



ONLINE-MEDIATION IN CROSS-BORDER DISPUTES

Gernot Barth, Bernhard Böhm, Claudia Covata,
Sylwia Chalupka-Dunse, Irka Fürle, Christiana Marucci (Eds.)

Volume 2 of the series „Basics of Online Dispute Resolution“
edited by Gernot Barth



**Steinbeis-Beratungszentrum
Wirtschaftsmediation**
Leipzig – Stuttgart – Wien – Budapest

- Akademie
- für Soziales
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Project Introduction

This publication is the final project report of the project “Online-Mediation in Cross-Border Disputes” co-financed by the European Commission in the framework of the Civil Justice program.

The program is designed for the purpose of improving the quality handling an increasing number of cross-border disputes. This is mainly caused by the increasing use of the rights of free movement of persons, goods and services. In a genuine European area of justice, individuals should not be prevented or discouraged from exercising their rights. The incompatibility and complexity of legal or administrative systems in EU countries should not be a barrier.¹

However, in a Europe of open borders there are diverse occasions that may lead to citizens finding themselves in front of a court of another EU member state.

For example:

- individuals may be involved in a car accident while on holiday;
- goods from abroad may be ordered using the Internet which are never dispatched or which turn out to be faulty;
- bi-national marriages get divorced, causing a dispute on child custody while one parent may have settled in another country without the consent of the other parent.

An extensive description of the project will not be delivered at this point. However, a short introduction about the main outcomes and the instruments used will be provided in the following:

The EU-Project “Online-Mediation in Cross-Border Disputes” was implemented by Steinbeis Consulting Center Mediation of Business (Germany), culture.communication (Germany) and Resolutia (Italy) starting on September 1st, 2010 and ending on August 30th, 2012. The activities were primarily aiming at mediators, judges, advocates, court officials and other legal professionals. Indirectly the citizens of the European Union should participate from the project, however.

In order to reach this target group several events were hosted, e.g. two international conferences were carried out during the two years lasting project duration, both with the aim of spreading information on Online Dispute Resolution (ODR) and Cross-Border Disputes. Besides numerous trainings on

- ODR
- intercultural aspects of mediation
- co-mediation
- legislative aspects of mediation in member states of the European Union

for mediators, judges and attorneys were delivered in Italy, Germany and Poland.

Additionally an online tool has been developed based on the web-conferencing tool Adobe Connect® that enables users to host online mediations in a cross-border setting. The software has been tested

¹ <http://www.europa.eu>

together with the Steinbeis University Berlin. Know-how of experts in intercultural communication, face-to-face mediation and online mediation has been included into this development. Two courts (Court of Appeal of Milan, Italy and the Higher Regional Court of Oldenburg, Germany) are officially supporting the project as “project courts” and confirmed to delegate cases to the project partners whenever a fitting cross-border dispute occurs to end up in their responsibility. Furthermore, employees of the partners support the project courts whenever additional knowledge on online mediation is needed.

In order to be able to handle cases delegated by courts or coming in from private customers a mediator pool and corresponding quality requirements has been created. Of course the process of handling a cross-border mediation case has also been commonly defined in order to ensure a consistent procedure when delivering the service of Online-Mediation to customers.

The core element of this process is the customized version of Adobe Connect® which will be introduced in the following article.

Video-Online-Mediation using Adobe Connect®

by Jonathan Barth

Within the project it was one of the goals to develop an online tool that is designed for Video-Online Mediation. Of course one could also use Skype or other web-based communication tools. However, these applications have certain disadvantages that do not match the requirements of mediation and principles procedures.

1. Online-mediation sessions using freeware are not confidential concerning SSL-certificate and password protection
2. There is no common workspace mediation participants could use e.g. whiteboards, poll-options, screen sharing etc.
3. They do not offer a convenient documentation option
4. In the project we carried out several trainings. Therefore, we needed a tool that signals when a session is being recorded in order to prevent any malpractice during real mediation sessions. There is no possibility considering freeware software to record sessions for training purposes.
5. Contents of sessions needed to be saved after leaving the virtual room
6. Different templates (customized for specific requirements) needed to be created, saved and be able to use at any time by accredited mediators

Therefore we decided to use the web-conferencing tool Adobe Connect® that is commonly used in business settings and may be known among some users already. This software was customized in order to create an environment that comes close to a face-to-face mediation session.

Another aspect that was part of our objective was the possibility to easily adapt the structure of the software itself. Since the tool was supposed to serve various mediators from different nations and with differing working styles we had to find an application that needed to be flexible. Each mediator had to be able to adapt the screen as he/she wishes in order to meet the expectations of their clients and of course their own expectations how a mediation procedure should be carried out.

Here, Adobe Connect® offered the highest degree of adaptability and user-friendliness. It allows the mediator to change the structure and the arrangements of screens at any time, even during a mediation session itself while conflicting parties are participating in the session already.