

DAV 14. May 2010  
Stand der Umsetzung  
der Mediationsrichtlinie  
in ausgewählten  
Ländern



ABA Section of  
**Dispute Resolution**



**Universiteit Utrecht**



**TOOLKIT COMPANY**

Merging science & commercial practice

Manon Schonewille

The **Directive 2008/52/EC OF THE EUROPEAN  
PARLIAMENT AND OF THE COUNCIL** of 21 May 2008 ...



## *Lawyers in ADR*

**Roles, Responsibilities and Opportunities of the  
Lawyers in Alternative Dispute Resolution (ADR)**

*A Project implemented by*



**... ON CERTAIN ASPECTS OF MEDIATION  
IN CIVIL AND COMMERCIAL MATTERS**

*In cooperation with*

**Utrecht University** (The Netherlands)  
**University of Deusto** (Spain)  
**UEAPME** (Belgium)  
**ACB** (The Netherlands)  
**ECLA** (Belgium)





## Training



## Video



## Survey

Implementing courses on civil and commercial mediation for EU lawyers

Creating a series of specialized videos on cross-border mediation translated into 23 EU languages

Creating a survey on data gathering to quantify the cost of *not using* mediation



## Book

Producing a book on mediation advocacy in the EU



## Website

Making a specific website with articles, video clips, rules, regulations, and other ADR tools



## International Conferences

Organizing international conferences to present the projects' results and impact

Go to

**[www.adrcenter.com/cj](http://www.adrcenter.com/cj)**

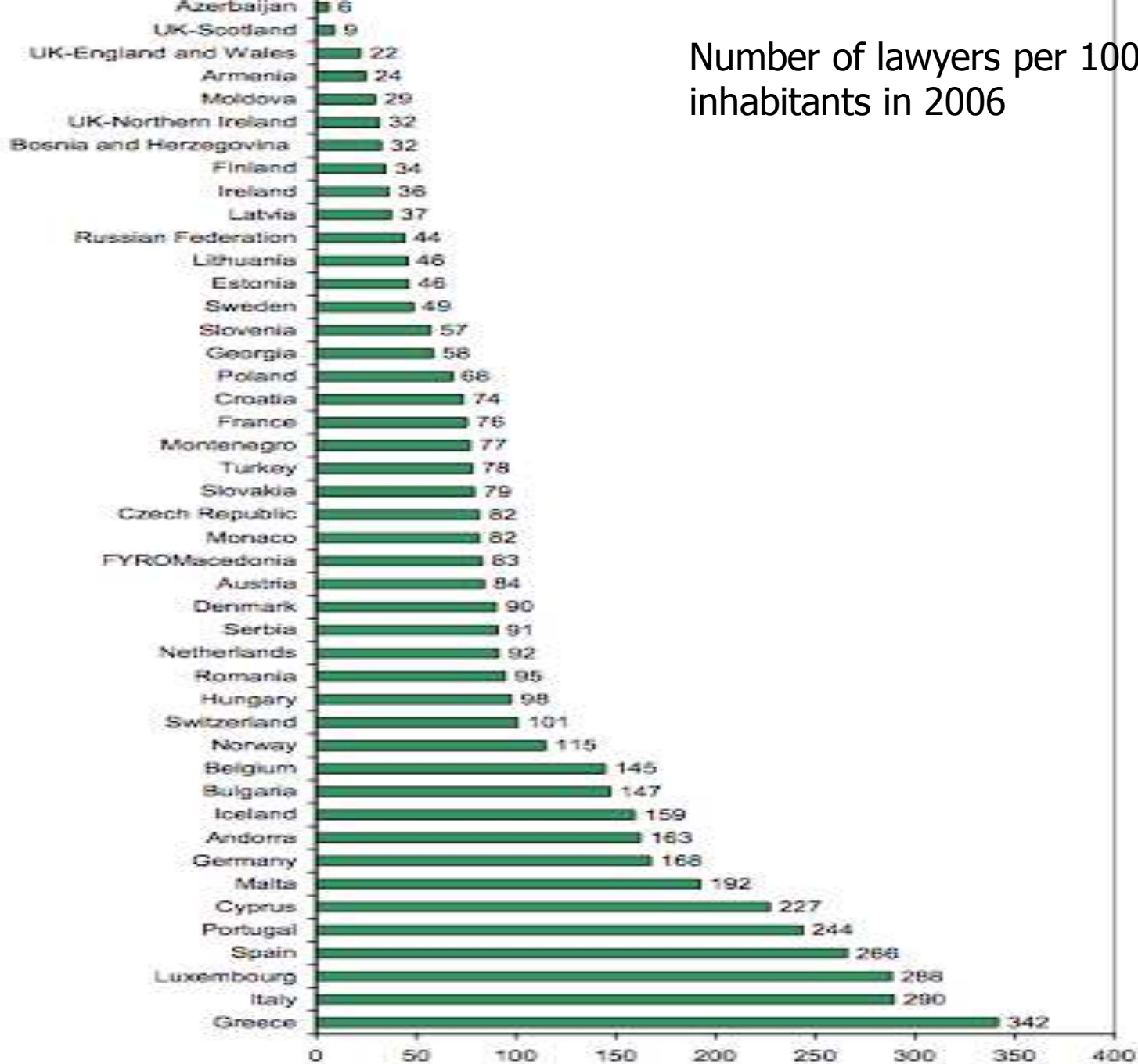
to download the EU :

- *Mediation Advocacy e-book;*
- *Video explaining mediation; and*
- *Survey on the costs of commercial litigation.*

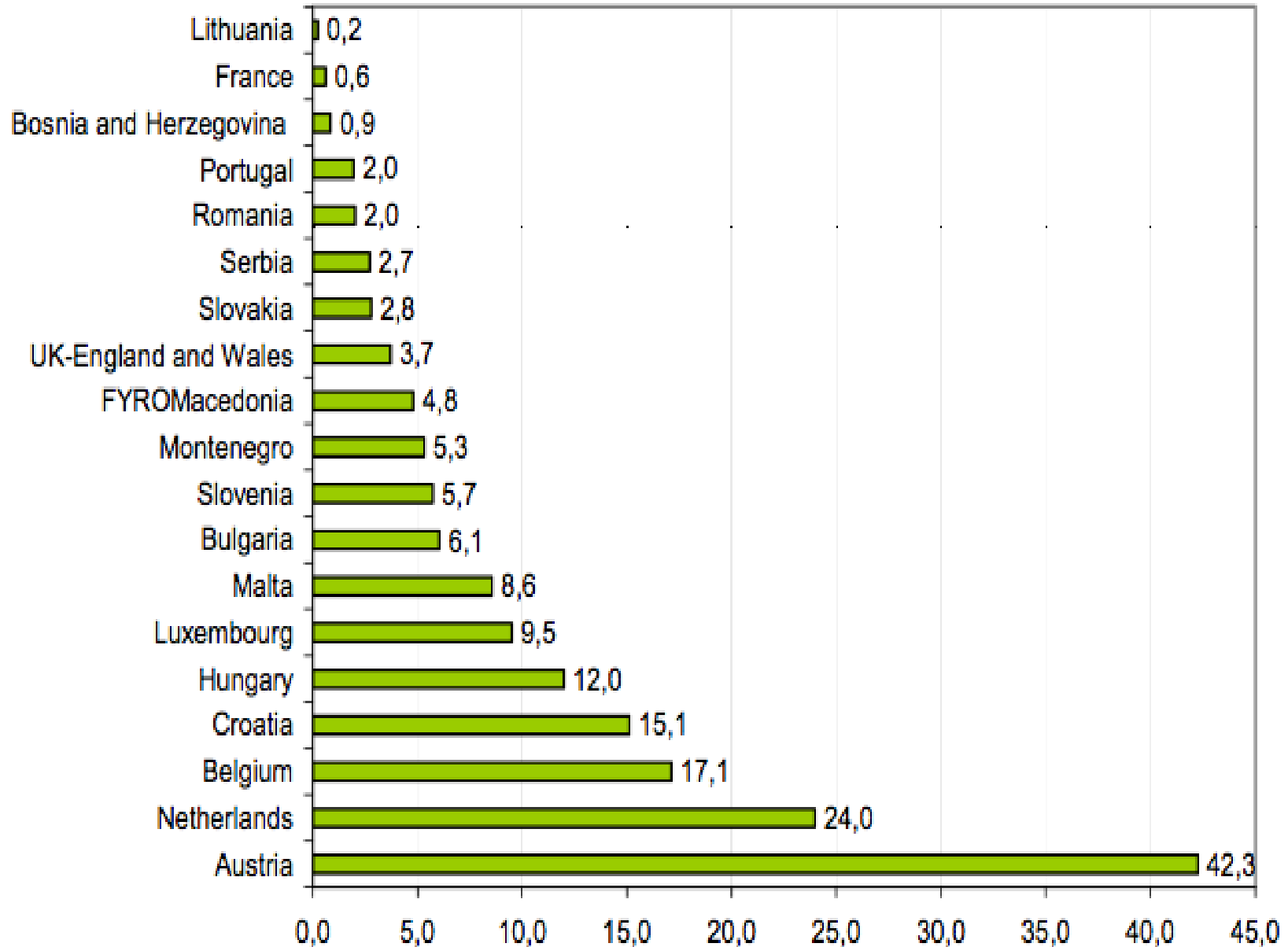
# European *Union*:

- 27 Members with 25 Civil Law jurisdictions and 2 Common Law jurisdictions
- Indicators for *ready-ness* to use ADR in the EU in cross border relationships
- Approaches towards legislation in mediation matters
- Approaches towards mediation style

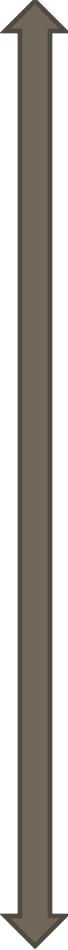
## Number of lawyers per 100.000 inhabitants in 2006



## Accredited mediators/100.000 inhabitants 2006



# Regulation of ADR in the EU

- 
- 0% - The UK, Ireland No legislation, regulation by mutual understanding & agreement: many mediations
  - 10% - 25% - The Netherlands. No legislation, self-regulation of mediator, special rules for court connected mediation, legal mediation aid, disciplinary court: many mediations
  - 25%-50% - France, Belgium – A law, not so much mediations
  - 80% - Austria – A law with very strict quality rules and mediation going on
  - 100% - Bulgaria, Romania – An elaborate law, but not too many cases yet

# "Irreconcilable" Issues in Regulating Mediation

## "Private" ADR

1. Voluntary attempt
2. Flexible procedure
3. Mediator accreditation standard set by the market
4. No sanctions for refusal to mediate (in the absence of a contract clause or statutory obligation)
5. Mediation body different legal forms and can be an individual
6. Proposals exchanged are irrelevant in subsequent proceedings
7. Mediation fees are freely contracted (and might be high)
8. Mediator does not have to be a lawyer
9. Outside counsel presence not necessary
10. Mediated settlement = contract

Mandatory attempt

Rigid procedure

Mediator accreditation standard set by public regulation

Some sanctions

The structure of mediation body determined by law

Proposals exchanged are relevant in subsequent proceedings

Mediation fees are fixed

Mediator has to be a legal professional (or at least a University graduate)

Outside counsel presence necessary

Mediated settlement = enforceable title

## "Public" ADR

# The Features of European Mediation - a Variegated Landscape

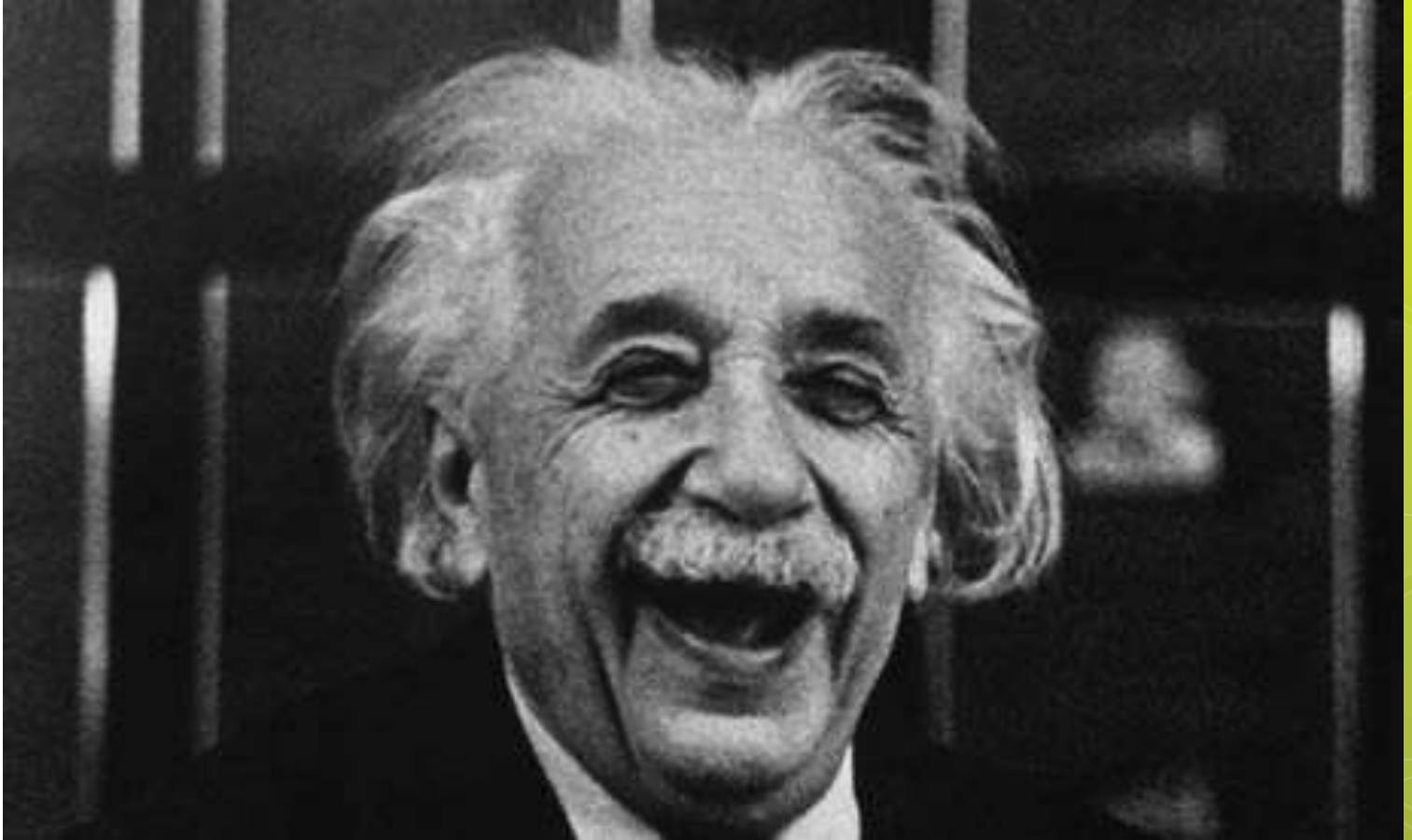
		UK	IT	AU	NL
<b>1. Attempt</b>	<b>Voluntary</b>	√		√	√
	<b>Mandatory</b>		√*		
<b>(Mediation clause)</b>	<b>Case admissable in court</b>			√**	√
	<b>Mandatory</b>	√	√		
<b>2. Procedure</b>	<b>Flexible</b>	√			√
	<b>Rigid</b>		√	√	
<b>3. Mediator accreditation standard</b>	<b>Set by the market</b>	√			√
	<b>Set by public regulation</b>		√	√	
<b>4. Sanctions</b>	<b>No sanctions</b>		√	√	√
	<b>Some sanctions</b>	√			
<b>5. Mediation body</b>	<b>Different legal forms and can be an individual</b>	√			√
	<b>Its structure determined by law</b>		√	√	

# The Features of European Mediation - a Variegated Landscape

		<b>UK</b>	<b>IT</b>	<b>AU</b>	<b>NL</b>
<b>6. Proposals exchanged</b>	Are irrelevant in subsequent proceedings	√			√
	Are somewhat relevant in subsequent proceedings		√	√	
<b>7. Mediation fees</b>	Are freely contracted (and might be high)	√			√
	Are fixed		√	√	
<b>8. Mediator</b>	Does not have to be a lawyer	√	√	√	√
	Has to be a legal professional				
<b>9. Outside counsel presence</b>	Not necessary	√	√	√	√
	Necessary				
<b>10. Mediated settlement **</b>	Contract	√			√
	Enforceable title		√	√	√*

\* possible in court connected mediation – \*\* In all countries through notary!

# How to **succeed** in Mediator Advocacy?



Strive not to be a success, but rather to be of value.



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The **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, published on the Official Journal of the European  
Union L. 136/3 on May 24, 2008

“... a **structured process**, however named  
or referred to, whereby two or more **parties** to  
a dispute attempt by themselves, on a  
**voluntary** basis, to reach an agreement on  
the **settlement** of their dispute with the  
**assistance** of a **mediator**”.

## DIRECTIVES

## 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 EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(c) and the second indent of Article 67(5) thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Economic and Social Committee <sup>(1)</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(2)</sup>,

(4) In April 2002 the Commission presented a Green Paper on alternative dispute resolution in civil and commercial law, taking stock of the existing situation as concerns alternative dispute resolution methods in the European Union and initiating widespread consultations with Member States and interested parties on possible measures to promote the use of mediation.

(5) The objective of securing better access to justice, as part of the policy of the European Union to establish an area of freedom, security and justice, should encompass access to judicial as well as extrajudicial dispute resolution methods. This Directive should contribute to the proper functioning of the internal market, in particular as concerns the availability of mediation services.