the mediation process?  
sometimes yes, mostly no.

**Interview:**

- Mediators should know at least about the legal framework of the respective country (solution shall be feasible)
- Language barrier (mediator often has to mediate in a foreign language like English) as well as body language (e.g. in some regions women are not allowed to say “no”, therefore the mediator has to derive their “real” answers from their body language)

## Questions for lawyers

Question added by University of Graz: Have you ever participated as lawyer in a mediation?

- Yes (3 in the questionnaire; 2 in the interview)
- No (2)

9. 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:

**Questionnaire:**

1. Assessment of whether mediation is / is still possible
2. Goal setting
3. Immerse the standstill

**Interviews:**

- Rational procedure (How can the mediation process be optimized when lawyers are present? How can they work efficiently together with the mediator(s) to save time?)
- Technical questions about online-mediation (What tools have proven useful?)
- Good networking between the professions (mediators and lawyers with knowledge on mediation)

These answers are very similar to some of those from the mediators. Networking and experience exchange are needed as well as information on how to effectively incorporate lawyers in the process and about online tools that are useful.

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

**Questionnaire:**

Presentation of the legal framework and the economic consequences

**Interviews:**

- Lawyers represent the parties (they are not impartial and passive).
- They have to hold up a certain image towards their party (“my lawyer is there to defend my interests”). This is a challenging task for lawyers who have knowledge on mediation. They want to fulfil their party’s wishes and at the same time help in moving forward the mediation process. Lawyers who do not know about mediation on the other hand can easily stop the process by indicating that litigation would be the better option.

11. 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:

**Questionnaire:**

long-term economic consequences are not taken into account or only taken into account to a limited extent

**Interviews:**

- Skill to assess and understand the role of the lawyer
- Skill to give the lawyer place in the process

12. 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:

**Questionnaire:**

Several times: listening

**Interviews:**

- Understanding of the process as such and how it develops (that there is work on interests and needs which needs time)

13. To the question No. 13 “Do you agree with a statement, that mediation should involve only parties to a dispute?”

**Questionnaire:**

Yes (1 person, it depends on the conflict)

No

“Do you agree with a statement, that participation of the lawyers often makes mediation process more complicated?” we received the following numbers:

Yes (1 person)

No (1 person)

**Interviews:**

- Advantages when lawyers are present are that they are trained in quickly extracting the important facts from the stories of the parties as well as what is important to the parties.
- Legal questions can be solved more quickly.
- Lawyers can explain very well how the alternative (court proceedings) would look like (How much would it cost? How long would it take? Which evidence would be needed? Is there a need for expert reports? How would the stages of appeal look like? What are the risks when going to court?). Therefore, they can be of support when deciding which procedure to choose for the conflict at hand.

One can deduct from these answers that lawyers can be very beneficial to the mediation process if legal questions have to be clarified. The same conclusion can be made from the answers of the mediators.

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

**Questionnaire:**

language barriers

**Interviews:**

- Time is an important factor, since families often quickly need money, alimonies, a regulation of the contact to the children

**Questions for all professions**

15. To the question No. 15 “What are your needs in trainings about cross-border family cases?” we received the following answers: (In the interviews this question was combined with question 1)

**Questionnaire:**

Perceive differences in social awareness

I think that if we are together and want to learn together, there will be a better understanding of the other professional group.

**Interviews:**

- Exchange of intercultural experiences (what are NO-GOs for mediators when dealing with specific cultures?)
- Legal framework of countries of the parties
- How to deal with lawyers participating in the mediation process
- Rational procedure (How can the mediation process be optimized when lawyers are present? How can they work efficiently together with the mediator(s) to save time?)
- Technical questions about online-mediation (What tools have proven useful?)
- Good networking between the professions (mediators and lawyers with knowledge on mediation)

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

Go directly to question No. 17

17. 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:

**(we have combined questions 16 and 17)**

**Questionnaire:**

applicable law, enforcement

have different legal situations in different countries, in both legal spheres

both right and neither wants to give in.

**Interviews:**

- Mediators should know at least about the legal framework of the respective country **(solution shall be feasible)**
- Time is an important factor, since families often quickly need money, alimonies, a regulation of the contact to the children
- Language barrier (mediator often has to mediate in a foreign language like English) as well as body language (e.g. in some regions women are not allowed to say “no”, therefore the mediator has to derive their “real” answers from their body language)
- Logistics (How to get “together” all parties to the conflict? Online-conferences should only be an emergency solution)
- Different legal systems

18. 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: (marked answers could be included in the best practice manual)

**Questionnaire:**

good cooperation between lawyer and mediator (2x)

### Interviews:

- legal uncertainties were clarified very quickly, since the parties collected legal advice outside of the mediation process from a German lawyer (Austria – Germany)
- **If there is awareness on the importance of time and that distance is a barrier, parties are working very efficiently and actively towards solutions, especially if interests of the child are involved. This awareness is generated in course of the process (parties see that long mediation sessions are exhausting, they have to drive a long way to meet, it costs a lot, etc.).** (On the contrary, this knowledge can also be used against the other party by prolonging the process on purpose)
- **Parties are motivated, because they see that mediation is a good alternative in cross-border cases, since they are usually very complex (e.g. questions of procedural and substantive law, jurisdiction, enforcement of titles in different countries)**
- The parties should be supported in time after the first conflict.

### Conclusion

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?

There was not a huge number of participants (7/8/3) but using the mixed method (questionnaire and interview) we got a good idea of the experiences and perceptions of mediators and lawyers working together in the field of cross-border family mediation.

Results showed that the participation of lawyers in the mediation process who do not have a basic understanding of mediation, who lack an openness to ADR and/or have economic interests is very challenging.

The interviewed experts recommended that trainings for lawyers include information on the mediation process as such as well as exercises and self-awareness activities. For mediators it would be interesting to learn how they can effectively incorporate lawyers in the process by giving them enough, but not too much space. Both professions agree that lawyers can be beneficial to the process, especially if legal questions about the case as such or questions about “the alternative” (the court) arise.

Regarding cross-border family mediation, various challenges could be identified: time, distance, costs, culture and legal complexity.

For mediators it would be interesting to learn more about cultural basics (“NO-GOs”) as well as about the legal framework of the countries involved in a cross-border process.

Lawyers answered that they want to learn how the process can be organised in the most efficient way.

Moreover, mediators and lawyers would like to know more about online mediation-tools.

Another need of both, lawyers and mediators, would be networking and experience exchange among their profession as well as with other professions involved in court proceedings.

We would therefore recommend very active and overlapping trainings with lawyers and mediators through which they can meet each other, practice together, network and exchange experiences. Topics to address should be: the mediation process as such as well as its organisation, the role of mediators, lawyers and parties in the process and how to integrate everyone efficiently, cultural “NO-GOs” and basic legal frameworks regarding family law in European countries as well as the introduction of online-tools that have proven to be successful.