



Mediation meets judges – fact sheet for Belgian based court annexed mediation schemes

In Belgium, an increasing number of judges have decided to promote mediation inside the court. The modus operandi is slightly different from one court to another. There is no national framework so far.

This fact sheet describes the scheme as developed in Brussels at the French speaking Commercial Court as this is the place where everything began. Thought, recent evaluation of initiatives in Liège and Namur reveals to be much more successful. These figures are not yet integrated in this fact sheet.

Description

- Who is involved:

- Which court (or judge/clerk)? Number of judges?

About 5 judges of the French speaking Commercial Court of Brussels, on a voluntary basis are involved in the pilot scheme. In Belgium 3 judges seat in the court out of which 1 is a professional in law and 2 have a business experience (“juges consulaires”). The initiative of the judges in Brussels gather both types of judges.

- How many mediators?

A dozen of mediators are involved in the process. All are accredited Belgian mediators and are lawyers (member of the Brussels bar). So far, the project has not been opened to non-lawyers.

- Which MmJ partner/Chamber

BECI, Brussels Enterprises Commerce and Industry (<http://www.beci.be/>).

- Other (bar association, lawyer, mediation centres, mediators...).

The French-Speaking Bar in Brussels through its “Committee for ADR” (<http://www.barreaudebruxelles.info/>) and [bmediation](http://www.bmediation.eu/) (the main civil and commercial mediation centre in Belgium - <http://www.bmediation.eu/>).

- When did it start? Is there a date foreseen for review/evaluation?

It started in 2012 under the initiative of one judge of the Brussels’ Commercial Court (FR).

The initiative of this one judge wasn’t enough to make it work, so it stopped after few months. The project enabled to begin the permanences in September 2014 with more judges involved and in a more structured scheme (see next point).

The permanences have progressively been extended to the Court of Namur, Liège, Nivelles, Gent and Brussels.



An evaluation was held the 24th of June 2015.

The objective is to have regular ad hoc evaluations which are done at court level and the Belgium section of Gemme organized a workshop the 16th of February 2016 with objective to share the various practices.

- What is the process?

- Where/when is info about mediation communicated?

Participating judges select cases which they consider appropriate for mediation. They invite parties and their lawyers to come to a hearing and during that hearing, the judge advises parties to try mediation. They also offer the parties to meet mediators who stand at the permanence for more information.

- Who receives the info (lawyers, parties)

Parties and attorneys together in the best cases. Thought, it appears that parties and lawyers often fail to show up at these hearings. And when they show up, it is often a partial presence of the parties.

- How is the communication made (individual meeting, permanence, group meetings, written...)?

Face to face through individual meetings with the judge or the mediators during their permanence. Before September 2015, parties would receive a written notification from the clerks but clerks have been severely understaffed. Consequently, in September 2015 the written notification has been abandoned by lack of resources. The written notifications from the clerks have started again in January 2016.

- Is it an invitation or an order by the judge?

Invitation

- Is there a feedback given to the judge?

When the parties require the judge to design the mediator, it is a “judiciary mediation”, and then there is a legal obligation for the mediator to say to the judge whether the mediation succeeded or not. However, parties may decide to appoint a mediator without requesting the intervention of the judge. In this later case, the mediation is “voluntary” and no feedback to the judge is mandatory.

- Are there statistics collected and how?

Yes, by the mediators who stand at the permanence and by the judge in charge of the project. The judges and mediators cross check their statistics about once a year.



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- Where there any prerequisite? (such as trainings for the judges)

No, but 2 days of training have been organized for the judges by bmediation and BECI.

- Others

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Evaluation of the scheme

- What works well/what is positive?

What works well is the willingness of judges and mediators to make the project work. For the period September 2014 to June 2015, mediators spent 164 hours in the court at the “permanence”.

Another positive aspect is the fact that the Belgian Minister of Justice encourages this initiative and requested such initiatives to be extended at national level. Though no budget was granted nor framework given. This remains voluntary and unstructured.

- What are the difficulties?
 - The parties and their lawyers rarely come to the hearings with the judge.
 - There is a lack of clerks to assist the judges on this project.
 - There is a resistance from some attorneys.
 - The scheme is encouraged by the President of the Court but not mandatory for the judges.
 - The success rate (12 mediations) is poor compared to the investment of the stakeholders (85 dossiers selected by the judge and 164 hours of permanences).

- How many cases were referred to mediation?

From September 2014 to June 2015, 12 cases have been referred to mediation.

- How many mediation were positively concluded (even partially)?

For the same period: 4 mediations were positively concluded; 1 received a partial agreement; 3 mediation cases didn't reach settlement; 4 mediations cases were still pending in June.

- Files/disputes that are solved through negotiation with or without lawyers?

This information is not available.

- Number of cases selected?

From September 2014 to June 2015, 85 cases have been selected for a hearing with the judge.



- Presence of parties (or partially)

38

- Number of information sessions held by the permanence? (spontaneous + on initiative of judges)

From September 2014 to June 2015, 138 information sessions have been held.

Conclusion

- What is the future of this pilot scheme like?

The stakeholders of the project decided in June 2015 to continue the project despite the difficulties.

During the setting up of this process, we noticed that some judges were really familiarized with the mediation and aware about the advantages of this process. The collaboration and the setting up of a common project were therefore easier. But when the judges do not know enough about mediation it is more complicated to implement mediation in Courts.

Therefore, the striking difficulty was and is still to have a system of permanencies which is sustainable by itself and does not depend on the individual initiatives of judges. To attain this goal, the clerk also plays a role. From September 2015 to December 2015, when the clerks were no longer able to send summons to parties, the number of cases referred to mediation as well as the number of mediations decreased. Thought, at each hearing introduction, the judge announces the existence of the permanence and presents the mediator who stands at the permanence.

Another difficulty is linked to the role of attorneys and the way they see mediation. For a lot of them, mediation is sometimes perceived as a loss of fees. Lot of them do not understand very well the principles of mediation and therefore see it as a treat. That is why it has been stated above that when the clerk sends a summon to the parties to come to a hearings related to mediation, parties and their attorneys rarely show up at these hearings.

Ministry of Justice is willing to modify the mediation regulation framework. The current draft foresees an increased role for the judges. They should have a set of new tools to consolidate the pilot schemes into common practice. The proposal is expected to be released in autumn 2016.

- Suggestion for improvement?

Improve the visibility of the mediation through different actions like the organisation of a mediation week. This action should also target attorneys.

At the beginning of a hearing, there are always a lot of parties with their counsels waiting. The judge could suggest them to go and wait in the permanence place;



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The tribunal could “penalize” the parties who don’t try mediation for a non relevant reason: such as postponing the hearing to 3 months to let them negotiate or try a mediation; condemn the parties to the justice costs. But this point is linked to an improvement of the legal framework. The law has to give the possibility to the judge to “penalize” the parties but by applying objective criteria.