



European Network of National Observatories on Childhood

# Family mediation in the European Union

Survey Report  
ChildONEurope Secretariat

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European Network of National Observatories on Childhood

This survey has been carried out by the ChildONEurope Secretariat in accordance with the agreement concluded with the Ministry of family and integration of Luxembourg.

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# 1. Context and methodology of the survey

## 1.1 The context: L’Europe de l’Enfance and ChildONEurope

### 1.1.1 The origins of L’Europe de l’Enfance and ChildONEurope

To understand the origins of the *European Network of National Observatories on Childhood* (hereinafter ChildONEurope), one has to go back to the semester of the French European Union (hereinafter EU) Presidency, in the second half of the year 2000. It was then that the EU member States decided to set up a political co-ordination network on childhood and adolescence, with the aim of adopting an action plan, organise a “European Childhood Day” and create a Permanent Intergovernmental Group called *L’Europe de l’Enfance*.

This Intergovernmental Group has held regular meetings with the representatives of the national Ministries with competence in the field of childhood and adolescence during each EU Presidency semester, as well as meetings of the Ministers competent in childhood, in particular under the French, Belgian and Italian Presidencies. The setting up of the *L’Europe de l’Enfance* Permanent Intergovernmental Group not only stems from the will of knowing more about the living conditions of children and adolescents in the European Union, the policies concerning them and the “best practices”, but it also expresses the need for a discussion forum to fight against the increasing number of transnational issues having a negative impact on minors, for instance the problem of unaccompanied foreign minors, the trafficking of minors for the purposes of prostitution, drug pushing and the perpetration of other crimes, the pedo-pornographic material exchanged and circulated on the Internet.

It was in the framework of *L’Europe de l’Enfance* Permanent Group that started the process aiming at the creation of a European network of national centres, institutes and observatories competent in the field of childhood and adolescence, called ChildONEurope, which maintains a privileged information and collaboration relation with *L’Europe de l’Enfance* in pursuit of its purposes of collecting, exchanging and analysing information on laws, policies, statistical data, research and best practices with regard to childhood and adolescence, in the exchange and

dissemination of knowledge on the methods and indicators used at national level and in carrying out comparative analyses on specific subjects.

Following the enlargement of the European Union to 25 member countries, the ChildONEurope network includes nine Members (Belgium (French-speaking community), Cyprus, Denmark, France, Ireland, Italy, Luxembourg, Portugal and Spain) and twelve Observers (Austria, Estonia, Finland, Germany, Greece, Holland, Poland, United Kingdom, Czech Republic, Slovakia, Sweden and Hungary), all chosen and suggested by their relevant national representatives of the *L'Europe de l'Enfance* Intergovernmental Group. The Observers, who unlike the Members have no decision-making power in the assembly meetings and do not give financial contributions towards the Secretariat activities, can however decide to become Members at any time, by selecting an observatory or another national institution if not already designated, capable of following the network activities, in particular supplying official public data on the conditions of children and adolescents.

ChildONEurope is composed of an Assembly of members meeting at least twice a year with decision-making powers, open to the participation of observers, and a Secretariat with the task of making proposals and with functions of technical-scientific support and communication between the network Members and Observers. The tasks of the Secretariat are carried out by the *Italian Childhood and Adolescence. Documentation and Analysis Centre*.

### 1.1.2 ChildONEurope's activities

The first meeting of the Network Assembly was held on 24th January 2003, at the *Istituto degli Innocenti* in Florence. The participants decided not only the name of the Network: European Network of National Observatories on Childhood, but also its acronym: ChildONEurope, its logo, its programme of activities for 2003 and discussed issues concerning the relations with the *L'Europe de l'Enfance* Intergovernmental Group, while the issue of how to finance the Secretariat's activity was solved – for the first year 2003 – through the funding entirely granted by the Italian Ministry of Labour and Social Policies, with additional co-funding by the members as from 2004.

The first concrete action carried out by ChildONEurope has been the collection and comparison of data concerning the activities of its Members

and Observers to evaluate the opportunities and methods of collaboration. The areas on which to focus attention in the first year of activity were identified by preparing and disseminating a questionnaire, the results of which were processed and analysed by the Secretariat. The analysis of the questionnaire has shown that the most frequently chosen areas of common interest were demography and the family, followed by national and international adoptions.

Both Members and Observers expressed special interest in topical issues, such as unaccompanied foreign minors and social exclusion. However, all debates stressed that any attempt at comparing data calls for an accurate and precise clarification of the very concept of data and information collection at a transnational level.

During the 2003, the Secretariat decided to carry out a demographic data collection and disseminate a questionnaire on national and international adoption whose results were presented during the Assembly of 5<sup>th</sup> December 2003. Furthermore in the margin of the Assembly, a seminar was organised on unaccompanied foreign minors with the aim of comparing data, legislation, policies and best practices in particular concerning the three aspects of welcome, integration and family reunification.

During the 2004 the survey on national and international adoption was enriched especially thanks to the collection of the national legislations on the issue; moreover the Secretariat started to tackle the issue of child abuse through the collection of national legislations and the preparation of statistical and qualitative questionnaires specifically on the issue of the national systems of registration of child abuse.

During this first period of activity ChildONEurope has always maintained a privileged link with the Intergovernmental Group *L'Europe de l'Enfance* reporting on its activities during the meetings of the latter.

Finally, ChildONEurope has created its own web-site ([www.childoneurope.org](http://www.childoneurope.org)), including all the results of its activities, information about the network, the funding lines and the EU-approved calls for tender, events related to the network and the intergovernmental group, links to a list of governmental and non-governmental international organisations working in the field of childhood and adolescence, in addition to information services supplied by the Secretariat through a special

section reserved for the network members and observers, such as the communication of transnational events taking place in a EU member country, as well as the work in progress carried out by the Secretariat through in-depth and comparative studies.

## 1.2 The mandate

On the occasion of its Semester of EU Presidency (1 January to 31 June 2005), the Grand Duchy of Luxembourg has decided to hold an international Seminar on “Family Mediation and L’Europe de l’Enfance”.

The Seminar is organised by the Ministry of Family and Integration on behalf of the Luxembourg government, in collaboration with the University of Luxembourg, the Institut International des Droits de l’Enfant, the Kurt Bösch University Institute and ChildONEurope.

Within the framework of this Seminar, the Luxembourg Ministry of Family and Integration has entrusted the ChildONEurope Secretariat with the mandate of carrying out a survey on family mediation in the European Union, considering its terms of reference and its collaboration relations with the L’Europe de l’Enfance Intergovernmental Group.

With regard to the contents of the survey carried out by the ChildONEurope Secretariat, these are the subjects requested:

1. texts of the legislations and implementing rules on family mediation in force at European level and in each EU member country.
2. public and private training institutions for family mediators
3. public and private family-mediation services
4. concrete experiences of intercultural, interethnic and cross-border family mediation
5. statistical data on:
  - a. total population;
  - b. rate of minors;
  - c. rate of foreign residents;
  - d. number of marriages and divorce rate;
  - e. number of transnational marriages;
  - f. rate of single parent families;
  - g. rate of recomposed families;

- h. number of adopted minors;
- i. national, cultural and ethnic origin of adopted minors;
- j. rate of minors placed into alternative care.

The survey has been carried out through the following activities, in compliance with the terms of reference:

1. Establish contacts with qualified counterparts at EU level and within each EU member State.
2. Identification of all professional figures dealing with family mediation, drafting and dissemination of an ad-hoc questionnaire among their representatives in each European country.
3. Analysis of the information collected on the various subjects.
4. Drafting and dissemination of a final report, including any additional collected material.

The survey results will be presented during the Seminar “Family Mediation and L’Europe de l’Enfance” that will be held in Luxembourg on 12 and 13 April 2005 and they aim to represent one of the instruments for the definition of strategic lines to promote family mediation at European level.

## 1.3 Epistemology and methodology of the survey

In compliance with the mandate mentioned above, this survey aims at reaching the following objective: acquiring knowledge about legislative, theoretical, methodological and operational aspects of family mediation in Europe.

For the purpose of this survey a corpus is built on the basis of both theoretical-epistemological tenets and specific goals. The basic assumption of this survey is that in order to build an epistemologically acceptable corpus, its pragmatic dimension (goals) must be based on scientific tenets and on accurate methodology. This way the corpus becomes the framework within which the survey is carried out on the basis of specific goals, methodology, results and remarks.

The following paragraphs describe the goal-building process and the theoretical tenets underlying our survey.

Reality stems from discourse processes<sup>1</sup> produced by speakers. Therefore it is not generated by a single source but rather by a co-construction and “intersection” of discourses and “voices” featuring in a specific context – in this case family mediation in Europe. Consequently any specific “construct”<sup>2</sup> – for instance “family mediator” – is generated not only by the discourse produced by those who actually play this role – family mediators – but also by the discourse of those who take actions relating to this role – the Legislator for instance. By the same token a construct also results from discourse practices of people who occupy a central place in the network of institutions that interact with family mediators such as judges, lawyers, trainers and supervisors of family mediators. As a consequence there is a “choir of different voices” that one has to listen to and take into account in order to understand how “family mediation” is constructed and operates in real life. This survey deals with the discourse processes produced by all participants in family mediation in order to gain some knowledge about the following aspects:

Knowledge categories used in legal and statistical fields and by all those who are involved in family mediation in Europe;

Operational impact generated by the practice of “family mediation” in real life bearing in mind that this results from joint and cross discourse practices produced by a choir of different voices.

The knowledge categories applied to the purpose of this survey have the status of a “construct” and not of a “concept”. In fact a concept refers to empirical reality at a level that could be defined as ontological-monistic<sup>3</sup>,

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<sup>1</sup> By discourse processes we mean anything that is organised by a linguistic-symbolic dimension in “ostensive” terms. In other words the generative function of language derives from its use by a language community and not from its connotation (a term is used to indicate an object) and denotation (something is specified according to the point of view and the context within which the term is used).

<sup>2</sup> For the definition of “construct” and “concept” see the note below.

<sup>3</sup> Within the philosophy of science there are different schools of thought about how knowledge relates to reality. Reality itself can be seen through different lenses: *monistic realism* is an epistemological position that assumes reality is essence and can be known without resorting to theory. Internal or hypothetical realism, instead, is an epistemological stance that assumes reality exists and can be known only through theory. Conceptual realism is an epistemological position that considers reality as the product of the use of cognitive categories and it emphasises the cognitive modes adopted to build up what (only at a second stage) will be considered as reality.

whereas a “construct” is a linguistic-symbolic expression. It indicates both its use by speakers within the boundaries of “common sense”<sup>4</sup> and its use within the scientific community, based on theoretical and pragmatic orientations.

Considering the previous remarks, this project follows three different strategic axes that are applied to three different areas of investigation. The general objective and the specific goals for each strategic axis are described below.

### 1.3.1 Knowledge acquisition about the legal framework of family mediation

Analysing the discursive practices produced by the “choir of different voices” of the legal community about the reality of “family mediation” entails the analysis of legal rules both at a European level and in individual EU member countries.

The aim of this analysis of EU legal rules and regulations about family mediation is twofold: on one hand identifying the knowledge categories used by legislators to design the practice of family mediation, and, on the other, highlighting the pragmatic effects and the operational impact deriving from these rules and regulations.

The analysis of national legal texts and rules of EU member states aims at highlighting common elements and differences in the national legislations of EU countries on the basis of specific criteria.

The goals of this strategic axis of our survey is the following:

- Collecting EU legal texts and regulations as well as national legislation in those countries where family mediation is ruled by law;
- Identifying and analysing knowledge categories that inspire legal texts and regulations at a European level;
- Drawing up a synoptical table showing common elements and differences in the legal principles underlying national legislation in the EU member states.

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<sup>4</sup> By “common sense” we mean a statement of any type or nature having the following features: it defines and states what reality is; it organises stereotypes and prejudice; it cuts across roles and contexts; it founds its legitimacy on self-reference.

### 1.3.2 Analysis of discourse produced by the “roles” involved in family mediation

The aim of analysing discourse practices by those who are involved in family mediation – a choir of different voices spoken by different roles<sup>5</sup> – is to identify the knowledge categories used by family mediation players: family mediators, attorneys, heads of family mediators training centres, judges.

The specific goals to be reached by this strategic axis are listed below:

- Designing and applying a survey questionnaire on discourse practices produced by the different roles that come into play in family mediation;
  - Data and discourse analysis using statistical tools;
  - Comparative analysis of:
- Data about activities carried out by family mediation services;
- Data about cooperation between family mediation services and other professionals;
- Theoretical models and methodological approaches in family mediation;
- Effectiveness of family mediation actions;
- Networks of institutional relations within which family mediation is implemented;
- Training requirements for family mediators.

### 1.3.3 Analysis of statistical data about family mediation in Europe

The aim of statistical data collection and analysis is to have a clear picture of the level of current knowledge about children and family in Europe. This way it will be possible to see whether currently available data are sufficient to provide enough information and to allow an effective implementation of family mediation. Eurostat data will be analysed to determine to what extent they can be used as a source to acquire knowledge about the different contexts where family mediation may be implemented and to what extent these data allow to carry out a feasibility study on the implementation of family mediation.

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<sup>5</sup> For the purpose of this study roles are “places” of meaning defined and recognised by speakers of a community who participate in different ways in the construction of the reality of “family mediation”.

Secondly, a proposal will be put forward concerning:

- Collection of statistically comparable data about family mediation practice at European level;
- Construction of monitoring indicators to create an effective system of periodical assessment of processes. This system should assess whether a process is heading towards the right direction to hit its target, in other words it should monitor the implementation of family mediation in Europe and determine whether it is effective or not.

General conclusions and operational proposals will be drawn from the research findings. In particular, strengths and weaknesses of family mediation implementation in Europe will be highlighted in order to identify possible future scenarios for “family mediation in Europe”.

## 2. The contribution of a survey on the normative frame

### 2.1 Normative texts at European level

#### 2.1.1 Methodological elements

This paragraph analyses the methodological approach adopted in the survey described in this document. Reference will be respectively made to the methods used to select the analysed texts, the survey instruments and, to conclude, the illustration of the data analysis procedures and the description of results. The latter will be studied in depth and, in particular, the distinction between “process” and “content” will be examined. In this respect, the description of the discursive process and the relations between process and content will be analysed.

##### 2.1.1.1 The search for the legislative texts

The aim underlying this study is, first of all, to trace the normative framework existing at the European level in relation to family mediation. Therefore, a research was done to find out all those European norms that, having mostly a not-binding character, constitute a source of inspiration for the States’ normative production, providing fundamental guidelines in relation to this subject. Inside this European framework, as we will see later through national legislations’ analysis, each Country maintains a relatively significant autonomy in regulating family mediation and its related issues. The primary consequence emerging is the variety of legislative provisions relating to mediation at the European level, with differences that can be really important between one State and the other.

Concerning the sources of international legislation, we took into consideration provisions enforced both at the COE’s level and at the EU’s level. All texts referring to family mediation were analysed: the search criterion was that the text should make reference to family mediation, irrespective of its specific subject. For instance, the *European convention on the exercise of children’s rights*, though dealing with the promotion of children’s rights and wellbeing, has been taken into consideration because it mentions family mediation as a process for the management of family

disputes and as a relevant instrument to achieve the specific objectives of the legislative text itself.

The legislative texts included in the analysis are the following:

#### European Union (EU)

- European Code of conduct for mediators, 2 June 2004
- Regulation (EC) No 2201/2003 adopted by the Council of Ministers, concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility repealing Regulation (EC) No 1347/2000 and amending Regulation (EC) No 44/2001 in matters relating to maintenance, 27 November 2003
- Directive 2002/8/EC adopted by the Council of Ministers, to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes, 27 January 2003
- Green Paper COM (2002) 196 final adopted by the Commission, on alternative dispute resolution in civil and commercial law, 19 April 2002

#### Council of Europe (COE)

- European Convention on the exercise of children’s rights, 25 January 1996
- Reply [CM/AS (2004) Rec 1639 final] adopted by the Committee of Ministers to the Parliamentary Assembly Recommendation 1639 (2003) on Family Mediation and equality of sexes, 21 June 2004
- Recommendation 1639 (2003) adopted by the Parliamentary Assembly, on family mediation and gender equality, 25 November 2003
- Recommendation No. R (98)1 adopted by the Committee of Ministers on Family Mediation, 21 January 1998

The following table presents and explain the principal characteristics of the main international legal acts analysed in the survey.

Table n. 1

Main International Acts	Description of Main International Acts
<b>Convention</b>	<p>It is a formal agreement between two or more States taking specific obligations and settling down rights; other synonyms of "Convention" are "Agreement" and "Treaty".</p> <p>The formal procedure of adoption of a Convention implies four steps:</p> <ul style="list-style-type: none"> <li>• negotiation: in this step the aim is to obtain the States party consensus on the content of the Convention;</li> <li>• signature: is affixed at the end of the negotiation and doesn't imply for the States party a legal obligation;</li> <li>• ratification: the competent national authority of each State party with this step takes a conventional engagement and shows the State will to obligate itself to comply with it;</li> <li>• exchange or deposit of the instruments of ratification: in the first case (exchange) the Convention enter into force immediately, in the second case it will be effective following the deposit of a certain amount of these instruments.</li> </ul> <p>The Convention binds only the States that have ratified them. The text of the Convention through to ratification and the process of harmonisation becomes part of the national legal framework.</p>
<b>Regulation</b>	<p>According to article 249<sup>6</sup> of the Treaty establishing the European Community (EU), it is an act adopted by the European Parliament jointly with the Council, by the Council and the Commission, which shall have general application. It shall be binding in its entirety and directly applicable in all EU Member States.</p> <p>The principal characteristics of the regulation are the following:</p> <ol style="list-style-type: none"> <li>1. general level of the content, that means the addressees should be part of categories defined at abstract and objective level;</li> <li>2. abstractness, that means that it applicable independently from the specific case and are applicable to all the cases covered by the provision;</li> <li>3. coerciveness in all his elements, that means that it implies an obligation of result and also of forms and methods through which reach it.</li> </ol>
<b>Directive</b>	<p>According to article 249<sup>7</sup> of the Treaty establishing the EU, it is an act which 'shall be binding' as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods. It can be adopted by the European Parliament acting jointly with the Council and the Commission of the EU; the purpose is to bind the addressees to take a specific behaviour considered responding to the communitarian interests</p>
<b>Recommendation</b>	<p>According to article 249<sup>8</sup> of the Treaty establishing the EU, it is an act which 'shall have no binding force' adopted by the European Parliament jointly with the Council and the Commission of the EU; the purpose is to bind the addressees to take a specific behaviour considered responding to the communitarian interests.</p> <p>At more general level, it is the main act adopted by the international organisations (Council of Europe, United Nations Organisation, etc.). Recommendations do not bind the member states, however it will be considered licit the behaviour of a member State taken in fulfilling the recommendation provisions and against the engagement taken previously with agreements and principles of international law.</p>
<b>Reply</b>	<p>The written answer of the addressed institution responding to a written question presented by another institution of the same international organisation (i.e. EU).</p>
<b>Explicative Memorandum</b>	<p>The purpose of this document, is to explain more in detail the content of another document adopted by the same authority.</p>

<sup>6</sup> In order to carry out their task and in accordance with the provisions of this Treaty, the European Parliament acting jointly with the Council, the Council and the Commission shall make regulations and issue directives, take decisions, make recommendations or deliver opinions.  
A **regulation** shall have general application. It shall be binding in its entirety and directly applicable in all Member States.  
A **directive** shall be binding, as to the result to be achieved, upon each Member State to which it is

addressed, but shall leave to the national authorities the choice of form and methods.  
A **decision** shall be binding in its entirety upon those to whom it is addressed.  
**Recommendations** and **opinions** shall have no binding force.

<sup>7</sup> See footnote n.1

<sup>8</sup> See footnote n.1

Concerning the different typologies of the main international legal texts, it must be noted first of all the distinction between binding texts, that imply the obligation of respect of the text by the States parties, and non binding texts that simply offer an indication of behaviour but do not imply any legal obligation.

As regards the texts adopted by the EU those that are binding are the regulations and some directives, while as regards the texts adopted by the CoE only the conventions are binding for those States that have ratified them.

Among the analysed binding texts the most relevant one is the European Convention on the exercise of children's rights that was signed by 15 Member States of the CoE and ratified by 9 States and in force since 1 July 2000 (see table below). At this proposal it must be noted that the field of application of the Convention refers to the proceedings before a judicial authority affecting children, namely family proceedings, in particular those involving the exercise of parental responsibilities such as residence and access to children.

As a consequence the Strasbourg Convention is focused on the law of procedure whose practical character is self-evident; it renders visible the substantial rights of minors with consequences both on the juridical and on the cultural level. The great innovation of the Strasbourg Convention is that it has given value to the exercise of children's rights in the trail field, in particular the capacity of discernment concerning the awareness of the child about his/her personal relations and the attitude to orient him/herself in relation to his/her life choices.

Table n. 2. European Convention on the Exercise of Children's Rights - Status as of: 2/28/2005. Source: Treaty Office on <http://conventions.coe.int>

#### Member States of the Council of Europe

States	Signature	Ratification	Entry into force
Albania			
Andorra			
Armenia			
Austria	13/7/1999		
Azerbaijan			
Belgium			
Bosnia and Herzegovina			
Bulgaria			
Croatia	8/3/1999		
Cyprus	4/9/2002		

»»

#### »» Table n. 2

#### Member States of the Council of Europe

States	Signature	Ratification	Entry into force
Czech Republic	26/4/2000	7/3/2001	1/7/2001
Denmark			
Estonia			
Finland	25/1/1996		
France	4/6/1996		
Georgia			
Germany	25/10/2000	10/4/2002	1/8/2002
Greece	25/1/1996	11/9/1997	1/7/2000
Hungary			
Iceland	25/1/1996		
Ireland	25/1/1996		
Italy	25/1/1996	4/7/2003	1/11/2003
Latvia	25/10/2000	30/5/2001	1/9/2001
Liechtenstein			
Lithuania			
Luxembourg	25/1/1996		
Malta	20/1/1999		
Moldova			
Monaco			
Netherlands			
Norway			
Poland	25/6/1997	28/11/1997	1/7/2000
Portugal	6/3/1997		
Romania			
Russia	10/5/2001		
San Marino			
Serbia and Montenegro			
Slovakia	22/6/1998		
Slovenia	18/7/1996	28/3/2000	1/7/2000
Spain	5/12/1997		
Sweden	25/1/1996		
Switzerland			
the former Yugoslav Rep. of Macedonia	3/4/2001	15/1/2003	1/5/2003
Turkey	9/6/1999	10/6/2002	1/10/2002
Ukraine	7/5/1999		
United Kingdom			

#### Non-member States of the Council of Europe

States	Signature	Ratification	Entry into force
Holy See			
<b>Total number of signatures not followed by ratifications:</b>			<b>15</b>
<b>Total number of ratifications/accessions:</b>			<b>9</b>

### 2.1.1.2 Text reading and analysis

By keeping the narrative-model approach and in line with the research objectives, the legislation was read so as to identify which text portions to analyse. The reading was based on a number of criteria. These were defined as content elements that were essential for the efficacy of a legislative text which, from the theoretical-methodological and operational point of view, can lead to scenarios for the creation or evaluation of family mediation services.

Thus, the text-reading criteria allowed to circumscribe the text portions to be analysed. The table below summarises the criteria used and their description:

Table n. 3

Criteria	Description
Objectives of family mediation	This criterion refers to the texts portions mentioning, in the legislative text, the family-mediation objective. Objective means “what is to be achieved”
Definition of family mediation	This criterion refers to text portions mentioning a definition of family mediation, i.e. the sections answering the question “what is family mediation?”
Field of implementation of family mediation	This criterion refers to text portions describing or prescribing the areas of implementation of family mediation. These texts answer the question “when and to which circumstances is family mediation applicable?”
Role of the family mediator	This criterion refers to the text portions outlining the role of family mediators, in terms of definition as well as objectives and competencies. These texts answer the question “who is a family mediator, what does he/she do and how does he/she do it”?
Requirements of the family-mediation process	This criterion refers to the text portions describing the elements that are necessary or required for the family mediation process to be implemented.
Procedural aspects in the judicial system	This criterion refers to the text portions outlining the procedures and procedural implications deriving from the family-mediation process within the ordinary judicial system.

The text passages identified according to the above-mentioned criteria were then analysed by the text-analysis method.

The identified text portions were analysed by the text-analysis method, which includes the following steps:

1. **Extraction of discourse repertoires.** a discourse repertoire is a finite mode of constructing a linguistic reality, with a pragmatic approach grouping together several utterances, structured into concatenated sentences and diffused as a statement of truth aiming at generating/maintaining narrative coherence. Thanks to the researchers’ competence in the theoretical model adopted for the research and in the text analysis methodology, the discourse repertoires at the basis of the analysed legislative texts have been identified. The theoretical assumption on which the extraction of the discourse repertoires is based implies that reality (in this case, reality is to be intended by both the legislative text and the scenarios that may be generated by means of it) is generated according to the organisation of discourses.
2. **Identification of archipelagos of meaning.** An “archipelago of meaning” is an agglomeration of contents contributing to the creation of a repertoire and on the basis of which the repertoire is organised in a narrative sense. The archipelagos of meaning allow to highlight the “subject” of the analysed text portion.
3. **Considerations concerning the identified repertoires and archipelagos.** The considerations analyse different levels:
  - a. the descriptive level. In this case, the total number of repertoires per criterion has been specified, as well as the frequency of each repertoire among all texts; the number and repertoires present in each of the legislative texts; the date of the text mentioning the specific criterion for the first time and a review of the criterion subject over the years, throughout the legislation.
  - b. the “process” and “content” analysis level, regarding the possible scenarios related to the presence of the repertoires. This analysis has been carried out on each of the texts as well as intertextually. According to the adopted approach, it is possible to outline the argumentative structure supporting the discourse production

identified in the legislative texts. The text is analysed as a process and not as a content, and the process is not to be intended as a given reality (the empirical-factual reality), but as a reality constructed as a discourse by its very actors. Developing the analysis on a process level means setting aside the approach whereby the analysis is based on text subjects, and by taking into consideration the argumentative architecture of the text in its entirety, so as to single out the discursive portions that make the text peculiar and typical. Thus, the portions of text that, to begin with, may look identical in the argumentative and structural sense, will look similar only because of their content, but not by virtue of the process they contribute to describe. Vice versa, the discourse modes composed of several elements are identified by the same denomination, for they have the same proposed argumentative mode. Now, to explain what the elements of “content” and “process” are, as a mere example, two text passages dealing with the definition of family mediation should be taken into consideration:

*Alternative methods of dispute resolution for the purposes of this green paper are defined out-of-court dispute resolution processes conducted by a neutral third party, excluding arbitration proper.* (Repertoire of definition by a third party)

*Family mediation is a valuable alternative means of solving family disputes in certain circumstances.* (Definition repertoire)

Both definitions describe mediation as an alternative method of dispute resolution. In other words, these two definitions have similar contents. However, the repertoires generating them are different, since their argumentative modes and discursive processes are different. In the first case, the “repertoire of definition by a third party” is characterised by the use of a verb in the passive form (*are defined*) and in the third person plural, which makes the definition “recited”, opening up the possibility of an “evaluation” on the part of the reader (“who defines it so?” “for what reason?”). In the second case, the “definition repertoire” is characterised by the use of the verb “to be” in the active form, which gives an ontological

status to the definition itself, by making it self-referential. The reader has no other choice but to abide by it.

In practical terms, these discursive processes generate a different collocation of the counterpart-reader vis-à-vis the text. In the presented cases, therefore, through the developed discursive processes the content becomes: 1. a hypothesis or a suggestion; 2. an unquestionable fact.

Conversely, when two texts dealing with the definition of family mediation are different in content, they can be generated from the same repertoire. For example:

- i. *to introduce or promote family mediation or, where necessary, strengthen existing family mediation;*
- ii. *to take or reinforce all measures they consider necessary with a view to the implementation of the following principles for the promotion and use of family mediation as an appropriate means of resolving family disputes* (Prescription repertoire)

*Legal aid is to be granted on the same terms both for conventional legal proceedings and for out-of-court procedures such as mediation, where recourse to them is required by the law, or ordered by the court* (Prescription repertoire).

Although the text portions comprise totally different content elements, in argumentative terms they allow to outline the same descriptive mode with which the discursive process develops. Thus, the researcher can identify the elements generating the discursive process constructing the argumentation proposed by the text, without having to get down to the content. In this case, both text portions refer to the “prescription” discourse mode, thereby generating a definition of mediation as an element of the judicial system.

As explained above, the “discourse repertoire” is a construction defining **a finite mode of constructing a linguistic reality, with a pragmatic approach, grouping together several utterances, structured in concatenated sentences and diffused as a statement of truth.** By adopting a finite mode of constructing reality, the intention is to define the repertoire as a discourse unit with a finite sense. For example, the repertoire formed by the words *Family mediation is a valuable alternative means of solving family disputes in certain circumstances* allows to define family mediation in an exhaustive and finite way; that is to

say, no other elements are needed as what has been stated can exhaust every aspect of the mediation process, according to the “speaker’s” consideration of it. Thus, the pragmatic value has also been defined, considering that the mode with which the elements of the studied repertoire have been organised make it immediately usable for the listeners; the repertoire will not only be understood and shared, but it will be possible for it to be easily transferred to other contexts relevant to the original one. The repertoire can group together several utterances structured in concatenated sentences, i.e. the repertoire is a discourse mode characterised by a beginning, a development and a closing end. Moreover, the statement of truth can be stressed, if one considers that the studied repertoire confers a value of reality to whatever is described at the very moment it is used. Furthermore, once the elements making up the repertoires are considered, if typical contents have been found, organised in a specific way, they will be identified as “archipelagos of meaning”. An “archipelago of meaning” is a content contributing to the creation of the repertoire and on the basis of which the repertoire organises itself in the narrative sense.

The archipelagos of meaning are used in formulating considerations, to identify the topics that become the subject of legislative texts and anticipate which scenarios can be generated by using certain topics.

Finally, the text-analysis document is supplemented by a table describing the discourse repertoires found. The descriptions concern two levels: 1. the typical discourse mode of the repertoire itself and its specific “function”; 2. the argumentative elements characterising the structure, in logical terms.

The text analysis has been organised into 6 tables, one for each criterion. Each table is in turn composed of 3 columns:

- the first column specifies the legislative text, by giving the text title as well as the year of promulgation;
- the second column includes the text portions identified as relevant to the criterion shown in the table;
- the third column shows discourse repertoires and the identified archipelagos of meaning.

A number, placed in the second and third columns, represents the text portion referring to the repertoire specified in the third column.

## 2.1.2 Technical report

Table n. 4. Description of the repertoires

Repertoire	Description of the repertoire
Repertoire of definition	It refers to discourse modalities which determine a concept by setting its limits and its field of application.
Repertoire of definition by a third party	It refers to discourse modalities through which a passage becomes a “narrating voice” which determines a concept by setting its limits. These discourse modalities do not generate autonomous definitions (i.e. self-governed by their own laws), but they generate definitions stemming from a specific source and governed by the laws of that source. Therefore, the structure of the argumentation is based on an implicit relationship between the source of the definition and the definition itself.
Repertoire for setting the conditions	It refers to discourse modalities which entail several “requirements” or conditions to be met for certain facts or circumstances to arise. These modalities legitimize or delegitimize a passage in the text; or, they can restrict the field of application of what has been identified by the text. Therefore, the structure of the argumentation is based on a relationship of subordination between facts and circumstances.
Repertoire of legitimation	It refers to discourse modalities through which a passage in the text “allows” the presence of another passage by considering it conforming to the rest. Therefore, the structure of the argumentation is based on a relationship of dependence of one passage on another one.
Repertoire of prescription	It refers to discourse modalities which entail instructions or orders to be followed. These discourse modalities make the passages very practical, as they define rules, roles and objectives. Therefore, the structure of the argumentation is based on a relationship of necessity which has been established by a passage in the text.
Repertoire of justification	It refers to discourse modalities which have the rhetorical function of adding an argument in support of what is being said. A passage in the text “approves” and “supports” an event or condition described in another passage. Since this discourse modality has a supporting function, its usage entails the preservation of the “present state” described in the other passage. Therefore, the structure of the argumentation is based on a relationship of addition of passages in the text, defined in terms of moral assessment.



► Table n. 4. Description of the repertoires

Repertoire	Description of the repertoire
Repertoire of union	It refers to discourse modalities through which two or more passages in the text are grouped together on the basis of a common criterion. The passages become elements of a set and they are characterized by a common property. Therefore, the argumentation is based on a relationship of inclusion of passages in the text in a superordinate category.
Repertoire of objective	It refers to discourse modalities which define the objective to be reached. In these modalities a passage in the text becomes the criterion for measuring the other passages, which acquire the meaning of means. Therefore, the structure of the argumentation is based on a "means-end" relationship.
Repertoire of strategy	It refers to discourse modalities which define the possible ways to reach an objective. In this modality, a passage in the text is put in a "means-end" relationship with another one.
Repertoire of juxtaposition	It refers to discourse modalities through which a passage is put in contrast with other passages in the text. Through a delegitimation process, these discourse modalities destructure the first passage of the text and they make the second one real. Therefore, the structure of the argumentation is based on a relationship of opposition of one passage to the other one.

Table n. 5. Definition of family mediation

Text	Passages identified as “definition of family mediation”	Discourse repertoires
<p><b>European convention on the exercise of children’s rights</b> (1996.1.25)<sup>9</sup></p>	<p>Premise “10.(Convinced of the need to make greater use of family mediation, a process in which a third party, the mediator, impartial and neutral assists the parties themselves to negotiate over the issues in dispute and reach their own joint agreements”) 11. Recommends the governments of member States:) (1)</p> <p>(i. to introduce or promote family mediation or, where necessary, strengthen existing family mediation; ii. to take or reinforce all measures they consider necessary with a view to the implementation of the following principles for the promotion and use of family mediation as an appropriate means of resolving family disputes.) (2)</p>	<p>(1) REPERTOIRE OF LEGITIMATION • archipelago of meaning “competence of the role”: Third party...impartial and neutral, • archipelago of reference to a meaning: to negotiate over...in dispute...to reach their own joint agreements • archipelago of reference to a meaning: recommends</p> <p>(2) REPERTOIRE OF PRESCRIPTION • archipelago of meaning “definition of the objective of mediation”: as an appropriate means of resolving family disputes</p>
<p><b>Green paper COM (2002) 196 Final</b> (2002.4.19)</p>	<p>1.Overview- 1.1. Wide variations  (“2. Alternative methods of dispute resolution for the purposes of this green paper are defined out-of-court dispute resolution processes conducted by a neutral third party, excluding arbitration proper. The alternative methods of dispute resolution will therefore be referred to below by the acronym that is tending to be accepted universally in practice, i.e. “ADR.” (note 3) Note 3: The notions commonly used in national practice and legislation, i.e. mediation and conciliation, will therefore not be used systematically in this green paper, but only in the context of a particular national legislation or of specific work by an international organization”) (1)</p> <p>2.2.2 Reaping the benefits of the initiatives taken in the field of family law  “(47. at the Vienna European council in December 1998, the heads of state or government gave their approval to the action plan of the council and of the commission concerning the optimum arrangements for the implementation of the provisions of the Treaty of Amsterdam on the creation of an area of freedom, security and justice. Paragraph 41(c) of this action plan includes among the measures which should be taken within five years following the entry into force of the Treaty to “examine the possibility of drawing up models for non-judicial solutions to disputes with particular reference to trans-national family conflicts. In this context, the possibility of mediation as a means of solving family conflict should be examined”) (2)</p>	<p>(1) REPERTOIRE OF DEFINITION BY A THIRD PARTY • archipelago of reference to a meaning: alternative methods of dispute resolution • archipelago of reference to a meaning: out-of-court dispute resolution process • archipelago of meaning “conditions”: excluding arbitration proper • archipelago of meaning “role”: conducted by a neutral third party • archipelago of meaning “requisites for the role”: a neutral party</p> <p>(2) REPERTOIRE OF LEGITIMATION • archipelago of meaning “definition of mediation”: a means of solving family conflict should be examined</p>



<sup>9</sup> the text does not contain any passages meeting the criterion “definition of family mediation”

►► Table n. 5. Definition of family mediation

Text	Passages identified as “definition of family mediation”	Discourse repertoires
<b>Council directive 2002/8/EC</b> 2003.1.03	Premise “(21).(Legal aid is to be granted on the same terms both for conventional legal proceedings and for out-of-court procedures such as mediation, where recourse to them is required by the law, or ordered by the court”) (1).	5. REPERTOIRE OF PRESCRIPTION • archipelago of meaning “fields of application of legal aid”: conventional legal proceedings and for out-of-court procedures such as mediation • archipelago of meaning “definition of mediation”: out-of-court procedures such as mediation) • archipelago of meaning “conditions”: where recourse to them is required by the law, or ordered by the court)
<b>Recommendation 1639 (2003) (1)</b> 2003.11.25	“1. (Family mediation is a life-building and life-management process between family members in the presence of an independent and impartial third party known as the mediator”) (1)  “3. (In general, family mediation is valued as an alternative method of resolving family disputes as it has the advantage of promoting methods of friendly settlement and reducing the economic and social costs of separation and divorce for families, the state and society.[...]) (2)  4. (Family mediation is not a universal remedy that will solve all family problems while avoiding congestion of the courts with jurisdiction over family issues (divorce, child custody and access, maintenance, division of estates, inheritance, etc.).[...]) (3)	(1) REPERTOIRE OF DEFINITION • archipelago of meaning “description of the process”, “life building” and “life management” process between family members in the presence of • archipelago of meaning “requisites for the mediator”: independent and impartial third party. • archipelago of meaning “role”: known as the mediator  (2) REPERTOIRE OF DEFINITION BY A THIRD PARTY • archipelago of meaning “definition of mediation”: an alternative method • archipelago of meaning “resolution” of family disputes • archipelago of meaning “results of mediation”, promoting methods of friendly settlement and reducing the economic and social costs  (3) REPERTOIRE OF JUXTAPOSITION • archipelago of meaning “definition”: avoiding congestion of the courts • archipelago of meaning “field of application”: with jurisdiction over family issues
<b>Council regulation (EC) N. 2201/2003</b> (2003.11.2) <sup>10</sup>		
<b>European Code of conduct for mediators</b> (2004.6.2)	Premise “(mediation is defined as any process where two or more parties agree to the appointment of a third party – hereinafter “the mediator” – to help the parties to solve a dispute by reaching an agreement without adjudication and regardless of how that process may be called or commonly referred to in each Member State”) (1)	(1) REPERTOIRE OF DEFINITION BY A THIRD PARTY • archipelago of meaning “role”: two or more parties agree to the appointment of a third party – hereinafter “the mediator” ; a third party – hereinafter “the mediator” – to help the parties to solve a dispute by reaching an agreement • archipelago of meaning “objective of mediation”: to solve a dispute • archipelago of meaning “strategy”: by reaching an agreement • archipelago of meaning “requisites of the agreement”: an agreement without adjudication and regardless of how that process may be called or commonly referred to in each Member State



<sup>10</sup> the text does not contain any passages meeting the criterion “definition of family mediation”

► Table n. 5. Definition of family mediation

Text	Passages identified as “definition of family mediation”	Discourse repertoires
<p><b>CM (2004) Rec 1639 final</b> (2004.6.21)</p>	<p>“2.(family mediation is a valuable alternative means of solving family disputes in certain circumstances [...]) (1)</p> <p>2.(it is not the only means for solving all family disputes and should not be an obstacle for the individual’s right of access to the ordinary justice system [...]) (2)</p> <p>5.(The Committee of Ministers underlines that Recommendation No. R (98) 1 recommends that governments of member states “take or reinforce all measures they consider necessary with a view to the implementation of the following principles for the promotion and use of family mediation as an appropriate mean of resolving family disputes”.) (3)</p> <p>Appendix 1. (The Bureau of the CDEG welcomed the proposal of the Parliamentary Assembly aimed at promoting family mediation as an appropriate means of resolving family disputes as well as the proposal related to the implementation of the principles laid down in Recommendation No. R(98)1 of the Committee of Ministers on family mediation.) (4)</p> <p>Appendix 1. (family mediation is, by definition, a way of resolving family disputes in a consensual manner and therefore legal representation should not be needed. [...]) (5)</p> <p>Appendix 2. (“family mediation is a valued alternative family dispute resolution, taking into account that it is not the only means for solving all family problems nor should it become “poor man’s justice” for family disputes”) (6)</p>	<p>(1) REPERTOIRE OF DEFINITION</p> <ul style="list-style-type: none"> <li>• archipelago of meaning “conditions”: in certain circumstances</li> <li>• archipelago of meaning “definition of mediation”: valuable alternative means</li> </ul> <p>(2) REPERTOIRE FOR SETTING THE CONDITIONS</p> <ul style="list-style-type: none"> <li>• archipelago of meaning “objective of mediation”: means for solving all family disputes</li> <li>• archipelago of meaning “definition of mediation”: should not be an obstacle for the individual’s right of access”</li> <li>• archipelago of reference to a meaning: for the individual’s right of access to the ordinary justice system</li> </ul> <p>(3) REPERTOIRE OF LEGITIMATION</p> <ul style="list-style-type: none"> <li>• archipelago of meaning “objective of mediation”: as an appropriate means of resolving family disputes</li> </ul> <p>(4) REPERTOIRE OF LEGITIMATION</p> <ul style="list-style-type: none"> <li>• archipelago of meaning “definition of mediation”: family mediation as an appropriate means of resolving family disputes</li> </ul> <p>(5) REPERTOIRE OF DEFINITION</p> <ul style="list-style-type: none"> <li>• archipelago of meaning “requisites for the process”: in a consensual manner</li> <li>• archipelago of meaning “conditions”: therefore legal representation should not be needed</li> </ul> <p>(6) REPERTOIRE FOR SETTING THE CONDITIONS</p> <ul style="list-style-type: none"> <li>• archipelago of meaning “definition of mediation”: family mediation is a valued alternative family dispute resolution, is not the only means for solving all family problems nor should it become “poor man’s justice” for family disputes”</li> <li>• archipelago of reference to a meaning: poor man’s justice</li> </ul>

When considering the criterion “definition of mediation”, 15 discourse repertoires have been identified. The “repertoire of legitimation” is used 4 times, the “repertoire of definition” and the “repertoire of definition by a third party” are used 3 times, the “repertoire for setting the conditions” and the “repertoire of prescription” are used twice and the “repertoire of juxtaposition” is used once. Such analysis highlights that the repertoires referring to definition, the “repertoire of definition” and the “repertoire of definition by a third party”, are used as a whole 6 times out of 15.

The *European convention on the exercise of children’s rights* does not contain any passages meeting the criterion of definition. As to the use of discourse modalities, the “repertoire of legitimation” appears in the *Recommendation N. R (98) 1*, in the *CM (2004) Rec 1639* and in the passage of the *Green Paper COM (2002) 196 Final*. The “repertoire of prescription” appears in the *Recommendation N. R (98) 1* and in the *Council directive 2002/8/EC*. The “repertoire of definition” appears in the *Recommendation 1639 (2003) (1)* and in the *CM (2004) Rec 1639*. The “repertoire of definition by a third party” appears in the *Recommendation 1639 (2003) (1)*, in the *European Code of conduct for mediators* and in the *Green Paper COM (2002) 196 Final*. The “repertoire of juxtaposition” appears the *Recommendation 1639 (2003) (1)*. The “repertoire for setting the conditions” appears in the *CM (2004) Rec 1639*.

Table n. 5 shows that the definition of family mediation appears for the first time in 1998, in the *Recommendation N. R (98) 1*, and that the first European text to mention it (*European convention on the exercise of children’s rights*, 1996) does not give any definition of family mediation.

In the passages giving a definition of family mediation, several different discourse modalities are used. However, the discourse modalities using a repertoire of definition are more frequent than the ones using other repertoires and they appear in 4 texts out of 6. Therefore, in European legislation the concept of family mediation is effectively identified and defined. In particular, there are two different discourse modalities for definition – the “repertoire of definition” and the “repertoire of definition by a third party” - which are used with the same frequency.

Even if in European legislation the concept of family mediation is effectively defined, it is interesting to remark that two different modalities are used for building this definition. The “repertoire of definition” allows a

clear definition of the concept and its limits, while the “repertoire of definition by a third party” is less effective in setting its limits. The use of such repertoires leads to different practical results. In the first case, the reader-interpreter of the law must stick to what is specified in it (e.g. *Family mediation is a life-building and life-management process between family members in the presence of an independent and impartial third party known as the mediator*). In case of use of the “repertoire of definition by a third party”, the reader can evaluate the law (“who defines it in this way?”; “why?”) because its content looks like a hypothesis or someone’s proposal (*In general, family mediation is valued as an alternative method of resolving family disputes as it has the advantage of promoting methods of friendly settlement and reducing the economic and social costs of separation and divorce for families, the state and society.[....]*). As a result, the reader-interpreter can decide to accept or to refuse such hypothesis or proposal. In terms of communication, the “repertoire of definition” is more effective in attributing a univocal meaning to a concept.

As to other discourse modalities, the definition of family mediation is built through the use of repertoires of legitimation (4 times in 3 texts out of 6). This means that when European legislation gives a definition of family mediation, usually, it also builds the basis for making it a legitimate practise.

The following are some observations made when analyzing the repertoires used more frequently:

- Different archipelagos of meaning are associated with the “repertoire of definition”: the description of the process (e.g. *life-building and life-management process between family members* or *family mediation is a valuable alternative means of solving family*), the requisites for the role (e.g. *an independent and impartial third party*), the conditions that mediation must meet in order to be applied (e.g. *family mediation is a valuable alternative means of solving family disputes in certain circumstances*).
- Even more different archipelagos of meaning are associated with the “repertoire of definition by a third party”: the consequences (e.g. *it has the advantage of promoting methods of friendly settlement and reducing the economic and social costs of separation and divorce for families, the state and society*), the objective of mediation (e.g. *to help the parties to solve a dispute by reaching an agreement or as an*

*alternative method of resolving family disputes*), the strategies (e.g. *to help the parties to solve a dispute by reaching an agreement*), and the requisites for the result (e.g. *by reaching an agreement without adjudication and regardless of how that process may be called or commonly referred to in each Member State*).

- Two main elements are associated with the “repertoire of legitimation”: the idea that mediation is necessary and the references to other regulations. Through such an approach mediation is made legitimate. Mediation is defined through the description of the objectives and competence of the mediator (in this case it is the role of the mediator which is legitimized, e.g. *“a process in which a third party, the mediator, impartial and neutral assists the parties themselves to negotiate over the issues in dispute and reach their own joint agreements”*), through the description of the objective of mediation (e.g. *“family mediation as an appropriate means of resolving family disputes”*) and through its own definition (e.g. *“family mediation is a valued alternative family dispute resolution”*).
- When the “repertoire of juxtaposition” is used, on the one hand the text underlines that mediation has been “assessed” on the basis of its potential advantages (costs and social relationships) and, on the other hand, it limits the possibilities of application of mediation. In this case the text juxtaposes the objective of mediation (solving family disputes) with the aspect of reducing congestion of the courts. On the one hand, family mediation is seen as an effective tool for solving family disputes without going to court, but on the other hand its application is lessened because it is not a “universal remedy”.
- When the “repertoire for setting the conditions” is used, the text defines the fields where family mediation cannot be applied. For example, descriptions include the economic situations which are not binding on the choice and the situations where the individual’s right of access to the ordinary justice system is not under discussion (e.g. *nor should it become “poor man’s justice” for family disputes* or *“should not be an obstacle for the individual’s right of access to the ordinary justice system*).
- When the “repertoire of prescription” is used, mediation is referred to as an extra-judicial procedure and it is considered as a tool

integrating the justice system. The mediation process should be included in the legal aid system where recourse to it is required by the law or ordered by the court (e.g. *Legal aid is to be granted on the same terms both for conventional legal proceedings and for out-of-court procedures such as mediation, where recourse to them is required by the law, or ordered by the court*).

Legislation as a whole gives a univocal and shared definition of family mediation, even if the theoretical definition of family mediation contains some elements that are not coherent with it. Indeed, the theoretical definition of mediation includes elements pertaining to the process, to the role managing the process and to the requisites for the process and for the role. As to the applicability of mediation, on the one hand the texts underline the advantage of decongesting courts, but on the other hand they stress that it cannot be a universal remedy and they do not define precise fields of application.

From an operational point of view, European legislation has the following consequences for those called to enact its regulations.

- i. It gives shared and univocal definitions of mediation, thus allowing the reader-interpreter of the regulation to univocally identify the specific scope of mediation: family conflicts.
- ii. The definition of family mediation is not absolutely distinguished from the definition of family mediators and their role and from the definition of the requisites for mediation and for the role. Definitions expressed in these terms can lead the reader-interpreter of the law to confuse between the plan pertaining to the tool of mediation and the plan pertaining to the role of the mediator. Therefore, researchers and workers in the field might assess the effectiveness of mediation on the basis of local and particular needs rather than on the basis of univocal criteria established by the institutions.
- iii. European legislation does not provide shared and univocal criteria for defining the fields of application of family mediation. When the fields of application are discussed, they are defined in negative terms. Therefore, the reader-interpreter of the law and the researchers and workers in the field might evaluate the applicability of mediation on the basis of local and particular needs.

iv. The field of application entails in particular the relationship between mediation and the justice system. In its definition, firstly, the individual's rights, considered a category of the ordinary justice system, are juxtaposed with family mediation, considered as an alternative instrument of justice. Secondly, legal aid is prescribed in legal proceedings which order mediation as an instrument in support of the justice system. From a practical point of view, on the one hand, researchers and workers in the field might define the use of

mediation as a tool integrating the justice system on the basis of particular, unshared and non-univocal criteria; on the other hand, each country and national legislation might identify the particular procedures which allow mediation to become a tool integrating the justice system. Therefore, without any European guidelines on family mediation as a tool integrating the justice system, family mediation will be regulated in each case on the basis of local experiences and needs.

Table n. 6. Objectives of family mediation

Text	Passages identified as "definition of family mediation"	Discourse repertoires
<b>European convention on the exercise of children's rights</b> (1996.1.25)	Chapter II - Procedural measures to promote the exercise of children's rights "F. Other matters. Article 13- Mediation or other processes to resolve disputes (In order to prevent or resolve disputes or to avoid proceedings before a judicial authority affecting children, Parties shall encourage the provision of mediation or other processes to resolve disputes and the use of such processes to reach agreement in appropriate cases to be determined by Parties)" (1)	(1) REPERTOIRE OF PRESCRIPTION <ul style="list-style-type: none"> <li>• archipelago of meaning "specific objectives": to reach agreement in appropriate cases to be determined by Parties</li> <li>• archipelago of meaning "field of application": in appropriate cases to be determined by Parties</li> <li>• archipelago of meaning "definition of mediation": mediation or other processes to resolve disputes</li> </ul>
<b>Recommendation N. R (98) 1</b> (1998.1.21)	Preamble ("Taking into account the results of research into the use of mediation and experiences in this area in several countries, which show that the use of family mediation has the potential to: <ul style="list-style-type: none"> <li>• improve communication between members of the family;</li> <li>• reduce conflict between parties in dispute;</li> <li>• produce amicable settlements;</li> <li>• provide continuity of personal contacts between parents and children;</li> <li>• lower the social and economic costs of separation and divorce for the parties themselves and States;</li> <li>• reduce the length of time otherwise required to settle conflict)</li> </ul> [...]           11. Recommends...." (1)	(1) REPERTOIRE OF LEGITIMATION <ul style="list-style-type: none"> <li>• archipelago of meaning "potential": improve communication between members of the family; reduce conflict between parties in dispute; produce amicable settlements; provide continuity of personal contacts between parents and children; lower the social and economic costs of separation and divorce for the parties themselves and States; reduce the length of time otherwise required to settle conflict;</li> </ul>
<b>Green paper COM (2002) 196 Final</b> (2002.4.19) <sup>11</sup>		



<sup>11</sup> the text does not contain any passages meeting the criterion "objectives of family mediation"

► Table n. 6. Objectives of family mediation

Text	Passages identified as “definition of family mediation”	Discourse repertoires
<b>Council directive 2002/8/EC</b> <sup>12</sup> (2003.1.03)	Art. 55 - Cooperation on cases specific to parental responsibility (The central Authorities shall, upon request from a central Authority of another member State or from a Holder of parental responsibility, cooperate on specific cases to achieve the purposes of this Regulation. To this end they shall acting directly or through public authorities or other bodies take all appropriate steps in accordance with the law of that member state in matters of personal data protection to:) [...] (e) (facilitate agreement between holders of parental responsibilities through mediation or other means) (1)	(1) REPERTOIRE OF PRESCRIPTION • archipelago of meaning “objective”: facilitate agreement between holders of parental responsibilities through mediation or other means • archipelago of meaning “holder of parental responsibility”: holders of parental responsibilities
<b>Recommendation 1639 (1)</b> (2003.11.25)	“1.(The aim of mediation is to seek a conclusion that is acceptable for the mediated partners, without discussion of blame or responsibility. The agreement reached is intended to lead to appeasement and long-term improvement of the mediated partners' relations.) (1) 7. [(The primary aim of mediation is not to reduce congestion of the courts but to repair a breakdown in communication between the parties, with the help of a professional trained in mediation)] (2) .”	(1) REPERTOIRE OF THE OBJECTIVE • archipelago of meaning “conditions”: to seek a conclusion that is acceptable for the mediated partners, without discussion of blame or responsibility  (2) REPERTOIRE OF JUXTAPOSITION • archipelago of meaning “objective”: to repair a breakdown in communication • archipelago of meaning “conditions”: with the help of a professional trained in mediation
<b>European Code of conduct for mediators</b> (2004.6.2) <sup>13</sup>		
<b>CM (2004) Rec 1639 final</b> (2004.6.21) <sup>14</sup>		

<sup>12</sup> the text does not contain any passages meeting the criterion “objectives of family mediation”

<sup>13</sup> the text does not contain any passages meeting the criterion “objectives of family mediation”

<sup>14</sup> the text does not contain any passages meeting the criterion “objectives of family mediation”

When considering the criterion “objectives of family mediation”, 5 discourse repertoires have been identified. The “repertoire of prescription” is used twice; the “repertoire of juxtaposition”, the “repertoire of objective” and the “repertoire of legitimation” are used once. Such analysis highlights that:

- the “repertoire of objective” does not appear more frequently than the other repertoires;
- the “repertoire of objective” appears in 1 one text out of the 4 describing the objective of family mediation;

The analysis of the use of discourse modalities in each text shows that the “repertoire of prescription” appears in the *European convention on the exercise of children’s rights* and in the *Council regulation (EC) N. 2201/2003*. In the former family mediation is mentioned as a tool integrating the justice system, since its use is prescribed in order to avoid legal proceedings which might involve children. In both texts, the archipelagos of meaning are such that the definition of the objective of mediation is made through the reference to the solution of disputes and to the reaching of an agreement. A means-end relationship is built in the text, i.e. if mediation reaches the objective of solving disputes, its use by states has the objective of reaching an agreement (*Parties shall encourage the provision of mediation or other processes to resolve disputes and the use of such processes to reach agreement*”; *“facilitate agreement between holders of parental responsibilities through mediation or other means*).

The “repertoire of legitimation” is used in the *Recommendation N. R (98) 1* in order to legitimize the potential of mediation through research and experiences on the field. The potential outcome of mediation is varied: improving communication between family members, promoting continuity in the parents-children relationship, lowering the social and economic costs of separation and divorce for both parties and for the state, reducing the time necessary to solve the dispute.

The *Recommendation 1639 (1)* makes use of the “repertoire of objective” and of the “repertoire of juxtaposition”. The archipelagos of meaning highlight that the result of mediation is an acceptable conclusion for both parties and that in order to reach an agreement some requirements must be met, i.e. no discussions of blame or responsibility. The definition of the objective also contains an aspect relative to the outcome of mediation, which can be the improvement of the relationship. Through the “repertoire

of juxtaposition”, the objective is defined in negative terms (*The primary aim of mediation is not to reduce congestion of the courts*) and then in affirmative terms (re-establishing communication between the parties).

Legislation as a whole gives a diversified definition of the objective of family mediation. Indeed, the theoretical definition of the objective does not only contain elements relating to the “objective”, but also other elements external to it, such as, for example, the objective of the use of mediation and the conditions to be met for an effective application. Therefore, there can be some confusion between elements pertaining to what is being pursued and elements relating to the application of family mediation or to conditions and requirements for its applicability (*The aim of mediation is to seek a conclusion that is acceptable for the mediated partners, without discussion of blame or responsibility*). There are also some contradictions in the legislation: the earlier texts, such as the *European convention on the exercise of children’s rights* and the *Council regulation (EC) N. 2201/2003*, distinguish between an operational objective (solving conflicts) and an objective of the use of mediation (regulating agreements), while in the *Recommendation 1639 (1)* the objective is defined as the conclusion valid for both parties and it is referred to as the agreement.

Therefore, at an institutional level, there is no shared and univocal definition of “objective” and of the elements defining an objective. Due to the absence of a theoretical definition of objective in the European legislation, what mediation can pursue is not clear and there is confusion between “mediation as a process”, “mediation as a tool” and mediation as a “process which must meet some conditions in order to be applied”.

From an operational point of view, it can be hard to identify shared and univocal conceptual tools to elaborate clear procedures in line with the objective. Below are some practical consequences:

- i. Both elements of solving a conflict and reaching an agreement are present in the definition of the objective and they are built in different ways. In one case, the former is the operational objective of mediation and the latter is the objective of the use of mediation in the justice system, while in the other case the agreement is the operational objective of mediation. This leads to two possible results. Firstly, the reader-interpreter of the law might determine the objective of mediation according to the situation and on the basis of local or particular criteria

(as a result no comparison would be possible between the models for evaluating mediation, both at a European and at an individual level). Secondly, the reader-interpreter of the law might attribute both objectives to mediation. Is family mediation more effective when defined as a way to reach an agreement or when defined as a way to solve conflicts? This aspect strongly affects the concept of family mediation as a tool in support of the justice system. If reaching an agreement is considered the only necessary condition to effectively apply family mediation, what would be the difference between the intervention of a lawyer, the intervention of a mediator and the intervention of a judge? Due to this overlap, mediation clearly cannot meet all the requirements that other procedures meet, such as the protection of individual rights. Therefore, mediation has a very limited and restrained use.

- ii. When the “repertoire of juxtaposition” is used, the objective is defined in negative terms. Therefore, the reader of the law considers the process of mediation for what differentiates it from other processes, but (s)he will not get the defining elements of mediation itself. Also, in this regulation<sup>15</sup> both the “repertoire of juxtaposition” and the “repertoire for setting the conditions” are used in the description of the objective of mediation. As a result, it is not possible to identify the defining elements of the objective of mediation and the reader can subordinate what is being done to conditions and restrictions, thus taking an operational rather than managerial dimension.
- iii. When the objective is described through the “repertoire for setting the conditions”, the process of mediation is subject to some conditions and restrictions. Therefore, the reader would consider the process and its objectives less legitimate than the conditions and the restrictions (*The aim of mediation is to seek a conclusion that is acceptable for the mediated partners, without discussion of blame or responsibility*<sup>16</sup>). In particular, through the use of nouns, this passage identifies what should not be entailed in the process, thus imposing restrictions on mediation.

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<sup>15</sup> See note 2

<sup>16</sup> Recommendation 1639 (2003) (1)

- iv. When the objective is defined through the “repertoire of prescription”, it emerges as a necessary element among all other elements. Its “coercive” dimension is strengthened, rather than the description of what is being pursued. In the case of the texts above, the effectiveness of this repertoire is even more diminished, because the prescription is associated with the “repertoire of strategy”, thus underlining strategy rather than the objectives.

The copresence of these repertoires makes the texts less effective in identifying and conveying what family mediation does. Such aspect is to be taken in consideration when debating mediation at an institutional level, together with the fact that “specific” regulations on mediation (the *Recommendation N. R (98) 1* and the *European Code of conduct for mediators*) do not provide any definition.

The following are some further observations on the presence of archipelagos of meaning used in association with repertoires:

- In the *European convention on the exercise of children’s rights*, the archipelagos of meaning used to define the objective of family mediation underline the importance of preventing and avoiding any legal proceedings involving children. The responsibility of evaluating the applicability of the process is left to each country’s national legislation. However, the text encourages the provision of family mediation when a judicial solution might affect the child.
- The *Recommendation 1639 (2003) (1)* deals with the relationship between family mediation and gender equality and it defines mediation as a practise which should “repair” a “breakdown in communication” between family members. Its application is bound to a series of conditions, such as competence in reaching an agreement acceptable for both parties. In this case, the archipelagos of meaning underline that the couple itself should reach the objective.
- In the *Council regulation (EC) N. 2201/2003* on parental responsibility, family mediation is described as a way to reach an agreement between holders of parental responsibility.

The association of the objective of mediation with these archipelagos of meaning highlights the absence of a clear and univocal objective and the confusion between what pertains to the process, to the strategies and to the objective.

Table n. 7. Field of application of family mediation

Text	Passages identified as “definition of family mediation”	Discourse repertoires
<b>European convention on the exercise of children’s rights</b> (1996.1.25) <sup>17</sup>	Chapter II - Procedural measures to promote the exercise of children’s rights “F. Other matters. Article 13- Mediation or other processes to resolve disputes (In order to prevent or resolve disputes or to avoid proceedings before a judicial authority affecting children, Parties shall encourage the provision of mediation or other processes to resolve disputes and the use of such processes to reach agreement in appropriate cases to be determined by Parties”) (1)	(2) REPERTOIRE OF PRESCRIPTION • archipelago of meaning “specific objective”: to reach agreement in appropriate cases to be determined by Parties • archipelago of meaning “field of application”: in appropriate cases to be determined by Parties • archipelago of meaning “prevent”: in order to prevent • archipelago of meaning “resolve”: in order to prevent or resolve disputes... to resolve disputes • archipelago of meaning “avoid”: to avoid proceedings before a judicial authority affecting children • archipelago of meaning “definition of mediation in comparative terms”: mediation or other processes to resolve disputes
<b>Recommendation N. R (98) 1</b> (1998.1.21)	(I. a) Family mediation may be applied to all disputes between members of the same family, whether related by blood or marriage, and to those who are living or have lived in family relationships as defined by national law. I. b) states are free to determine the specific issues or cases covered by family mediation II. b) States are free to organise and deliver mediation as they see fit, whether through the public or private sector.) (1)	(1) REPERTOIRE FOR SETTING THE CONDITIONS • archipelago of meaning “field of application”: to all disputes between members of the same family, whether related by blood or marriage; to those who are living or have lived in family relationships as defined by national law; states are free to determine the specific issues or cases covered by family mediation; States are free to organise and deliver mediation as they see fit, whether through the public or private sector.
<b>Green paper COM (2002) 196 Final</b> (2002.4.19) <sup>18</sup>		
<b>Council directive 2002/8/EC</b> (2003.1.03) <sup>19</sup>		
<b>Council regulation (EC) N. 2201/2003</b> (2003.11.2) <sup>20</sup>		
<b>Recommendation 1639 (2003) (1)</b> (2003.11.25)	1. It is most often used in the context of a couple’s separation, but also to settle questions relating to education, child custody and access, the determination of an appropriate contribution to the upbringing and maintenance of children, the division of an estate, inheritance, etc.	(1) REPERTOIRE OF UNION • archipelago of meaning “objective”: to settle questions relating to • archipelago of meaning “field of application”: the context of a couple’s separation; education, child custody and access, the determination of an appropriate contribution to the upbringing and maintenance of children, the division of an estate, inheritance, etc



<sup>17</sup> the text does not contain any passages meeting the criterion “field of application of family mediation”  
<sup>18</sup> the text does not contain any passages meeting the criterion “field of application of family mediation”

<sup>19</sup> the text does not contain any passages meeting the criterion “field of application of family mediation”  
<sup>20</sup> the text does not contain any passages meeting the criterion “field of application of family mediation”

► Table n. 7. Field of application of family mediation

Text	Passages identified as “definition of family mediation”	Discourse repertoires
<p><b>European Code of conduct for mediators</b> (2004.6.2)<sup>21</sup></p>	<p>2. (family mediation is a valuable alternative means of solving family disputes in certain circumstances) (1)</p> <p>3.(issues concerning violence in couples or families could constitute criminal offences and in these circumstances the use of the mediation process may not be appropriate.) (2)</p> <p>Appendix 1. (The Bureau of the CDEG considered that issues concerning violence in couples or families should not be dealt in the mediation process as they could constitute criminal offences and in these circumstances the use of the mediation process would not be the most appropriate way of resolving family disputes) (3)</p>	<p>(1) REPERTOIRE OF DEFINITION</p> <ul style="list-style-type: none"> <li>• archipelago of meaning “conditions”: in certain circumstances</li> <li>• archipelago of meaning “definition of mediation”: valuable alternative means</li> </ul> <p>(2) REPERTOIRE FOR SETTING THE CONDITIONS</p> <ul style="list-style-type: none"> <li>• archipelago of reference to a meaning: violence in couples or families; criminal offences</li> <li>• archipelago of reference to a meaning: may not be appropriate.</li> </ul> <p>(3) REPERTOIRE FOR SETTING THE CONDITIONS</p> <ul style="list-style-type: none"> <li>• archipelago of reference to a meaning: violence in couples or families; criminal offences</li> <li>• archipelago of reference to a meaning: Would not be the most appropriate way of resolving family disputes.</li> </ul>

<sup>21</sup> the text does not contain any passages meeting the criterion “field of application of family mediation”

When considering the criterion “field of application of mediation”, 6 discourse repertoires have been identified. The “repertoire for setting the conditions” is used 3 times, the “repertoire of definition”, the “repertoire of prescription” and the “repertoire of union” are used once. Therefore, such analysis highlights that the “repertoire for setting the conditions” best identifies the fields of application.

The *Green paper COM (2002) 196 Final*, the *European Code of conduct for mediators*, the *Council directive 2002/8/EC* and the *Council regulation (EC) N. 2201/2003* do not contain any passages meeting the criterion “field of application of family mediation”.

As to the use of discourse modalities, the “repertoire for setting the conditions” appears once in the *Recommendation N. R (98) 1* and twice in the *CM (2004) Rec 1639*; the “repertoire of prescription” appears once in the *European convention on the exercise of children’s rights*; the “repertoire of definition” appears once in the text *CM (2004) Rec 1639* and the “repertoire of union” appears once in the *Recommendation 1639 (2003) (1)*.

Table n. 7 shows that the field of application of family mediation is mainly defined through the “repertoire for setting the conditions”, namely through the identification of an implicit relationship of subordination between conditions and events. However, other repertoires are used too: the “repertoire of prescription” is used to prescribe the use of family mediation as a tool (*to prevent or resolve disputes or to avoid proceedings before a judicial authority affecting children*), but the responsibility of evaluating in which cases mediation might be appropriate is left to each country’s national legislation. This repertoire confirms the idea of mediation as a tool which prevents and resolves disputes or avoids legal proceedings, but it weakens its applicability, because each state can determine its field of application.

*The “repertoire for setting the conditions” is used both in the Recommendation N. R (98) 1 and in the CM (2004) Rec 1639. In the former, it establishes that each state is free to determine the cases covered by family mediation (Family mediation may be applied to all disputes between members of the same family, whether related by blood or marriage, and to those who are living or have lived in family relationships as defined by national law). Firstly, the text distinguishes between family members, related by blood or marriage, and people who are in family relationships as*

*defined by national law. Secondly, states are left free to determine the specific issues covered by mediation and to organise it through the public or private sector. In the CM (2004) Rec 1639 the “repertoire for setting the conditions” determines the cases in which family mediation cannot be used (issues concerning violence in couples or families could constitute criminal offences; issues concerning violence in couples or families should not be dealt in the mediation process as they could constitute criminal offences).*

The field of application of family mediation appears also in the passage labelled “repertoire of definition”. In this case the field of application is not explicitly described, but it is only generally defined with the expression *in certain circumstances*. In this text, the definition of mediation does not contain any elements which circumscribe its application. The “repertoire of union” appears only once and it is used to define the group of elements (situations) with similar characteristics where mediation can be applied. The text gives a list of cases which can be covered by mediation, but it does not specify the common characteristic which makes them all the “field of application of mediation” (*It is most often used in the context of a couple’s separation, but also to settle questions relating to education, child custody and access, the determination of an appropriate contribution to the upbringing and maintenance of children, the division of an estate, inheritance, etc*). In this case, the field of application of family mediation is not only the context of a couple’s separation, but also all the questions relating to it (education, children’s custody and access to children, the determination of an appropriate economical contribution for their maintenance, the division of a patrimony or heritage) and any other event summarized by the abbreviation “*etc*”.

When defining the field of application of family mediation, legislation as a whole identifies situations and cases which become more and more specific over the years. In the beginning, legislation leaves the states free to determine the use of mediation, then, in recent years, it identifies the cases in which mediation could be effectively applied or not. Besides, the definition of the field of application is closely linked to the theoretical definition and to the objectives of family mediation. Therefore, the critical aspects of these two criteria also affect the criterion of the field of application. The following are some observations made on table n. 8:

- The *Recommendation N. R (98) 1* and the *European convention on the exercise of children's rights* leave the states free to determine the field of application of mediation. This is applied to all conflicts between members of the same family, related by blood or marriage, and to those who are in family relationships as defined by law. In the texts there is no specific reference to the context of separation.
- The *Recommendation N. R (98) 1* and the *CM (2004) Rec 1639* state that family mediation can be applied also in other contexts than a couple's separation, provided that there has been or there could be a family conflict.
- The *Recommendation 1639 (2003) (1)* and the *CM (2004) Rec 1639* identify the specific conditions in which mediation cannot be applied. Such restriction of the field of application distinguishes between cases which might be criminal offences and should be solved in court, and cases where there are no criminal offences. Therefore, the texts stress the difference between judicial and extra-judicial processes in solving disputes rather than their possible complementarity.

From an operational point of view, European legislation has the following consequences for countries and people called to enact its regulations.

- I. The field of application of family mediation is defined both in affirmative and in negative terms. In the first case, the reader-interpreter of the law can identify the field of application of mediation on the basis of local and particular criteria. Each state and mediator can decide whether to use mediation in all family disputes or only during a separation, on the basis of specific needs and local experience. When the field of application is defined in negative terms, then the definition is shared and univocal (issues concerning violence in couples or families which could constitute criminal offences).
- II. Since each state is free to determine the field of application of mediation, mediators might have different roles in different states. The objective, the competence and the requisites for the role might be different. The possible multiplying of theories and uses of mediation would not allow any comparison between models for assessing its effectiveness. Moreover, mediation would be difficult to

apply when people or organizations involved come from different countries (see the *Green Paper*).

- III. Family mediation is *de facto* excluded from cases of violence in couples, as the texts prescribe that violent issues cannot be solved by mediation. This leads to a distinction between the ordinary justice system and the extra-judicial justice system. Mediation is seen as a practical tool which can regulate agreements or resolve conflicts, but only as an extra-judicial process, outside the ordinary justice system. Indeed, assuming that mediation cannot manage violence in families, means that mediation can only deal with situations where there is a possibility of reaching an agreement or solving the conflict. Therefore, the concept of mediation which emerges is a "static" and "bureaucratic" one, as it is seen only as a way to regulate agreements rather than as a way to manage a conflict between two parties.

Table 8. The role of the family mediator

Text	Passages identified as “definition of family mediation”	Discourse repertoires
<p><b>European convention on the exercise of children’s rights</b> (1996.1.25)<sup>22</sup></p>	<p>II. c) Irrespective of how mediation is organised and delivered, States should see to it that there are appropriate mechanisms to ensure the existence of:</p> <ul style="list-style-type: none"> <li>• procedures for the selection, training and qualification of mediators;</li> <li>• standards to be achieved and maintained by mediators (1)</li> </ul>	<p>(1) REPERTOIRE OF PRESCRIPTION</p> <ul style="list-style-type: none"> <li>• archipelago of meaning “conditions”: procedures for the selection, training and qualification of mediators; standards to be achieved and maintained by mediators</li> </ul>
<p><b>Green paper COM (2002) 196 Final</b> (2002.4.19)<sup>23</sup></p>	<p>1.1. Competence (Mediators shall be competent and knowledgeable in the process of mediation. Relevant factors shall include proper training and continuous updating of their education and practice in mediation skills, having regard to any relevant standard or accreditation schemes) (1)</p> <p>2. INDEPENDENCE AND IMPARTIALITY</p> <p>2.1. Independence and neutrality (The mediator must not act, or, having started to do so, continue to act, before having disclosed any circumstances that may, or may be seen to, affect his or her independence or conflict of interest. The duty to disclose is a continuing obligation throughout the process. Such circumstances shall include:</p> <ul style="list-style-type: none"> <li>• any personal or business relationship with one of the parties</li> <li>• any financial or other interest, direct or indirect, in the outcome of the mediation, or</li> <li>• the mediator, or a member of his or her firm, having acted in any capacity other than mediator for one of the parties</li> </ul> <p>In such cases the mediator may only accept or continue the mediation provided the he/she is certain of being able to carry out the mediation with full independence and neutrality in order to guarantee full impartiality and that the parties explicitly consent) (2)</p> <p>2.2. Impartiality (The mediator shall at all times act, and endeavour to be seen to act, with impartiality towards the parties and be committed to serve all parties equally with respect to the process of mediation) (3)</p>	<p>(1) REPERTOIRE OF PRESCRIPTION</p> <ul style="list-style-type: none"> <li>• archipelago of meaning “requisites for the role”: Mediators shall be competent and knowledgeable in the process of mediation, proper training and continuous updating of their education and practice in mediation skills, having regard to any relevant standard or accreditation schemes</li> </ul> <p>(2) REPERTOIRE OF PRESCRIPTION</p> <ul style="list-style-type: none"> <li>• archipelago of meaning “juxtaposition”: The mediator must not act, or, having started to do so, continue to act, before having disclosed any circumstances that may, or may be seen to, affect his or her independence or conflict of interest</li> <li>• archipelago of meaning “requisites for the role”: independence or conflict of interest</li> <li>• archipelago of meaning “requisites for the role”: any personal or business relationship with one of the parties; any financial or other interest, direct or indirect, in the outcome of the mediation, or;</li> <li>• the mediator, or a member of his or her firm, having acted in any capacity other than mediator for one of the parties; independence and neutrality</li> </ul> <p>(3) REPERTOIRE OF PRESCRIPTION</p> <ul style="list-style-type: none"> <li>• archipelago of meaning “requisites for the role”: impartiality;</li> <li>• archipelago of meaning “role”: to serve all parties equally with respect to the process of mediation</li> </ul>



<sup>22</sup> the text does not contain any passages meeting the criterion “the role of the family mediator”

<sup>23</sup> the text does not contain any passages meeting the criterion “the role of the family mediator”

► Table 8. The role of the family mediator

Text	Passages identified as “definition of family mediation”	Discourse repertoires
<p><b>Council directive 2002/8/EC</b> (2003.1.03)<sup>24</sup></p>		
<p><b>Recommendation 1639 (2003) (1)</b> 2003.11.25</p>	<p>1. (Family mediation is a life-building and life-management process between family members in the presence of an independent and impartial third party known as the mediator). (1)</p> <p>1. (The mediator’s task is to support the mediated partners in their progress towards a previously agreed goal) (2)</p> <p>3. (In general, family mediation is valued as an alternative method of resolving family disputes as it has the advantage of promoting methods of friendly settlement and reducing the economic and social costs of separation and divorce for families, the state and society. (For family mediation to be successful, however, the main principles of mediation must be respected, in particular the independence and impartiality of the mediator – who must be specially trained – and the confidentiality of the process.) (3)</p> <p>4. ([Researchers and practitioners in the mediation field] ... They also mention the difficulties faced by mediators in identifying or redressing power imbalances between the parties, especially when domestic violence or another type of spousal abuse is involved) (4)</p> <p>7. (The primary aim of mediation is not to reduce congestion of the courts but to repair a breakdown in communication between the parties, with the help of a professional trained in mediation) (5)</p> <p>7 (Judicial proceedings cannot be appropriately replaced by the mediation process unless the constituent elements of mediation are present, namely: [...])</p> <p>ii. the independence and impartiality of the mediator must be guaranteed from both the institutional and the professional standpoint;</p> <p>7. Judicial proceedings cannot be appropriately replaced by the mediation process unless the constituent elements of mediation are present, namely: [...]</p>	<p>(1) REPERTOIRE OF DEFINITION</p> <ul style="list-style-type: none"> <li>• archipelago of meaning “description of the process”: a life-building and life-management process between</li> <li>• archipelago of meaning “requisites for the mediator”: an independent and impartial third party</li> <li>• archipelago of meaning “role”: known as the mediator</li> </ul> <p>(2) REPERTOIRE OF DEFINITION</p> <ul style="list-style-type: none"> <li>• archipelago of meaning “objectives of the mediator”: to support the mediated partners in their progress towards a previously agreed goal</li> </ul> <p>(3) REPERTOIRE FOR SETTING THE CONDITIONS</p> <ul style="list-style-type: none"> <li>• archipelago of reference to a meaning: For family mediation to be successful</li> <li>• archipelago of meaning “requisites for the role”: the independence and impartiality of the mediator- who must be specially trained</li> <li>• archipelago of meaning “requisites for the process”: the confidentiality of the process</li> </ul> <p>(4) REPERTOIRE OF LEGITIMATION</p> <ul style="list-style-type: none"> <li>• archipelago of meaning “role”: the difficulties faced by mediators in identifying or redressing</li> <li>• archipelago of meaning: power imbalances</li> <li>• archipelago of meaning: domestic violence or another type of spousal abuse is involved</li> </ul> <p>(5) REPERTOIRE OF JUXTAPOSITION</p> <ul style="list-style-type: none"> <li>• archipelago of meaning “objective”: to repair a breakdown in communication between the parties</li> <li>• archipelago of meaning “conditions”: with the help of a professional trained in mediation</li> </ul> <p>(6) REPERTOIRE FOR SETTING THE CONDITIONS</p> <ul style="list-style-type: none"> <li>• archipelago of meaning “requisites for the role”: the independence and impartiality; qualifications, the official authorisation; supervision of his or her work</li> </ul>



<sup>24</sup> the text does not contain any passages meeting the criterion “the role of the family mediator”

► Table 8. The role of the family mediator

Text	Passages identified as “definition of family mediation”	Discourse repertoires
<b>Council regulation (EC) N. 2201/2003</b> (2003.11.2) <sup>25</sup>	<p>v. the balance of power between the mediated parties must be guaranteed. This is the responsibility of the mediator, who must be specially educated and trained for this purpose in order to be able to establish that this essential requirement is met;</p> <p>7. vi. as a mediator’s competence depends on his or her qualifications, particular attention must be paid to the mediator’s training and the official authorisation and supervision of his or her work) (6)</p>	<ul style="list-style-type: none"> <li>• archipelago of meaning “requisites for the process”: the balance of power between the mediated parties must be guaranteed</li> <li>• archipelago of meaning “competence of the role”: educated and trained for this purpose in order to be able to establish that this essential requirement is met</li> </ul>
<b>CM (2004) Rec 1639 final</b> (2004.6.21)	<p>3.(it recalls that Recommendation No. R (98) 1, under its Principle III (ix), provides that “the mediator should pay particular regard to whether violence has occurred in the past or may occur in the future between the parties and the effect this may have on the parties’ bargaining positions, and should consider whether in these circumstances the mediation process is appropriate”) (1)</p> <p>4.(It is also recalled that Recommendation No. R (98) 1 in its Principle III (viii) sets out that: “the mediator should have a special concern for the welfare and best interests of the children, should encourage parents to focus on the needs of children and should remind parents of their prime responsibility relating to the welfare of their children and the need for them to inform and consult their children”.) (2)</p> <p>Appendix 2. (The Bureau fully supported the Parliamentary Assembly in encouraging the independence and impartiality of the mediator, which is entirely in conformity with paragraph 10 and Principles III and V of Recommendation No. R (98) 1) (3)</p> <p>Appendix 2. (the Bureau noted that Recommendation No. R (98) 1, under its Principle III (ix), provides that “the mediator should pay particular regard to whether violence has occurred in the past or may occur in the future between the parties and the effect this may have on the parties’ bargaining positions, and should consider whether in these circumstances the mediation process is appropriate”) (4)</p>	<p>(1) REPERTOIRE OF LEGITIMATION</p> <ul style="list-style-type: none"> <li>• archipelago of meaning “role”: the mediator should pay particular regard to whether violence has occurred in the past or may occur in the future between the parties and the effect this may have on the parties’ bargaining positions; and should consider whether in these circumstances the mediation process is appropriate</li> <li>• archipelago of meaning “field of application”: whether in these circumstances the mediation process is appropriate</li> </ul> <p>(2) REPERTOIRE OF LEGITIMATION</p> <ul style="list-style-type: none"> <li>• archipelago of meaning “role”: should have a special concern for the welfare and best interests of the children; should encourage parents to focus on the needs of children and should remind parents of their prime responsibility relating to the welfare of their children and the need for them to inform and consult their children</li> </ul> <p>(3) REPERTOIRE OF LEGITIMATION</p> <ul style="list-style-type: none"> <li>• archipelago of meaning “requisites for the role”: the independence and impartiality of the mediator</li> </ul> <p>REPERTOIRE OF LEGITIMATION</p> <ul style="list-style-type: none"> <li>• archipelago of meaning “role”: the mediator should pay particular regard to whether violence has occurred in the past or may occur in the future between the parties and the effect this may have on the parties’ bargaining positions; and should consider whether in these circumstances the mediation process is appropriate</li> <li>• archipelago of meaning “field of application”: whether in these circumstances the mediation process is appropriate</li> </ul>

<sup>25</sup> the text does not contain any passages meeting the criterion “the role of the family mediator”

When considering the criterion “role of family mediator”, 14 discourse repertoires have been identified. The “repertoire of legitimation” is used 5 times, the “repertoire of prescription” is used 4 times, the “repertoire of definition” and the “repertoire for setting the conditions” are used twice and the “repertoire of juxtaposition” is used once.

The *European convention on the exercise of children’s rights*, the *Green Paper COM (2002) 196 Final*, the *Council directive 2002/8/EC* and the *Council regulation (EC) N. 2201/2003* do not contain any definition of the role of the mediator. In the other texts, the role is mostly (9 times out of 15) defined through the “repertoire of legitimation” and the “repertoire of prescription”.

As to the use of discourse modalities, the “repertoire of legitimation” appears once in the *Recommendation 1639 (2003) (1)* and 4 times in the *CM (2004) Rec 1639 final*; the “repertoire of prescription” appears 3 times in the *European Code of conduct for mediators* and once in the *Recommendation N. R (98) 1*; the “repertoire of definition” appears twice in the *Recommendation 1639 (2003) (1)*; the “repertoire for setting the conditions” appears twice in the *Recommendation 1639 (2003) (1)*; the “repertoire of juxtaposition” appears once in the *Recommendation 1639 (2003) (1)*.

Table n. 8 shows that the role of the mediator is mentioned for the first time in 1998, in the *Recommendation N. R (98) 1*. The *European Code of conduct for mediators*, a document which specifically deals with this topic, is drafted in 2002. Finally, the role of the mediator is also mentioned in 2004 in the text on family mediation and gender equality.

Due to the use of the discourse repertoires mentioned above, the texts do not really define the role of the mediator, but what (s)he does. Indeed, the role is referred to through the “repertoire of prescription” and through the “repertoire of legitimation”. Firstly, through the “repertoire of prescription”, the states are given the responsibility of training and setting standards for the selection of mediators (*States should see to it that there are appropriate mechanisms to ensure the existence of: - procedures for the selection, training and qualification of mediators; - standards to be achieved and maintained by mediators*) and the role is defined in terms of what should be done and how (*Mediators shall be competent and knowledgeable in the process of mediation,*

*proper training and continuous updating; The mediator must not act, or, having started to do so, continue to act*). Secondly, through the “repertoire of legitimation”, European institutions and political bodies recognize and legitimize the requisites for the role, the field of application and the conditions to be met for the applicability of the mediation process. At an institutional level, the role is legitimized after its competence has been “prescribed”. However, such prescription does not define a set of skills for the role, but each state is left the responsibility to do so. The *European Code of conduct for mediators* prescribes what the mediator should do, independently from the definitions of family mediation and of mediator and without an explicit indication of the objectives of the process and of the role.

The “repertoire of definition” appears where the definition of the role of the mediator is implicitly related to the process of mediation and to the requisites for the mediator. Therefore, the role is defined in operational terms and also through the description of the objective of the mediator (*to support the mediated partners in their progress towards a previously agreed goal*). This passage is the only one which explicitly mentions the objective of the role of the mediator.

The last two repertoires to be analyzed are the “repertoire for setting the conditions” and the “repertoire of juxtaposition”. Setting the conditions determines the effectiveness of the role in relation to the requisites for the role and for the process and to the competence of the role. Namely, the process is effective when some conditions are respected. These conditions pertain to the process (*the balance of power between the mediated parties must be guaranteed*), to the requisites for the role or to the competence (i.e. the need for the mediator to be trained). Through the “repertoire of juxtaposition”, the role is determined through a “negative” definition of its objective (*The primary aim of mediation is not to reduce congestion of the courts but to repair a breakdown in communication between the parties, with the help of a professional trained in mediation*). It is interesting to see that here the text does not contain the term “mediator” like in other cases, but the expression “a professional trained in mediation”.

European legislation does not provide a univocal definition of the role of the mediator and of his/her competence, as the states are left free to

determine the standards to be achieved and maintained. This is mainly due to the lack of a shared definition of the objectives of the role.

From an operational point of view, European legislation is open to several interpretations, so the competence and objectives of the mediator can be determined on the basis of national laws. The most critical aspect is that the figure of the mediator can vary considerably from country to country and from culture to culture. Distinct definitions of the role, of the objectives of the role, of mediation and of the objectives of mediation can lead to differences based on the structures and services in each state. This lack of uniformity can lead each state to make an “operational” definition of the role, focused only on resolving disputes and reaching agreements (as often stated in the texts), rather than on the *life-building and life-management process between family members*.

Table n. 9. The mediation process in the legal system

Text	Passages identified as “definition of family mediation”	Discourse repertoires
<b>European convention on the exercise of children’s rights</b> <sup>26</sup> (1996.1.25)		
<b>Recommendation N. R (98) 1</b> <sup>27</sup> (1998.1.21)		
<b>Green paper COM (2002) 196 Final</b> <sup>28</sup> (2002.4.19)		
<b>Council directive 2002/8/EC</b> <sup>29</sup> (2003.1.03)		
<b>Council regulation (EC) N. 2201/2003</b> <sup>30</sup> (2003.11.2)		
<b>Recommendation 1639 (2003) (1)</b> (2003.11.25)	7. ([...] Judicial proceedings cannot be appropriately replaced by the mediation process unless the constituent elements of mediation are present, namely: [...] iv. the inclusion of family mediation in the legal aid system; v. review of the lawfulness and fairness of mediation agreements through their approval by the competent courts; vi. the confirmation of mediation agreements by the competent courts; vii. the existence of a formal complaints system within every mediation service.) (1)	(1) REPERTOIRE FOR SETTING THE CONDITIONS • archipelago of meaning “aspects of the process”: iv. the inclusion of family mediation in the legal aid system; v. review of the lawfulness and fairness of mediation agreements through their approval by the competent courts; vi. the confirmation of mediation agreements by the competent courts; vii. the existence of a formal complaints system within every mediation service.
<b>European Code of conduct for mediators</b> <sup>31</sup> (2004.6.2)		
<b>CM (2004) Rec 1639 final</b> <sup>32</sup> (2004.6.21)		

<sup>26</sup> the text does not contain any passages meeting the criterion “the mediation process in the legal system”

<sup>27</sup> the text does not contain any passages meeting the criterion “the mediation process in the legal system”

<sup>28</sup> the text does not contain any passages meeting the criterion “the mediation process in the legal system”

<sup>29</sup> the text does not contain any passages meeting the criterion “the mediation process in the legal system”

<sup>30</sup> the text does not contain any passages meeting the criterion “the mediation process in the legal system”

<sup>31</sup> the text does not contain any passages meeting the criterion “the mediation process in the legal system”

<sup>32</sup> the text does not contain any passages meeting the criterion “the mediation process in the legal system”

*In the European legislation, the position of the mediation process in the legal system is dealt with in 2003 in the Recommendation 1639 (2003) (1). The repertoire used in the relevant passages is the “repertoire for setting the conditions”. Indeed, some restrictions must be respected in order for family mediation to replace legal proceedings (iv. the inclusion of family mediation in the legal aid system; v. review of the lawfulness and fairness of mediation agreements through their approval by the competent courts; vi. the confirmation of mediation agreements by the competent courts; vii. the existence of a formal complaints system within every mediation service). Mediation is thus legitimized as an instrument which integrates the legal system, provided that it can meet some specific requirements. These requirements pertain to the process and to the agreements reached through mediation.*

Over the years, legislation as a whole provides only one regulation concerning the mediation process in the legal system. This text is not prescriptive, but it only gives European directions to the states, which are left free to choose whether to apply or not these requisites.

From an operational point of view, European legislation has the following consequences for countries and people called to enact its regulations.

- i. European legislation provides shared and univocal criteria which legitimize mediation as an instrument in support of the legal system. Even if the legislator has no intention of prescribing mediation as a supporting instrument, the reader-interpreter of the law is left with limited and definite possibilities to build the mediation process as an operational instrument of the justice system.
- ii. In order for family mediation to replace legal proceedings, it must meet some requirements of the justice system (*legal aid system; approval by the competent courts; formal complaints system*). Mediation is recognized as “another” form of justice, which can only be useful if it meets the requirements of ordinary justice. Researchers and workers in the field could apply mediation not only in situations where parties willingly request it, but they could also experiment its effectiveness in conflicts which pertain to the justice system. Such scenario would represent a radical change in the conception of mediation. This is first seen as a useful service offered to parties who

request it and who can already anticipate how to manage their conflict; then, mediation would be seen as an instrument which can generate a different reality from the one anticipated by the conflicting parties. Therefore, mediation would really become a process capable of creating a “new” reality, rather than just being a process regulating what the two parties can already do.

Table n. 10. Requisites<sup>33</sup> for the mediation process

Text	Passages identified as “definition of family mediation”	Discourse repertoires
<p><b>European convention on the exercise of children’s rights</b> (1996.1.25)<sup>34</sup></p>		
<p><b>Recommendation N. R (98) 1</b> (1998.1.21)<sup>35</sup></p>		
<p><b>Green paper COM (2002) 196 Final</b> (2002.4.19)<sup>36</sup></p>		
<p><b>European Code of conduct for mediators</b> (2002.6.4)</p>	<p>“1.2. Appointment The mediator will confer with the parties regarding suitable dates on which the mediation may take place. The mediator shall satisfy him/herself as to his/her background and competence to conduct the mediation before accepting the appointment and, upon request, disclose information concerning his/her background and experience to the parties (1)</p> <p>3.1 Procedure the mediator shall satisfy himself/herself that the parties to the mediation understand the characteristics of the mediation process and the role of the mediator and the parties in it. The mediator shall in particular ensure that prior to commencement of the mediation the parties have understood and expressly agreed the terms and conditions of the mediation agreement including in particular any applicable provisions relating to obligation of confidentiality on the mediator and on the parties. The mediation agreement shall, upon request of the parties, be drawn up in writing. The mediator shall conduct the proceedings in an appropriate manner, taking into account the circumstances of the case, including possible power imbalances and the rule of law, any wishes the parties may express and the need for a prompt settlement of the dispute. The parties shall be free to agree with the mediator, by reference to a set of rules or otherwise, on the manner in which the mediation is to be conducted. The mediator, if he/she deems it useful, may hear the parties separately. (1)</p> <p>3.2 Fairness of the process the mediator shall ensure that all parties have adequate opportunities to be involved in the process. The mediator if appropriate shall inform the parties, and may terminate the mediation, if:</p>	<p>(1) REPERTOIRE OF PRESCRIPTION</p> <ul style="list-style-type: none"> <li>• archipelago of meaning “conditions”: before accepting the appointment and, upon request, disclose information; in particular ensure that prior to commencement of the mediation the parties have understood and expressly agreed the terms and conditions of the mediation agreement including in particular any applicable provisions relating to obligation of confidentiality on the mediator and on the parties; taking into account the circumstances of the case, including possible power imbalances and the rule of law, any wishes the parties may express and the need for a prompt settlement of the dispute; a settlement is being reached that for the mediator appears unenforceable or illegal, having regard to the circumstances of the case and the competence of the mediator for making such an assessment, or the mediator consider that continuing the mediation is unlikely to result in a settlement;</li> <li>• archipelago of meaning “role”: The mediator will confer; The mediator shall satisfy; the mediator shall satisfy; the mediator shall satisfy; The mediator shall in particular ensure; The mediator shall conduct, The mediator, if he/she deems it useful, may hear; the mediator shall ensure; The mediator if appropriate shall inform; The mediator may terminate the mediation.; The mediator shall take all appropriate measures; The mediator may, upon request of the parties and within the limits of his or her competence, inform; the mediator must always supply the parties; He/she shall not accept a mediation; The mediator shall keep confidential;</li> <li>• archipelago of meaning “mediation process”: The mediation agreement shall; The parties may withdraw from the mediation at any time without giving any justification; The parties shall be free to agree with the mediator, by reference to a set of rules or otherwise, on the manner in which the mediation is to be conducted.</li> </ul>



<sup>33</sup> something which is necessary for a particular purpose (Collins Cobuild); requirement or expectation which can be expressed, generally implicit or unbreakable (ISO standard)

<sup>34</sup> the text does not contain any passages meeting the criterion “requisites for the mediation process”

<sup>35</sup> the text does not contain any passages meeting the criterion “requisites for the mediation process”

<sup>36</sup> the text does not contain any passages meeting the criterion “requisites for the mediation process”

►► Table n. 10. Requisites for the mediation process

Text	Passages identified as “definition of family mediation”	Discourse repertoires
	<ul style="list-style-type: none"> <li>• a settlement is being reached that for the mediator appears unenforceable or illegal, having regard to the circumstances of the case and the competence of the mediator for making such an assessment, or</li> <li>• the mediator considers that continuing the mediation is unlikely to result in a settlement. (1)</li> </ul> <p>3.3 the end of the process The mediator shall take all appropriate measures to ensure that any understanding is reached by all parties through knowing and informed consent, and that all parties understand the terms of the agreement. The parties may withdraw from the mediation at any time without giving any justification. The mediator may, upon request of the parties and within the limits of his or her competence, inform the parties as to how they may formalize the agreement and as to the possibilities for making the agreement enforceable. (1)</p> <p>3.4 Fees where not already provided, the mediator must always supply the parties with complete information on the mode of remuneration which he intends to apply. He/she shall not accept mediation before the principles of his/her remuneration have been accepted by all parties concerned. (1)</p> <p>4. Confidentiality The mediator shall keep confidential all information, arising out of or in connection with mediation, including the fact that mediation is to take place or has taken place, unless compelled by law or public policy grounds. Any information disclosed in confidence to mediators by one of the parties shall not be disclosed to the other parties without permission or unless compelled by law”. (1)</p>	
<p><b>Council directive 2002/8/EC</b> (2003.1.03)<sup>37</sup></p>		
<p><b>Recommendation 1639 (2003) (1)</b> 2003.11.25</p>	<p>(7. the constituent elements of mediation: i. as freedom of choice for the parties is the key to all mediation, mandatory referral to mediation must be prohibited; ii. the independence and impartiality of the mediator must be guaranteed from both the institutional and the professional standpoint;</p>	<p>(1) REPERTOIRE OF DEFINITION • archipelago of meaning “conditions for applicability”: as freedom of choice for the parties is the key to all mediation, mandatory referral to mediation must be prohibited;</p>



<sup>37</sup> the text does not contain any passages meeting the criterion “requisites for the mediation process”

► Table n. 10. Requisites for the mediation process

Text	Passages identified as “definition of family mediation”	Discourse repertoires
	<p>iii. the confidentiality of the process must be guaranteed, even in court-ordered mediation, as regards both the judge and the mediated parties;</p> <p>iv. the obligation to speedily confirm mediation agreements would guarantee that they are lawful and respect the individual rights of each person covered by them;</p> <p>v. the balance of power between the mediated parties must be guaranteed. This is the responsibility of the mediator, who must be specially educated and trained for this purpose in order to be able to establish that this essential requirement is met;</p> <p>vi. as a mediator’s competence depends on his or her qualifications, particular attention must be paid to the mediator’s training and the official authorisation and supervision of his or her work.) (1)</p>	<ul style="list-style-type: none"> <li>• archipelago of meaning “requisites for the role”: the independence and impartiality of the mediator must be guaranteed; the responsibility of the mediator, who must be specially educated and trained for this purpose in order to be able to establish that this essential requirement is met; particular attention must be paid to the mediator’s training and the official authorisation and supervision of his or her work.;</li> <li>• archipelago of meaning “requisites for the process”: the confidentiality of the process must be guaranteed; the obligation to speedily confirm mediation agreements would guarantee that they are lawful and respect the individual rights of each person covered by them; balance of power between the mediated parties must be guarantee.</li> </ul>
<p><b>Council regulation (EC) N. 2201/2003</b> (2003.11.2)<sup>38</sup></p>		
<p><b>CM (2004) Rec 1639 final</b> (2004.6.21)<sup>39</sup></p>		

<sup>38</sup> the text does not contain any passages meeting the criterion “requisites for the mediation process”

<sup>39</sup> the text does not contain any passages meeting the criterion “requisites for the mediation process”

When considering the criterion “requisites for the mediation process”, 2 discourse repertoires have been identified – the “repertoire of definition” and the “repertoire of prescription”.

The *European convention on the exercise of children’s rights*, the *Recommendation N. R (98) 1*, the *Green Paper COM (2002) 196 Final*, the *Council directive 2002/8/EC*, the *Council regulation (EC) N. 2201/2003* and the *CM (2004) Rec 1639 final* do not contain any passages meeting the above criterion. As to the use of discourse modalities, the “repertoire of prescription” appears in the *European Code of conduct for mediators*, while the “repertoire of definition” appears in the *Recommendation 1639 (2003) (1)*.

Table n. 10 shows that the requisites for the mediation process are mentioned for the first time in 2002, in the *European Code of conduct for mediators*. Therefore, the previous texts do not identify the requisites for the process – not even the *Recommendation N. R (98) 1*, which determines the principles for the application of family mediation.

The requisites for the mediation process are identified in two ways. Firstly, they are defined in operational terms as a set of rules to be followed during the mediation process. Secondly, they are defined in general terms as “*the constituent elements of mediation*”. In both cases, definitions pertain to the conditions for applicability, the role of the mediator and the process of mediation.

In line with its objectives, the *European Code of conduct for mediators* makes use of the “repertoire of prescription”. The requisites for the process are listed in the different chapters of the code: *Appointment, Procedure, Fairness of the process, the end of the process, Fees, Confidentiality*. The archipelagos of meaning highlight that certain conditions should be met (*the parties have understood and expressly agreed the terms and conditions of the mediation agreement*), that the situation should be suitable for mediation (without any power imbalance between the parties and with full respect of regulations), that the process should be confidential (unless compelled by law or public policy grounds) and that the mediator must certificate his/her experience to the parties (*before accepting the appointment and, upon request, disclose information concerning his/her background and experience to the parties*). The latest aspect is very critical for the role, whose legitimacy is under discussion. This does not happen for other roles: for example, in a hospital, doctors never have to show their

credentials to patients before surgery. Instead, in the case of mediation, mediators have to prove their legitimacy by giving information on their background and experience, thus leading to a delegitimation of the role. Moreover, the requisites for the mediation process are defined in terms of what the mediator should do (“*satisfy*”, “*ensure*”, “*not accept*”, “*keep confidential*”, “*take all appropriate measures*”, etc). Finally, since the parties can interrupt the process anytime they want and since they must agree with the mediator on how the process should be conducted, they emerge as the real “managers” of the mediation process. The “repertoire of prescription” has the function of responding to the needs and expectations (implicitly or explicitly expressed) of the parties or to the restrictions imposed by national legislations.

Through the use of the “repertoire of definition”, the requisites for the process become the defining elements of the process itself. Here too the archipelagos of meaning refer to the conditions of application (“*freedom of choice*”) and to the role. In particular, the focus is not on what the role should do, but on its requisites: impartiality, independence and specific training for managing power imbalance. Other archipelagos of meaning are related to the process (confidentiality, balance of power between parties and speedy confirmation of the agreements by courts). In this text there is no explicit reference to the parties; therefore, the “repertoire of definition” has the function of identifying a series of conditions defining the process and necessary for its applicability and for the reaching of its objectives.

When defining the requisites for the process of family mediation, legislation as a whole identifies a set of conditions to be satisfied by the role (see the use of the verb “*satisfy*” in the *European code of conduct*) and then a list of qualities which define the peculiarity of the mediation process.

From an operational point of view, European legislation has the following consequences for countries and people called to enact its regulations.

- i. Since the *European code of conduct*, the description of the role of the mediator has been based on a series of specific actions, which, however, do not define the objectives and the competence of the role. Therefore, the role can be defined in terms of “meeting the requirements”, rather than managing the objectives of the process.
- ii. The texts do not clearly identify the theoretical definition, the objectives and the strategies of family mediation. However, its

requisites are delegated to the role of the mediator, who has to ensure some characteristics (confidentiality, impartiality, independence, balance of power, etc) and who has to verify that initial conditions are favourable to the use of mediation. Only two requisites do not pertain to the role of the mediator – confirmation of agreements by courts and freedom of choice (i.e. the process is not mandatory by law). This means that the requisites for the process are based on a set of given practises and that they are not supported by a theory providing models and operational tools.

## 2.2 National legislation

### 2.2.1 Methodological elements

This paragraph analyses the methodological approach adopted in the survey described in this document. Reference will be respectively made to the methods used to select the analysed texts, the survey instruments and, to conclude, the illustration of the data analysis procedures and the description of results.

#### 2.2.1.1 The search for the legislative texts

The analysed texts were collected through a research carried out for each Country of the EU through the representatives of the Intergovernmental Group *L'Europe de l'Enfance* and the partners of the ChildONEurope Network. By contacting the single national representatives and the observatories' referents, we found the different national laws referring to family mediation (in case this legislation effectively exist). Thus we examined all legislative texts concerning family mediation issued at the European level. The searching criterion was the presence of a quotation regarding this matter in the text, irrespective of the specific object of it. In addition, we considered, where relevant for our analysis, also interpretative and/or enforcing provisions.

In the end, we chose to consider only legislative texts available in English or French, both officially translated ones or texts for which a non-official translation was made available for the purposes of the analysis.

The texts for which no translation was made available in the above-mentioned languages were not analysed. The legislative texts, that have

been analysed according to a chronological order starting from the country with the oldest law, are the following:

#### France

- Loi n°95-125 du 8 février 1995 relative à l'organisation des juridictions et à la procédure civile, pénale et administrative
- Décret no 96-652 du 22 juillet 1996 relatif à la conciliation et à la médiation judiciaires
- Loi no 2002-305 du 4 mars 2002 relative à l'autorité parentale
- Décret n° 2003-1166 du 2 décembre 2003 portant création du diplôme d'Etat de médiateur familial
- Arrêté du 12 février 2004 relatif au Diplôme d'État de médiateur familial
- Loi n° 2004-439 du 26 mai 2004 relative au divorce
- Circulaire n°DGAS/4A/2004/376 du 30 juillet 2004 relative aux modalités de la formation préparatoire au diplôme d'état de Médiateur familial et à l'organisation des épreuves de certification

#### Ireland

- Family Law (Divorce) Act, 1996
- Children Act, 1997

#### United Kingdom

- Family Law Act 1996

#### Portugal

- Ministerial Order no.12 368/97
- Law no.133/99 of 28th August
- Ministerial Order no.1091/2002

#### Hungary

- Government Decree 149/1997 (IX. 10.) on guardianship authorities and on child welfare and guardianship procedures
- Minister of Welfare Decree 15/1998. (IV. 30.) on the professional tasks and on the conditions of operation of child welfare and child protection institutions and persons providing personal care
- Act LV of 2002 on Mediation

## Italy

- Law 285/97 Provisions for the promotion of rights and opportunities for children and adolescents
- Law 154/01 Measures against violence in family relations

## Austria

- Law 22 July 1999
- Guidelines on the funding of mediation, 3 November 1999
- Law 29 December 2000
- 29th Federal Act on Mediation in Civil cases, 6 June 2003

## Finland

- Marriage Act (234/1929; amendments up to 1226/2001 included)

## Poland

- Regulation by the Minister of justice 18 May 2001 on mediation proceedings in cases related to minors

## Slovakia

- Law of 25 July 2004 on mediation and on the integration of a number of laws

## Malta

- Mediation Act, 21st December 2004

## Belgium

- Loi relative à la médiation en matière familiale dans le cadre d'une procédure judiciaire, 19 février 2001
- Loi modifiant le Code judiciaire en ce qui concerne la médiation, 21 février 2005

### 2.2.1.2 Text reading and analysis according to defined criteria

By adopting the narrative approach and in line with the research objectives, the legislation was read so as to single out the text portions to analyse. The reading was based on a number of criteria. These were defined

as content elements essential for the efficacy of a legislative text which, from the theoretical-methodological and operational point of view, can lead to scenarios requiring the creation or consideration of family mediation services.

Thus, the text-reading criteria allowed to circumscribe the text portions to be analysed. The table below summarises the criteria used and their description:

Table n. 11

Criteria	Description
Definition of family mediation	This criterion refers to text portions mentioning a definition of family mediation, i.e. the sections answering the question "what is family mediation?"
Field of implementation of family mediation	This criterion refers to text portions describing or prescribing the areas of implementation of family mediation. These texts answer the question "when and to which circumstances is family mediation applicable?"
Objectives of family mediation	This criterion refers to the texts portions mentioning, in the legislative text, the family-mediation objective. Objective means "what is to be achieved"
Role of the family mediator	This criterion refers to the text portions outlining the role of family mediators, in terms of definition as well as objectives and competencies. These texts answer the question "who is a family mediator, what does he/she do and how does he/she do it"?
Requirements of the family-mediation process	This criterion refers to the text portions describing the elements that are necessary or required for the family mediation process to be implemented.
Procedural aspects in the judicial system	This criterion refers to the text portions outlining the procedures and procedural implications deriving from the family-mediation process within the ordinary judicial system.

### 2.2.1.3 Objectives of the compilation and analysis of the synoptic table

The text portions identified according to the above-mentioned criteria have been used for the compilation of a synoptic table, with the aim of identifying the differences and similarities between the legislative texts analysed according to the listed criteria.

The description of the synoptic table has complied with the following criteria:

- identification of a subject in the national legislation and relationship between that subject and family mediation as mentioned in the legislation;
- identification of the definitions of mediation used in the text;
- presence/absence of the criteria identified in the legislative texts

In the next section, a synoptic table is presented, organised into 10 parts, one for each EU Member State having national laws mentioning family mediation. The 10 tables are shown in chronological order according to the date of promulgation of the first law of a State. Each table includes the entire legislative production of a member State and comprises a first line with the name of the Country and the references of the legislative texts. Three columns follow:

- the first column shows the chronological number of the identified criteria;
- the second column specifies the names of the identified criteria;
- the third column includes the text portions considered to be relevant to the table criteria.

## 2.2.2 Synoptic table on national legislation

Table n. 12

FRANCE (1)

ACT N. 95-125 OF 8 FEBRUARY 1995 RELATIVE TO AN ORGANISATION OF JURISDICTIONS AND CIVIL, CRIMINAL AND ADMINISTRATIVE PROCEDURE

N	Criterion	Portion of the text corresponding to the Criterion
1	Definition <sup>40</sup>	
2	Field of implementation	
3	Aim	CHAPITRE Ier La conciliation et la médiation judiciaires Art. 21 [...] 2. Soit à une médiation, en tout état de la procédure et y compris en référé, pour tenter de parvenir à un accord entre les parties.
4	Proceeding requirements	
5	Role of the mediator	
6	Procedural aspects of mediation and the court	CHAPITRE Ier La conciliation et la médiation judiciaires Art. 21. - Le juge peut, après avoir obtenu l'accord des parties, désigner une tierce personne remplissant les conditions fixées par décret en Conseil d'Etat pour procéder: 1. Soit aux tentatives préalables de conciliation prescrites par la loi, sauf en matière de divorce et de séparation de corps; 2. Soit à une médiation, en tout état de la procédure et y compris en référé, pour tenter de parvenir à un accord entre les parties. Le juge fixe le montant de la provision à valoir sur la rémunération du médiateur et désigne la ou les parties qui consigneront la provision dans le délai qu'il détermine. La désignation du médiateur est caduque à défaut de consignation dans le délai et selon les modalités impartis. L'instance est alors poursuivie.  Art. 22. - Les parties déterminent librement la répartition entre elles de la charge des frais de la médiation. A défaut d'accord, ces frais sont répartis à parts égales, à moins que le juge n'estime qu'une telle répartition est inéquitable au regard de la situation économique des parties. Lorsque l'aide juridictionnelle a été accordée à l'une des parties, la répartition de la charge des frais de la médiation est établie selon les règles prévues à l'alinéa précédent. Les frais incombant à la partie bénéficiaire de l'aide juridictionnelle sont à la charge de l'Etat, sous réserve des dispositions des articles 45 et 46 de la loi no 91-647 du 10 juillet 1991 relative à l'aide juridique.  Art. 23. - La durée de la mission de conciliation ou de médiation est initialement fixée par le juge sans qu'elle puisse excéder un délai fixé par décret en Conseil d'Etat. Le juge peut toutefois renouveler la mission de conciliation ou de médiation. Il peut également y mettre fin avant l'expiration du délai qu'il a fixé, d'office ou à la demande du conciliateur, du médiateur ou d'une partie.  Art. 24. - Le conciliateur et le médiateur sont tenus à l'obligation du secret à l'égard des tiers. Les constatations du conciliateur ou du médiateur et les déclarations qu'ils recueillent ne peuvent être évoquées devant le juge saisi du litige qu'avec l'accord des parties. Elles ne peuvent être utilisées dans une autre instance. Toutefois, le conciliateur ou le médiateur informe le juge de ce que les parties sont ou non parvenues à un accord.  Art. 25. - En cas d'accord, les parties peuvent soumettre celui-ci à l'homologation du juge qui lui donne force exécutoire.  Art. 26. - Les dispositions du présent chapitre ne sont pas applicables aux procédures pénales. Un décret en Conseil d'Etat précise les conditions d'application de ces dispositions et détermine les règles applicables à la provision à valoir sur la rémunération de la personne chargée de procéder à la médiation.



<sup>40</sup> No portion of the text corresponding to the Criterion mentioned has been found (hereinafter for the blank spaces)

►► Table n. 12

**FRANCE (2)**  
**LAW ON PARENTAL AUTHORITY 4 MARCH 2002**

<b>N</b>	<b>Criterion</b>	<b>Portion of the text corresponding to the Criterion</b>
1	Definition	
2	Field of implementation	
3	Aim	
4	Proceeding requirements	
5	Role of the mediator	
6	Procedural aspects of mediation and the court	<p>«Art. 373-2-10. - En cas de désaccord, le juge s'efforce de concilier les parties.</p> <p>«A l'effet de faciliter la recherche par les parents d'un exercice consensuel de l'autorité parentale, le juge peut leur proposer une mesure de médiation et, après avoir recueilli leur accord, désigner un médiateur familial pour y procéder.</p> <p>«Il peut leur enjoindre de rencontrer un médiateur familial qui les informera sur l'objet et le déroulement de cette mesure</p>

**FRANCE (3)**  
**DECREE N° 2003-1166 OF 2 DECEMBER 2003 CREATING THE FAMILY MEDIATOR STATE DIPLOMA**

<b>N</b>	<b>Criterion</b>	<b>Portion of the text corresponding to the Criterion</b>
1	Definition	
2	Field of implementation	
3	Aim	
4	Proceeding requirements	
5	Requirements for the role of mediator	<p>Article 1</p> <p>Il est créé un diplôme d'Etat de médiateur familial qui atteste des compétences nécessaires pour intervenir auprès de personnes en situation de rupture ou de séparation afin de favoriser la reconstruction de leur lien familial et aider à la recherche de solutions répondant aux besoins de chacun des membres de la famille</p> <p>Article 2</p> <p>Les candidats à la formation de médiateur familial doivent justifier, dans le domaine social, sanitaire ou juridique, d'un diplôme national ou d'une expérience professionnelle. Ils font l'objet d'une sélection organisée par les établissements de formation. Un arrêté du ministre chargé des affaires sociales détermine les conditions d'application du présent article .</p>
6	Procedural aspects of mediation and the court	



► Table n. 12

**FRANCE (4)  
DECREE OF 12 FEBRUARY 2004 RELATIVE TO THE FAMILY MEDIATOR STATE DIPLOMA**

<b>N</b>	<b>Criterion</b>	<b>Portion of the text corresponding to the Criterion</b>
1	Definition	
2	Field of implementation	
3	Aim	
4	Proceeding requirements	
5	Requirements for the role of mediator	Article 1 Le diplôme d'Etat de médiateur familial atteste des compétences de spécialisation professionnelle pour exercer les fonctions telles que définies dans le référentiel professionnel détaillé en annexe I du présent arrêté.
6	Procedural aspects of mediation and the court	

**FRANCE (5)  
ACT N° 2004-439 OF 26 MAY 2004 RELATIVE TO DIVORCE**

<b>N</b>	<b>Criterion</b>	<b>Portion of the text corresponding to the Criterion</b>
1	Definition	
2	Field of implementation	
3	Aim	
4	Proceeding requirements	
5	Requirements for the role of mediator	
6	Procedural aspects of mediation and the court	Chapitre II De la procédure du divorce ART 12 « Art. 255. - Le juge peut notamment : « 1° Proposer aux époux une mesure de médiation et, après avoir recueilli leur accord, désigner un médiateur familial pour y procéder ; « 2° Enjoindre aux époux de rencontrer un médiateur familial qui les informera sur l'objet et le déroulement de la médiation ; « 3° Statuer sur les modalités de la résidence séparée des époux ; « 4° Attribuer à l'un d'eux la jouissance du logement et du mobilier du ménage ou partager entre eux cette jouissance, en précisant son caractère gratuit ou non et, le cas échéant, en constatant l'accord des époux sur le montant d'une indemnité d'occupation ; « 5° Ordonner la remise des vêtements et objets personnels;



► Table n. 12

FRANCE (5)  
ACT N° 2004-439 OF 26 MAY 2004 RELATIVE TO DIVORCE

N	Criterion	Portion of the text corresponding to the Criterion
		<p>« 6° Fixer la pension alimentaire et la provision pour frais d'instance que l'un des époux devra verser à son conjoint, désigner celui ou ceux des époux qui devront assurer le règlement provisoire de tout ou partie des dettes ;</p> <p>« 7° Accorder à l'un des époux des provisions à valoir sur ses droits dans la liquidation du régime matrimonial si la situation le rend nécessaire ;</p> <p>« 8° Statuer sur l'attribution de la jouissance ou de la gestion des biens communs ou indivis autres que ceux visés au 4°, sous réserve des droits de chacun des époux dans la liquidation du régime matrimonial ;</p> <p>« 9° Désigner tout professionnel qualifié en vue de dresser un inventaire estimatif ou de faire des propositions quant au règlement des intérêts pécuniaires des époux ;</p> <p>« 10° Désigner un notaire en vue d'élaborer un projet de liquidation du régime matrimonial et de formation des lots à partager. »</p>

FRANCE (6)  
CIRCULAR DGAS/4 A N° 2004-376 OF 30 JULY 2004 RELATIVE TO THE PREPARATORY TRAINING FOR THE FAMILY MEDIATOR STATE DIPLOMA AND TO THE ORGANISATION OF THE CERTIFICATION TESTS

N	Criterion	Portion of the text corresponding to the Criterion
1	Definition	<p>PREAMBULE</p> <p>Traitement des dysfonctionnements familiaux, dans l'intérêt des enfants comme des parents, par une aide professionnelle adaptée</p>
2	Field of implementation	<p>PREAMBULE</p> <p>Le champ d'intervention de la médiation familiale recouvre toutes les modalités de l'union (mariage, concubinage, PACS), la situation des liens intergénérationnels, les situations de rupture, les situations familiales à dimension internationale et la protection de l'enfance.</p> <p>ANNEXE I</p> <p>RÉFÉRENTIEL PROFESSIONNEL DES MÉDIATEURS FAMILIAUX</p> <p>Son champ d'intervention recouvre:</p> <ul style="list-style-type: none"> <li>• toutes les modalités de l'union, et notamment: mariage, concubinage, PACS;</li> <li>• la situation des liens intergénérationnels dans leur diversité;</li> <li>• toutes les situations de ruptures telles que décès, séparations, questions patrimoniales, incommunications;</li> <li>• les situations familiales à dimension internationale;</li> <li>• les situations familiales concernées par la protection de l'enfance.</li> </ul>
3	Aim	
4	Proceeding requirements	<p>ANNEXE I</p> <p>RÉFÉRENTIEL PROFESSIONNEL DES MÉDIATEURS FAMILIAUX</p> <p>La médiation familiale, introduite dans le code civil, article 373-2-7-10 par la loi du 4 mars 2002 relative à l'autorité parentale, est un processus de construction ou de reconstruction du lien familial axé sur l'autonomie et la responsabilité des personnes concernées par des situations de rupture ou de séparation. Fondée sur l'engagement volontaire des personnes et la reconnaissance de l'altérité, la médiation familiale est confidentielle.</p>



FRANCE (6)

CIRCULAR DGAS/4 A N° 2004-376 OF 30 JULY 2004 RELATIVE TO THE PREPARATORY TRAINING FOR THE FAMILY MEDIATOR STATE DIPLOMA AND TO THE ORGANISATION OF THE CERTIFICATION TESTS

N	Criterion	Portion of the text corresponding to the Criterion
5	Role of the mediator	<p>PRINCIPES GÉNÉRAUX</p> <p>Dans ce contexte, la création du diplôme d'Etat de médiateur familial vise à répondre à ces nouveaux besoins sociétaux ainsi qu'aux besoins de qualification du secteur en réaffirmant une identité professionnelle du médiateur familial par une exigence forte de professionnalisation.</p> <p>Le diplôme d'Etat de médiateur familial créé par le décret du 2 décembre 2003 et organisé par l'arrêté du 12 février 2004 est un diplôme de spécialisation professionnelle inscrit au niveau II au répertoire national des certifications professionnelles (RNCP). Il atteste des compétences nécessaires pour intervenir auprès de personnes en situation de rupture ou de séparation afin de favoriser la reconstruction de leur lien familial et aider à la recherche de solutions répondant aux besoins de chacun des membres de la famille.</p> <p>ANNEXE I</p> <p>RÉFÉRENTIEL PROFESSIONNEL DES MÉDIATEURS FAMILIAUX</p> <p>Contexte de l'intervention</p> <p>Le médiateur familial exerce de façon qualifiée une profession de spécialisation s'appuyant sur une expérience professionnelle acquise dans le champ de l'accompagnement familial, social, sanitaire, juridique, éducatif ou psychologique.</p> <p>ANNEXE I</p> <p>RÉFÉRENTIEL PROFESSIONNEL DES MÉDIATEURS FAMILIAUX</p> <p>Dans une démarche éthique, et dans le cadre d'entretiens confidentiels, le médiateur familial, tiers impartial et indépendant, sans pouvoir de décision, garant du cadre et du déroulement du processus, favorise l'accompagnement du projet des personnes à travers l'organisation de leur rencontre, la restauration d'un dialogue, la gestion de leurs conflits dans le domaine familial entendu dans sa diversité et dans son évolution.</p> <p>Le médiateur familial accompagne la recherche de solutions concrètes en amenant les personnes à trouver elles-mêmes les bases d'un accord mutuellement acceptable tenant compte, en l'état du droit, des besoins de chacun des membres de la famille, et particulièrement de ceux des enfants, dans un esprit de coresponsabilité parentale.</p> <p>Le médiateur familial exerce dans des structures diverses : associations à caractère social ou familial, associations spécifiques de médiation familiale, services publics ou parapublics et parfois en secteur libéral.</p> <p>La professionnalisation du médiateur familial s'appuie sur une formation spécialisée, dans le cadre de la formation continue, garantissant des compétences techniques spécifiques.</p> <p>Référentiel d'activités</p> <p>Le référentiel d'activités décline les activités rattachées aux quatre fonctions exercées par le médiateur familial.</p> <p>FONCTIONS</p> <p>1. Accueil/Evaluation/Information/Orientation : Accueillir la demande d'une personne (ou plusieurs) par téléphone, par entretien. Informer sur le concept de médiation, son champ d'application, le processus, la déontologie, le rôle du médiateur, les conditions matérielles de l'intervention. Evaluer avec les personnes :- la demande (adéquation besoins et offre) :- l'indication de médiation ; - l'état de leur communication. Engager une relation de médiation avec la personne présente en introduisant l'absent. Proposer une orientation vers d'autres spécialistes (avocats, magistrats, notaires, professionnels de l'action sociale, thérapeutes, associations, etc.)</p> <p>Médiation/Gestion de conflits</p> <p>2 Construction/Reconstruction de liens: Organiser les conditions de la rencontre en se posant comme tiers. Poser un cadre en définissant les règles. Définir avec les personnes l'objet de la médiation. Etablir un engagement volontaire réciproque sur le déroulement de la médiation. Conduire et réguler des entretiens en favorisant l'écoute mutuelle, l'expression des émotions et la reconnaissance de l'autre. Garantir l'équilibre de la parole entre les personnes. Vérifier la compréhension mutuelle des échanges. Favoriser l'émergence d'options multiples à la construction de projets. Recueillir/traiter/analyser les éléments de la situation pour accompagner les personnes à construire par elles-mêmes des accords et leur permettre d'organiser la vie familiale (parentale) notamment dans l'intérêt de l'enfant. Accompagner, à leur demande, les personnes dans la rédaction d'un document écrit et signé par elles qui leur est propre et dont elles sont libres de la divulgation</p>



► Table n. 12

FRANCE (6)

CIRCULAR DGAS/4 A N° 2004-376 OF 30 JULY 2004 RELATIVE TO THE PREPARATORY TRAINING FOR THE FAMILY MEDIATOR STATE DIPLOMA AND TO THE ORGANISATION OF THE CERTIFICATION TESTS

N	Criterion	Portion of the text corresponding to the Criterion
		<p>3. Administration/Rédaction/Gestion : Elaborer et gérer des plannings de rendez-vous. Adresser systématiquement les courriers aux personnes concernées. Etablir un contrat régissant les relations entre le médiateur et les personnes. Faire un dossier administratif pendant le temps de la médiation. Participer à la rédaction de rapports d'activités en collectant des données anonymes.</p> <p>4. Promotion/Formation : Informer sur la médiation et promouvoir une culture de médiation par l'organisation d'ateliers, de conférences, par des permanences, des écrits, etc. Développer le recours à la médiation familiale en amont des conflits en mettant en oeuvre des entretiens d'information auprès de multiples publics. Développer des partenariats autour de l'information à la médiation familiale. Participer à des séances d'analyse de la pratique. Actualiser ses connaissances par la formation. Participer à des actions de formation continue et des démarches de recherche</p>
		<p>REFERENTIEL DE COMPETENCES</p> <p>Les compétences requises pour exercer les fonctions de médiateur familial sont déclinées en deux domaines de compétences subdivisés en compétences et indicateurs de compétences correspondants.</p> <p>Domaine de compétences 1 (compétence socle). - Création et maintien d'un espace tiers de médiation familiale :</p> <p>1.1. Evaluer une situation.</p> <p>1.2. Construire une posture de tiers.</p> <p>1.3. Restaurer les liens intrafamiliaux et accompagner au changement.</p> <p>Domaine de compétences 2 (compétence complémentaire). - Communication/Formation :</p> <p>1.1. Informer sur la démarche de médiation.</p> <p>1.2. Développer des partenariats autour de la médiation familiale.</p> <p>1.3. Faire évoluer sa pratique et contribuer à la formation.</p>
		<p>DOMAINES</p> <p>de compétences (DC)</p> <p>DC 1 - Création et maintien d'un espace tiers de médiation familiale:</p> <p>1.1. Evaluer une situation : 1.1.1. Savoir contextualiser et conceptualiser le processus de médiation familiale (philosophie, principes et déontologie). 1.1.2. Connaître et intégrer des savoirs théoriques en sciences de la famille, psychologie, droit, sociologie de la famille, économie de la famille, ethnologie. 1.1.3. Savoir utiliser des techniques de communication. 1.1.4. Savoir expliciter et clarifier la singularité de l'espace de médiation par rapport au contexte administratif, judiciaire et social. 1.1.5. Savoir repérer la dynamique relationnelle des personnes. 1.1.6. Savoir analyser une situation. 1.1.7. Savoir identifier les « entraves » éventuelles de la médiation</p> <p>1.2. Construire une posture de tiers : 1.2.1. Connaître les techniques de négociation. 1.2.2. Savoir développer des stratégies multiples. 1.2.3. Savoir faire émerger la demande et la motivation des personnes. 1.2.4. Savoir faire émerger des solutions par les personnes. 1.2.5. Savoir garantir un espace de parole. 1.2.6. Savoir restaurer un dialogue direct. 1.2.7. Savoir présenter, faire accepter et garantir un cadre.</p> <p>1.3. Restaurer les liens intrafamiliaux et accompagner au changement: 1.3.1. Connaître la psychologie de l'enfant et les répercussions sur lui de la crise familiale. 1.3.2. Savoir identifier les points d'accord et de désaccord. 1.3.3. Savoir activer des processus de créativité. 1.3.4. Savoir amener les personnes à analyser les enjeux de leur conflit. 1.3.5. Savoir faire vérifier la faisabilité des propositions par les personnes. 1.3.6. Savoir rédiger un accord en étant au plus près de l'expression des personnes. 1.3.7. Savoir susciter et accompagner les personnes vers un nouveau projet.</p>



► Table n. 12

FRANCE (6)

CIRCULAR DGAS/4 A N° 2004-376 OF 30 JULY 2004 RELATIVE TO THE PREPARATORY TRAINING FOR THE FAMILY MEDIATOR STATE DIPLOMA AND TO THE ORGANISATION OF THE CERTIFICATION TESTS

N	Criterion	Portion of the text corresponding to the Criterion
		<p>DC 2 - Communication/Formation</p> <p>2.1. Informer sur la démarche de médiation et promouvoir une culture de médiation : 2.1.1. Savoir animer des groupes. 2.1.2. Savoir utiliser les acquis de formation et les réactualiser. 2.1.3. Savoir susciter l'intérêt pour la démarche de médiation. 2.1.4. Savoir diversifier les supports de communication</p> <p>2.2. Développer des partenariats autour de la médiation familiale : 2.2.1. Savoir identifier les réseaux professionnels et leurs compétences. 2.2.2. Savoir construire des collaborations en préservant l'identité de la médiation</p> <p>2.3. Faire évoluer sa pratique et contribuer à la formation : 2.3.1. Savoir accompagner des stagiaires et contribuer au processus de formation. 2.3.2. Savoir s'autoévaluer. 2.3.3. Savoir prendre du recul sur ses pratiques professionnelles. 2.3.4. Savoir conceptualiser ses pratiques professionnelles.</p>
6	Procedural aspects of mediation and the court	<p>PREAMBULE</p> <p>la Loi du 26 mai 2004 relative au divorce prévoit que le juge peut notamment dans le cadre de cette procédure :</p> <p>« 1° Proposer aux époux une mesure de médiation et, après avoir recueilli leur accord, désigner un médiateur familial pour y procéder ;</p> <p>« 2° Enjoindre aux époux de rencontrer un médiateur familial qui les informera sur l'objet et le déroulement de la médiation. »</p> <p>Le juge délégué aux affaires familiales peut, lui aussi, recourir aux compétences d'un médiateur familial dans le cadre de l'article 373-2-10 du code civil (loi relative à l'autorité parentale du 4 mars 2002) qui prévoit :</p> <p>« A l'effet de faciliter la recherche par les parents d'un exercice consensuel de l'autorité parentale, le juge peut leur proposer une mesure de médiation et, après avoir recueilli leur accord, désigner un médiateur familial pour y procéder. »</p> <p>L'institutionnalisation de la médiation familiale nécessite d'offrir des garanties de qualité à la fois aux prescripteurs et aux familles notamment par rapport à la professionnalisation de la fonction.</p>

Table n. 13

**IRELAND  
FAMILY LAW (DIVORCE) ACT, 1996**

N	Criterion	Portion of the text corresponding to the Criterion
1	Definition	
2	Field of implementation	
3	Aim	
4	Proceeding requirements	
5	Role of the mediator	
6	Procedural aspects of mediation and the court	<p>6 Safeguards to ensure applicant's awareness of alternatives to divorce proceedings and to assist attempts at reconciliation.</p> <p>6.—(1) In this section "the applicant" means a person who has applied, is applying or proposes to apply to the court for the grant of a decree of divorce.</p> <p>(2) If a solicitor is acting for the applicant, the solicitor shall, prior to the institution of the proceedings concerned under section 5—</p> <p>(a) discuss with the applicant the possibility of a reconciliation and give to him or her the names and addresses of persons qualified to help to effect a reconciliation between spouses who have become estranged,</p> <p>(b) discuss with the applicant the possibility of engaging in mediation to help to effect a separation (if the spouses are not separated) or a divorce on a basis agreed between the applicant and the other spouse and give to the applicant the names and addresses of persons qualified to provide a mediation service for spouses who have become estranged, and</p> <p>(c) discuss with the applicant the possibility (where appropriate) of effecting a separation by means of a deed or agreement in writing executed or made by the applicant and the other spouse and providing for their separation.</p> <p>43 Cost of mediation and counselling services.</p> <p>43.—The cost of any mediation services or counselling services provided for a spouse who is or becomes a party to proceedings under this Act, the Act of 1964 or the Act of 1989 or for a dependent member of the family of such a spouse shall be in the discretion of the court concerned.</p>

Table n. 14

**UNITED KINGDOM  
FAMILY LAW ACT 1996**

N	Criterion	Portion of the text corresponding to the Criterion
1	Definition	<p>PART III LEGAL AID FOR MEDIATION IN FAMILY MATTERS Legal aid for mediation in family matters. 26. - (1) In the Legal Aid Act 1988 insert, after section 13 - (3A) "Mediation" means mediation to which Part IIIA of this Act applies; and includes steps taken by a mediator in any case-</p> <ul style="list-style-type: none"> <li>(a) in determining whether to embark on mediation;</li> <li>(b) in preparing for mediation; and</li> <li>(c) in making any assessment under that Part." </li></ul>
2	Field of implementation	<p>PREMISE An Act to make provision with respect to: divorce and separation; legal aid in connection with mediation in disputes relating to family matters; proceedings in cases where marriages have broken down; rights of occupation of certain domestic premises; prevention of molestation; the inclusion in certain orders under the Children Act 1989 of provisions about the occupation of a dwelling-house; the transfer of tenancies between spouses and persons who have lived together as husband and wife; and for connected purposes.</p> <p>"PART IIIA MEDIATION Scope of this Part. 13A. - (1) This Part applies to mediation in disputes relating to family matters. (2) "Family matters" means matters which are governed by English law and in relation to which any question has arisen, or may arise-</p> <ul style="list-style-type: none"> <li>(a) under any provision of- <ul style="list-style-type: none"> <li>(i) the 1973 Act;</li> <li>(ii) the Domestic Proceedings and Magistrates' Courts Act 1978;</li> <li>(iii) Parts I to V of the Children Act 1989;</li> <li>(iv) Parts II and IV of the Family Law Act 1996; or</li> <li>(v) any other enactment prescribed;</li> </ul> </li> <li>(b) under any prescribed jurisdiction of a prescribed court or tribunal; or</li> <li>(c) under any prescribed rule of law.</li> </ul>
3	Aim	
4	Proceeding requirements	
5	Role of the mediator	<p>PART III LEGAL AID FOR MEDIATION IN FAMILY MATTERS Legal aid for mediation in family matters. 26. - (1) In the Legal Aid Act 1988 insert, after section 13-</p> <p>(3) In section 43 of the 1988 Act, after the definition of "legal representative" insert-</p> <p>"mediator" means a person with whom the Board contracts for the provision of mediation by any person."</p> <p>PART III LEGAL AID FOR MEDIATION IN FAMILY MATTERS Legal aid for mediation in family matters. 26. - (1) In the Legal Aid Act 1988 insert, after section 13-</p> <p>(6) Any contract entered into by the Board for the provision of mediation under this Part must require the mediator to comply with a code of practice.</p>



►► Table n. 14

UNITED KINGDOM  
FAMILY LAW ACT 1996

N	Criterion	Portion of the text corresponding to the Criterion
		<p>PART III LEGAL AID FOR MEDIATION IN FAMILY MATTERS Legal aid for mediation in family matters. 26. - (1) In the Legal Aid Act 1988 insert, after section 13-</p> <p>(7) The code must require the mediator to have arrangements designed to ensure-</p> <p>(a) that parties participate in mediation only if willing and not influenced by fear of violence or other harm; (b) that cases where either party may be influenced by fear of violence or other harm are identified as soon as possible; (c) that the possibility of reconciliation is kept under review throughout mediation; and (d) that each party is informed about the availability of independent legal advice.</p> <p>(8) Where there are one or more children of the family, the code must also require the mediator to have arrangements designed to ensure that the parties are encouraged to consider-</p> <p>(a) the welfare, wishes and feelings of each child; and (b) whether and to what extent each child should be given the opportunity to express his or her wishes and feelings in the mediation.</p> <p>(9) A contract entered into by the Board for the provision of mediation under this Part must also include such other provision as the Lord Chancellor may direct the Board to include.</p> <p>(10) Directions under this section may apply generally to contracts, or to contracts of any description, entered into by the Board, but shall not be made with respect to any particular contract."</p>
6	Procedural aspects of mediation and the court	<p>Attendance at information meetings. 8. - (1) The requirements about information meetings are as follows. [... ]</p> <p>(9) Regulations made under subsection (6) must, in particular, make provision with respect to the giving of information about-</p> <p>(a) marriage counselling and other marriage support services; (b) the importance to be attached to the welfare, wishes and feelings of children; (c) how the parties may acquire a better understanding of the ways in which children can be helped to cope with the breakdown of a marriage; (d) the nature of the financial questions that may arise on divorce or separation, and services which are available to help the parties; (e) protection available against violence, and how to obtain support and assistance; (f) mediation; (g) the availability to each of the parties of independent legal advice and representation; (h) the principles of legal aid and where the parties can get advice about obtaining legal aid; (i) the divorce and separation process.</p> <p>Supplementary Lord Chancellor's rules. 12. - (1) The Lord Chancellor may make rules- [... ]</p> <p>(2) The Lord Chancellor may make rules requiring a person who is the legal representative of a party to a marriage with respect to which a statement has been, or is proposed to be, made-</p>



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N	Criterion	Portion of the text corresponding to the Criterion
	<p>(a) to inform that party, at such time or times as may be specified-</p> <ul style="list-style-type: none"> <li>(i) about the availability to the parties of marriage support services;</li> <li>(ii) about the availability to them of mediation; and</li> <li>(iii) where there are children of the family, that in relation to the arrangements to be made for any child the parties should consider the child's welfare, wishes and feelings;</li> </ul> <p>(b) to give that party, at such time or times as may be specified, names and addresses of persons qualified to help-</p> <ul style="list-style-type: none"> <li>(i) to effect a reconciliation; or</li> <li>(ii) in connection with mediation; and</li> </ul> <p>(c) to certify, at such time or times as may be specified-</p> <ul style="list-style-type: none"> <li>(i) whether he has complied with the provision made in the rules by virtue of paragraphs (a) and (b);</li> <li>(ii) whether he has discussed with that party any of the matters mentioned in paragraph (a) or the possibility of reconciliation; and</li> <li>(iii) which, if any, of those matters they have discussed.</li> </ul>	
	<p>Directions with respect to mediation. 13. - (1) After the court has received a statement, it may give a direction requiring each party to attend a meeting arranged in accordance with the direction for the purpose-</p> <ul style="list-style-type: none"> <li>(a) of enabling an explanation to be given of the facilities available to the parties for mediation in relation to disputes between them; and</li> <li>(b) of providing an opportunity for each party to agree to take advantage of those facilities.</li> </ul> <p>(2) A direction may be given at any time, including in the course of proceedings connected with the breakdown of the marriage (as to which see section 25).</p> <p>(3) A direction may be given on the application of either of the parties or on the initiative of the court.</p> <p>(4) The parties are to be required to attend the same meeting unless-</p> <ul style="list-style-type: none"> <li>(a) one of them asks, or both of them ask, for separate meetings; or</li> <li>(b) the court considers separate meetings to be more appropriate.</li> </ul> <p>(5) A direction shall-</p> <ul style="list-style-type: none"> <li>(a) specify a person chosen by the court (with that person's agreement) to arrange and conduct the meeting or meetings; and</li> <li>(b) require such person as may be specified in the direction to produce to the court, at such time as the court may direct, a report stating- <ul style="list-style-type: none"> <li>(i) whether the parties have complied with the direction; and</li> <li>(ii) if they have, whether they have agreed to take part in any mediation.</li> </ul> </li> </ul>	
	<p>PART III LEGAL AID FOR MEDIATION IN FAMILY MATTERS Legal aid for mediation in family matters. 26. - (1) In the Legal Aid Act 1988 insert, after section 13- "Provision and availability of mediation. 13B. - (1) The Board may secure the provision of mediation under this Part.</p> <p>(2) If mediation is provided under this Part, it is to be available to any person whose financial resources are such as, under regulations, make him eligible for mediation.</p>	

► Table n. 14

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N	Criterion	Portion of the text corresponding to the Criterion
		<p>(3) A person is not to be granted mediation in relation to any dispute unless mediation appears to the mediator suitable to the dispute and the parties and all the circumstances.</p> <p>(4) A grant of mediation under this Part may be amended, withdrawn or revoked.</p> <p>PART III LEGAL AID FOR MEDIATION IN FAMILY MATTERS Legal aid for mediation in family matters. 26. - (1) In the Legal Aid Act 1988 insert, after section 13- Payment for mediation. 28. - (1) After section 13B of the 1988 Act, insert-</p> <p>"Payment for mediation under this Part. 13C. - (1) Except as provided by this section, the legally assisted person is not to be required to pay for mediation provided under this Part.</p> <p>(2) Subsection (3) applies if the financial resources of a legally assisted person are such as, under regulations, make him liable to make a contribution.</p> <p>(3) The legally assisted person is to pay to the Board in respect of the costs of providing the mediation, a contribution of such amount as is determined or fixed by or under the regulations.</p> <p>(4) If the total contribution made by a person in respect of any mediation exceeds the Board's liability on his account, the excess shall be repaid to him.</p> <p>(5) Regulations may provide that, where-</p> <p>(a) mediation under this Part is made available to a legally assisted person, and</p> <p>(b) property is recovered or preserved for the legally assisted person as a result of the mediation, a sum equal to the Board's liability on the legally assisted person's account is, except so far as the regulations otherwise provide, to be a first charge on the property in favour of the Board.</p> <p>(6) Regulations under subsection (5) may, in particular, make provision-</p> <p>(a) as to circumstances in which property is to be taken to have been, or not to have been, recovered or preserved; and</p> <p>(b) as to circumstances in which the recovery or preservation of property is to be taken to be, or not to be, the result of any mediation.</p> <p>(7) For the purposes of subsection (5), the nature of the property and where it is situated is immaterial.</p> <p>(8) The power to make regulations under section 34(2)(f) and (8) is exercisable in relation to any charge created under subsection (5) as it is exercisable in relation to the charge created by section 16.</p> <p>(9) For the purposes of subsections (4) and (5), the Board's liability on any person's account in relation to any mediation is the aggregate amount of-</p> <p>(a) the sums paid or payable by the Board on his account for the mediation, determined in accordance with subsection (10);</p> <p>(b) any sums paid or payable in respect of its net liability on his account, determined in accordance with subsection (11) and the regulations-</p> <p>(i) in respect of any proceedings, and</p> <p>(ii) or any advice or assistance under Part III in connection with the proceedings or any matter to which the proceedings relate, so far as the proceedings relate to any matter to which the mediation relates; and</p> <p>(c) any sums paid or payable in respect of its net liability on his account, determined in accordance with the regulations, for any other advice or assistance under Part III in connection with the mediation or any matter to which the mediation relates.</p>



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N	Criterion	Portion of the text corresponding to the Criterion
	(10) For the purposes of subsection (9)(a), the sums paid or payable by the Board on any person's account for any mediation are- (a) sums determined under the contract between the Board and the mediator as payable by the Board on that person's account for the mediation; or (b) if the contract does not differentiate between such sums and sums payable on any other person's account or for any other mediation, such part of the remuneration payable under the contract as may be specified in writing by the Board.	
	(11) For the purposes of subsection (9)(b), the Board's net liability on any person's account in relation to any proceedings is its net liability on his account under section 16(9)(a) and (b) in relation to the proceedings."	
	(2) In section 16(9), after paragraph (b) insert "and "(c) if and to the extent that regulations so provide, any sums paid or payable in respect of the Board's liability on the legally assisted person's account in relation to any mediation in connection with any matter to which those proceedings relate."	
	(3) At the end of section 16, insert- "(11) For the purposes of subsection (9)(c) above, the Board's liability on any person's account in relation to any mediation is its liability on his account under section 13C(9)(a) and (c) above in relation to the mediation."	
	Mediation and civil legal aid. 29. In section 15 of the 1988 Act, after subsection (3E) insert- "(3F) A person shall not be granted representation for the purposes of proceedings relating to family matters, unless he has attended a meeting with a mediator- (a) to determine- (i) whether mediation appears suitable to the dispute and the parties and all the circumstances, and (ii) in particular, whether mediation could take place without either party being influenced by fear of violence or other harm; and (b) if mediation does appear suitable, to help the person applying for representation to decide whether instead to apply for mediation.	
	(3G) Subsection (3F) does not apply- (a) in relation to proceedings under- (i) Part IV of the Family Law Act 1996; (ii) section 37 of the Matrimonial Causes Act 1973; (iii) Part IV or V of the Children Act 1989; (b) in relation to proceedings of any other description that may be prescribed; or (c) in such circumstances as may be prescribed.	
	(3H) So far as proceedings relate to family matters, the Board, in determining under subsection (3)(a) whether, in relation to the proceedings, it is reasonable that a person should be granted representation under this Part- (a) must have regard to whether and to what extent recourse to mediation would be a suitable alternative to taking the proceedings; and (b) must for that purpose have regard to the outcome of the meeting held under subsection (3F) and to any assessment made for the purposes of section 13B(3)."	

Table n. 15

**PORTUGAL (1)**

**MINISTERIAL ORDER NO.12 368/97 (2ND SERIES)**

**MINISTERIAL ORDER NO.1091/2002 (2ND SERIES) AN AMENDMENT IS INTRODUCED CONCERNING THE SCOPE OF THE TERRITORIAL COMPETENCE OF THE FAMILY MEDIATION OFFICE**

<b>N</b>	<b>Criterion</b>	<b>Portion of the text corresponding to the Criterion</b>
1	Definition	
2	Field of implementation	<p>PREMISE</p> <p>Therefore, for implementation of the research-action project " Family mediation in parental conflicts" the following is determined:</p> <ol style="list-style-type: none"> <li>1. An office is created, under the Ministry of Justice, with the objective of providing a public service of family mediation in situations of divorce and separation.</li> <li>2. The competence of the aforementioned office shall be limited to the situations of parental conflict relating to the regulation of the paternal power, to the change in the regulation of the paternal power and to the situation of non compliance with the exercise of paternal authority regime whose jurisdiction is within the competence of the District of Lisbon.</li> </ol>
3	Aim	
4	Proceeding requirements	
5	Role of the mediator	
6	Procedural aspects of mediation and the court	

**PORTUGAL (2)**

**LAW NO.133/99**

<b>N</b>	<b>Criterion</b>	<b>Portion of the text corresponding to the Criterion</b>
1	Definition	
2	Field of implementation	
3	Aim	
4	Proceeding requirements	
5	Role of the mediator	
6	Procedural aspects of mediation and the court	<p>Article 147 D Mediation</p> <ol style="list-style-type: none"> <li>1. At any stage of the proceeding and whenever deemed convenient, namely in a proceeding for regulation of the exercise of paternal authority, the judge, officially, with the agreement of the involved parties or on their request, may determine the intervention of public or private mediation services.</li> <li>2. The judge shall approve the agreement obtained through mediation, provided that this meets the minor's interest.</li> </ol>

Table n. 16

**HUNGARY (1)**  
**GOVERNMENT DECREE 149/1997 (IX. 10.) ON GUARDIANSHIP AUTHORITIES AND ON CHILD WELFARE AND GUARDIANSHIP PROCEDURES**

N	Criterion	Portion of the text corresponding to the Criterion
1	Definition	
2	Field of implementation	
3	Aim	
4	Proceeding requirements	
5	Role of the mediator	<p>Section 30/C</p> <p>(1) Within 15 days of acceptance of the appointment of the mediator, he/she shall invite the parties to a consultation. On the first session the mediator informs the parties on the entire procedure, on its major elements and on the confidentiality clause.</p> <p>(2) The mediator shall hear the parties and children over the age of 12 in every case, and a child of rational capacity shall be heard only if recommended by the parents or the guardianship authorities.</p> <p>(3) If necessary, more than one consultation sessions can be held in a single case,</p>
6	Procedural aspects of mediation and the court	<p>Child protection mediation procedure</p> <p>Section 30/A.</p> <p>(1) In case the parents or those entitled as per Section 28 Subsection (1), cannot agree on the way and time of contact, the guardianship authorities remind the parties of the possibility to make use of child protection mediation procedures. Mediation procedure can also be used in the course of enforcement procedures. Mediation procedure can take place either when the parties request it together, or at the initiative of the guardianship authorities with the consent of the parties.</p> <p>(2) In case the parties announce their intention to use child protection mediation procedure during the procedure aimed at regulating the process of contact or during the enforcement procedure, the guardianship authorities inform them on the place and way of the mediation procedure while at the same time ordering the suspension of the procedure in front of them for four months.</p> <p>(3) In case the mediation procedure is not concluded successfully within these four months, the mediator informs the guardianship authorities of this fact. In such a case the guardianship authorities continue the procedure ex officio.</p> <p>(4) In case the mediation procedure cannot be concluded successfully due to the lack of cooperation from one of the parties, the guardianship authorities can continue the procedure even within the given four month at the request of the other party.</p> <p>Section 30/B</p> <p>(1) Should a child protection mediation procedure take place, the parties select a mediator together from the National Child Protection Experts' Register kept by the National Family and Social Policy Institute. The Register can be viewed at the offices of the guardianship authorities and at those of the child welfare services.</p> <p>(2) In case the parties agree on the person of the mediator, the guardianship authorities inform the mediator on his/her appointment. The mediator shall issue a written statement within three days of receipt of the notice on the acceptance or rejection of the appointment, and in case of acceptance he/she shall also state that he/she is impartial, and no reasons to exclude him/her as per Section 19 of the Áe. (Public Administration Procedures) prevail.</p> <p>Section 30/D</p> <p>(1) In case an agreement is reached between the parties, the mediator shall draw up a written document thereon, signed by the parties as well.</p> <p>(2) The mediator shall send the signed agreement to the guardianship authorities regulating the contact procedure within 8 days. The guardianship authorities shall approve the agreement upon the request of the parties.</p>



► Table n. 16

**HUNGARY (2)**

**MINISTER OF WELFARE DECREE 15/1998. (IV. 30.) ON THE PROFESSIONAL TASKS AND ON THE CONDITIONS OF OPERATION OF CHILD WELFARE AND CHILD PROTECTION INSTITUTIONS AND PERSONS PROVIDING PERSONAL CARE**

<b>N</b>	<b>Criterion</b>	<b>Portion of the text corresponding to the Criterion</b>
1	Definition	
2	Field of implementation	
3	Aim	Section 7/B b) upon the request of those involved, or at the initiative of the guardianship authorities, providing child protection mediation procedure with the aim of helping to solve conflicts between the parties, to reach an agreement and to make sure it is observed by both parties, or
4	Proceeding requirements	
5	Requirements for the role of mediator	
6	Procedural aspects of mediation and the court	

**HUNGARY (3)**

**ACT LV OF 2002 ON MEDIATION**

<b>N</b>	<b>Criterion</b>	<b>Portion of the text corresponding to the Criterion</b>
1	Definition	Mediation Defined Section 2. Mediation is a special non-litigious procedure conducted according to this Act to provide an alternative to court proceedings in order to resolve conflicts and disputes where the parties involved voluntarily submit the case to a neutral third party (hereinafter referred to as 'mediator') in accordance with Subsection (1) of Section 1 in order to reach a settlement in the process and lay the ensuing agreement down in writing.
2	Field of implementation	(2) This Act shall not apply to other mediation and conciliation proceedings governed under specific other legislation, nor to mediation within an arbitration proceeding.
3	Aim	
4	Proceeding requirements	<b>Chapter IV - THE MEDIATION PROCESS</b> Commissioning a Mediator Section 23. (1) Upon agreement in the selection of a mediator, the parties shall invite the natural or legal person selected in writing. If necessary, the parties may invite more than one natural person or legal person at the same time. (2) Upon receipt of the invitation, the legal person shall notify the employee selected to mediate the case. (3) The invitation shall indicate: a) the name or corporate name of the parties, their residence or corporate address, or place of abode, b) the name of the natural person or the corporate name of the legal person invited to mediate, c) the name and address of any representative involved,

►►

► Table n. 16

HUNGARY (3)  
ACT LV OF 2002 ON MEDIATION

N	Criterion	Portion of the text corresponding to the Criterion
		<p>d) the subject of the dispute, and e) the foreign language the parties intend to use in the process. (4) The invitation shall contain the parties' statement of their agreement to seek a resolution for their dispute by way of a mediation process.</p> <p>Section 24. (1) The invited natural person or the employee acting in the name of a legal person, following consultation with the director of the legal person, shall communicate his acceptance or rejection in writing within eight days following receipt of the invitation. Acceptance of the invitation shall constitute the right of the invited natural person or the employee acting in the name of a legal person to function as the mediator in the mediation process. (2) The mediator may not accept the invitation if there is any conflict of interest as specified in Subsection (1) of Section 25 or may reject it if he is unable to accept the invitation for any other reason.</p> <p>Commencement of the Mediation Process Section 28. (1) If the mediator accepts the invitation, he shall send the parties a statement of acceptance, as stipulated in Subsection (1) of Section 24, inviting the parties to the first mediation hearing and informing them of their right to obtain representation. (2) The representative may be a person of legal age and legal capacity or a legal counsel acting under a power of attorney. The parties or, if the party is a legal person, the authorized representative must appear together in person at the first mediation hearing and for the conclusion of the agreement. (3) The mediator shall hold the mediation hearing in the place indicated in the register as the official location of mediation activities or at some other location subject to the parties' approval.</p> <p>Section 29. Where either of the parties fails to appear in the first mediation session, the mediator shall not start the mediation process.</p> <p>Section 30. (1) The mediator in the first mediation session shall inform the parties a) of the basic principles of mediation and the major stages of mediation negotiations, b) of the process effectively leading to an agreement, c) of the costs of the process, d) of the confidentiality requirement encumbering the mediator and expert who is involved, e) of the option that parties may agree on the confidentiality to which they are subject, f) of the mediator's obligation to present only those legal materials and facts that directly pertain to the case, where it is so warranted by the nature of the case, g) of the contents of Subsection (4) of Section 32 and Subsection (3) of Section 35. (2) If in the first mediation session the parties invariably request continuation of the mediation process, it shall be recorded in writing signed by both parties and the mediator. This statement shall also contain an agreement between the parties and the mediator on the terms of advances and the payment of the costs and expenses involved in the process, which shall also cover rescission and termination, and it may also contain the parties' agreement on confidentiality and any other issue they deem necessary. (3) Unless agreed otherwise, each party shall bear the costs of his participation in the process (e.g., travel) as well as the costs incurred in connection with hearing any person at his request. Unless there is an agreement to the contrary, the parties shall cover the fees and costs of the mediator and the expert, if any, in equal proportions.</p> <p>Section 31. (1) Signing the statement referred to in Subsection (2) of Section 30 shall constitute commencement of the mediation process. (2) Commencement of the mediation process means the discontinuation of the limitation period. Regarding the limitation period, Subsections (1) and (2) of Section 327 of the Civil Code shall apply if the mediation process is successful and Subsection (2) of Section 326 of Civil Code shall apply if not.</p>



N	Criterion	Portion of the text corresponding to the Criterion
	The Mediation Process Section 32.	(1) The mediator shall hear the opinion of both parties in the mediation process and ensure equal treatment for all parties. In this stage, the parties shall present their case supported by any documentary evidence they may have. (2) Unless otherwise stipulated, the parties shall be required to appear in person in the first and all subsequent mediation sessions. (3) Subject to agreement of the parties concerned, the mediator may conduct the mediation process with all parties present or by hearing the parties separately. (4) The mediator may convey any information received from one of the parties to the other party for reply, unless the party supplying the information expressly forbids the mediator to convey it to the other party.
	Expert Participation in a Mediation Process Section 33.	(1) The mediator may request the assistance of an expert subject to approval by the parties. Any person of sufficient expertise in the subject may participate as an expert if accepted by the parties. Experts shall be subject to the same rules regarding conflict of interest and confidentiality as the mediator. (2) The expert shall communicate his acceptance or rejection in writing to the mediator within eight days following receipt of the invitation, including a statement declaring that he is impartial and unbiased in the case. (3) The expert shall produce a written opinion upon studying the documents supplied within 30 days following receipt of the invitation. This deadline may be extended once if so agreed by the parties. If permitted by the parties, the expert may also attend mediation sessions. (4) Experts shall be entitled to remuneration and shall be compensated for expenses.
	Involvement of Third Parties in the Mediation Process Section 34.	At the request of the parties, the mediator may interview other persons in the mediation process who have knowledge of the circumstances of the case.
	Conclusion of the Mediation Process Section 35.	(1) A mediation process is deemed concluded a) on the day the settlement is signed, b) on the day on which one of the parties informs the other party and the mediator of his withdrawal from the mediation process, c) on the day on which the parties unanimously declare in front of the mediator their request to close the mediation process, or d) after the end of the fourth month following the signing of the statement, unless otherwise agreed by the parties. (2) The mediator shall record the settlement made in the presence of the parties in the language selected for the mediation process and shall supply a copy of the settlement document to each of the parties. The settlement document shall be signed by the mediator and by the parties at the same time. (3) Where the mediator of a mediation process is a legal advisor, a notary public or an attorney, the mediator shall not be permitted to prepare a legally binding document on the basis of the written settlement, nor shall he be entitled to endorse such document in his capacity as a legal advisor or attorney. (4) If the settlement contains any error concerning a name or number, or any calculation error or other similar typographical error, the mediator - if requested by both parties - shall make the necessary corrections within 15 days following receipt of the request.
	Section 36.	(1) An agreement made in conclusion of the mediation process shall have no bearing in terms of the parties' right to seek a solution for their dispute in court or by way of arbitration. (2) Unless otherwise prescribed by law and unless otherwise agreed by the parties, the following shall be inadmissible in court or arbitration proceedings initiated after the mediation process: a) any statement or recommendation made during the mediation process by a party in connection with a potential solution for the dispute, and b) any statement of acceptance or disclaimer made by a party in the mediation process.



► Table n. 16

HUNGARY (3)  
ACT LV OF 2002 ON MEDIATION

N	Criterion	Portion of the text corresponding to the Criterion
		<p>Section 37.</p> <p>(1) Upon conclusion of the mediation process, the mediator shall settle accounts with the parties.</p> <p>(2) The mediator (or the legal person employing the mediator) shall, if required to issue invoices, issue an invoice for fees and expenses (prepayments) or, if not so required, issue a receipt upon payment.</p> <p>Section 38.</p> <p>(1) The mediator (or the legal person employing the mediator) shall be required to retain the statement in proof of the commencement of the mediation process, the settlement agreement or the closing statement of an unsuccessful procedure (with the reason indicated) for a period of ten years following conclusion of the procedure.</p> <p>(2) If requested and paid for by the parties, the mediator may supply simple copies of the documents during the retention period.</p>
5	Requirements for the role of mediator	<p>Responsibilities of Mediators</p> <p>Section 3.</p> <p>Mediators shall be responsible for mediating negotiations between the parties to the best of their abilities in an unbiased and conscientious manner in order to reach an agreement in conclusion of the process.</p> <p>Conflict of Interest</p> <p>Section 25.</p> <p>(1) A mediator may not handle a case in which</p> <p>a) he represents one of the parties,</p> <p>b) he is a relative of either party under Paragraph b) of Section 685 of the Civil Code,</p> <p>c) he is employed by a legal person that is affiliated with either of the parties (Civil Code, Section 685/B),</p> <p>d) he is employed by either of the parties, whether by contract of employment, under subcontract agreement or by way of membership,</p> <p>e) he is involved in the case in any other way or if he is biased.</p> <p>(2) The mediator must notify the parties if he represented either of them within the preceding five years or if he was employed by either of them whether by contract of employment, under subcontract agreement or by way of membership within the preceding five years. Unless otherwise agreed by the parties upon the above-specified notification, the mediator may not handle the case.</p> <p>(3) Unless otherwise agreed by the parties, a person who participated in a mediation process whether in the capacity of the mediator, a representative or an expert as well as a mediator under suspension in the litigation on the same subject as the mediation process, or originating from the underlying contract or other relationship, may not act as</p> <p>a) an arbitrator,</p> <p>b) a representative of either party, or</p> <p>c) an expert.</p> <p>Confidentiality</p> <p>Section 26.</p> <p>(1) Unless otherwise prescribed by law, mediators must handle any and all data and information obtained in a mediation process in strict confidentiality.</p> <p>(2) Mediators shall remain under the obligation of confidentiality following termination of professional mediation activities.</p> <p>Remuneration of Mediators</p> <p>Section 27.</p> <p>(1) Mediators shall be entitled to remuneration for their services and shall be compensated for all substantiated expenses; they shall also have the right to request advance payments for fees and expenses.</p> <p>(2) The fee for any given case shall be subject to negotiation between the parties and the natural person or legal person mediator.</p>
6	Procedural aspects of mediation and the court	

Table n. 17

ITALY (1)

LAW 28 AUGUST 1997, N. 285 "PROVISIONS FOR THE PROMOTION OF RIGHTS AND OPPORTUNITIES FOR CHILDREN AND ADOLESCENTS"

N	Criterion	Portion of the text corresponding to the Criterion
1	Definition	
2	Field of implementation	
3	Aim	Art. 4 (Support services for the parent-child relationship, fight poverty and violence, and offer alternatives to the placement of minors in welfare - educational institutions) 1. The actions described under article 3, paragraph 1 a) ... should be implemented ... in particular, through: [...] i) family mediation services and advisory services for families and minors aimed at solving relational difficulties;
4	Proceeding requirements	
5	Role of the mediator	
6	Procedural aspects of mediation and the court	

ITALY (2)

MEASURES AGAINST VIOLENCE IN FAMILY RELATIONS

LAW N. 154 OF 4 APRIL 2001

N	Criterion	Portion of the text corresponding to the Criterion
1	Definition	
2	Field of implementation	
3	Aim	
4	Proceeding requirements	
5	Role of the mediator	



► Table n. 17

ITALY (2)

MEASURES AGAINST VIOLENCE IN FAMILY RELATIONS  
LAW N. 154 OF 4 APRIL 2001

N	Criterion	Portion of the text corresponding to the Criterion
6	Procedural aspects of mediation and the court	<p>«Title IX-b. PROTECTION ORDERS AGAINST FAMILY ABUSE Art. 342c. (Content of the protection orders)</p> <p>With the decree mentioned in article 342-b the judge orders the spouse or cohabiter, who has behaved prejudicially, to cease the same conduct and he orders the spouse or cohabiter who has behaved prejudicially to leave the family home, also forbidding him/her, where necessary, to approach the places normally frequented by the petitioner, and in particular the workplace, the domicile of the family of origin, or the domicile of other close family members or other persons and the vicinity of the schools attended by the couple's children, unless frequented of necessity for work purposes.</p> <p>The judge may also order, where necessary, the intervention of the local social services or of a family mediation centre, and also of associations whose statutory aim is to support and shelter women and children or other subjects who are the victims of abuse and ill-treatment; periodical payment of an allowance to the cohabiting persons who, as a result of the provisions mentioned in the first subsection, remain without sufficient means, establishing the method and terms of payment and ordering, if necessary, that the sum be paid directly to the entitled person by the obligated person, deducting it from the said person's earnings.</p> <p>With the same decree the judge, in the cases mentioned in the previous subsections, establishes the duration of the protection order, that starts on the date of execution of the same. This cannot exceed six months and may be extended, upon request from the party involved, only if there are serious reasons and for the time strictly necessary.</p> <p>With the same decree the judge determines the way it will be enforced. Where difficulties or objections regarding the execution arise, the same judge decrees the most appropriate method of enforcement, including the assistance of the police force and the officer of health».</p>

Table n. 18

**AUSTRIA (1)**  
**GUIDELINES ON THE FUNDING OF MEDIATION/ 1999**

N	Criterion	Portion of the text corresponding to the Criterion
1	Definition	
2	Field of implementation	<p><b>Aims</b></p> <p>1. (1) The aim of funding mediation is to provide an appropriate and high quality mediation service for disputes involving family law and children's rights.</p>
3	Aim	<p><b>Aims</b></p> <p>1. (2) The funding of mediation in family law disputes is intended to help those directly affected to obtain specialist assistance to enable them to work out an acceptable solution to a dispute involving divorce, separation, custody or access. Particular emphasis is given to finding an arrangement which maintains parental contact and responsibilities whilst reflecting the paramount principle of the welfare of the child, and enabling parents to take decisions on re-shaping their lives, following divorce or separation.</p>
4	Proceeding requirements	
5	Role of the mediator	<p>a) They must be able to provide evidence of at least 5 years practical professional experience in family law or working with families.</p> <p>b) They must have completed training pursuant to appendices 2 and 4 of the Civil Mediation Act (BGBl II no 47/2204) or be on the list of accredited mediators pursuant to para 8 et seq of the Civil Mediation Act (BGBl I no 29/2003).</p> <p>c) They must have a minimum professional indemnity cover of 400,000 euros per case.</p> <p>(2) Profession of Origin</p> <p>1. The legal profession covers the professions of barrister, notary and judge. Others who have completed a degree in law and have worked in family law are deemed to be of equivalent standing.</p> <p>2. Psychology covers the professions of psychotherapist; those holding psychology degrees and qualified social workers who work in the area of family law. Others who work in psychology or the social services may be deemed to have equivalent training if they can provide evidence of professional training in social work plus further training of a level, standard and breadth equivalent to a social work diploma with family law specialisation. Examples of professional in this category might be qualified Marriage Guidance or Family counsellors pursuant to the Familienberatungsforderungsgesetz (Family Counselling Act).</p> <p>(3) Mediators must have at least 50 hours of continuous professional development over 5 years and provide evidence of this to the body with which they are accredited.</p> <p>(4) The accrediting body is responsible for assessing the professional suitability of mediators and the further training they have done. The continuing professional development course certificates must be forwarded to the Federal Ministry for Social Security, the Generations and Consumer Protection upon request.</p> <p>(5) The Federal Ministry reserves the right to refuse funding to mediators who infringe the above provisions.</p> <p>(6) The accrediting bodies vouch for the fact that the mediation teams will comply with the Ministry requirements.</p> <p>a) A mediator may not embark on a mediation if he has any relationship, be it de facto or de jure, with the client, particularly where he is in a position of advisor or counsellor to the client or is involved in the latter's medical treatment.</p> <p>b) The clients must fulfil all requirements before mediation can begin.</p> <p>c) The mediation team must inform the couple fully as to the legal and economic aspects of family law disputes particularly in respect of the possible effects on the children involved.</p> <p>d) The mediation team must inform the couple that they are not obliged to take legal advice, but are free to seek legal representation.</p>



► Table n. 18

**AUSTRIA (1)**  
**GUIDELINES ON THE FUNDING OF MEDIATION/ 1999**

N	Criterion	Portion of the text corresponding to the Criterion
		<p>e) If the mediation team is not accredited on the list of mediators pursuant to para 8 et seq of the Civil Mediation Act, the couple seeking mediation must be informed that contrary to para 22 of the Civil Mediation Act the period of prescription will not be interrupted.</p> <p>f) In the absence of the criteria necessary for mediation, the couple seeking mediation should be referred to an appropriate body with the relevant expertise.</p> <p>g) No contact outside the formal mediation is permitted between the couple seeking mediation and the mediator or mediation team, with the exception of arranging meeting dates.</p> <p>h) Mediation can be terminated at any point by the couple or by the mediation team.</p> <p>i) The mediation team has an obligation of complete confidentiality in respect of facts disclosed during mediation or otherwise. Documents handed over during the course of mediation are to be treated confidentially.</p> <p>The accrediting body in its entirety is likewise bound by the obligation of confidentiality. The exceptions to this rule are:</p> <ul style="list-style-type: none"> <li>- notifications to the courts to the effect that the mediation has taken place</li> <li>- documents which must be made available to the Federal Ministry for Social Security, the Generations and Consumer Protection.</li> </ul> <p>(6) Mediation should take the form of co-mediation by a team of mediators, with one mediator from a legal background and one with a background in psychology. Ideally the co-mediation team should consist of a male and a female mediator. Any deviation from this principle of co-mediation requires authorisation by the Federal Ministry for Social Security, the Generations and Consumer Protection.</p>
6	Procedural aspects of mediation and the court	

**AUSTRIA (2)**  
**LAW 22 JULY 1999**

N	Criterion	Portion of the text corresponding to the Criterion
1	Definition	
2	Field of implementation	
3	Aim	
4	Proceeding requirements	
5	Role of the mediator	<p>In para 320, indent 3, the full stop is replaced by a semicolon and a further indent 4 inserted, to read as follows:</p> <p>"4. Mediators mediating between spouses under the Marriage Act para 99(1), in respect of information disclosed or otherwise made available to them in the context of the discussions aiming to reach an agreement"</p>
6	Procedural aspects of mediation and the court	



►► Table n. 18

**AUSTRIA (3)**  
**LAW 29 DECEMBER 2000**

<b>N</b>	<b>Criterion</b>	<b>Portion of the text corresponding to the Criterion</b>
1	Definition	
2	Field of implementation	
3	Aim	
4	Proceeding requirements	2. Any breach of the confidentiality requirement in para 1 will be treated as an offence similar to prohibited disclosure of information in para 301 StGB (Criminal Procedure Code), to the extent that a legitimate interest is infringed, and the affected party wishes proceedings to be brought.
5	Role of the mediator	1. A Mediator with specialist training, mediating professionally between the parties to guardianship proceedings, or their legal representatives, is bound by the principle of confidentiality in respect of facts communicated or otherwise made known to him during the discussions aiming to resolve the dispute. The prescriptive period will not start, or will cease to run, for the duration of the mediation in respect of all claims regarding children's rights.
6	Procedural aspects of mediation and the court	

**AUSTRIA (4)**  
**LAW 6 JUNE 2003, 29TH FEDERAL ACT: CIVIL MEDIATION ACT**

<b>N</b>	<b>Criterion</b>	<b>Portion of the text corresponding to the Criterion</b>
1	Definition	
2	Field of implementation	<b>Section I - General provisions</b> <b>Definitions</b> (2) Mediation in civil cases seeks to resolve conflicts in cases where the ordinary civil courts would normally be competent.  Definitions 3(1) to the extent that this Federal Act uses the term:- 1. mediation: the meaning is mediation in civil cases
3	Aim	<b>Section I - General provisions</b> <b>Definitions</b> (2) Mediation in civil cases seeks to resolve conflicts in cases where the ordinary civil courts would normally be competent.
4	Proceeding requirements	<b>Section I - General provisions</b> <b>Definitions</b> (1) Mediation is voluntary on the part of both parties.



►► Table n. 18

**AUSTRIA (4)**  
**LAW 6 JUNE 2003, 29TH FEDERAL ACT: CIVIL MEDIATION ACT**

N	Criterion	Portion of the text corresponding to the Criterion
5	Role of the mediator	<p>Section I - General provisions</p> <p>Definitions</p> <p>(1) [...] A negotiator (mediator) with specialist training uses recognised methods to facilitate communication between the parties with a view to enabling them to find an acceptable solution to the dispute themselves.</p> <p>Definitions</p> <p>3 (1) to the extent that this Federal Act uses the term:-</p> <p>2. mediator: the meaning is a mediator registered within the terms of the Act</p> <p><b>Registration requirements</b></p> <p>9. (1) A mediator is entitled to be entered on the list if he can show the following:</p> <ol style="list-style-type: none"> <li>1. He is over twenty eight.</li> <li>2. He has relevant expertise</li> <li>3. He is trustworthy</li> <li>4. He has taken out an indemnity insurance policy as per para 19.</li> </ol> <p>(2) The mediator must give the address of the premises where he practises.</p> <p><b>Obligations to the parties</b></p> <p>16. (1) Any individual who is or has been party to a dispute, has represented or otherwise advised a party to the dispute, or has been a member of a decision-making body involved in the dispute may not act as mediator. If a mediator is mediating in a dispute which is itself subject of further mediation, the mediator may not represent or advise the parties, nor participate in any decision-making. However, once the mediation has ended, he may in his professional capacity assist in the implementation of the settlement reached, with the agreement of the parties to the dispute.</p> <p>(2) The mediator may only act with the agreement of the parties. He must inform the parties about the essence of the dispute and the legal consequences of mediation in civil cases. He must do this to the best of his ability and conscience, directly and in person, and must at all times be neutral in respect of both parties.</p> <p>(3) The mediator must advise the parties if they need to take advice on the case, in particular where legal advice may be necessary in connection with the mediation. He must also advise as to the appropriate format for the agreement resulting from the mediation so as to ensure implementation thereof.</p> <p>17. (1) The mediator is required to document the start of the mediation process, the circumstances of the case, from which it can be inferred that the mediation process was duly carried out, and also the end of the case. The start is deemed to be the point at which the parties agreed to seek mediation to resolve the dispute. The mediation process ends when the parties or the mediator decide to end it, or when a result has been obtained.</p> <p>(2) At the request of the parties the mediator must document both the result of the mediation process and the steps necessary for implementation of the result.</p> <p>(3) The mediator must retain his case notes for a minimum of seven years after the conclusion of the case. At the request of the parties, he must give them a copy of the transcript.</p> <p><b>Secrecy and Confidentiality</b></p> <p>18. The mediator is sworn to secrecy regarding the facts of the case entrusted or otherwise known to him. He must treat the case documents as confidential. The same applies to any assistants of the mediator and to any individuals who may be working with the mediator for purposes of practical training.</p>



► Table n. 18

AUSTRIA (4)  
LAW 6 JUNE 2003, 29TH FEDERAL ACT: CIVIL MEDIATION ACT

N	Criterion	Portion of the text corresponding to the Criterion
		<p><b>Professional Indemnity Insurance</b></p> <p><b>19.</b> (1) The mediator is required to take out professional indemnity insurance with an insurer operating in Austria, in order to cover any claims for compensation arising in the course of his professional activity. He must maintain this throughout his period of registration on the list of approved mediators.</p> <p>(2) The following requirements apply to the insurance policy:</p> <ol style="list-style-type: none"> <li>1. Austrian law must apply.</li> <li>2. The minimum sum insured must be 400,000 Euro for each case handled</li> <li>3. There must be no exclusions nor limitations on the period for which the insurer is liable</li> </ol> <p><b>Continuing Education</b></p> <p><b>20.</b> The mediator undertakes to do an appropriate amount of continuing education, at least fifty hours over the course of five years, and to provide the Ministry of Justice with evidence thereof every five years.</p>
6	Procedural aspects of mediation and the court	<p>Section V Interruption of prescriptive period</p> <p><b>22.</b> (1) Both the start and the due and proper continuation of a mediation process by a registered mediator affect the start of a prescriptive period, and interrupt the prescriptive period of a claim where it has started to run. This also applies to other rights and claims connected with the case subject to mediation.</p> <p>(2) The parties may agree in writing that the mediation procedure will also interrupt the prescriptive period in respect of other claims extant between themselves, although unrelated to the mediation procedure. Where mediation relates to rights and claims under family law, the break in prescriptive period automatically affects all mutual rights and obligations under family law, in the absence of an alternative written agreement between the parties.</p>

Table n. 19

**FINLAND**  
**MARRIAGE ACT (234/1929; AMENDMENTS UP TO 1226/2001 INCLUDED)**

N	Criterion	Portion of the text corresponding to the Criterion
1	Definition	
2	Field of implementation	
3	Aim	
4	Proceeding requirements	
5	Role of the mediator	<p>Chapter 5 — <b>Family mediation</b> (411/1987)            Section 20 (411/1987)            (2) There are family mediators who render assistance and support, upon request, when disputes arise in a family.            (3) Mediators may render assistance and support upon request also in the event that disputes arise as to compliance with a court order or an agreement on child custody and right of access. (622/1996)</p> <p>Section 21 (411/1987)            (1) A mediator shall aim for a confidential and open discussion between the family members. He or she shall aim for a consensus as to how to solve the disputes in the family in the best possible way for all the persons concerned.            (2) The mediator shall pay special attention to securing the position of the minor children in the family.            (3) The mediator shall assist the persons concerned in concluding agreements and in other measures necessary for the settlement of disputes.</p> <p>Chapter 5 — <b>Family mediation</b> (411/1987)            Section 23a (411/1987)            The duty of secrecy of the mediator shall be governed by the provisions of sections 57(1), 58(1) and 58(3) of the Social Welfare Act (710/1982). The provisions in section 56 of the Social Welfare Act on the obligation to supply and to receive information do not apply to the mediator.</p>
6	Procedural aspects of mediation and the court	<p>Chapter 5 — <b>Family mediation</b> (411/1987)            Section 20 (411/1987)            (1) Disputes and legal matters arising in a family should primarily be settled in negotiations between the family members and decided by agreement.</p> <p>Chapter 5 — <b>Family mediation</b> (411/1987)            Section 23 (411/1987)            (1) An authorisation to render family mediation may be granted, upon application, to a society, association or foundation considered capable of rendering it competently. An authorisation may be granted, upon application, also to an individual who is familiar with child welfare or family guidance work or with family law and who, by virtue of his or her previous experience and personal characteristics, is adequately competent to work as a mediator.            (2) The authorisation shall be granted for a fixed period, not exceeding five years at a time. The authorisation may be revoked, if there is a reason for the same.            (3) When granting the authorisation, the State Provincial Office may also issue more detailed instructions concerning the district and tasks, as well as the obligation to supply the Office with information necessary for monitoring the mediation.</p>

Table n. 20

**POLAND**  
**REGULATION BY THE MINISTER OF JUSTICE OF 18 May 2001 ON MEDIATION PROCEEDINGS IN CASES RELATED TO MINORS (Journal of Laws of 6 June 2001)**

N	Criterion	Portion of the text corresponding to the Criterion
1	Definition	
2	Field of implementation	
3	Aim	
4	Proceeding requirements	<p>§ 10. The following shall participate in the mediation proceedings: the minor, the injured party and the parents or the guardian of the minor, and if the injured party is a minor – also his/her parents or guardian, hereinafter referred to as the “participants”.</p> <p>§ 11. The mediation proceedings shall be conducted with the consent of all participants. The consent may be withdrawn at any stage of the mediation proceedings.</p> <p>§ 12. The mediation proceedings shall be conducted in a confidential manner preventing third parties from accessing information obtained in their course. The confidentiality of mediation proceedings can be abandoned only with the consent of all participants.</p> <p>§ 13. The mediation proceedings shall not be conducted in premises occupied by participants or their families, irrespective of the intended purpose of the said premises and the legal title to occupy the said premises, nor in the court building.</p>
5	Role of the mediator	<p>§ 4. The court may refer the case for the purpose of conducting mediation proceedings to a trustworthy person who:</p> <ol style="list-style-type: none"> <li>1) reached 26 years of age,</li> <li>2) fully enjoys civil and public rights,</li> <li>3) has an excellent command of Polish both in speech and in writing,</li> <li>4) studied psychology, pedagogy, sociology, social rehabilitation or law and has experience in educating or rehabilitating young people,</li> <li>5) has the abilities to resolve conflicts and establish interpersonal relations,</li> <li>6) guarantees due performance of duties;</li> <li>7) has participated in the training for mediators specified in § 8,</li> <li>8) has been entered into the register specified in § 7 item 1.</li> </ol> <p>§ 5. The mediation proceedings shall be conducted by a trustworthy person or by a representative of the institution referred to in § 3 item 1 or 2, hereinafter referred to as the “mediator”.</p> <p>§ 6. 1. The following persons cannot be mediators if they are professionally active:</p> <ol style="list-style-type: none"> <li>1) judges, prosecutors, court or prosecutor’s assessors and trainees and another individuals working for a court, a prosecutor’s office, the police or for other institution authorized to prosecute crimes,</li> <li>2) attorneys and trainees at attorney’s offices, legal counsels and trainees at legal counsel’s offices, notaries public, assessors and trainees at notary public offices,</li> <li>3) bailiffs, trainees at bailiff’s offices and employees of bailiff’s offices,</li> <li>4) officers and employees of the Prison Service,</li> <li>5) <sup>(1)</sup> employees of custody and educational institutions, special school and educational centers, reformatories or shelters for minors,</li> <li>6) employees of institutions or members of organizations providing assistance to crime victims or acting to their benefit,</li> </ol>



POLAND

REGULATION BY THE MINISTER OF JUSTICE OF 18 May 2001 ON MEDIATION PROCEEDINGS IN CASES RELATED TO MINORS (Journal of Laws of 6 June 2001)

N	Criterion	Portion of the text corresponding to the Criterion
		<ul style="list-style-type: none"> <li>2. Lay judges within their term in office or public court guardians also shall not be mediators.</li> <li>3. Any individual who was a witness in the case related to the minor, issued an opinion, conducted environmental inquiry or conducted therapy of the minor, as well as any person in relation to which there is a circumstance which could raise a grounded doubt concerning the impartiality of the said individual should not be a mediator in a given case.</li> </ul>
§ 7.	1.	A list of institutions and trustworthy individuals authorized to conduct mediation proceedings shall be kept at district courts.
	2.	Chief Justice of a district court enters onto the list institutions or individuals expressing their readiness to conduct mediation proceedings after it is established that the conditions specified respectively in § 3 and 4 are met, subject to § 6 items 1 and 2.
	3.	Chief Justice of a district court shall remove from the list referred to in item 1 institutions or individuals: <ul style="list-style-type: none"> <li>1) at their request,</li> <li>2) if the trustworthy person dies or the institution is liquidated,</li> <li>3) if the ability to perform legal acts is at least limited,</li> <li>4) in case of deprivation of public rights by a valid judgment,</li> <li>5) if the institution or the individual fails to perform or unduly performs the duties related to conducting mediation proceedings,</li> <li>6) who fail to guarantee a due performance of duties.</li> </ul>
§ 8.	1.	Training for mediators shall consist in familiarization with the problems related to mediation proceedings and obtaining knowledge necessary to perform the actions of a mediator.
	2.	The training referred to in item 1 shall include both theoretical and practical training.
	3.	The training shall be conducted in accordance with the standards specified in appendix hereto.
§ 9.	1.	In the decision on referring the case to mediation proceedings the family court shall specify the time limit within which it should receive a report on the course and results of the mediation proceedings, not longer than 6 weeks. In extraordinary cases, where there is a significant probability that a settlement will be reached, the court may extend the said limit by a specified period of time, not longer than 14 days.
	2.	The time limit referred to in item 1 shall run from the date of delivery to the trustworthy person or the institution mentioned in § 3 item 1 or 2 of a decision on referring the case to mediation proceedings.
§ 14.		After a case is referred to mediation proceedings the mediator shall: <ul style="list-style-type: none"> <li>1) familiarize himself/herself with the information included in the case files,</li> <li>2) establish a contact with the participants and obtain from them a consent to participation in the mediation proceedings,</li> <li>3) hold individual meetings with the participants and inform them on the essence and the principles of the mediation proceedings and on the role and the rights of the participants,</li> <li>4) hold a mediation meeting with the participation of all participants,</li> <li>5) assists in formulating the content of the settlement between the participants and supervises performance of the duties resulting therefrom,</li> <li>6) prepares a report for the family court on the course and results of the mediation proceedings conducted.</li> </ul>
§ 15.		If a direct meeting of the participants is not possible, the mediator can conduct the mediation proceedings in an indirect manner, by means of passing to the participants information, proposals, and standpoints taken by each of them, unless reasons related to the educational influence on the minor prevent



**POLAND**

**REGULATION BY THE MINISTER OF JUSTICE OF 18 May 2001 ON MEDIATION PROCEEDINGS IN CASES RELATED TO MINORS (Journal of Laws of 6 June 2001)**

N	Criterion	Portion of the text corresponding to the Criterion
		<p>APPENDIX STANDARDS FOR MEDIATORS' TRAINING</p> <p>I. Topics that shall be included in the training:</p> <p>1. Legal and organizational aspects of functioning of mediation procedures between the injured party and the perpetrator of a prohibited deed:</p> <ul style="list-style-type: none"> <li>• legal basis for application of mediation procedures in cases related to minors together with elements of knowledge on mediation in criminal action,</li> <li>• detailed discussion of the principles of conducting mediation proceedings,</li> <li>• rights and duties of the mediator,</li> <li>• aspects of the mediators' professional ethics,</li> <li>• practical issues related to organization of the mediation proceedings,</li> <li>• principles of cooperation with the judiciary bodies,</li> <li>• keeping documentation,</li> <li>• international standards for mediation proceedings.</li> </ul> <p>2. Psychological mechanisms of arising, escalation and resolution of conflicts:</p> <ul style="list-style-type: none"> <li>• selected issues of social psychology, particularly those falling into the scope of practical use of psychological knowledge on the mechanisms of arising, escalation and resolution of conflicts,</li> <li>• procedures for resolving conflicts (negotiations, mediations, arbitration, court) – similarities and differences,</li> <li>• application of mediation procedures in Poland and in the world (collective disputes, conflicts in local societies, conflicts between neighbors and in families, court disputes),</li> <li>• various models of mediation between the injured party and the perpetrator,</li> <li>• knowledge on the mediation process (specificity of the mediator's role, stages of mediation, role of satisfaction related to the essence of the matter, as well as of the psychological and procedural satisfaction).</li> </ul> <p>3. Training in mediation skills in the scope of:</p> <ul style="list-style-type: none"> <li>• holding initial meetings with the parties and learning utterances that open mediation,</li> <li>• performing the analysis and diagnosis of the conflict concerned by mediation,</li> <li>• holding mediation sessions and individual meetings with participants to the mediation proceedings (learning mediation techniques),</li> <li>• communicating with the participants in a manner allowing to understand the problem (active listening, asking questions),</li> <li>• providing assistance in reaching a settlement that satisfies both parties,</li> <li>• learning terminology allowing to cooperate and exchange experiences with other mediators.</li> </ul> <p>II. Requirements for institutions and individuals conducting training:</p> <p>1. Qualifications of persons conducting training:</p> <ul style="list-style-type: none"> <li>• university education and at least two years of practical experience in mediation,</li> <li>• didactic experience in conducting classes and trainings in the scope of resolving conflicts,</li> <li>• knowledge and acceptance of the principles of mediator's professional ethics.</li> </ul> <p>2. Requirements concerning training organization:</p> <ul style="list-style-type: none"> <li>• preparation of a detailed training curriculum together with cost calculation and establishing the amount of fee for participation,</li> <li>• performing in the course of the training tests of knowledge in particular areas covered by the training, as well as keeping a record of trainees' presence,</li> <li>• issuing certificates on participation in the training which certificates shall describe the scope of the training, number of hours, results or particular tests, as well as persons conducting the training and issuing opinion on the ability of the trainee to perform the function of a mediator.</li> </ul>

**POLAND**  
**REGULATION BY THE MINISTER OF JUSTICE OF 18 May 2001 ON MEDIATION PROCEEDINGS IN CASES RELATED TO MINORS (Journal of Laws of 6 June 2001)**

N	Criterion	Portion of the text corresponding to the Criterion
6	Procedural aspects of mediation and the court	<p>§ 14. After a case is referred to mediation proceedings the mediator shall:                      ...                      ...                      ...                      6) prepares a report for the family court on the course and results of the mediation proceedings conducted.</p> <p>§ 16. 1. While referring the case to mediation proceedings, the family court shall make information from the case files available to the mediator in a scope necessary for conducting the mediation proceedings, particularly the information included in the decision on initiating the proceedings.                      2. No materials which are included in the case files and constitute state or official secret or are related to the health condition of the minor, nor the criminal record of the minor, shall be made available to the mediator.                      3. The information referred to in item 1 shall be made available to the mediator in the presence of the head of the court secretariat.                      4. Copies and Xerox copies of documents, as well as notes from case files and mediation proceedings shall be kept by the mediator in a manner preventing third parties from making themselves familiar with the said copies and notes and returned to the family court together with the report on the course and results of the mediation proceedings.</p> <p>§ 17. 1. After the mediation proceedings are finished, the mediator shall prepare a written report and next shall present the report to the family court.                      2. The report shall include:                      1) case reference number, last name, first name and address of the trustworthy person or of the institution conducting the mediation proceedings,                      2) information on the number, dates and places of individual and collective meetings, as well as a list of the individuals participating in the said meetings,                      3) information on the results of the mediation proceedings.                      3. The report shall not disclose the course of the meetings nor shall it include assessments of participants' behavior in the course of the meetings or the content of their declarations, unless a participant explicitly applies for disclosing the said information in relation to him/her.                      4. If a settlement is made, it shall be attached to the report.</p>

Table n. 21

**SLOVAKIA**  
**LAW OF 25 JULY 2004 ON MEDIATION AND ON THE INTEGRATION OF A NUMBER OF LAWS**

N	Criterion	Portion of the text corresponding to the Criterion
1	Definition	<p><b>§ 2</b>  <b>Principal definitions</b>                      (1) "Mediation" is an extra-judicial activity in which the parties concerned resolve a controversy between them deriving from a contractual or other juridical relationship by means of a mediator.</p>
2	Field of implementation	<p><b>§ 1</b>                      Subject                      (2) This law concerns claims deriving from juridical relationships under civil law, 1), juridical relationships under family law, 2), commercial relationships 3) and juridical relationships under labour law 4).</p> <p><b>§ 2</b>  <b>Principal definitions</b>                      (2) Within the terms of this law, this is                      a) the party to the mediation process, a physical or juridical person who is in controversy with another physical or juridical person when the controversy derives from a contractual or other juridical relationship,                      b) the person with a clean criminal record and no convictions for premeditated crimes, this to be demonstrated by a penal certificate no more than three months old.</p>
3	Aim	
4	Proceeding requirements	<p><b>§ 5</b>  <b>Secrecy</b>                      The mediator, the parties concerned in the mediation process and all other physical or juridical persons called upon to intervene by the mediator or by the parties concerned shall respect the obligation to secrecy concerning all information which shall come into their possession concerning the function of mediation, except as provided by law.</p> <p><b>§ 6</b>                      In the eventuality of judicial proceedings, arbitration or other similar proceedings concerning compensation for damage as provided by § 4 (3), the mediator shall be exempt from the obligation to secrecy insofar as to permit an accurate assessment of the alleged damage.</p> <p><b>§ 7</b>  <b>Agreement to resolve controversies by means of mediation</b>                      (1) The agreement to resolve a controversy by means of mediation shall be confirmed in writing and signed by the parties concerned. It shall express the parties' desire to resolve through mediation all present or future controversies, or part thereof, deriving from any actual contractual relationship, or any other type of juridical relationship.                      (2) The written agreement to resolve controversies by means of mediation may take the form of a declaration by the parties concerned annexed to the minutes prepared by the mediator. Such declaration shall be made in writing and signed by the parties concerned in the controversy before the commencement of the mediation process.                      (3) In the agreement to resolve controversies by means of mediation, the parties concerned may provide that the agreement be also binding on their legal successors.                      (4) In the eventuality of the contract from which the controversy derives being null, the agreement to resolve the controversy by means of mediation, which shall be an integral part of the former, shall only be null if the reason for the former's nullity has a bearing on it.</p>



**SLOVAKIA**  
**LAW OF 25 JULY 2004 ON MEDIATION AND ON THE INTEGRATION OF A NUMBER OF LAWS**

N	Criterion	Portion of the text corresponding to the Criterion
		<p>(5) In the eventuality of either party concerned in the controversy receding from the contract from which the controversy derives, there shall be no recession from the agreement to resolve the controversy by means of mediation, which shall be an integral part of the former, except as provided by specific agreement by the parties concerned in the controversy.</p> <p><b>§ 14</b>  <b>Commencement and termination of the mediation process</b></p> <p>(1) Unless agreed differently by the parties concerned in the mediation process, mediation shall commence on the day agreed in writing between the parties for the process to commence concerning itself with a specific case, and when the name of the mediator is specified.</p> <p>(2) In the eventuality that a party concerned in a controversy duly applies for mediation in an actual case but does not receive confirmation thereof within the term specified in the application, or within 14 days from the delivery of the application to the other party, such application for mediation is to be considered rejected.</p> <p>(3) Mediation is considered terminated</p> <p>a) on the date the parties reach an agreement through the offices of the mediator,</p> <p>b) on the date of the written declaration drawn up and delivered by the mediator after talks with the parties concerned, to the effect that the mediation shall not continue,</p> <p>c) on the date of delivery of the written declaration drawn up by one of the parties concerned in the controversy and delivered to the other and to the mediator to the effect that the mediation is terminated in the eventuality that the mediator was elected by the parties concerned.</p>
5	Role of the mediator	<p><b>§ 3</b>  <b>Mediator</b></p> <p>Any physical person may perform mediation provided he or she is enrolled in the roll of mediators, has been identified by the parties concerned in the controversy and accepts the task of mediation.</p> <p><b>§ 4</b>  <b>Exercise of the function of mediator</b></p> <p>(1) The activity of mediator shall be exercised in a manner equivalent to that of an enterprise.</p> <p>(2) The mediator shall exercise his or her activity autonomously and impartially with the utmost diligence and professional scrupulousness; furthermore the mediator shall instruct the parties concerned in the controversy of the rights which may be compromised in the mediation process. In addition, he or she shall inform the parties forthwith of all facts and circumstances which may constitute an impediment to his or her ability to perform mediation by virtue of any relationship with the object of contention or by virtue of non-impartiality with the parties concerned.</p> <p>(3) The mediator is responsible for any damage which his or her activity as mediator may cause to the parties in accordance with the laws in force and the regulations of responsibility for damage. 5)</p> <p><b>§ 8</b>  <b>Registration procedure</b></p> <p>(1) The Ministry of Justice of the Slovak Republic (hereinafter "Ministry") shall maintain a roll of mediators, a list of meditation places and a list of centres for training mediators.</p> <p>(2) The Ministry shall register on the roll of mediators whomsoever</p> <p>a) possesses the capacity to execute legal acts,</p> <p>b) has obtained a second-class university degree in the Slovak Republic 7) or a second-class university degree in a foreign university, which is recognized in the Slovak Republic,</p> <p>c) has no criminal record,</p> <p>d) possess a certificate of graduation from a centre for training mediators (hereinafter "training certificate").</p>

**SLOVAKIA**  
**LAW OF 25 JULY 2004 ON MEDIATION AND ON THE INTEGRATION OF A NUMBER OF LAWS**

N	Criterion	Portion of the text corresponding to the Criterion
		<p>(3) The Ministry shall remove from the roll of mediators whomsoever</p> <ul style="list-style-type: none"> <li>a) makes a written request for removal,</li> <li>b) is deceased or is declared dead,</li> <li>c) has been declared in part or wholly incapable of executing legal acts,</li> <li>d) has been sentenced in the final stage of judgment for a premeditated crime,</li> <li>e) is not in possession of the prerequisites for registration on the roll of mediators.</li> </ul> <p>(4) The Ministry shall issue the mediator with a certificate attesting registration of the relative physical person on the roll of mediators, or a certificate attesting removal of the relative physical person from the roll of mediators.</p> <p>(5) The Ministry shall register on the list of training centres for mediators the institutions which</p> <ul style="list-style-type: none"> <li>a) possess all the prerequisites provided by § 11 (1), or</li> <li>b) possess the authorisation for training in "mediation" in accordance with the laws in force.</li> </ul>
		<p><b>§ 9</b>  <b>Training of the mediator and qualifying examination</b></p> <p>(1) The objective of training mediators is to provide them with the capabilities required by this law to exercise their activity.</p> <p>(2) The duration of the training course for mediators shall be 100 hours. Training shall include the principles of law. Professional training shall also encompass issues of interpersonal communication, conflict theory and the psychological aspects of resolving conflict, as well as the rules of conduct for mediators.</p> <p>(3) Mediator training shall terminate with a qualifying examination to assess the technical capabilities and mediation skills of trainees. Trainees who fail the qualifying examination may repeat it without having to repeat the training course. Trainees who repeatedly fail to pass the qualifying examination may apply to sit the examination at the Ministry. Trainees who fail the Ministry examination may apply to repeat it but in this case they must also repeat the training course.</p> <p>(4) Physical persons who have obtained at least a first-class university degree in law are exempt from the part of the training course dealing with principles of law and are also exempt from the part of the qualifying examination on the principles of law. The duration of the technical training of physical persons who have obtained at least a first-class degree in law shall be no longer than three consecutive days and the charge for their training shall be no higher than the charge for other trainees for the part of the course dealing with interpersonal communication and the psychological aspects of resolving conflict.</p>
		<p><b>§ 10</b>  <b>Training institution</b></p> <p>(1) The training course and qualifying examination of the mediator may only take place within centres which are duly authorised by law 8), except when the examination is being held at the Ministry as provided by § 9 (3).</p> <p>(2) Training institutions whose certificate of authorisation is revoked will be removed from the list of authorised centres by the Ministry.</p> <p>(3) The training institution shall issue a certificate to trainees who complete their training course successfully. Trainees who pass the examination at the Ministry will be issued a certificate by the Ministry.</p>
6	Procedural aspects of mediation and the court	<p><b>§ 15</b>  <b>Value of the mediation agreement</b></p> <p>(1) The agreement reached through mediation shall be confirmed in writing and be binding on the parties to the mediation.</p> <p>(2) On the basis of the agreement reached through mediation, the victorious party may apply for judicial execution or collection provided that the agreement be in conformity with the law in force, namely:</p> <ul style="list-style-type: none"> <li>a) that it is drawn up in the form of a notary act, and</li> <li>b) that a judicial authority or arbitration organ approves its legality as a compromise agreement.</li> </ul>

Table n. 22

**MALTA**

**MEDIATION ACT, 21 DECEMBER 2004**

**To encourage and facilitate the settlement of disputes in Malta through mediation, to establish a Malta Mediation Centre as a centre for domestic and international mediation, and to make provisions regulating the conduct of the mediation process**

N	Criterion	Portion of the text corresponding to the Criterion
1	Definition	PART 1 Preliminary 2. [...] <p>“domestic mediation” means any mediation of a civil, family, social, commercial and industrial nature</p> [...] <p>“mediation means” a process in which a mediator facilitates negotiations between parties to assist them in reaching a voluntary agreement regarding their disputes</p> <p>“mediation party” means a person that participates in a mediation and whose agreement is necessary to resolve the dispute</p>
2	Field of implementation	
3	Aim	
4	Proceeding requirements	PART V Mediation process 17. Mediation proceedings may be resorted to by the mediation parties – <ul style="list-style-type: none"> <li>a) voluntarily; or</li> <li>b) following a decree or order by a court or other adjudicating authority; or</li> <li>c) by law</li> </ul> 25. A mediation party may, during mediation proceedings, be assisted by an advocate, legal procurator or any individual designated by him before or during the mediation <p>Provided that when recourse to mediation follows a decree from a superior court of civil or commercial jurisdiction, the mediation party may be assisted by an advocate</p> 28. A mediation ends when either one of the following conditions is satisfied: <ul style="list-style-type: none"> <li>a) the mediation parties execute a written agreement that fully resolves the disputes;</li> <li>b) the mediator provides the mediation parties with a writing signed by the mediator that states the mediation is terminated, or words to that effect;</li> <li>c) if, in the opinion of the mediator, the parties cannot arrive at a solution to their disputes;</li> <li>d) if one of the parties elects not to continue with the mediation process</li> </ul>
5	Role of the mediator	PART 1 Preliminary 2. [...] <p>“mediator” means a neutral, qualified and impartial individual who conducts a mediation</p> 19. (1) In accordance with the provisions of article 5(e), the Centre shall draw up a list of mediators to assist in domestic and international mediation (2) The list shall be composed of persons who in the opinion of the Centre are qualified to carry out the duties and functions of a mediator in a particular field



► Table n. 22

MALTA

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N	Criterion	Portion of the text corresponding to the Criterion
		<p>20. (1) If the parties do not agree on a mutually acceptable mediator from the list of mediators referred to in article 19, the parties, or any one of them, may apply to the registrar for the appointment of a mediator, and the registrar shall then suggest to the Board the name of the mediator who is the next on the list</p> <p>(2) A mediator may decline a request without giving any reason</p> <p>21. (1) Prior to accepting a mediation, a mediator shall –</p> <p>a) determine, as is reasonably possible, whether there are any known facts that a reasonable individual would consider likely to affect his impartiality as a mediator;</p> <p>b) disclose any such known facts to the mediation parties as soon as is possible</p> <p>(2) If a mediator becomes aware of any fact described under subarticle (1) (b) after accepting a mediation, the mediator shall disclose it to the parties at his earliest convenience and either party shall have a right to refuse to appear before such mediator, in which case a new mediator shall be appointed and there shall be followed the procedure provided for under article 20</p> <p>22. Any mediator may be challenged if circumstances exist that give rise to justifiable doubt as to the mediator's impartiality or independence. [...]</p> <p>26. (1) In the conduct of the mediation process, the mediator shall follow the code of ethics as provided by the Centre and shall assist the mediation parties to reach a resolution that is timely, fair and cost-effective</p> <p>(2) the mediator shall hold the trust of the parties at all time of the mediation process.</p> <p>(3) the mediator may shorten or extend the mediation process by agreement</p> <p>(4) the proceedings may be held in public should both parties agree</p> <p>27. (1) No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, mediation is admissible in any proceedings, and disclosure of such evidence shall not and may not be compelled in any proceedings.</p> <p>(2) All communications or settlement discussion by and between participants in the course of mediation shall remain confidential</p> <p>(3) Except as required under subarticle (4), a mediator may not submit to any court or adjudicatory body any evidence, report, assessment, evaluation, or finding of any kind concerning a mediation conducted by him other than a report that is mandated by the Court or adjudicatory body, and which only states whether an agreement was reached</p> <p>(4) A mediator only divulge such information as established under subarticle (3) to a Court or adjudicatory body as long as all parties to the mediation expressly agree in writing</p>
6	Procedural aspects of mediation and the court	<p>PART V Mediation process</p> <p>18. Parties to any proceedings may, by a joint note, request the court or other adjudicating authority to stay proceedings while the parties attempt at settling the dispute before a mediator</p>

Table n. 23

**BELGIUM**  
**LAW AMENDING THE JUDICIAL CODE CONCERNING MEDIATION, 21 FEBRUARY 2005**

N	Criterion	Portion of the text corresponding to the Criterion
1	Definition	
2	Field of implementation	<p>Art 1724</p> <p>Tout différend susceptible d'être réglé par transaction peut faire l'objet d'une médiation de même que:</p> <p>1° les différends relatifs aux matières visées aux chapitres V et VI du titre V, au chapitre IV du titre VI et au titre IX du livre 1° du Code Civil;</p> <p>2° les différends relatifs aux matières visées au titre Vbis du livre III du même Code ;</p> <p>3° les différends introduits conformément aux sections 1° à IV du chapitre XI du livre IV de la quatrième partie du présent Code;</p> <p>4° les différends découlant de la cohabitation de fait</p> <p>Le personnes morales de droit public peuvent être parties à une même médiation dans les cas prévues par la loi ou arrêté délibéré en Conseil de ministres</p>
3	Aim	
4	Proceeding requirements	<p>Art 1729</p> <p>Chacune des parties peut à tout moment mettre fin à la médiation, sans que cela puisse lui porter préjudice</p> <p>Art 1730</p> <p>§ 1° Toute partie peut proposer aux autres parties, indépendamment de toute procédure judiciaires ou arbitraire, avant, pendant ou après le déroulement d'une procédure judiciaire, de recourir au processus de médiation. Les parties désignent le médiateur de commun accord ou chargent un tiers de cette désignation</p> <p>Art 1731</p> <p>§ 1° Les parties définissent entre elles, avec l'aide d'un médiateur, les modalités d'organisation de la médiation et la durée du processus. Cette convention est consignée par écrit dans un protocole de médiation signé par les parties et par le médiateur. Les frais et honoraires de la médiation sont à charge des parties par parts égales sauf si elles en décident autrement.</p> <p>§2° Le protocole de médiation contient:</p> <p>1° le nom et le domicile des parties et de leurs conseils;</p> <p>2° le nom, la qualité et l'adresse du médiateur et le cas échéant, la mention que le médiateur est agréé par la commission visée à l'article 1727</p> <p>3° le rappel du principe volontaire de la médiation</p> <p>4° un exposé succinct du différend</p> <p>5° le rappel du principe de la confidentialité des communications échangées dans le cours de la médiation</p> <p>6° le mode de fixation et le taux des honoraires du médiateur, ainsi que les modalités de leur paiement</p> <p>7° la date</p> <p>8° la signature de parties et du médiateur</p> <p>§ 3° La signature du protocole suspend le cours de la prescription durant la médiation</p> <p>§4° Sauf accord exprès des parties, la suspension de la prescription prend fin un mois après la notification faite par l'une de partie ou par le médiateur à l'autre ou aux autres parties de leur volonté de mettre fin à la médiation. cette notification a lieu par lettre recommandée.</p>



► Table n. 23

**BELGIUM**  
**LAW AMENDING THE JUDICIAL CODE CONCERNING MEDIATION, 21 FEBRUARY 2005**

N	Criterion	Portion of the text corresponding to the Criterion
5	Role of the mediator	<p>Art 1726            § 1° Peuvent être agréés par la commission visée à l'article 1727 les médiateurs qui répondent au moins aux conditions suivantes:            1° posséder, par l'exercice présent ou passé d'une activité, la qualification requise eu égard à la nature du différend            2° justifier, selon le cas, d'une formation ou d'une expérience adaptée à la pratique de la médiation;            3° présenter les garanties d'indépendance et d'impartialité nécessaires à l'exercice de la médiation</p> <p>Art 1728            § 2. Dans le cadre de sa mission et pour les besoins de celle-ci, le médiateur peut, avec l'accord de parties, entendre les tiers qui y consentent ou lorsque la complexité de l'affaire l'exige, recourir aux services d'un expert, spécialiste du domaine traité. Ceux-ci sont tenus à l'obligation de secret visée au §1°, alinea 1°. Le § 1, alinea 3, s'applique à l'expert</p>
6	Procedural aspects of mediation and the court	<p>Art. 671            L'assistance judiciaire couvre également les frais et l'honoraire du médiateur dans le cadre d'une procédure de médiation judiciaire ou volontaire, menée par un médiateur agréé par la commission visée à l'article 1727</p> <p>Art 1725            § 1° Tout contrat peut contenir une clause de médiation, par laquelle les parties s'engagent à recourir à la médiation préalablement à tout autre mode de résolution des éventuels différends que la validité, la formation, l'interprétation, l'exécution ou la rupture du contrat pourrait susciter            § 2° Le juge ou l'arbitre saisi d'un différend faisant l'objet d'une clause de médiation suspend l'examen de la cause à la demande d'une partie, à moins que ce qui concerne ce différend, la clause ne soit pas valable ou ait pris fin. L'exception doit être proposée avant tout autre moyen de défense et exception. L'examen de la cause est poursuivi dès que les parties ou l'une d'elles, ont notifié au greffe et aux autres parties que la médiation a pris fin.            § 3° La clause de Médiation ne fait pas obstacle aux demandes de mesures provisoires et conservatoires. L'introduction de telles demandes n'entraîne pas renonciation à la médiation</p> <p>Art 1727            § 1° Il est institué une commission fédérale de médiateur, composée d'une commission générale et de commissions spéciales            [...]            § 6° Les missions de la commission générale sont les suivantes:            1° agréer les organes de formation des médiateurs et les formations qu'ils organisent            2° déterminer les critères d'agrément des médiateurs par type de médiation            3° agréer les médiateurs            4° retirer, temporairement ou définitivement, l'agrément accordé aux médiateurs qui ne satisfont plus aux conditions prévues à l'article 1726            5° fixer le procédure d'agrément et de retrait, temporaire ou définitif du titre de médiateur            6° dresser et diffuser la liste des médiateurs auprès des cours et tribunaux            7° établir un code de bonne conduite et déterminer les sanctions qui en découlent            Les décisions de la commission sont motivées</p>



► Table n. 23

**BELGIUM**  
**LAW AMENDING THE JUDICIAL CODE CONCERNING MEDIATION, 21 FEBRUARY 2005**

N	Criterion	Portion of the text corresponding to the Criterion
		<p>Art 1728 § 1° Les documents établis et les communications faites au cours d'une procédure de médiation et pour les besoins de celle-ci sont confidentiels. Ils ne peuvent être utilisés dans une procédure judiciaires, administrative ou arbitrale ou dans toutes autres procédures visant à résoudre des conflits et ne sont pas admissibles comme preuve, même comme aveu extrajudiciaire. L'obligation de secret ne peut être levée qu'avec l'accord des parties pour permettre notamment au juge d'homologuer les accords de médiation. En cas de violation de cette obligation de secret par une des parties, le juge ou l'arbitre se prononce sur l'octroi éventuel de dommage-intérêt. Les documents confidentiels qui sont malgré tout communiqués ou sur lesquels une partie se base en violation de l'obligation de secret sont d'office écartés des débats. Sans préjudice des obligations que la loi lui impose, le médiateur ne peut rendre publics les faits dont il prend connaissance au cours de la médiation. L'article 458 du code pénal s'applique au médiateur.</p>
		<p>Art. 1734 § 1° Sauf devant la cour de cassation et le tribunal d'arrondissement, en tout état de la procédure et ainsi qu'en réfère, le juge déjà saisi d'un litige peut, à la demande conjointe des parties ou de sa propre initiative mais avec l'accord de celles-ci, ordonner une médiation, tant que la cause n'a pas été prise en délibéré. Les parties s'accordent sur le nom du médiateur...</p>
		<p>Art 1735 [...] § 2° La médiation peut porter sur tout ou partie du litige §3° Le juge reste saisi durant la médiation et peut, à tout moment, prendre toutes mesures qui lui paraissent nécessaires. Il peut aussi, à la demande du médiateur ou de l'une des parties, mettre fin à la médiation avant l'expiration du délai fixé [...]</p>

### 2.2.2.1 Descriptions and considerations

Looking at the synoptic table one can observe large differences in the object of the legislation presented. While some countries present specific legislation on mediation (France, Malta, Austria, Hungary, Portugal, Belgium and Slovakia) other countries incorporate it within legislation that has a different object (Ireland, United Kingdom, Italy, Finland).

Specifically, France has enacted 6 laws and of these there follows a description of how family mediation enters into the object of the text.

- Act N. 95 –125/ 1995 concerns the organisation of the civil, criminal and administrative jurisdictions and procedures: mediation is defined by the text within a chapter dedicated jointly to judicial conciliation and mediation, which describes the judge's authority to designate a third party to proceed in one of the aforementioned institutes.
- Act 4 March 2002 which concerns parental authority, the institute of alternate residence, child prostitution and international abduction of children, amends article 373-2-10 of the Civil Code identifying mediation as a measure that the judge may adopt in order to facilitate the parents' search for a consensual exercise of parental authority.
- Decree N. 2003-1166/ 2003 and Decree 12 February 2004 which create the family mediator state diploma.
- Act N. 2004-439/ 2004 relative to divorce: mediation, within the chapter that regulates divorce procedures, is identified as a measure that the judge may use.
- The circular Dgas/4 a n° 2004-376/ 2004 relative to the method of training for the family mediator state diploma and to the organisation of the certification tests.

Ireland has enacted the "Family law (divorce) act/ 1996" in which mediation appears in the paragraph that aims to ensure that the petitioners are aware of the alternatives to divorce proceedings and to assure attempts at reconciliation and to instruct the prosecutor to discuss with the parties the possibility of their making use of the instrument of mediation.

The United Kingdom has enacted the "Family law act/ 1996" in which mediation appears in the object of interest of the text: it concerns the

regulation of separation and divorce proceedings and also legal support in connection with family mediation in conflicts and disputes over family matters.

Portugal has enacted:

- Ministerial decrees N. 12 368/97 and N.1091/2002 that concern respectively the institution under the Ministry of Justice of a public family mediation centre with the aims of providing family mediation services, disseminating the aims and methods of mediation, and also to conduct research and evaluation of the family mediation initiatives; the second introduces amendments to the definition of the local competence of the aforementioned office.
- Act N.133/99 concerning civil proceedings involving child protection and family mediation is included to aid the judge, particularly in proceedings that regulate the exercise of parental authority.

Hungary has enacted three acts:

- Government Decree N. 149/1997 (IX.10.) on guardianship authorities and on child welfare and guardianship procedures;
- Minister of Welfare Decree N.15/1998 (IV.30.) that involves professional objectives and child welfare actions, children's institutions and the persons caring for the child.
- Act LV/2002 on mediation that treats it as a priority instrument to facilitate the resolution of civil disputes.

Italy has enacted two laws:

- Act N. 285/ 1997 concerning the provisions for the promotion of rights and opportunities of children and adolescents and in which family mediation appears as one of the instruments in support of projects that aim to create services in support of parent-child relationships, to combat poverty and violence and also measures alternative to admitting children to educational-child care institutes.
- Act N. 154/ 2001 concerning measures against violence in family relationships: family mediation appears under title IX b with regard to protection orders against family abuse and is identified as one of the instruments that can be used by the judge.

Austria has enacted four acts:

- “Guidelines on the funding of mediation, 1999” concerning funding of mediation as a government strategy for providing high quality mediation services in family law disputes and children’s rights.
- Law 22 July 1999(Article iv) and Law 29 December 2000, (Article xvi) are amendments to the code of civil procedure in matters of family mediation.
- “29th Federal Act on Mediation in Civil cases, 6 June 2003” that is a Federal Act on civil mediation and contains articles amending the code of criminal procedure, the “Court Fees Act” and the “Children’s Rights Act 2001”.

Finland has enacted the “Marriage Act/ 2001” in which mediation is identified as the priority instrument for disputes and conflicts within the family.

Malta has enacted the “Mediation Act, 2004” which aims to fulfil three aims: to encourage and facilitate conflict and dispute resolution through mediation, to create a Malta Mediation Centre as a domestic and international mediation centre and finally to regulate the conduction of the mediation procedure.

Slovakia has enacted the law of 25 July 2004 on “mediation and on the integration of a number of laws” in which it defines the implementation of mediation, its fundamental principles, its organization and effects.

Finally, among the texts analysed, Belgium has adopted a law modifying the judicial code on family mediation (2005).

The analysis shows first of all that mediation has been considered an instrument to be regulated in this 11 EU countries and that this had been done over the last ten years, namely from 1995 to today. Secondly it can be observed that the spheres in which the national legislations have considered it differ considerably: for example, from the acts dedicated to it specifically (France, Portugal, Hungary, Austria, Slovakia, Malta, Belgium) to the laws that consider it, for example the civil, criminal and administrative jurisdictions and

procedures (France), the subject of divorce (Ireland), family law (United Kingdom), the subject of marriage (Finland) and the more specific spheres of promoting the rights of children and adolescents and protection against family abuse (Italy).

Concerning the expressions referred to the process of mediation it emerges that they differ from one country to another and in one case it emerges that in the same country there are laws that use different expressions (France). To be precise, in France Act N. 95-125/ 1995 uses the expression “médiation judiciaire”, in the titles of the chapters about mediation, and in these chapters the expressions “médiation” and “médiateur” are used. Since 2002 the legislation has univocally used the expressions “family mediation” and “family mediator”.

In Ireland the Legislator uses the expression “mediation”. In the United Kingdom the term “mediation in family matters” is used; “mediation” and “mediator” are used in the titles and within the text of the chapters concerning the mediation process. In Portugal the expression “family mediation” is used in ministerial decrees, whereas in Act N.133, therefore since 1999, the term “mediation” has been used.

In Hungary, Government Decree N. 149/1997 (IX.10.) and Act LV/2002 use the expressions “mediation” and “mediator”, while the “Minister of Welfare Decree N.15/1998 (IV.30.)” uses the expression “child protection mediation procedure”

In Italy the laws univocally use the expression “family mediation” and also all the Austrian legislation univocally uses the expressions “mediation” and “mediator”.

In Finnish law the chapters of the text contain the expression “family mediation” and within the text there are the expressions “family mediator”, “family mediation”, “mediation” and “mediator”. In the law of Slovakia, the expressions “mediation” and “mediator” are used. The Maltese laws use the expression “mediation” in the title of the Act and in the introduction, where the definitions are supplied the Legislator uses the expression “domestic mediation”; in the continuation of the text the expressions “mediation” and “mediator” are used.

In Belgian law, finally, the expressions “médiation” and “médiateur” are used.

It emerges from the above that national legislation did not start with a univocal expression for mediation, but each country has created and used a particular, local expression. The use of an expression means referring to a semantic domain and specific fields of implementation, therefore this phenomenon, in terms of operational implications, enables the interlocutor-reader of the regulation to refer, for the construction and implementation of mediation procedures, to the legislation of his own country rather than to a univocal European definition. For example the laws that have defined the field of application of the normative text concerning mediation have allowed to identify the way of utilization of the mentioned expressions.

By comparing the parts of those laws that refer to the field of application we observe the following:

- In the French law the use of the expression “family mediation” refers to all forms of union, namely marriage, cohabitation, PACS, intergenerational links, situation of breaking up of relations, family relations in an international dimension and the protection of childhood
- The law of the United Kingdom uses the expression “mediation” referring to divorce, separation, controversies concerning family questions, occupation rights related to domestic issues, the prevention of harassment, the provisions of the Children Act of 1989 concerning the occupation of the house that is the object of the controversy and the payment of the rent of the house by the married couple or the people that have lived together as husband and wife.
- In the Portuguese legislation the expression “family mediation in parents conflicts” is used to refer to divorce, separation and those situations of conflict between parents linked to the parental authority
- The Austrian legislation uses the expression “mediation” with reference to all those controversies that concern the family law and the rights of the child.
- In the law of Slovakia the expression “mediation” is used to refer to a field of application that includes the civil law, the family law, the commercial relations and the labour law.

Other effects are the critical aspects concerning the possibility of comparing the national procedures at a European level and critical aspects

concerning the possibility of creating cross-border mediation procedures. On the basis of the fact that legislation of a European nature exists, the questions from those who have worked until now, implementing and creating procedures within their own national legislative framework, could be aimed at understanding for example what is meant in each country by “*médiation judiciaire*” or by “domestic mediation” or “child protection mediation procedure” and when the same expression is used, i.e. “mediation” or “mediator” is the definition the same? Is the field of implementation the same? Finally, where the expressions such as “family mediation” or “family mediator” are used, do these descriptions define a single institute or is it a specific field of implementation of mediation?

Concerning the content of the national legislation where reference is made to family mediation, we will analyse the presence / absence of the criteria identified for every national legislation.

The laws enacted in France as a whole correspond to the following criteria:

- Act N. 95-125/ 1995, that of 4 March 2002” and Act N. 2004-439/ 2004 discuss the procedural aspects of mediation within the system of justice, i.e. they regulate the relation between mediation as a support instrument for the system of justice and the court; in particular Act N. 95-125/ 1995 furthermore provides a definition of the aim of the mediation (*pour tenter de parvenir un accord entre les parties*);
- When they discuss mediation, Decree N. 2003-1166/ 2003 and Decree 12 Février 2004 which establish the family mediator state diploma, they define the requirements of the role of the mediator;
- Circular N. 2004-376/ 2004, concerning the method of training for the family mediator state diploma and the organisation of the certification tests, speaks of mediation, giving it a definition (*traitement des dysfonctionnements familiaux, dans l'intérêt des enfants comme des parents, par une aide professionnelle adaptée*), indicating the requirements for the role of the mediator and with the reference in “Act 2004-439/ 2004” outlining the procedural aspects within the system of justice.

It therefore emerges that French legislation from 1995 to 2004 does not define the mediation proceeding requirements, whereas it gives a definition

of mediation, of the aim, and it outlines the procedural aspects in the framework of the system of justice and defines the requirements for the role of mediator.

In the Irish legislation it emerges that exclusively the procedural aspects of mediation are covered in the “Family Law (Divorce) Act/1996”. The legislation in the United Kingdom gives a definition of mediation, a definition of the fields of implementation (*mediation in disputes relating to family matters; “Family matters” means matters which are governed by English law and in relation to which any question has arisen, or may arise-* (a) under any provision of- (i) the 1973 Act; (ii) the Domestic Proceedings and Magistrates’ Courts Act 1978; (iii) Parts I to V of the Children Act 1989; (iv) Parts II and IV of the Family Law Act 1996; or (v) any other enactment prescribed; (b) under any prescribed jurisdiction of a prescribed court or tribunal; or (c) under any prescribed rule of law), and also an outline of the procedural aspects of mediation in the system of justice.

With regard to mediation, the national legislation in Portugal examines the following criteria:

- Ministerial decrees N. 12 368/97 and N.1091/2002 define its field of implementation (*to the situations of parental conflict relating to the regulation of the paternal authority, to the change in the regulation of the paternal authority and to the situations of non compliance with the regime for the exercise of paternal authority whose jurisdiction is within the competence of the District of Lisbon*).
- Act N.133/99 covers the procedural aspects identifying the competence of the judge who officially, with the agreement of the parties involved in the dispute, may determine the intervention of a mediation service in a public or private centre. The judges’ approval of the agreements reached in the mediation process is also regulated.

Hungarian legislation from 1997 to 2002 considers mediation following all the criteria identified in the survey. A definition of mediation is provided (*Mediation is a special non-litigious procedure conducted according to this Act to provide an alternative to court proceedings in order to resolve conflicts and disputes where the parties involved voluntarily submit the case to a neutral third party (hereinafter referred to as ‘mediator’) in accordance with Subsection (1) of Section 1 in order to reach a settlement in*

*the process and lay the ensuing agreement down in writing.*), the field of implementation is described, the aim of this action is defined (*upon the request of those involved, or at the initiative of the guardianship authorities, providing a child protection mediation procedure with the aim of helping to solve conflicts between the parties, to reach an agreement and to make sure it is observed by both parties*). The aspects of the proceeding requirements are also covered, i.e. the definition of the Role of the mediator and the procedural aspects of mediation within the system of justice.

With regard to Italian national legislation, a definition is given of the aim of family mediation (*the services of family mediation and advice for families and children in order to overcome relational difficulties*) and of the procedural aspects.

The legislation in Finland covers family mediation defining the competence and the requirements of the role of the mediator and the procedural aspects.

The Austrian legislation considers family mediation, defining the field of implementation (*high quality mediation service for disputes involving family law and children’s rights*). As regards the definition of the aim of the action it emerges that it is formulated in different ways according to the regulation to which it refers (*to enable them to work out an acceptable solution to a dispute involving divorce, separation, custody or access; Mediation in civil cases seeks to resolve conflicts in cases where the ordinary civil courts would normally be competent.*). Moreover, the legislation also covers the aspects that create the role of the mediator and has been concerned on the whole, from 1999 to 2003, with defining the mediation proceeding requirements and the procedural aspects that regulate mediation in its relations with the courts.

Slovakia has passed a law that contains the definition of mediation and its field of application.

The role of the mediator has been taken into consideration through the definition of the criteria for the exercise of such a role, the registration in the ministerial roll and the creation and registration of the training centres for family mediators.

The normative text defines the procedural aspects concerning the mediation in the framework of the justice system providing for the

possibility of the homologation of the agreements concluded by the judicial authority or by an arbitral body.

Maltese national legislation provides a definition of family mediation (*“domestic mediation” means any mediation of a civil, family, social, commercial and industrial nature; “mediation means” a process in which a mediator facilitates negotiations between parties to assist them in reaching a voluntary agreement regarding their disputes*), the definition of the proceeding requirements, the definition of the competence of the role of the mediator and the procedural aspects of mediation within the system of justice.

Finally, Belgium’s legislation covers family mediation defining its field of implementation, the proceeding requirements, the role of the mediator and the procedural aspects.

From the analysis of the contents of the national legislations it emerges first of all that the legislations enacted have covered the procedural aspects of mediation within the system of justice. Against this it emerges that the Legislator in each country has first of all regulated the instrument of mediation within the system of ordinary justice. This aspect indicates a transversal institutional legitimisation of mediation as an instrument in support of the system of justice.

Conversely national legislations have not moved univocally in providing definitions of mediation, its aims, the role of the mediator and the proceeding requirements, therefore we observe that if on the one hand mediation as a system supporting the system of justice is legitimated transversally, on the other hand no delimitations of this procedure are found.

Therefore a considerable diversification in the meaning of mediation emerges from the analysis of the synoptic table, and in particular, observing some countries where more laws have been enacted, it emerges that the same country uses different expressions and different definitions. Against this we consider that it is the instrument of mediation that conforms to the general aim and to the object of a specific law and not the contrary; i.e. it is not the specific law that uses for its own ends an operational instrument that has its own specific characteristics in terms of diction, the definition of the aim and the definition of the field of implementation.

## 3. The discursive practices of roles involved in family mediation

### 3.1 Theoretical and methodical elements

The following is an overview of the methodology adopted by the survey. The instruments used by the survey, and the method of questionnaire distribution and collection is defined, and the procedures of data analysis and description of results illustrated. These latter elements will be considered in detail in the chapter on how the answers to the “open” questions are described and analysed. Particular focus will be given to one crucial aspect of the overall methodological approach, i.e. the distinction between “process” and “content”. In-depth examination will be made of how discourse is described, as well as the relation between process and content.

#### 3.1.1 Definition of the survey instruments

The epistemological, theoretical and methodological elements underpinning the construction of the survey’s instruments are described. Reference is also made to the points outlined in the Introduction since the general reference guidelines are key to the overall meaning of the instrument, i.e. the role it plays (the use to which it is put) and its connection with the research objectives. The theoretical reference framework also outlines the confines within which the research is set and for which the “instrument building” exercise is accomplished in order to “operationalise” the aims. The process used to achieve this passage from theory to practice is described below.

The research project uses already established *ad hoc* survey instruments. This enables objectives to be encompassed within specific formulations (items), thereby operationalising the aims of the survey. With the method adopted, the questions posited allow the researcher to “access” the actual discourse employed by the respondent; in other words, it allows description of the process of construction of that particular respondent’s reality regarding the subject under examination (family mediation). The instruments comprise 4 questionnaires dedicated to each group in the survey (Family Mediators, Training Centres, Lawyers and

Judges). They comprise questions with reply options (“closed answer” questions) and questions without answer options (“open answer” questions).

The following describes the contents of the questionnaires with reference to the type of items indicated above (see Table 1):

Table n. 1. Question distribution in the different questionnaire types

Question	Survey Group
1. Country in which profession is practised	Lawyers Judges Training Centres Family Mediators
2. City/town in which profession is practised	Lawyers Judges Training Centres Family Mediators
3. Number of family mediation cases dealt with in the previous year of activity (i.e. in the 12 months prior to filling in this questionnaire)	Family Mediators
3. Over the past year have you suggested to any of your clients that they seek family mediation services? (i.e. in the 12 months prior to filling in this questionnaire)	Lawyers
3. Over the last year have you advised/obliged disputing couples to attend a family mediation service? (i.e. in the 12 months prior to filling in this questionnaire)	Judges
4. If yes, how frequently? (i.e. in the 12 months prior to filling in this questionnaire)	Lawyers Judges
5. What are the criteria whereby family mediation intervention may be defined effective in the case of disputed divorce or separation?	Lawyers Judges Training Centres Family Mediators
6. In what kind of separation and/or divorce disputes do you believe family mediation to be effective?	Lawyers Judges Training Centres Family Mediators



►► Table n. 1. Question distribution in the different questionnaire types

Question	Survey Group
7. Describe how family mediation may be useful and effective	Lawyers Judges Training Centres Family Mediators
8. In what way can family mediation be educational?	Lawyers Judges Training Centres Family Mediators
9. Which of the following relations do you think most critical: family mediator, judge, lawyer, the couple's psychologist? Indicate in rank order, explaining your choice.	Lawyers Judges Training Centres Family Mediators
10. What specific training should a family mediator receive to be a competent operator?	Lawyers Judges Training Centres Family Mediators
11. What specific training should a family mediator receive to be able to exercise his/her profession in an inter-cultural, inter-ethnic and cross-border environment?	Lawyers Judges Training Centres Family Mediators
12. What is meant by family mediation?	Lawyers Judges Training Centres Family Mediators
13. How would you describe the methodological approach adopted by a family mediation service?	Lawyers Judges Training Centres Family Mediators
14. What theoretical model is the basis for a family mediation service?	Lawyers Judges Training Centres Family Mediators
15. What aspects are assessed to decide whether family mediation is feasible?	Lawyers Judges Training Centres Family Mediators

Question	Survey Group
16. What aspects are assessed to decide whether family mediation has had a positive outcome?	Lawyers Judges Training Centres Family Mediators
17. In the light of the theoretical and methodological approach adopted by your Institute, family mediation is initiated: (you may tick more than one box) <input type="checkbox"/> On a completely voluntary basis <input type="checkbox"/> On a voluntary basis with legal obligation to notify case details <input type="checkbox"/> On a voluntary basis with notification of case details left to the discretion of the judge <input type="checkbox"/> On a voluntary basis with judge's order to notify case details <input type="checkbox"/> Other (please specify)	Training Centres
17. Family mediation is initiated: (you may tick more than one box) <input type="checkbox"/> Completely voluntarily <input type="checkbox"/> Voluntarily with legal obligation to notify case details <input type="checkbox"/> Voluntarily with notification of case details left to the discretion of the judge <input type="checkbox"/> Voluntarily with judge's order to notify on case details <input type="checkbox"/> Other (specify)	Family Mediators
18. In the light of the theoretical and methodological approach adopted by your Institute, the involvement of the children in family mediation is: (you may tick more than one box) <input type="checkbox"/> Always excluded <input type="checkbox"/> Involvement is assessed on a case-by-case basis <input type="checkbox"/> Children are always present during the initial phase <input type="checkbox"/> Children are always present during the final phase <input type="checkbox"/> Other (please specify)	Training Centres Family Mediators
19. Describe the theoretical and methodological basis for the choice made	Training Centres Family Mediators
20. Type of service <input type="checkbox"/> public <input type="checkbox"/> private <input type="checkbox"/> private with agreement with public social service	Family Mediators
21. Location of centre <input type="checkbox"/> University <input type="checkbox"/> Health Service <input type="checkbox"/> Local government body <input type="checkbox"/> Other (please specify)	Family Mediators



►► Table n. 1. Question distribution in the different questionnaire types

Question	Survey Group	Question	Survey Group
22. Date of start of family mediation services	Family Mediators	30. Number of family mediation cases with positive outcomes during the previous year of practice (i.e. in the 12 months prior to filling in this questionnaire)	Family Mediators
23. Number of people operating at the service	Family Mediators	31. Number of family mediation cases involving inter-cultural, inter-ethnic and cross-border relations dealt with since the beginning of your service's activities to date (please indicate dates)	Family Mediators
24. Opening times	Family Mediators	32. Choose an inter-cultural or inter-ethnic or cross-border case from among all cases handled by your service. How would you describe this case with regard to: 1. the parties' needs; 2. definition of the aims; 3. identification of strategies; 4. outcome of mediation process.	Family Mediators
25. In the event of the judge ordering notification of case details, who decides on the family mediation service to approach? <input type="checkbox"/> The judge <input type="checkbox"/> The couple <input type="checkbox"/> The judge informs the couple of the public services available <input type="checkbox"/> Other (please specify)	Family Mediators		
26. Professional operators referring clients to the service (indicate rank order of referrals from highest to lowest) Rank Order Family doctor <input type="checkbox"/> Yes <input type="checkbox"/> No N° _____ Paediatrician <input type="checkbox"/> Yes <input type="checkbox"/> No N° _____ Other doctor <input type="checkbox"/> Yes <input type="checkbox"/> No N° _____ Psychologist/Psychotherapist <input type="checkbox"/> Yes <input type="checkbox"/> No N° _____ Social Services <input type="checkbox"/> Yes <input type="checkbox"/> No N° _____ Lawyer <input type="checkbox"/> Yes <input type="checkbox"/> No N° _____ Other clients <input type="checkbox"/> Yes <input type="checkbox"/> No N° _____ Relatives of the couple <input type="checkbox"/> Yes <input type="checkbox"/> No N° _____ Other (please specify) <input type="checkbox"/> Yes <input type="checkbox"/> No _____	Family Mediators		
27. _____ N° _____			
28. Is a follow up carried out?	Family Mediators		
29. If yes, in what percentage of cases	Family Mediators		

The following Pertinent Items List indicates the instruments addressed to the three survey topic groupings (see Table 2) and their relevance with regard to the objectives set.

### Pertinent Items List of all questions appearing in the 4 questionnaires

Table n. 2. Pertinent items list

Objective	Item Operationalising the Objective
1. To elicit indications as to the structure and organisational processes adopted by a family mediation service	<input type="checkbox"/> Type of service (item 3) <input type="checkbox"/> Location of centre (item 4) <input type="checkbox"/> Date of start of family mediation services (item 5) <input type="checkbox"/> Number of people operating at the service (item 6) <input type="checkbox"/> Opening times (item 7) <input type="checkbox"/> Number of family mediation cases dealt with in the last year of activity (item 8) <input type="checkbox"/> Involvement of children in the family mediation process (item 12) <input type="checkbox"/> Is a follow up carried out? (item 13) <input type="checkbox"/> If yes, in what percentage of cases is follow up carried out? (item 14) <input type="checkbox"/> Number of family mediation cases with positive outcome during the previous year of activity (item 15) <input type="checkbox"/> Number of inter-cultural, inter-ethnic and cross-border cases dealt with since the beginning of the service's activity to date (item 16)
2. To elicit indications as to the organisational processes of a family mediation service that is part of a wider services network	<input type="checkbox"/> Have you suggested/invited/obliged a disputing couple to seek family mediation during the previous year of your professional activity? (item 3) <input type="checkbox"/> If yes, how many times? <input type="checkbox"/> How family mediation is initiated (item 9) <input type="checkbox"/> If initiated by the judge, who chooses the family mediation service? (item 10) <input type="checkbox"/> Type of operators making referrals to the service (item 11)

Objective	Item Operationalising the Objective
3. To elicit the meanings attributed by mediators, mediation trainers, lawyers and judges to the following aspects:	<input type="checkbox"/> Describe the theoretical and methodological reasons for the choice made (item 12.1) <input type="checkbox"/> In what way can family mediation be educational? (item 20) <input type="checkbox"/> What is meant by family mediation? (item 24) <input type="checkbox"/> How would you describe the methodological approach to family mediation adopted by your service? (item 25) <input type="checkbox"/> What is the theoretical model adopted by your service? (item 26) <input type="checkbox"/> Choose an inter-cultural, inter-ethnic, cross-border family mediation case among those dealt with in the service (item 29)
a) the family mediation theoretical model and methodological approach	
b) Effectiveness of family mediation	<input type="checkbox"/> What are the criteria whereby family mediation intervention may be defined effective in the case of disputed divorce or separation? (item 17) <input type="checkbox"/> In what kind of separation and/or divorce disputes do you believe family mediation to be effective? (item 18) <input type="checkbox"/> Describe how family mediation may be useful and effective (item 19) <input type="checkbox"/> What aspects are assessed to decide whether family mediation is feasible? (item 27) <input type="checkbox"/> What aspects are assessed to decide whether family mediation has had a positive outcome? (item 28)
c) the institutional network of which family mediation is a part	<input type="checkbox"/> Which of the following relations do you think most critical: family mediator, judge, lawyer, the couple's psychologist? Indicate in rank order, explaining your choice. (item 21)
d) family mediator training requirements	<input type="checkbox"/> What specific training should a family mediator receive to be a competent operator? (item 22) <input type="checkbox"/> What specific training should a family mediator receive to be able to exercise his/her profession in an inter-cultural, inter-ethnic and cross-border environment? (item 23)

### 3.1.2 The network of contacts and the distribution of the questionnaires

In order to reach an adequate number of people belonging to the respective professional areas ( family mediators, people in charge of training centres for family mediators, lawyers and judges), therefore constituting a significant investigation group for each of the Countries taken into consideration, we proceeded, first of all, through contacts with associations grouping at European level the representatives of each profession (professional field-area) (see, for example, the European Forum on family mediation). From this initial contact we were able to trace- in a second time- the names and addresses of professionals operating in each European Country, asking them for further names and contact details of other colleagues having the same nationality.

To confirm and strengthen to network created, we demanded further support to the representatives of each Country belonging – as Member or Observer – to ChildON Europe and they gave us further indications and useful information for our survey.

In this way the initial framework of the net was created, constituting the basis for the distribution of questionnaires on family mediation. Nonetheless, where it showed some deficiencies or, more simply, where the contacts were not enough, the net was further enlarged using other sources of contacts.

We must underline, in fact, that concerning in particular lawyers and judges, due to the weak, rooting of the European co-ordination associations on the national territory, it was hard to find – in a relatively short period of time – a sufficient number of contacts of professionals of the field operating in each European country. Consequently, the lack of this initial point of co-ordination, made really difficult to reach a really effective and systematic way to act (action), shifting easily from the European level to every national context. As a consequence the results, in these cases, are more fragmented in relation to what was obtained for the other two categories (i.e. family mediators and people in charge of training centres for family mediators).

In conclusion, it should be remembered that a significant number of questionnaires – regarding, in particular, the above mentioned categories – were completed and sent back to the Secretariat after the established deadline, so that it was impossible to include them in the survey.

Concerning the distribution and the collection of questionnaires, we firstly sent a copy of the questionnaire to each person through e-mail, including a letter explaining the aim of the survey, its multidisciplinary and innovative nature and its European reach. More in general, the mandate and the activities of ChildON Europe network were described as an introduction to the whole activity.

All documents were produced in two versions: English and French.

Following the distribution via e-mail, people involved in the survey were contacted by phone, in order to verify they effectively received the questionnaire and were willing to collaborate to the survey by answering the questions. These recalls were, in some circumstances, repeated more than once, so that we could identify the competent person in every single body, speak directly to her/him inviting her/him to complete the questionnaire and send it back to the Network's Secretariat.

In other cases the contact was carried out through sending a letter or by fax while in those cases where it resulted difficult to contact family mediators or people in charge of training centres for family mediators, the various approaches were adopted at the same time.

In the end, we informed through a collective e-mail all people involved in the survey about the incoming deadline for sending back the completed questionnaires, in order for them to have enough time. Unfortunately a relevant number of questionnaires (20 at least) could not be included in the survey due to the delay they arrived with.

On the whole, ChildON Europe's Secretariat reached a total number of contacts of about 400 units, of which at least one half constituted by family mediators and people in charge of training centres for family mediators. In respect to the number of contacts, the total number of answers (46) represents a percentage of 11.5 %. Despite this, basing on direct contacts with the people involved, we could notice a general interest towards the survey. In many cases, the interest showed was supported by the request of knowing the study's results. From this, it seems right to deduce that in the cases people failed to answer, the main reason could be attributed to logistical difficulties (lack of time, difficulty to coordinate, etc...) or to the fact that the process was completely voluntary and not the lack of interest for the study itself.

### 3.1.3 Analysis procedures of textual data

The following gives an account of the main phases of text analysis and description of the answers to the open questions.

#### Analysis and description of the answers to the open questions

**Phase 1:** Transferring data from paper to electronic support systems

description: Imputing textual data with the aid of special electronic database system.

**Phase 2:** Extraction of data from database

description: Extraction of data from database and building of file for analysis in Word Format (each text is made up of all the answers given by a group of respondents to the particular question being analysed)

**Phase 3:** Data organisation

description: Distribution and organisation of data on Atlas-ti and SPSS software systems

**Phase 4:** Analyses: using Atlas-ti and SPSS software

description: application of data analyses procedures using both programmes.

**Phase 5:** Extraction of discourse repertoires

description: By discourse repertoire is meant a linguistically complete, pragmatic construction of reality containing one or more statements, articulated in one or more consequential sentence structures that assert truth, with the intention of generating (constructing)/maintaining narrative consistency. Discourse repertoires were identified from the answers to the questions on the basis of researcher competence in the theoretical model and the text analysis method adopted for the research. In this way, it is considered that reality is generated on the basis of how discourse is organised and hence the extent to which the narrative consistency contributes to maintaining uniformity with the posited statement in order that contradictions are not be generated.

**Phase 6:** Result description method

description: The various answers to the different questions were organised into repertoires assembled for each survey group<sup>1</sup>. This was carried out as follows:

1. extraction of pertinent repertoires by text analysis of the answers.
2. argumentational type description of the collation of the repertoires within the text.

With regard to the “closed” questions, Descriptive Analyses were made of the answer distribution frequency, and *Frequency Tables* drawn up (indicating absolute frequencies).

### 3.1.4 Analysis instruments

#### Atlas.ti

Atlas.ti is an extremely useful and versatile qualitative text analysis software system developed to process large quantities of textual data, assist data organisation and summarise results on the basis of researcher-defined constructs.

On starting the text analysis, the first evident advantage is the easy availability of all documents and their associated codings. This facilitates internal comparison between the various text excerpts or segments and the simultaneous analysis of the meanings that emerge from the texts.

Atlas.ti is designed to assist development of a text-based theoretical model, in other words, to produce scientific knowledge by allowing interaction between the researcher’s analysis categories and the meanings constructed by the respondents with their discourse. This procedure refers to the Grounded Theory developed by Glaser and Strauss in the sixties whereby any theory must emerge from the elements of empirical research itself<sup>2</sup>.

Methodologically, the software allows research to proceed in progressively more in-depth phases.

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<sup>1</sup> With regard to the analysis of the “open” questions, where deemed of particular note, a content analysis of the answers is also given, with indication of the elements that “anchor” the repertoire to the specific question.

<sup>2</sup> B. Glaser, A. Strauss, “*The discovery of grounded theory: strategy of qualitative research*”, Chicago, Aldine, 1967.

Once the text - the substantive element of the research – has been coded, Atlas.ti comes into its own as a powerful tool, allowing swift retrieval and comparison of quotations, and the creation of graphs of data produced during the first phase of coding. The networks, or graphs generated at the end of the research procedure, can be used both as survey instruments for analysis purposes or as a “map” for organisational and theory development purposes.

#### General work procedure using Atlas.ti

The software is used in different development phases in which information is extracted from the initial documents and presented in graphic form and as sets of quotations that correspond to specific requests made by the researcher.

These phases can be summed up as follows:

1. Development of a project (Hermeneutical Unit) comprising all the initial documents and all the other structures that will be created during the course of the research (quotations, codings, memos, networks).
2. Analysis of the text trying to select those parts (quotations) considered pertinent, and assign them codes (coding). During this phase, care must be taken regarding the text segments that are coded. The more the selection of codes aligns with the criteria underpinning the basic methodological and theoretical proposition, the more accurate and useful coding will be for the researcher.
3. Constructing results by developing graphs (networks) that enable conceptual networks to be build up through the association between codes and quotations. Developing networks that can organise data, visualising them in space, and focus analysis on specific aspects of the wider network making up the hermeneutic unit is a highly appreciate feature displayed by Atlas.ti.
4. Building results through queries allows the researcher to extrapolate from the texts information considered useful for the purposes of research. Queries allow searches for code combinations within all, one, or a group of coded documents. Queries are in effect a text decoding system that allows simultaneous search for sentences coded under different codes. A query has two specific elements: the

*operandi* and the *operators*. *Operandi* may be codes, super-codes and families of codes, while *operators* may be of three types: Boolean, semantic and proximity operators. *Operators* and *operandi* can be combined when querying a text and the reply/result is identified as a super-code.

#### SPSS

The statistical SPSS package was employed to analyse the answers to the multiple choice question furnished by the surveyed group. This system is particularly suited for database management, allowing a wide range of statistical analyses.

The frequency distribution analysis was conducted by the SPSS system which initially provided the description of the group surveyed and its distribution as a function of the characteristics defined as illustrative variables (Country and Professional Role), and secondly, a comparative analysis as a function of the data regarding the activities of the family mediation centres and data on collaboration between the family mediation services and other professional figures (specific objectives a. and b. of Strategic Line D. of the Research Project).

This procedure allows analysis of the distribution of the responses provided by the survey group as a function of the research variables and in particular with regard to the specific variables of Country and Profession Role.

In both cases, the analyses were presented in table form: tables on frequency and 3-item contingency tables, which allowed comparison between the type of reply given by the respondents and their Professional Role and with Country.

#### 3.1.5 Description of the results to the “open” questions

The follows examines the text analysis method in order to then proceed to examine the description of the results. To this end, and as mentioned above, the distinction between “process” and “content” is key.

With this approach, the researcher, even if not directly involved with the activities carried out by the professionals involved in the survey, can outline the argumentational structure underpinning discourse produced in answer to the questions posited. In this way the researcher is engaged at the level

of process and not content, whereby process signifies not a given reality (a factual empirical reality) but a reality constructed by the discourse of the players involved.

This positioning at the process level signifies distancing oneself from any analysis of the main themes considered by the respondents – which are taken as valid – in order to outline the argumentational architecture underpinning the discourse produced in answer to the questions, and the passages typical and specific to such discourse, and hence the modality with which it is proffered. In this way, segments of replies that initially may seem identical from an argumentational and structural viewpoint appear similar only in content but not as regards the process they are contributing to describe. Vice-versa, discourse modalities made up of different elements may be identified as similar when the argumentational modality is the same.

What is meant by “content” and “process” is illustrated by the following two excerpts of replies given by professionals in answer to the question “What is meant by family mediation? (Judges, Lawyers, Training Centres, Mediators):

Table n. 3. Text excerpts in answer to the question “What is meant by Family mediation?”

**Excerpt 1**

“family mediation is organised in the presence of an impartial, independent and qualified third party in order to create confidential relations. In any case, the family mediator facilitates communication, uses a process, creative pedagogy; she has the power to take decisions with people and facilitate the taking of responsibility by people and their decision making...”

**Excerpt 2**

“Family mediation exists in the moment there is the presence of a third party role qualified to manage relations among people in conflict. Despite this the family mediator is a facilitator of communication flows, using elements of pedagogical science, and is concerned with helping people take decisions, giving them back responsibility for the process..”

The text analysis method uses both grammatical elements and sentence analysis to identify the differences and/or similarities of argumentational theses as previously outlined.

The elements given below (Table 4) show how the initial parts of both excerpts are composed of similar elements but different argumentational modalities and hence different processes of discourse.

Table n. 4

Excerpt 1	Excerpt 2
Family mediation is organised	Family mediation exists the moment there is
An impartial, independent and qualified third party in order to create confidential relations	A third party role qualified to manage relations among people in conflict

Certain argumentational passages illustrate what has thus far been said. Both excerpts answer the question using the words “family mediation” and a verb referring to this. With the use of the verb “organise”, the first excerpt attributes to mediation the presence of a set of actions whereby mediation becomes an organising and organisable element. With the descriptive “exist”, the second excerpt does not, however, set mediation within the precise framework of “identifiable” and organising actions but rather identifies it as a process existing at a given “moment” and, by that token, something that cannot be summed up exclusively as those actions possible at that specific moment.

With the second argumentation, the excerpts identify common elements: the presence of a “qualified” “third party”, who is concerned with “relations”.

Despite this, however, the first excerpt attributes the characteristic of “impartial” to the “third party”, compared to the second excerpt where the third party is qualified with the discursive form “role”. In the first excerpt, the accent is placed on the manner in which the third party intervenes in the mediation process, i.e. as an “impartial” yet personal presence, while the second excerpt identifies the third party’s status as the particular expression of a given “role”.

While both excerpts use the form “relations”, this has different connotations: in the first excerpt, “relations” are of a “confidential” nature, hence similar to any other relationship outside of the mediation context and not specific to it; in the second excerpt, however, “relations” are with “people in conflict” and hence identifiable through specific elements associated with disputes.

Table n. 5

Excerpt 1	Excerpt 2
In any case, the family mediator facilitates communication	Despite this the family mediator is a facilitator of communication flows
uses a process, creative pedagogy; she has the power to take decisions with people and facilitate the taking of responsibility by people and their decision making	using elements of pedagogical science, and is concerned with helping people take decisions, giving them back responsibility for the process

The second part of the excerpts reveal elements of content. In the first: we have “in any case”, “the family mediator”, the process of facilitation “facilitates”, and the object “communication”; in the second: the sentence starts with “despite this”, and identifies the “family mediator” as a “facilitator”, and the object “communication flows”. Of note is the fact that although the content elements do not indicate similarities, nonetheless at a process level these two parts of the texts indicate the same process. In fact, in both cases, elements are used to serve as adversative conjunctions (“*in any case*” and “*despite this*”) to support the argument. The argumentational effect of this is that everything that is reported before the two adversative conjunctions is less important compared to what follows these conjunctions. In the first case, what is said with regard to the inherent aspects of mediation, as an environment organised starting from a third party, is redefined through the description of the person who is the “mediator” and who “facilitates communication”. In the same way, with the use of the form “despite this”, the second excerpt shows that the previous general definition of mediation need not be taken into consideration as an answer to the question, since it is rather a framework element that does not constitute the “core” of the reply. The effective answer to the question is provided by the description of the role (as a person who sets up communication flows as a result of his/her competence and the intervention environment).

Although the parts of the two excerpts have been constructed using completely different content elements, their discourse employs the same descriptive modality of argumentation. In this way the researcher can put together elements that generate the discourse process whereby the argumentation of the text is reconstructed without entering into

considerations of content. As has already been mentioned, this is made possible on the one hand by adherence to the theoretical model adopted and on the other, to the text analysis method.

Still concerning the methodology, the researcher’s main instrument is the “discourse repertoire” which indicates: **a linguistically complete, pragmatic construction of reality containing one or more statements, articulated in one or more consequential sentence structures that assert truth, with the intention of generating (constructing)/maintaining a narrative consistency.**

Let us consider this in some detail. A complete construction of reality means the repertoire inclusion of a complete sense unit of discourse. For example, the repertoire including the words:

“Despite this the family mediator is a facilitator of communication flows, using elements of pedagogical science, and is concerned with helping people take decisions, giving them back responsibility for the process” allows a complete and exhaustive definition of the mediator’s role. No further elements are needed because what has been posited contains every aspect the “competence entailed in the role”. What is intended by “pragmatic” also becomes clear since the elements making up a repertoire are to be immediately useable by the recipient. The repertoire content is therefore not only understandable and intelligible but can also be easily transferred to different pertinent contexts other than the one it is in.

“Containing one or more statements articulated in one or more consequential sentence structures” means that the repertoire is a discourse mode that has a beginning, a middle and an end. The example given above presents several sentences that generate the repertoire. Furthermore they are interwoven and interconnected by the use of the same subject.

Furthermore with “assert truth” underlines how the repertoire confers a reality value to what is described at the precise moment in which it is used. It follows that nothing is attributed to the role of the mediator other than that supplied by the modality of definition used. The text segments constituting the repertoire allow no space for any additional elements: what is asserted is true, sufficient and founded.

Finally “with the intention of generating (constructing)/maintaining narrative consistency” is meant a consistent organised modality of discourse which contributes to maintaining discourse uniform and unaltered ensuring no narrative contradiction is generated. Therefore not only is everything that is placed in the repertoire under consideration sufficient unto itself to describe the role, but no different realities are generation other than that which is affirmed as the role of the “family mediator”. In no way can it be placed on another narrative plane except that of “role rhetoric” and “mediation”. To a certain extent, from that moment on, the “mediator role rhetoric” used to describe the competences of the role makes available a single, consistent level of reality for the whole question.

Such typical repertoire content organised according to a specific modality has been termed an “archipelago of meaning”, signifying a set of

content that together constitutes a repertoire that forms the basis of the narrative sense of that repertoire.

### 3.2 Description of the group of investigation

This section includes a short description of the groups surveyed, with regard to variables such as “professional role”, “nationality” and “cities where the professionals practise their activity”.

The analysis carried out shows that, according to the “Country” variable, Italy has 32 respondents, Belgium 3, Ireland 2, Spain 1, France 4, Switzerland 2, England 1 and Luxembourg 1. With reference to the “Professional role” variable, the lawyers’ group includes 3 respondents, the magistrates’ 15, the mediators’ 23, the training institutes’ group 5, totalling 46 respondents.

Table n. 6. The contingency table illustrates the features of the survey group in terms of absolute frequency with regard to Professional role and Country

		Country								
		Italy	Belgium	Ireland	Spain	France	Switzerland <sup>3</sup>	UK	Luxembourg	Total
Role	Lawyers	2	0	0	0	1	0	0	0	<b>3</b>
	Judges	13	0	1	0	0	1	0	0	<b>15</b>
	Mediators	12	3	1	1	3	1	1	1	<b>23</b>
	Training centres	5	0	0	0	0	0	0	0	<b>5</b>
<b>Total</b>		<b>32</b>	<b>3</b>	<b>2</b>	<b>1</b>	<b>4</b>	<b>2</b>	<b>1</b>	<b>1</b>	<b>46</b>

<sup>3</sup> Even if Switzerland does not belong to the EU, we have included questionnaires from this country taking into consideration the presence of Swiss experts in the Seminar on “Family mediation and *L’Europe de l’Enfance*” held in Luxembourg on 12-13 April 2005.

**Table n. 7. The contingency table shows the characteristics of the surveyed group in terms of absolute frequency according to the countries and cities where the profession is carried out. For each city, the number of respondents is shown in brackets.**

Country	Cities
Italy (30)	Bari (7)
	Cagliari (2)
	Canicatti (Ag) (1)
	Como (1)
	Florence (2)
	Forli (1)
	Genoa (5)
	Lecco (1)
	Modena (1)
	Montesilvano (1)
	Naples (3)
	Parma (1)
	Ponsacco (Pisa) (1)
	Rome (2)
Taranto (2)	
Turin (1)	
Varese (1)	
Belgium (3)	Edegem (1)
	Brussels (1)
	Sint-Niklaas (1)
Ireland (2)	Cork (1)
Spain (1)	Madrid (1)
France (4)	Angers (1)
	Beauvais (1)
	Paris (1)
Switzerland (2)	Nyon (1)
	Sion (1)
UK (1)	Bristol (1)
Luxembourg (1)	Luxembourg (1)

As regards the city where the profession is carried out, it should be noted that, with reference to Italy, 7 respondents work in Bari, 5 in Genoa, 3 in Naples, 2 in Cagliari, Florence, Rome and Taranto, while there is only 1 respondent working in other Italian cities, as is the case of Belgium, Ireland, Spain, France, Switzerland, United Kingdom and Luxembourg.

### 3.3 Technical report

#### 3.3.1 Technical report I

This paragraph includes the results of the data analysis, a description of the data as well as a comment on objective 1: *“Identification of aspects related to the structure and organisational processes of a family mediation service”*. Table n. 8 illustrates the objective and the questions making it operational.

**Table n. 8**

Objective	Items making the objective operational
1. Identification of aspects related to the structure and organisational processes of a family mediation service	<ol style="list-style-type: none"> <li>1. Typology of service (item 3)</li> <li>2. Location of the service (item 4)</li> <li>3. Initial date of the service activities (item 5)</li> <li>4. Number of people operating in the service (item 6)</li> <li>5. Opening time of the service (item 7)</li> <li>6. Number of family mediation interventions realised in the past year of activity (item 8)</li> <li>7. Children’s involvement in the family mediation process (item 12)</li> <li>8. Is a follow up carried out? (item 13)</li> <li>9. If the answer is “yes”, what is the percentage of cases in which the follow-up is carried out? (item 14)</li> <li>10. Number of successful family mediations conducted in the past year of activity (item 15)</li> <li>11. Number of cases of intercultural, interethnic and cross-border mediation realised since the beginning of the service activity (item 16)</li> </ol>

The tables below include the survey results, organised by questions and relevant answers.

Table n. 9. The contingency table illustrates the frequency distribution of the answers given by the surveyed group to the question concerning the Typology of family mediation service, by the country variable.

Typology of service

Country	Typology of Service			Total
	Public	Private	State-Agreed Private	
Italy	5	5	2	12
Belgium	1	1	1	3
Ireland	0	0	0	0
Spain	0	0	1	1
France	0	0	3	3
Switzerland	1	0	0	1
UK	1	0	0	1
Luxembourg	0	1	0	1
<b>Total</b>	<b>8</b>	<b>7</b>	<b>7</b>	<b>22</b>

With regard to the “Typology of service” variable, the collected data show that the family mediators participating in the survey equally belong to public services (8), private services (7) and State-agreed private centres (7). Specifically, the analysis by country indicates that, in the case of Italian mediators, the public and private type of services prevail, whereas in the French mediation services, all services included in the survey belong to State-agreed private centres.

Table n. 10. The contingency table illustrates the frequency distribution of the answers given by the surveyed group to the question concerning the Location of the family mediation service, by the country variable.

Location of the service

Country	Location of the service				Total	
	University	Healthcare institutions	Local gov. bodies	Private offices		Others
Italy	0	1	4	6	1	12
Belgium	1	1	0	0	1	3
Ireland	0	0	0	0	1	1
Spain	0	0	0	0	1	1
France	0	2	0	0	1	3
Switzerland	0	0	0	0	1	1
UK	0	0	0	1	0	1
Luxembourg	0	1	0	0	0	1
<b>Total</b>	<b>1</b>	<b>5</b>	<b>4</b>	<b>7</b>	<b>6</b>	<b>23</b>

With regard to the answers given by respondents about the location of the service where they carry out their activity, it can be observed that in 7 cases the services are located in private centres and in 6 cases in other types of locations not included in the categories above. In particular, among “other” locations, the respondents mentioned: “UDAF” (Union Départemental des Affaires Familiales) the location of a French mediation centre; the “Institut Européen pour l’Intérêt de l’Enfant”, the location of a Belgian mediation centre; the location of an Irish mediation centre at the “Statutory Government Service”; the “Social Service” as the location of a Swiss mediation centre, and finally “UNAF” (Family Mediation Service of the Union of Family Associations) for a Spanish mediation centre.

A university location for the service has been mentioned by only one Belgian respondent, while Healthcare institutions and Local government bodies were reported by respectively 5 and 4 mediators of the various countries considered.

Table n. 11. The contingency table illustrates the frequency distribution of the answers given by the surveyed group to the question concerning the Initial date of the family mediation service, by the country variable.

Initial date of the service activities

Country	Initial date of the service activities			Total
	Before 1990	1990 to 2000	Since 2000	
Italy	1	6	4	11
Belgium	1	2	0	3
Ireland	0	1	0	1
Spain	0	1	0	1
France	0	2	0	2
Switzerland	0	0	1	1
UK	0	1	0	1
Luxembourg	0	1	0	1
<b>Total</b>	<b>2</b>	<b>14</b>	<b>5</b>	<b>21</b>

As regards the beginning of the Service activity, according to the collected data, 14 respondents stated that the Service activity began in the period between 1990 and 2000, while 5 respondents reported that it began after the year 2000 and 2 report the period before 1990 as the period when their Service activity started.

Table n. 12. The contingency table illustrates the frequency distribution of the answers given by the surveyed group to the question concerning the number of operators of the family mediation service, by the country variable.

Number of service operators

Country	Number of service operators			Total
	1 operator	1 to 3 operators	More than 3 operators	
Italy	3	5	3	11
Belgium	2	1	0	3
Ireland	0	0	1	1
Spain	0	0	1	1
France	0	0	2	2
Switzerland	1	0	0	1
UK	0	0	1	1
Luxembourg	0	0	1	1
<b>Total</b>	<b>6</b>	<b>6</b>	<b>9</b>	<b>21</b>

When mediators were asked to specify the number of operators working at their respective mediation Service, according to the table above, 9 respondents stated that more than 3 operators work at their mediation Service, while 6 mediators reported one to three operators and 6 stated that there is only one operator working at their Service.

Table n. 13. The contingency table illustrates the frequency distribution of the answers given by the surveyed group to the question concerning the opening hours of the family mediation service, by the country variable.

Opening hours of the service

Country	Opening hours			Total
	0 to 12h per week	12 to 24h per week	More than 24h per week	
Italy	5	2	3	10
Belgium	0	1	1	2
Ireland	0	0	1	1
Spain	0	1	0	1
France	1	2	0	3
Switzerland	1	0	0	1
UK	0	1	0	1
Luxembourg	0	0	1	1
<b>Total</b>	<b>7</b>	<b>7</b>	<b>6</b>	<b>20</b>

As regards the opening hours of the Services included in the survey, 7 Services are open up to 12 hours/week, 7 provide their services 12 to 24 hours/week and another 6 Services, where mediators involved in the survey work, cover more than 24 hours/ week.

Table n. 14. The contingency table illustrates the number of family mediations conducted by the surveyed group every year, by the "Country" and "Professional role" variables.

Number of family mediations interventions conducted in the past year of activity

Country	Professional role	Number of services/year
Belgium	Mediator	10
		30
		60
France	Mediator	38
		63
		107
UK	Mediator	14,29
		369
Ireland	Mediator	3,679
Italy	Mediator	0
		1
		4
		8
		10
		12
		20
33		
40		
45		
50		
55		
Luxembourg	Mediator	90
Spain	Mediator	116
Switzerland	Mediator	50

The analysis carried out shows that the number of mediations per year, in the case of mediators practising in Belgium, ranges between 10 and 60; in the case of mediators practising in the United Kingdom between 14.29 and 369; for those working as mediators in Ireland, 3.679 mediations are conducted every year; 0 to 55 mediations are reported in Italy, 90 in Luxembourg, 116 in Spain; while mediators working in Switzerland reported 50 mediations.

According to the analysis carried out with reference to the children's involvement in the family mediation process, 8 respondents (6 Italian mediators and 2 training institutes on Italian territory) stated that children are always excluded; 17 respondents reported that the participation of children is evaluated case by case. These respondents included 4 Italian mediators and 4 Italian training institutes, 3 mediators working in Belgium, 3 mediators practising in France, 1 mediator from

Switzerland, 1 from England and 1 from Luxembourg. 2 respondents, 1 Italian training institute and 1 Spanish mediator, stated that children are always involved in the initial stage of the family mediation process; 8 respondents, 1 mediator from Spain, 1 from Switzerland and 6 training institutes, of which 5 in Italy and 1 in Belgium, stated that children are always involved in the final stage of the family mediation process; totalling 35 respondents.

Table n. 15. The contingency table illustrates the frequency distribution of the answers given by the surveyed group to the question concerning the children's involvement in the family mediation process, by the "Country" and "Professional role" variables.

#### Children's involvement in the family mediation process

Children's involvement		Italy	Belgium	Ireland	Spain	France	Switzerland	UK	Luxembourg	Total
Always excluded	Mediators	6	0	0	0	0	0	0	0	6
	Institutes	2	0	0	0	0	0	0	0	2
Presence evaluated case by case	Mediators	4	3	0	0	3	1	1	1	13
	Institutes	4	0	0	0	0	0	0	0	4
Always present in the initial phase	Mediators	0	0	0	1	0	0	0	0	1
	Institutes	1	0	0	0	0	0	0	0	1
Always present in the final phase	Mediators	0	0	0	0	1	1	0	0	2
	Institutes	5	1	0	0	0	0	0	0	6
<b>Total</b>		<b>22</b>	<b>4</b>	<b>0</b>	<b>1</b>	<b>4</b>	<b>2</b>	<b>1</b>	<b>1</b>	<b>35</b>

Table n. 16. The contingency table illustrates the frequency distribution of the answers given by the surveyed group to the question concerning the carrying out of a Follow-up, by the "Country" variable.

Is a follow up carried out?

Country	Follow-up		Total
	Yes	No	
Italy	6	6	12
Belgium	2	1	3
Ireland	0	1	1
Spain	0	1	1
France	0	3	3
Switzerland	0	1	1
UK	1	0	1
Luxembourg	0	1	1
<b>Total</b>	<b>9</b>	<b>14</b>	<b>23</b>

As regards the question about the follow-up carried out at the Service where the surveyed mediators work, it can be observed that 14 respondents state that no follow-up is carried out at their reference centre, while 9 respondents say that follow-up is guaranteed at their centres.

Table n. 17. The contingency table illustrates the frequency distribution of the answers given by the surveyed group to the question concerning the percentage of follow-up carried out, by the "Country" variable.

If the answer to the previous question is "yes", what is the percentage of cases in which a follow-up is carried out

Country	Follow-up percentage			Total
	1 to 25%	25 to 50%	50 to 100%	
Italy	2	0	3	5
Belgium	0	0	1	1
Ireland	0	0	0	0
Spain	0	0	0	0
France	0	0	0	0
UK	0	0	0	0
Switzerland	1	0	0	1
Luxembourg	0	0	0	0
<b>Total</b>	<b>3</b>	<b>0</b>	<b>4</b>	<b>7</b>

Whenever the surveyed group of mediators answered the previous question by saying that follow-up was carried out in their Service, the respondents were asked to specify the follow-up percentage. By observing the answers given by the surveyed group, 4 answers state that the follow-up was carried out in 50 to 100% of the cases, while 3 answers report that the follow-up was carried out in a number of cases below 25%. No answer gives a follow-up percentage between 25 and 50% of the cases.

Table n. 18. The contingency table illustrates the frequency distribution of the answers given by the surveyed group to the question concerning the number of successful mediations in the past year of activity, by the "Country" variable.

Number of successful family mediations conducted in the past year of activity

Country	Number of successful mediations			Total
	Less than 25%	50 to 75%	75 to 100%	
Italy	1	4	3	8
Belgium	0	2	1	3
Ireland	0	0	0	0
Spain	0	1	0	1
France	1	1	1	3
UK	0	1	0	1
Switzerland	0	1	0	1
Luxembourg	0	1	0	1
<b>Total</b>	<b>2</b>	<b>11</b>	<b>5</b>	<b>18</b>

As regards the answers given by the surveyed group of mediators to the question concerning the number of successful mediations conducted in the past year by the Service for which they work, it can be noted that 11 answers report 50 to 75% successful cases of family mediations for their Services; 5 answers given by the surveyed group state that the number of successful mediations range between 75 and 100%, while 2 respondents mention a percentage of successful mediations below 50% of the cases followed by their Service.

Table n. 19. The contingency table illustrates the frequency distribution of the answers given by the surveyed group to the question concerning the number of cases of intercultural, interethnic and cross-border mediation dealt with at the beginning of the service activity, by the "Country" variable.

Number of cases of intercultural, interethnic and cross-border mediation dealt with since the beginning of the service activities

Country	Number of cases of intercultural, interethnic and cross-border mediation			Total
	0 cases	1 to 10 cases	More than 10 cases	
Italy	3	3	0	6
Belgium	0	1	2	3
Ireland	0	0	0	0
Spain	1	0	0	1
France	1	2	0	3
Switzerland	0	1	0	1
UK	0	1	0	1
Luxembourg	1	0	0	1
<b>Total</b>	<b>6</b>	<b>8</b>	<b>2</b>	<b>16</b>

As regards the question concerning the number of intercultural, interethnic and cross-border mediations conducted by the Service since the beginning of its activity, for their respective Service 8 respondents reported a number of cases comprised between 1 and 3, while 6 respondents stated that their reference Service never conducted cases of intercultural, interethnic or cross-border mediation. Finally, 2 mediators involved in the survey reported that, to date, their Services have conducted more than 10 cases of intercultural, interethnic and cross-border mediation.

### 3.3.2 Technical report II

This paragraph summarises the results of the data analysis, a description of the data and a comment on objective 2: *“Identification of the aspects regarding the organisational processes of a family mediation service within a services network”*. Table n. 20 illustrates the objective and the questions making it operational.

Table n. 20

Objective	Items making the objective operational
2. Identification of the aspects regarding the organisational processes of a family mediation service within a services network	<input type="checkbox"/> Have you suggested/urged/forced a couple in conflict to accept family mediation in the past year of your activity? (item 3) <input type="checkbox"/> If your answer is yes, how many times? <input type="checkbox"/> Ways of starting a family mediation process (item 9) <input type="checkbox"/> If a judge starts the process, who chooses the family mediation service? (item 10) <input type="checkbox"/> Type of subjects who refer families to this service (item 11)

The tables below include the survey results, organised by questions and relevant answers.

Table n. 21. The contingency table illustrates the frequency distribution of the answers given by the surveyed group to the question concerning the suggestion to resort to family mediation, according to the “professional role” and “country” variables.

In the past year have you suggested, invited/obliged anyone to accept family mediation?

Have you suggested family mediation?		Country				Total
		Italy	Ireland	France	Switzerland	
Yes	Lawyers	2	0	0	0	2
	Magistrates	9	1	0	1	11
No	Lawyers	0	0	1	0	1
	Magistrates	4	0	0	0	4
<b>Total</b>		<b>15</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>18</b>

The analysis, regarding the question whether Lawyers and Magistrates had suggested (in the case of lawyers) or invited/obliged (in the case of magistrates) couples to resort to family mediation, shows that 13 respondents gave affirmative answers. Of these, 2 are lawyers practising in Italy, and 11 magistrates, 9 of whom practise in Italy, 1 in Ireland and 1 in Switzerland. A negative answer was given by 5 respondents, including 1 lawyer practising in France and 4 magistrates, practising in Italy.

Table n. 22. The contingency table illustrates the number of family mediation referrals suggested/invited/obliged by the surveyed group (made up of lawyers and magistrates) every year, according to the “country” and “professional role” variables. When the number of referrals/year concerns more than one respondent, the number of respondents is specified in brackets.

Number of family mediation referrals made in the past year of activity

Country	Professional role	Number of Referrals/Year
France	Lawyer	0
Ireland	Magistrate	4
Italy	Lawyer	0 (2)
	Magistrate	0 (2)
		1
		2
		4
		10
		12
		25
		Sometimes
Switzerland	Magistrate	5

According to the data analysis, the number of referrals per year amounts to 4 in the case of a magistrate-respondent practising in Ireland; no referrals in the case of lawyers practising in Italy, whereas magistrates show the whole range from no referrals to 25 referrals per year; 5 referrals in the case of magistrates practising in Switzerland. As regards respondents practising in France, no referrals have been reported.

With regard to the ways of starting a family mediation process, the analysis shows that this is a totally voluntary process for 26 respondents, of whom 22 mediators and 4 training institutes. Of the mediators, 11 work in Italy, 3 in Belgium, 1 in Ireland, 1 in Spain, 3 in France, 1 in Switzerland, 1 in England and 1 in Luxembourg, while the training institutes are scattered all over the Italian territory; moreover, 1 French mediator stated that the process starts on a voluntary basis with a legal obligation to pass on information; the way of starting the process is voluntary with a voluntary

passing on of information for 7 respondents, of whom 5 mediators and 2 training institutes. Of the mediators, 4 work in Italy and 1 in Belgium, while the training institutes are both in Italy. Finally, 9 respondents, of whom 6 mediators and 3 training institutes, considered the way of starting a family mediation process to be voluntary with an obligation of information ordered by a judge. Of these, 4 mediators work in Italy, 1 in France and 1 in England, while the 3 training institutes are all on Italian territory, totalling 43 answers given.

Table n. 23. The contingency table illustrates the frequency distribution of the answers given by the surveyed group to the question concerning the ways in which the family mediation process is started, according to the "country" and "professional role" variables.

#### Ways of starting a family mediation process

Ways of starting a family mediation process		Italy	Belgium	Ireland	Spain	France	Switzerland	England	Luxembourg	Total
On a voluntary basis	Mediators	11	3	1	1	3	1	1	1	22
	Institutes	4	0	0	0	0	0	0	0	4
Voluntary, with legal obligation to pass on information	Mediators	0	0	0	0	1	0	0	0	1
	Institutes	0	0	0	0	0	0	0	0	0
Voluntary, with optional passing on of information	Mediators	4	1	0	0	0	0	0	0	5
	Institutes	2	0	0	0	0	0	0	0	2
Voluntary, with obligation to inform ordered by the judge	Mediators	4	0	0	0	1	0	1	0	6
	Institutes	3	0	0	0	0	0	0	0	3
<b>Total</b>		<b>28</b>	<b>4</b>	<b>1</b>	<b>1</b>	<b>5</b>	<b>1</b>	<b>2</b>	<b>1</b>	<b>43</b>

Table n. 24. The contingency table illustrates the frequency distribution of the answers given by the surveyed group, when asked who finds the family mediation service whenever the judge orders the obligation to inform, according to the "country" variable

#### When the judge orders the obligation to inform, who chooses the family mediation service?

Country	Who chooses the family mediation service?				Total
	Judge	Couple	Judge informs the couple	Other	
Italy	2	2	0	2	6
Belgium	1	1	0	0	2
Ireland	0	1	0	0	1
Spain	0	0	1	0	1
France	1	0	1	0	2
Switzerland	0	0	0	0	0
UK	0	0	0	0	0
Luxembourg	0	0	0	1	1
<b>Total</b>	<b>4</b>	<b>4</b>	<b>2</b>	<b>3</b>	<b>13</b>

As regards the question about who chooses the mediation service when the judge orders the obligation to inform, according to 4 respondents of the surveyed group of mediators involved in the research, when the judge orders the obligation to inform, the service is chosen by the judge himself, while 4 respondents said that the service is chosen by the couple, 3 stated that the service is identified by other subjects and, finally, 2 respondents said that the Judge informs the couple about the service.

With regard to the question concerning the type of subjects referring couples to the mediation service, according to the answers given by the surveyed group of mediators of the various nationalities, referrals are largely made by social services (20) and other clients (20), followed by the relatives of the couple (15) and by psychologists-psychotherapists (14). With reference to the answers given by the surveyed mediators, a lower percentage of referrals is ascribed to general practitioners (9), paediatricians (4) and other doctors (4).

Table n. 25. The contingency table illustrates the frequency distribution of the answers given by the surveyed group, when asked about the Type of subjects referring couples to a family mediation service, according to the country variable.

Type of subjects who refer couples to the service

Country	Type of subjects								Total
	General Practitioner	Paediatrician	Other doctor	Psychologist/ psychotherapist	Social services	Lawyer	Other Clients	Relatives of the couple	
Italy	2	2	2	6	9	10	11	5	47
Belgium	2	0	0	1	3	3	3	3	15
Ireland	1	1	1	1	1	1	1	1	8
Spain	0	0	0	0	1	0	1	1	3
France	2	0	0	3	3	2	2	2	14
Switzerland	1	0	0	1	1	0	0	1	4
UK	1	1	1	1	1	1	1	1	8
Luxembourg	0	0	0	1	1	1	1	1	5
<b>Total</b>	<b>9</b>	<b>4</b>	<b>4</b>	<b>14</b>	<b>20</b>	<b>18</b>	<b>20</b>	<b>15</b>	<b>104</b>

### 3.3.3 Technical report III

This paragraph contains results of the data analysis, descriptions of the data and a comment on objective 3: *To shed light on the significance attributed by mediators, mediation trainers, lawyers and judges to the following: a) the theoretical model and methodological approach of family mediation; b) the effectiveness of an act of family mediation; c) the network of institutional relationships in which the tool of family mediation is set; d) family mediator training requisites.* Table 26 illustrates the objective and the questions which make it operational.

Table n. 26. Pertinent items

Objective	Items which make the objective operational
<p><b>3.</b> To shed light on the significance attributed by mediators, mediation trainers, lawyers and judges to the following:</p> <p><b>a)</b> the theoretical model and methodological approach of family mediation</p>	<p><input type="checkbox"/> Give the theoretical and methodological reasons behind the choice made (item 12.1)</p> <p><input type="checkbox"/> How can an act of family mediation be educative? (item 20)</p> <p><input type="checkbox"/> What is meant by family mediation? (item 24)</p> <p><input type="checkbox"/> How would you describe the methodological approach the service refers to? (item 25)</p> <p><input type="checkbox"/> What is the theoretical model the service refers to? (item 26)</p> <p><input type="checkbox"/> Identify an intercultural, interethnic cross-border mediation from those provided by the service (item 29)</p>
<p><b>b)</b> the effectiveness of an act of family mediation</p>	<p><input type="checkbox"/> Which criteria should be used for deciding whether an act of mediation between parties in conflict in separation and divorce can be effective? (item 17)</p> <p><input type="checkbox"/> In which instances in separation and/or divorce do you think that family mediation is an effective tool? (item 18)</p> <p><input type="checkbox"/> Describe the act of family mediation in relation to its usefulness and effectiveness (item 19)</p> <p><input type="checkbox"/> Which aspects are weighed in deciding the feasibility of an act of family mediation? (item 27)</p> <p><input type="checkbox"/> Which aspects are weighed in deciding that an act of family mediation has produced a positive outcome? (item 28)</p>
<p><b>c)</b> the network of institutional relationships in which the tool of family mediation is set</p>	<p><input type="checkbox"/> Which do you believe to be the most critical relationships among (family mediator, magistrate, lawyer, couple therapist)? State in order of importance and illustrate your choice (item 21)</p>

The results of the analysis of the answers to the questions are given in the tables below. For each item<sup>4</sup> a comment and a note on the operational aspects are provided.

#### a) Theoretical model and methodological approach to family mediation Comments and operational aspects

The comment which follows concerns the results which emerge on analysing the answers to 6 questions, with the aim of eliciting discursive modes (namely “modes of constructing reality starting from the questions themselves) on the part of subjects who in various capacities are involved in family mediation, relative to the concepts of “theoretical model” and “methodological approach”.

The questions were devised in order to ascertain the theories that the subjects would apply in this theoretical and methodological ambit. The aim, therefore, was not to discern a “correct” answer for a theoretical model or methodological approach but to understand the respondent’s stance as regards his or her role (the questions set out to ascertain if the respondent’s stance tended more towards a theoretical-methodological or technical approach to specific situations).

In more specific terms, the discursive modes which emerge from the descriptions given by the respondents, contain a highly varied range of repertoires – indeed a total of 47 were identified (see Tab. 27). This means that the knowledge categories implemented by the respondents for creating the theoretical-methodological ambit for an act of mediation are not exclusively relative to the ambit itself, but draw on a composite of resources which includes them as well as many others<sup>5</sup>.

In particular, on the one hand we note repertoires of a theoretical-methodological nature and, on the other, repertoires which have nothing to

<sup>4</sup> a) theoretical model and methodological approach of family mediation; b) effectiveness of an act of family mediation; c) network of institutional relationships in which the tool of family mediation is set; d) family mediator training requisites.

<sup>5</sup> similarly, for example, it is as though a group of chemists were asked which method they used for dating an archaeological find they replied citing knowledge categories about the find’s visible aspect or historiographic studies, or a judgment of value concerning the method used.

do with this. Hereunder follows an example of the descriptions given in response to a specific question: “*Give the theoretical-methodological reasons for your choice*”, in which the choice was whether the children should participate/not participate in the mediation process. An analysis of the reasons given by the respondents produces the following:

- repertoires were identified denoting a theoretical-methodological approach, namely repertoires of a type of mediation based on how much the act itself can do and achieve (“Repertoire of the objective”; “Repertoire of the result”); or repertoires in which the act is characterised by how the process is managed (“Repertoire of strategy”); and again repertoires in which the act takes place on certain prerequisites and advantages in order to be rigorous (“Repertoire of legitimisation”);
- repertoires were identified which do not belong to the theoretical-methodological approach but to a sphere of personal, specific, and local comments, namely all those repertoires of a polemic and ideological nature by means of which personal critical assessments are prioritised to the exclusion of any possibility of managing the process on its merits (“Repertoire of polemic”), or repertoires which are not based on theory nor are they specific to disciplinary or professional ambits, but are part of “common thought” (“Repertoire of common sense”); and lastly repertoires which have the rhetorical function of producing an argumentation to support what is held to be “right” (“Repertoire of justification”);
- repertoires were identified which characterise the roles that participate in the mediation process: the “child” is seen as a subject to be protected and hence wholly excluded from the mediation process (“Repertoire of conservation”); or, instead there are repertoires which see the “child” as a person with the right to participate in family affairs, making it one of the actors in the mediation process (“Repertoire of participation”); as regards the “parents”, the repertoires see them as roles to whom responsibility has been attributed for the children, hence the mediation as a process for its recovery (“Repertoire of attribution of responsibility” associated with “Repertoire of conservation”). These repertoires are built on discursive modes which characterise the role of the subject

participating in the mediation process and implicitly require choosing between having the child participate/not participate in the mediation process. This means that when a role is attributed in terms of competence, rights and responsibilities it is the emanation of a distinct theoretical, methodological strategy which, however, is not made explicit. In fact by using these discursive modes it is established “who is” the child or “what are its needs” or “who is the parent”; these factors are constructed as factual-empirical realities from which clear methodological paths emerge which then lead to the “inevitable” consequences and thus not methodological choices regarding specific theoretical models.

Looking closer at how these repertoires associate among themselves, it emerges that faced with the question (*Give the theoretical-methodological reasons for your choice, participation/non-participation of the child in the process*) the knowledge categories adopted by respondents were directed at repeating the theoretical-methodological choice made, resorting to argumentations which were either implicit (see “Repertoire of participation”, “Repertoire of attribution of responsibility”, “Repertoire of conservation”) or rhetorical to justify the choice, namely that they backed the idea of “making them right” (“Repertoire of justification”) or, lastly, argumentations that turned theoretical hypotheses into factual reality to which certain (methodological) choices become inevitable. In actual fact only seldom was the choice backed by argumentations with a strong theoretical-methodological content (“Repertoire of the objective”, “Repertoire of strategy”, “Repertoire of result”); while no repertoires were identified which prioritised processes of attestation, documentation or other pertinent aspects of the theoretical-methodological choices made.

In the light of this, the choices regarding practices (in the above example, “have the children participate/not participate in the mediation process”) are not so much legitimised in theoretical-methodological terms as put forward mainly as “right”, “necessary”, or implicitly re-proposed without any reason based on the theoretical approach adopted. The respondents’ stance, therefore, stems from a choice made on the basis of its being a technique to implement/not implement rather than on the basis of the underlying theoretical methodological thought. The

operational implications which ensue from this could create a scenario in which schools “of thought” are established regarding a specific technique, and the debate between operators shifts to whether they belong to one or another such school rather than regarding the theoretical-methodological basis of the tool of mediation. The operational consequences are that the decision whether or not to involve children in the mediation process is based on purely ideological grounds rather than on theoretical-methodological ones.

**Table n. 27. Aspects of “The theoretical model and methodological aspects of family mediation”  
The repertoires identified**

N.	Repertoire
1	Repertoire of participation
2	Repertoire of the collocation of the intervention
3	Repertoire of common sense
4	Repertoire of strategy
5	Repertoire of attribution of responsibility
6	Repertoire of conflict
7	Repertoire of legitimisation of the intervention
8	Repertoire of exploitative use
9	Repertoire of justification of the intervention
10	Repertoire of conservation
11	Repertoire of polemic
12	Repertoire of the objective of the intervention
13	Repertoire of Justification
14	Repertoire of Necessity
15	Repertoire of the problem
16	Repertoire of improvement
17	Repertoire of condition
18	Repertoire of effects
19	Repertoire of filling vacuums
20	Repertoire of help
21	Repertoire of anticipation
22	Repertoire of fields of application
23	Repertoire of moral assessment
24	Repertoire of communication
25	Repertoire of collaboration
26	Repertoire of agreement



►► Table n. 27

N.	Repertoire
27	Repertoire of parenthood ability
28	Repertoire of parenthood
29	Repertoire of the solution
30	Repertoire of jurisprudence
31	Repertoire of judgment
32	Repertoire of comparison
33	Repertoire of differentiation
34	Repertoire of respect
35	Repertoire of trust
36	Repertoire of negotiation
37	Repertoire of repossession
38	Repertoire of organisation
39	Repertoire of objective
40	Repertoire of characterisation of the intervention
41	Repertoire of the absence of a model for reference
42	Repertoire of experience
43	Repertoire of rhetoric question
44	Repertoire of expression of emotions
45	Repertoire of theory
46	Repertoire of possibility
47	Repertoire of critical aspects

### b) Effectiveness of an act of family mediation

#### Comments and operational aspects

The comment which follows concerns the results which emerge on analysing the answers to the 5 questions with the aim of eliciting the significance attributed to the roles which in various capacities are involved in family mediation, relative to the concept of the “effectiveness” of an act of family mediation, even in ambits which may vary.

The aim was to ascertain the theories (knowledge categories) that the subjects involved resorted to assess of the effectiveness, without the theories being linked to specific ambits of pertinence but of a purely methodological nature. The aim, therefore, was not to discern “correct” answers to assess effectiveness but to ascertain whether the respondent’s stance was more methodological than based on a series of techniques to implement in specific situations).

Looking closer at the discursive practices which emerge from the descriptions given by the respondents for effectiveness assessment, a very wide range of repertoires – indeed a total of 42 – emerges (see Tab. 28). This indicates that the knowledge categories used by respondents to construct the effectiveness assessment of an act are highly diversified and that there is no shared model making the effectiveness assessment highly fragmented and oriented.

As an example, we shall examine the analysis of the question “*Which aspects are assessed in deciding whether an act of family mediation has had a positive?*” as follows.

In this case, repertoires were identified which emerged as a prelude to a scientific assessment of effectiveness: the “Repertoire of criteria” and the “Repertoire of result indicators”. Within these, there is a different degree of pertinence in methodological purity; namely, the former identifies criteria of reference which provide an orientation for selecting which aspects are to be considered in assessing an outcome in terms of effectiveness; the repertoire of result indicators highlight further processes, namely an ulterior discernment of the intervention based on what can be “shown” as the result in effectiveness. The “Repertoire of result indicators” as opposed to the “Repertoire of criteria” points to the respondent’s stance being in order to make the effectiveness of the intervention recognizable, “relatable” to the outside (including the scientific community) by means of identified “indices”.

The following were identified as regards the many faceted meanings which go to make up the “Repertoire of criteria”: communication, cooperation, agreement, non-presence, involvement of the parties, getting beyond conflict, improvement, advantages/disadvantages, and needs. In this sense, the aspects mentioned may be found in more than one dimension – indeed a number of these are found in the sphere of feasibility (e.g. “non-presence” and “needs”); others the sphere of monitoring (e.g. “improvement” and “involvement”) while others still the sphere of achieving objectives (e.g. “getting beyond conflict” and “agreement”). Only the last type of criterion can be taken as a starting point for building “indices” of effectiveness acceptable to a scientific community for assessing the outcome of an intervention.

This requires rendering operational what is understood as “getting beyond conflict” or “agreements” in the sense that for it to become an the

indicator such, it must become a measurable element for assessing whether the outcome is (and by how much) in the direction of the objective.

Repertoires were also identified in which effectiveness assessment was characterised as an act that cannot be done without: the “Repertoire of assessment”, the “Repertoire of necessity” and the “Repertoire of value judgments”. Resorting to repertoires of this kind builds a reality which is based on moral rather than scientific categories, and thus assessing their effectiveness takes on a positive and not (only) a method of work value *vis-à-vis* the community of operators (the respondents). Hence, while on the one hand a scenario may emerge in which effectiveness assessment becomes the strategic objective to be achieved by practices which aim to consolidate as *Best Practice* (namely practices which in specific performances or indicators can be taken as the best applications available internationally), there is a danger that the objective swing towards a process of certification of effectiveness rather than an assessment of it. The difference between certification and assessment of effectiveness is the distance between privileging visibility in order for the service to be accredited and legitimised in a scientific community, and effectiveness assessment being used as a tool for added value in order to endow the service with a method of work, and for orienting it towards continual improvement.

In general, with regard to the analysis of questions regarding the concept of effectiveness, it was noted that the “repertoire of intervention assessment” was implemented by all the subjects taking part in the survey except the group of “training institutes” (namely those involved in theoretical and methodological training and on-going supervision of the work of the mediators). This provides an indication regarding the scenarios which can appear and their operational aspects; indeed, from what we see, the demand for assessing an intervention is firmly anchored within the sphere of experience rather than training and/or supervision. Assessments, therefore, are not constructed on theoretical or methodological competences, but with an eye to the specific roles (mediator, lawyer, magistrate). In this sense, establishing which criteria and which indicators are to be considered in order to assess the effectiveness of an act of mediation is delegated to a specific, local sphere thus the tool of effectiveness assessment is bent to the specific

needs of a family mediator or judge or lawyer instead of the other way round, and the domain of the scientific community is shifted to these subjects (thus produced and rendered valid by them), namely the combination of monitoring indicators and results which enable family mediation to continue to be an effective practice.

**Table n. 28. The effectiveness of an act of family mediation  
The repertoires identified**

N.	Repertoire
1	Repertoire of agreement
2	Repertoire of experience
3	Repertoire of possibility
4	Repertoire of judgment
5	Repertoire of critical aspects
6	Repertoire of objective
7	Repertoire of anticipation
8	Repertoire of theory
9	Repertoire of justification
10	Repertoire of parenthood
11	Repertoire of rhetorical question
12	Repertoire of expression of emotions
13	Repertoire of assessment of the intervention
14	Repertoire of repeating the question
15	Repertoire of help
16	Repertoire of common sense
17	Repertoire of fields of application
18	Repertoire of justification of the intervention
19	Repertoire of definition of the type of intervention
20	Repertoire of legitimisation of the intervention
21	Repertoire of prevision
22	Repertoire of the indicators of result
23	Repertoire of tautology
24	Repertoire of guide lines
25	Repertoire of necessity
26	Repertoire of criteria
27	Repertoire of conflict
28	Repertoire of phases of the process of mediation
29	Repertoire of indicators of result
30	Repertoire of strategy
31	Repertoire of primary interest of the juvenile
32	Repertoire of judicial procedure

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**»» Table n. 28**

N.	Repertoire
33	Repertoire of opinion
34	Repertoire of moral assessment
35	Repertoire of problem
36	Repertoire of result
37	Repertoire of Repertoire of illness
38	Repertoire of change
39	Repertoire of primary interest of the juvenile
40	Repertoire of identification of effective intervention strategies
41	Repertoire of management
42	Repertoire of competence of role

### **c) Network of institutional relations within which the tool of family mediation is set**

#### **Comments and operational aspects of the institutional relation matrix**

The comment which follows concerns the results which emerge on analysing the answers to the question stated with the aim of eliciting the significance attributed to the roles which in various capacities are involved in family mediation and the network of institutional relations within which the tool of family mediation is set (family mediator, lawyer, judge, couple therapist).

The question was devised to ascertain the respondents' stance on the process of constructing and maintaining an institutional matrix of relations within which each subject becomes a distinct "junction point" with its own mandate and objectives. In this sense the family mediator becomes a "new" junction point within the existing matrix (courts, social services, psychologists and legal support), hence the aim of the question was to ascertain what the present state of this network was after the reorganisation of the matrix brought about by the introduction of the family mediator as a new role (or junction point).

The aim, therefore, was not to discern "correct" answers in objectives and competences attributed to identified roles, but to ascertain the respondent's stance in the generation and maintenance of the institutional matrix of relations.

Looking closer at the discursive practices which indicate the critical relation among the roles of the same relation matrix.

- Repertoires are identified which establish the extent to which argumentation identifies the inevitable. In other words specific, local experience, developed by way of opinions, judgments and some polemic and ideology to becoming generalisations, turn into an “object”, (“Repertoire of reality”, “Repertoire of opinion”, “Repertoire of experience” Repertoire of polemic”, “Repertoire of generalisation”); in particular, note the use of the “Repertoire of personalisation” by means of which the assessments are characterised as being closely linked to whoever is responding. By using this repertoire in the need to assess the criticality in the relation among mediators providing their service, the respondent may shift identifying criticality from the relationship among roles, to the people who carry these roles out. The critical aspects which will arise within these relations may be the result of the multiplicity of characteristics of “n” people by “n” possibilities of personal interpretation of that specific role.
- With regard to the attribution of specific competences and objectives of the roles in the network of relations, repertoires are resorted to which are composed of a multitude of significances such as “role substitution” the “wished for propriety in relations”, but there is no trace of any definition of objectives of the relations among such roles. Thus, in building and managing the institutional matrix of relations, the roles interact on the basis of demarcation of their respective competences, and do not define what potential shared practices (of relating) there could be.

This can create scenarios in which those who play these roles have their “own” network of relations, and bend it to the specific requirements demanded by each role, rather than manage a network that has its own specific objectives, third, to the roles which compose it. Consequently the criticality in the sphere of relations between roles are identified either as “problems” referring to the personal experiences which each person encounters or the “absence of problems”, again encountered in local experience. The operational aspects of this scenario affect the possibility of

constructing matrices of relations which, in situations where they are effective, become “islands” in the country system and family mediation *per se*, because those who build them do so on a purely personal basis. The effect of this scenario is that constructed practice does not get applied to other contexts in which requirements and/or cultural, institutional or territorial specificities are different, since the former is an experience tied to persons and not a practice based on the competence of the roles which make up an institutional network. It is more frequent that these matrices are built on a strong mobility between individuals, thus whenever the relation between roles is effective and when it is person-based, every time there is a move, and a consequent “new entry”, those within the network need to “start over again”.

## 4. The statistical framework

### 4.1 Introduction

The mandate on the survey include the use of statistical data as a tool to acquire knowledge and to promote family mediation internationally. The statutory tasks referred to above include collection and analysis of the following data:

- a) Total population;
- b) Percentage of children;
- c) Percentage of foreign residents;
- d) Number of marriages and divorce rate;
- e) Number of transnational marriages;
- f) Percentage of single parent families;
- g) Percentage of recomposed families;
- h) Number of adopted children;
- i) National, cultural and ethnic origin of adopted children;
- j) Percentage of children in foster care.

The goal of statistical data collection and analysis is to ascertain the level of knowledge about children and families in order to see whether currently available data are sufficient to gain direct or indirect insight about family mediation and its effective implementation in Europe.

For the purpose of this study on family mediation in Europe the sources of data are Eurostat<sup>1</sup> statistical surveys conducted in 15 EU member states (before the accession of 10 new members countries in 2004), and 3 surveys that specifically deal with the situation of children. The first one of these surveys is an experimental study conducted in 5 EU member states: Germany, France, Italy, Spain and United Kingdom, published in January 2000<sup>2</sup>. The second survey is a study comparing the situation of the 15 EU member states (before the enlargement) in 16 different thematic areas and

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<sup>1</sup> Eurostat data, 2003 Edition

<sup>2</sup> *Indicatori europei dell'infanzia e dell'adolescenza*, Quaderno n. 13 del Centro nazionale di documentazione e analisi per l'infanzia e l'adolescenza, Istituto degli Innocenti di Firenze, 2000 (*European Indicators on Childhood and Adolescence*, Monographic study by the Italian Childhood and Adolescence Documentation and Analysis Centre Istituto degli Innocenti, Florence, 2000 available only in Italian).

was published in June 2002<sup>3</sup>. The third survey focuses on the same 16 thematic areas as the previous one but it also includes the new EU member countries and candidate countries<sup>4</sup> and makes a comparison of the situation in all these countries on the basis of fundamental statistical data.

A critical aspect of statistical data collection in Europe is the lack of comparable data at national level. In fact data collection and aggregation are performed according to national rules and standards leading to the following possible scenarios:

- Not all countries collect the same statistical data and as a result there is a lack of data pertaining to some countries concerning some thematic areas;
- The Countries collect statistical data in the same areas but use different data collection methodologies and tools and consequently data are available but not comparable;
- The Countries collect statistical data using the same terminology for the same object but the context of the use of this terminology is different as well as the real situation it describes. Again data at European level are available but not comparable.

This lack of comparable data was found in specific areas such as: transnational marriages, recomposed families, international adoption, national, cultural and ethnic origin of adopted children, children in foster care.

An additional problem is the lack of data pertaining directly to family mediation in Europe. At national level the statistical data concerning the practices of family mediation are not collected, as a consequence at present the possibility of acquiring statistical knowledge about the practices of family mediation in the EU countries is critical.

Considering the problems mentioned above, the general goals of this study were established as follows: collecting existing statistical data on the

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<sup>3</sup> *I numeri europei*, Quaderno n. 22 del Centro nazionale di documentazione e analisi per l'infanzia e l'adolescenza, Istituto degli innocenti, Firenze, (*Europe in Figures*, Monographic study by the Italian Childhood and Adolescence Documentation and Analysis Centre, Istituto degli Innocenti, Florence, 2002, available only in Italian).

<sup>4</sup> *I numeri Europei*, Quaderno n.32 del Centro nazionale di documentazione e analisi per l'infanzia e l'adolescenza, Istituto degli Innocenti, Firenze, 2004 (*Europe in Figures*, Monographic study by the Italian Childhood and Adolescence Documentation and Analysis Centre, Istituto degli Innocenti, Florence, 2004, available only in Italian).

one hand and, on the other, make a proposal for data collection in those areas where there is a lack of knowledge so that researchers and social workers can carry out feasibility studies on family mediation and can assess its effective implementation in divorce or separation cases in Europe.

The specific objectives of this study are listed below:

1. Statistical data collection concerning children, family, separation, divorce, foster care and family mediation. The aim is to collect, analyse and discuss available statistical data – using Eurostat as data source – concerning segments of the population and issues having to do with family mediation, and namely:
  - Total population by sex
  - Percentage of population aged 0-17 by sex
  - Number of resident foreign children out of 100 resident children
  - Number of marriages
  - Number of divorces
  - Number of divorces out of 100 marriages
  - Marriage rate
  - Average duration of marriage before divorce (in years)
  - Breakdown of households by family composition typology
2. Construction of statistical data such as absolute values and basic indicators in order to obtain comparable data on family mediation at European level;
3. Development of consistent monitoring indicators to allow the effective implementation of family mediation at European level.

This study focuses on three areas: children, family and divorce, and effective implementation of mediation. For each area figures are presented in tables containing statistical data, absolute values and relevant indicators<sup>5</sup>. Comments about facts and figures include a comparison with data contained in the three surveys mentioned above concerning the EU member countries and covering most of the thematic areas of this study for the years 1970-2002. In some cases a comparison among EU member states was impossible because of lack of basic data on a specific area.

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<sup>5</sup> See Par. 2 for tables showing absolute values and Par. 3 for tables showing indicators.

## 4.2 Technical report

### 4.2.1 Statistical data on children in the EU

#### 4.2.1.1 General comments

In Europe the number of children (0-17 years of age) out of the total population has been decreasing from the 60s onwards. In 2002 children represented 20.2% of the total EU resident population. Taking this figure as a reference value, EU countries can be broken down into the following groups:

- *Below EU average*  
Germany (18.7%), Greece (19.0%), Spain (18.0%) and Italy – with the lowest percentage of resident children among EU countries: 17.4%.
- *In line with EU average*  
Portugal (19.6%), Austria (20.5%) and Belgium (21.0%).
- *Above EU average*  
Sweden (21.8%), Denmark (21.9%), Luxemburg (22.1%), Netherlands (22.2%), France (22.5%), United Kingdom (22.6%); Ireland - with 26.0% of children out of the total resident population - is the country with the highest percentage.

If we compare these figures with statistical data analysed and discussed in previous surveys they show a significant trend to align with the EU average. Particularly in Ireland – where in 1999 the percentage of children on the total population was equal to 27.7% – there was a decrease by 1.7% in three years. In Italy – where the percentage of children was 17.7% in 1999 – this figure remained stable below the EU average.

The decline in birth rate in recent years went in parallel with an increasingly multiethnic and multiracial composition of society on the European continent. In fact, in all EU member states the incidence of the resident child population as against the child population of the host countries has increased. This trend is generally consistent and in some cases it shows a growth.

In Luxemburg, where the percentage of foreign children is the highest when compared with other EU member countries, this figure went up from 33.4% in 1994 to 38.9% in 1999. Germany and Austria show high figures as well: from 10.8% in 1998 to 10.5% in 2001 and from 9.7% in 1999 to 10.3% in 2001 respectively.

There is an intermediate group including the following countries: Netherlands (from 4.7% in 1999 to 4.3% in 2002), Sweden (from 5.9% in 1999 to 4.9% in 2002), Denmark (from 6.2% in 1999 to 5.8% in 2002) and France (data are available only for the year 1994: 6.8%).

The last group is made up of countries with the lowest percentages: Greece (available data refer to 1998 with a percentage of 0.4), Italy (from 2.3% in 1999 to 2.8% in 2001), Finland (from 1.8% in 1999 to 2.0% in 2002), United Kingdom (from 2.1% in 1997 to 2.6% in 2000), Ireland (from 2.2% in 1999 to 2.8% in 2001), Portugal (available data only refer to 1998 with 2.2%) and Spain (from 2.8 in 1999 to 2.9 in 2002).

It is worth noting that in order to obtain more accurate data some other figures should be added concerning:

- The figure of foreign children with a legal permit to stay in the host country – granted either individually or included in their parents’ permit – who are not yet on the records of the Register of births, deaths and marriages;
- The figure of foreign children who entered the country illegally.

In general an increase in percentage points can be seen in those countries that were below EU average for the first reference year.

#### 4.2.1.2 Proposal for statistical indicators for family mediation

The type of statistical data presented and described above allows acquiring some knowledge about the situation concerning children in Europe. However, it does not provide a viable tool to plan and implement family mediation actions that take into account the specific current and potential “context of needs”<sup>6</sup> of children. Since family mediation is mentioned in EU legal texts as one of the preferential instruments to guarantee the exercise of children’s rights<sup>7</sup>, it is absolutely essential to collect statistical data providing information on the “context of needs” if we want to implement family mediation effectively in cases of separation and divorce.

The absolute values and the indicators listed below were calculated for this purpose:

<sup>6</sup> The expression “context of needs” means the framework within which the need for family mediation arises implicitly or explicitly.

<sup>7</sup> *European Convention on the exercise of children’s rights / 1996*

Table n. 1

#### Child population involved in divorce proceedings

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Incidence of foreign child population involved in divorce proceedings as against child population of the host country

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Incidence of the foreign child population as against the total child population

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Incidence of the foreign child population involved in divorce proceedings as against the foreign child population

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Incidence of the foreign child population involved in divorce proceedings as against the total child population involved in divorce proceedings.

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Related to this it could be proposed to use the national judiciary statistics in order to collect, as a first step, the number of the divorces carried out. As a second step considering that each appeal in a divorce case contains the documentation related to the number, nationality and age of the sons and daughters involved, such data could be collected directly from the tribunals or extracted from a sample. In such a case the methodology of collection allows to obtain absolute or estimated values.

Collecting data about the child population involved in divorce proceedings has the aim to identify the “context of needs” specifically referring to children rather than – as it is presently the case – referring solely to adults. This way there would be a change in perspective: **since the priority in family mediation is to safeguard children’s interests, the analysis of the “context of needs” is relevant only if it refers directly and specifically to children.** Although family mediation addresses parents – for it tries to settle their dispute – its final goal is to safeguard children’s well being by preserving the integrity of their family. Consequently we need to identify those statistical data that are inextricably linked to the condition children experience and not to the condition of adults.

A statistical indicator of the “incidence of foreign child population involved in divorce proceedings as against child population of the host country involved in divorce proceedings” allows quantifying the size of this phenomenon as well as its cross-cultural, cross-ethnic and transnational dimension. Such an indicator would allow a realistic assessment of the “context of needs” in order to strategically develop family mediation. If we want to implement legal tools – both conventional and innovative – across borders and at a European level – we need this indicator to perform a feasibility assessment of family mediation in order to see whether its implementation can be extended from an experimental to a strategic level.

## 4.2.2 Statistical data on marriage and divorce in the EU

### 4.2.2.1 General comments

As far as marriage stability is concerned, the number of marriages and the corresponding marriage rates show a decline from 1970 to 2001<sup>8</sup>. In particular marriage rates went down from a EU average of 7.6 in 1970 to 6.3 in 1980, with a further drop to 5.1 in 1999, 2000 and 2001.

In parallel with this decrease there was a rise in the number of divorces and in the corresponding “divorce ratio”<sup>9</sup>. In particular, the latter shows that the EU average went from 10.1 in 1970 to 22.4 in 1980 and then up to 36.0 in 1997. Data referring to the year 2000 show that Belgium (59.8), Sweden (53.9), United Kingdom (50.5) and Finland (53.2) are the EU member countries with the highest ratios. The countries with the lowest ratios are Italy (13.4), Ireland (13.7)<sup>10</sup>, Spain (18.0) and Greece (21.1). Finally there is a large group of countries with intermediate ratios: Portugal, Netherlands, Luxemburg, Germany and Denmark. The most recent data available for France only refer to 1999 with a ratio of 40.8.

### 4.2.2.2 Proposal for specific statistical data on family mediation

In any justice system statistical data about marriage and divorce are a source of information about the enforcement of legal tools – both conventional and alternative – including family mediation. These data provide relevant information about general changes in families and their needs but they do not allow identifying specific needs that require family mediation. Indeed, a growth in the number of divorces highlights needs and requests. This does not mean, however, that simply on the basis of these data we can distinguish between needs and requests addressed to institutions, agencies and organisations dealing with divorce such as courts, social workers, counselling and psychotherapeutic services, family mediation bodies, legal and consultancy services. Although statistical data are relevant to assess the situation of marriage and divorce, they do not say much about the organisations that deal with divorce nor about their different actions.

<sup>8</sup> By “marriage ratio” we mean the ratio between marriages in each country and the average resident population multiplied by 1000.

<sup>9</sup> By “divorce ratio” we mean the number of divorces out of 100 marriages.

<sup>10</sup> In this country divorce came into force in 1996.

Consequently on the one hand data about divorce in the EU member states can tell us that there is room to promote family mediation but on the other hand it does not tell us much about how this promotion should be carried out nor about the specific requests by those who are involved in divorce proceedings and on how the divorce process is implemented and maintained (this type of information could be very helpful when deciding which type of action/instrument should be promoted). Being aware of all these critical aspects, we believe it is necessary to have absolute values and indicators that can offer specific information and knowledge to effectively implement family mediation. The method used for data collection may generate both absolute values and estimates as described below:

Table n. 2

#### Number of judicial divorces as against total number of divorces

Average length of legal proceedings in months and years

All these pieces of data provide information about social and economic costs incurred by the judicial system and the families. They also provide indications about the consequences of conflicts and disputes that arise during separation and divorce.

Family mediation is defined in EU legislation as “an alternative tool to settle family conflicts and disputes”<sup>11</sup>. This definition suggests that separation and divorce is the domain where family mediation can be applied while conflict and controversy are the main focus of family mediation. This means that family mediation does not come into play after a separation or divorce order but rather in case of unsettled conflict or controversy.

For this reason we would like to introduce a change in perspective and suggest to identify and develop relevant statistical indicators that would lead to an effective implementation of family mediation. We suggest that **the focus of our analysis be moved from separation and divorce to “conflict” and “controversy”** during separation and divorce. This shift would allow us to gain better knowledge about the object of family

<sup>11</sup> *European convention on the exercise of children's rights/96; Recommendation N. R (98) 1; Council directive 2002/8/EC; Recommendation 1639 (2003) (1); CM (2004) Rec 1639 final; Council regulation (EC) N. 2201/2003.*

mediation – i.e. conflict and controversy – and about its impact on families and judicial systems. In operational terms this entails conducting appropriate assessments about the viability of family mediation as a tool to support the judicial system. This could be the basis to conduct a comparative study on the effective implementation of family mediation. This way a direct comparison could be made between the impact of conflicts and disputes in divorce proceedings and the effects of family mediation.

#### 4.2.3 Effective implementation of a European family mediation practice in divorce cases

The effectiveness of any action is measured comparing gained results and programmed targets. Assessing the effectiveness of an action is essential to decide whether it can be defined as a so-called *best practice*, that is to say one of the best possible actions internationally on the basis of specific indicators or performance measure.

The pre-requisites for an effective monitoring can be met by adopting a methodology that comprises the following steps:

- I. Definition of the goal
- II. Construction of monitoring indicators<sup>12</sup>
- III. Periodical assessment of results on the basis of goals.

Having said that, the aim of this contribution is to identify and develop monitoring indicators allowing to perform a periodical assessment of the effective implementation of family mediation in divorce cases. We have decided to limit our survey to divorce cases as they be compared at European level whereas separation cases are not registered by Eurostat because of the different characteristics that such phenomenon has in the EU countries and as there is no normative regulation of this procedure.

The table below contains the first two steps described above: monitoring indicators are built on the basis of our goal in order to check the effective implementation of family mediation. Controversy and conflict, that determine the scope of family mediation actions, may arise in three different divorce

<sup>12</sup> A monitoring indicator should allow assessing whether a process is heading towards the right direction to hit the target. In other words it should tell us “what is being achieved” and not “what was achieved” by means of a periodical assessment.

scenarios: consensually agreed divorce, divorce obtained via legal proceedings, appeals by one of the parties against a divorce order. Since the goal of family mediation is to empower the two conflicting parties so that they can autonomously manage and settle their dispute, the results obtained by implementing mediation will be measured in terms of persistence of the conflict/dispute within the three scenarios. Mediation can be an effective tool to support the judicial system only if it can be pervasively applied to the three scenarios described above that generate and foster conflict/controversy.

The three indicators that we suggest to adopt – one for each scenario – contribute to the same extent to determine whether the goal was achieved or not. For this reason we assigned the same pondered weight to each one of them. They were developed on the basis of data collected with a specific methodology that generates both absolute values and estimates. These three indicators combined together compose an “index to monitor the effective implementation of family mediation in case of divorce”.

Table n. 3. Index to monitor the effective implementation of family mediation in case of divorce

Goal of family mediation	Monitoring indicators	Pondered weight
Empowering the parties in conflict, with the help of a third party, to manage and settle their conflict/ dispute autonomously	Incidence of consensual divorces obtained with the assistance of family mediation as against the total number of consensual divorces	1/3
	Incidence of the number of judicial divorces obtained with the assistance of family mediation as against total number of judicial divorces	1/3
	Number of appeals against divorce orders obtained with the assistance of family mediation as against the total number of divorces with the assistance of family mediation <sup>13</sup> .	1/3

Such an indicator may be confronted with the following: “the number of appeals on the cases of divorces reached without the contribution of an intervention of family mediation in relation to the total number of divorces”.

<sup>13</sup> Appeals can come from the denunciations of the parties for: a) not respecting the economical obligations; b) not respecting the right to access; c) physical or psychological violence. We need therefore to identify the number of judicial interventions required by the parties after a divorce obtained with the assistance of family mediation.

## 4.3 Statistical tables of absolute values

### Population

Table n. 4. Population by sex – Year 2002<sup>(a)</sup>

Country	Sex		Total
	Males	Females	
Austria	3.959.567	4.179.743	8.139.310
Belgium	5.042.288	5.267.437	10.309.725
Denmark	2.654.146	2.714.208	5.368.354
Finland	2.537.597	2.657.304	5.194.901
France	28.831.132	30.512.893	59.344.025
Germany	40.274.676	42.165.633	82.440.309
Greece <sup>(b)</sup>	5.199.841	5.354.563	10.554.404
Ireland	1.928.276	1.954.407	3.882.683
Italy <sup>(c)</sup>	28.094.857	29.749.160	57.844.017
Luxemburg	218.820	225.230	444.050
Netherlands	7.971.967	8.133.318	16.105.285
Portugal	4.991.590	5.343.969	10.335.559
Spain	19.779.378	20.629.952	40.409.330
Sweden	4.408.445	4.500.683	8.909.128
United Kingdom <sup>(c)</sup>	29.511.833	30.350.993	59.862.826
<b>EU</b>	<b>185.404.413</b>	<b>193.739.493</b>	<b>379.143.906</b>

(a) Estimated data for France, Ireland and Luxemburg

(b) Data for the year 2000

(c) Data for the year 2001

### Marriages and divorces

Table n. 5. Number of Marriages – Years 1999, 2000 and 2001

Country	Year		
	1999	2000	2001
Austria	39.485	39.228	34.213
Belgium	44.171	45.123	42.110
Denmark	35.439	38.388	36.567
Finland	24.271	26.150	24.830
France	286.191	305.000	303.500
Germany	430.674	418.550	389.000
Greece	61.165	48.880	57.000
Ireland	18.526	19.168	19.246
Italy	275.300	280.488	260.904
Luxemburg	2.090	2.148	1.983
Netherlands	89.428	88.074	79.677
Portugal	68.710	63.752	58.390
Spain	208.129	216.451	206.254
Sweden	35.682	39.895	35.778
United Kingdom	301.083	305.912	unavail.
<b>EU</b>	<b>1.920.344</b>	<b>1.937.207</b>	<b>-</b>

unavail. = Unavailable data

Table n. 6. Number of Divorces – Years 1998, 1999 and 2000

Country	Year		
	1999	2000	2001
Austria	17.884	18.512	19.552
Belgium	26.503	26.423	27.002
Denmark	13.141	13.537	14.381
Finland	13.848	14.030	13.913
France	116.515	116.813	unavail.
Germany	192.416	190.590	194.408
Greece	7814 <sup>(*)</sup>	9.629	11.119
Ireland <sup>(a)</sup>	unavail.	unavail.	2.623
Italy	33.510	34.341	37.573
Luxemburg	1.017	1.043	1.030
Netherlands	32.459	33.571	34.650
Portugal	15.278	17.676	19.104
Spain	36.072 <sup>(*)</sup>	unavail.	38.973
Sweden	20.761	21.000	21.502
United Kingdom	160.057	158.700	154.628

(a) In this country divorce came into force in 1996

(\*) Estimated figure

unavail. = Unavailable data

## 4.4 Statistical tables of indicators

### Population

Table n. 7. Percentage of Population aged 0-17 by sex – Year 2002<sup>(a)</sup>

Country	% Population aged 0-17		Total
	Males	Females	
Austria	21,0	20,1	20,5
Belgium	21,9	20,1	21,0
Denmark	22,7	21,1	21,9
Finland	22,6	20,7	21,7
France	23,8	21,3	22,5
Germany	19,6	17,8	18,7
Greece <sup>(b)</sup>	19,8	18,1	19,0
Ireland	26,9	25,2	26,0
Italy <sup>(c)</sup>	18,5	16,5	17,4
Luxemburg	23,0	21,3	22,1
Netherlands	22,9	21,4	22,2
Portugal	20,8	18,5	19,6
Spain	18,9	17,1	18,0
Sweden	22,6	21,0	21,8
United Kingdom <sup>(c)</sup>	23,6	21,8	22,6
<b>EU</b>	<b>21,2</b>	<b>19,2</b>	<b>20,2</b>

(a) Estimated data for France, Ireland and Luxemburg

(b) Data for the year 2000

(c) Data for the year 2001

## Children

Table n. 8. Foreign resident children out of 100 resident children

Country	Reference Year	Foreign resident children out of 100 resident children
Austria	2001	10,3
Belgium	2000	7,0
Denmark	2002	5,8
Finland	2002	2,0
France	-	unavail.
Germany	2001	10,5
Greece	1998	0,4
Ireland	2001	2,8
Italy	2001	2,8
Luxemburg	1999	38,9
Netherlands	2002	4,3
Portugal	1998	2,2
Spain <sup>(a)</sup>	2002	2,9
Sweden	2002	4,9
United Kingdom	2000	2,6

(a) Data for children aged 0-16  
unavail. = Unavailable data

## Marriages and divorces

Table n. 9. Marriage ratio - Years 1999, 2000 and 2001

Country	Year		
	1999	2000	2001
Austria	5,9	4,8	4,2
Belgium	4,3	4,4	4,1
Denmark	6,7	7,2	6,8
Finland	4,7	5,0	4,8
France	4,9 <sup>(a)</sup>	5,2	5,1
Germany	5,2	5,1	4,7
Greece	5,8	4,3	5,4
Ireland	4,9	5,0	5,0
Italy	4,8	4,9	4,5
Luxemburg	4,8	4,9	4,5
Netherlands	5,7	5,5	5,0
Portugal	6,8 <sup>(b)</sup>	6,2	5,7
Spain	5,2 <sup>(a)</sup>	5,4	5,1
Sweden	4,0	4,5	4,0
United Kingdom	5,0	5,1	unavail.
<b>EU</b>	<b>5,1<sup>(a)</sup></b>	<b>5,1</b>	<b>4,9<sup>(c)</sup></b>

(a) Preliminary data  
(b) Estimated figure  
(c) Excluding U.K.  
unavail. = Unavailable data

**Table n. 10. Average duration of marriage (in number of years)  
Years 1998, 1999 and 2000**

Country	Year		
	1998	1999	2000
Austria	11,2	11,5	11,7
Belgium	13,5	13,6	14,1
Denmark	11,8	12,4	12,3
Finland	13,1	13,4	13,6
France	14,3	13,7	unavail.
Germany	12,3	12,7	unavail.
Greece	unavail.	11,4	unavail.
Ireland <sup>(a)</sup>	unavail.	unavail.	unavail.
Italy	16,7	unavail.	unavail.
Luxemburg	12,4	13,0	12,2
Netherlands	12,6	12,9	13,0
Portugal	14,3	13,2	14,5
Spain	unavail.	unavail.	unavail.
Sweden	12,0	12,5	12,6
United Kingdom	9,4	unavail.	unavail.

(a) In this country divorce came into force in 1996  
unavail. = Unavailable data

**Table n. 11. Divorces out of 100 marriages - Years 1998, 1999 and 2000**

Country	Year		
	1999	2000	2001
Austria	45,7	46,9	49,8
Belgium	59,7	59,8	59,8
Denmark	37,8	38,2	37,5
Finland	57,6	57,8	53,2
France	42,9	40,8	unavail.
Germany	46,2	44,3	46,4
Greece	14,1	15,7	21,1
Ireland <sup>(a)</sup>	unavail.	unavail.	13,7
Italy	12,0 <sup>(a)</sup>	12,3	13,4
Luxemburg	49,9	49,9	48,0
Netherlands	37,3	37,5	39,3
Portugal	22,9	25,7	30,0
Spain	unavail.	unavail.	18,0
Sweden	65,7	58,9	53,9
United Kingdom	52,5	52,7	50,5

(a) In this country divorce came into force in 1996

(a) Preliminary data  
unavail. = Unavailable data

## Families

Table n. 12. Percentage of households by family composition typology - Year 1999

Country	Family Typology					Total
	Single person	Single parent with children	2 adults with children	3 or more adults with children	2 or more adults with no children	
Austria	30,2	3,7	22,0	6,5	37,7	100,0
Belgium	29,7	6,7	33,3	1,8	28,6	100,0
Denmark	37,3	5,2	21,3	2,2	34,1	100,0
Finland	38,3	4,8	23,6	1,2	32,1	100,0
France	unavail.	unavail.	unavail.	unavail.	unavail.	unavail.
Germany	35,4	3,9	22,1	2,1	36,6	100,0
Greece	16,0	2,1	28,1	8,5	45,4	100,0
Ireland	20,8	5,2	31,9	10,7	31,3	100,0
Italy	22,0	2,4	29,8	6,3	39,4	100,0
Luxemburg	24,8	3,1	31,2	6,2	34,7	100,0
Netherlands	33,7	4,8	26,1	1,4	34,1	100,0
Portugal	unavail.	unavail.	unavail.	unavail.	unavail.	unavail.
Spain	10,1	2,0	32,4	14,7	40,9	100,0
Sweden	38,2	5,7	24,4	1,5	30,1	100,0
United Kingdom	31,4	6,5	21,0	3,5	37,6	100,0

unavail. = Unavailable data

### France (year 1994)

Single person: 26,8%

Single parent with one child: 7,1

Two adults with one child: 32,1

Three or more adults and one child: 1,6

Two or more adults with no child: 32,4

### Portugal (year 1994)

Single person: 22.2%

Single parent with one child: 4.2

Two adults with one child: 35.2

Three or more adults with one child: 11.6

Two or more adults with no children: 26.8

## 5. General conclusions and perspectives

### 5.1. Methodological introduction

This survey is conducted within the paradigmatic framework of discursive science; as a means of gaining scientific knowledge it is a science that has different objects and methods from those of nomothetic science<sup>1</sup>. Two criteria distinguish nomothetic science from discursive science. The first is the object of the research, i.e. while in nomothetic science the researcher is an expert on “objects” and measurements, in discursive science the researcher is an expert in ways of constructing reality and in transformations (i.e. which discursive processes form the foundation of what is then considered as real). The second demarcation criterion concerns theoretical-methodological precision, i.e. if on the one hand in nomothetic science it derives from the precision of the measurement (and therefore of the instrument), on the other we have the precision of the construction of the argument with adequate reference to the epistemological plane on which it is based.

The approach to this research is based on what we have represented above and as for the results of the survey, for each section of the research (5.2) we will describe the considerations and operational aspects that have been revealed in relation to the state of the art of family mediation in Europe, distinguishing between the critical aspects and the strong points. Finally, we will outline the operational and research prospects (5.3) that are emerging in relation to the critical aspects and strong points identified.

### 5.2. General conclusions

Here we will represent the critical aspects and the strong points that have emerged from this survey on the situation of “family mediation in Europe”, following an order that goes from a level of general conclusions to

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<sup>1</sup> What is presented is an attempt, present in the literature, to overcome dichotomic categories such as natural sciences and spiritual sciences (see e.g. Dilthey).

a specific level, and then we will present the conclusions concerning the spheres that refer to:

- the normative frame (5.2.1)
- the discursive practices of roles involved in family mediation (5.2.2)
- the statistical framework (5.2.3).

#### 5.2.1. The normative frame

##### I. The scale and scope of the legislation adopted at the European level

From 1996 to 2004 altogether eight texts have been adopted by the institutions of the Council of Europe (COE) and the European Union (EU): this is undoubtedly a strong point and an indication of the enormous effort made at a European level towards family mediation and towards providing it with a legal base. This effort has been made using a range of legislative instruments available to the two international institutions, some of which are binding, others have merely the value of guidelines for the member states. Among the former, we include conventions and regulations, while non self-executing directives, recommendations, replies, communications, green papers and other atypical deeds such as codes of conduct should be numbered among the non-binding rules.

##### II. Family mediation within the legislation: from a “simple” operational instrument to a wide spectrum institution available to the legal system

Legislation is diversified in Europe and in most cases does not directly concern family mediation. This diversification is a strong point, revealing the institutions’ attention to family mediation and also showing a considerable effort to regulate the matter. The legislator, at a European level, has not only introduced legislation concerning this instrument, but has already applied it to some more general spheres of interest. Therefore mediation is not discussed only as regards the requirements and aims that define it and in professional practice, but also in a more instrumental dimension, i.e. in the context of wider frameworks.

In particular, we point out the spheres in which family mediation is regulated: the exercise of children’s rights<sup>2</sup>, gender equality<sup>3</sup>, access to

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<sup>2</sup> European convention on the exercise of children’s rights (1996.1.25).

<sup>3</sup> Recommendation 1639 (2003) (I) (2003.11.25); CM (2004) Rec 1639 final (2004.6.21).

justice in cross-border disputes<sup>4</sup>, the competence, recognition and making of decisions in matters of marriage and parental responsibility<sup>5</sup>.

At a national level, in line with what emerges from the legislation at a European level, we observe a considerable diversification in the objects of interest in the provisions examined (Box 1). In particular it emerges from the results of the research, as a strong point, that the legislators in the member states recognise that family mediation is strongly legitimated both as a professional practice and as an operational instrument in the service of ordinary justice.

### Box 1. National Legislations: the contexts of family mediation

While some countries present specific legislation on mediation (France, Malta, Austria, Hungary, Portugal and Belgium) other countries include it within legislations that have a different object of interest. For example, from acts dedicated to it specifically (France, Malta, Austria, Hungary, Portugal, Poland, Belgium and Slovakia) the legislation in which it is included and considered, for example by the civil, criminal and administrative jurisdictions and procedures (France), the subject of divorce (Ireland), family law (United Kingdom), the subject of marriage (Finland) and the more specific contexts of the promotion of children's and adolescents' rights and protection against family abuse (Italy).

### III. The interests and protection of children as the elective sphere of the practice of family mediation

With regard to legislation at a European level, first of all family mediation is observed to enter Europe as a process of management of family conflicts and as an instrument relevant to the aims of promotion and implementation of children's rights and welfare<sup>6</sup>. Secondly the results of the survey reveal that the guidelines provided by the European Convention on the exercise of children's rights is maintained as a framework for all subsequent legislation. Therefore the constant reference to children's primary interests emerges as a strong point in the legislation, as a framework within which every action of family mediation is structured, consolidated and evaluated (Box 2).

<sup>4</sup> COM(2002)13 final (18.01.2002); Council directive 2002/8/EC (2003.1.03).

<sup>5</sup> Council regulation (EC) N. 2201/2003 (2003.11.2)

<sup>6</sup> *European convention on the exercise of children's rights*.

### Box 2. European Legislation: Two examples about the interests and protection of children as the elective sphere of the practice of family mediation

#### (1) The European Convention on the exercise of children's rights

does not have family mediation as its object, in fact, the object of which is the promotion and implementation of children's rights and welfare, and which mentions family mediation as a process of family conflict management and as an appropriate instrument for the specific aims of the law itself.

Article 13 Mediation or other processes to resolve disputes

In order to prevent or resolve disputes or to avoid proceedings before a judicial authority affecting children, Parties shall encourage the provision of mediation or other processes to resolve disputes and the use of such processes to reach agreement in appropriate cases to be determined by Parties.

#### (2) The Recommendation N.R (98)1 on family mediation<sup>7</sup>,

in which, in consideration of the growing number of family quarrels and their impact on children, the usefulness of this instrument is recognised and consequently, the governments of the Member States are recommended to introduce, promote or strengthen the family mediation services.

Premise

(...)

3. Considering the need to ensure the protection of the best interests and welfare of the child as enshrined in international instruments, especially taking into account problems concerning custody and access arising as a result of a separation or divorce;

(...)

5. Acknowledging the special characteristics of family disputes, namely:

- the fact that family disputes involve persons who, by definition, will have interdependent and continued relationships;
- the fact that family disputes arise in a context of distressing emotions and increase them;
- the fact that separation and divorce impact on all the members of the family, especially children;

(...)

7. Taking into account the results of research into the use of mediation and experiences in this area in several countries, which show that the use of family mediation has the potential to:

- improve communication between members of the family;
- reduce conflict between parties in dispute;
- produce amicable settlements;
- provide continuity of personal contacts between parents and children;

III. Process of mediation

States should ensure that there are appropriate mechanisms to enable the process of mediation to be conducted according to the following principles:

(...)

viii. the mediator should have a special concern for the welfare and best interests of the children, should encourage parents to focus on the needs of children and should remind parents of their prime responsibility relating to the welfare of their children and the need for them to inform and consult their children;



<sup>7</sup> Adopted by the Committee of Ministers on 21 January 1998.

## ► Box 2

- V. Relationship between mediation and proceedings before the judicial or other competent authority
- States should recognise the autonomy of mediation and the possibility that mediation may take place before, during or after legal proceedings.
  - States should set up mechanisms which would:
- (...)
- ensure that in such a case the judicial or other competent authority retains the power to make urgent decisions in order to protect the parties or their children, or their property;

### iv. Definition of the family mediation mandate in the legislation: conflicts between members of a family

It can be seen that the European legislation builds an effective case, so as to give access to shared and univocal definitions. In this sense, firstly the interlocutor-reader of the provision is enabled to univocally identify a specific mandate for an action of mediation: a conflict between family members. This aspect is a strong point, since a rigorous, univocal and shared definition of this operational instrument has been used.

### v. The plurality of expressions in family mediation as a condition to overcome in order to be able to demonstrate its efficacy

Concerning national legislation acts the legislators have created and used specific local expressions and definitions. This aspect may be considered a consequence of what has been produced at a European level (see Box 3 and Box 4); where the definitions of family mediation are not univocal, each country is left with the possibility of interpreting “what family mediation is” (definition), “what family mediation does” (aim), “in which circumstances” (field of application), “what the family mediator is” (role profile) and then “what the family mediator does” (aims and competences of the role).

The fact that the use of a non-univocal expression or definition involves referring to a semantic domain and fields of implementation that are non-specific, means that the interlocutor-reader of the law will refer, for the creation and implementation of the mediation practice, to the legislation of his own country rather than to a univocal European definition.

Since in general the provisions are not binding, they cannot provide univocal guidelines that are shared by all member states.

Where there is the desire, at the European level, to adopt binding legislation, in view of the greater pervasiveness it would have, it would be even more important for the legislator to refer to rigorous and shared definitions.

Further critical aspects concern the impossibility of comparing the national practices and also the impossibility of creating cross-border mediation practices. In the latter case the non-availability of shared definitions entails and allows a greater reliance on local dimensions, also because of the different cultural and linguistic understandings. In particular, an analysis of the texts of the national legislations reveals that in some cases it is the countries themselves that use different expressions and definitions. Consequently it is the instrument of mediation that “is adapted” to the aims and the object of interest of a specific provision and not the opposite (i.e. it is not the specific provision that uses an operational instrument such as mediation for its own ends).

These scenarios are made possible by the fact that – since there are no univocal expressions or definitions of the instrument of mediation first of all among the experts and secondly, at the institutional level (legislator) – the instrument itself is thus “adapted”, i.e. interpreted. Its aims and fields of implementation change according to requirements or to the wider context (on the national plane), or to the more specific context (reference model of operation). In the light of these considerations we can therefore state that there is not one “operational instrument” but rather several “operational instruments”.

### Box 3. Examples of the plurality of definitions of the objective of family mediation at a European level

- e.g. (1) “family mediation as an appropriate means of resolving family disputes” [CM (2004) Rec 1639 final]
- e.g. (2) “Family mediation is a life-building and life-management process between family members in the presence of an independent and impartial third party known as the mediator” [Recommendation 1639 (2003) (1)]
- e.g. (3) “The primary aim of mediation is re-establishing communication between the parties” [CM (2004) Rec 1639 final]
- e.g. (4) “facilitate agreement between holders of parental responsibilities” [Council regulation (EC) N. 2201/2003]

#### Box 4. Examples of the plurality of definitions of the field of application of family mediation at a European level

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- e.g. (4) "Family mediation may be applied to all disputes between members of the same family, whether related by blood or marriage, and to those who are living or have lived in family relationships as defined by national law" [Recommendation 1639 (2003) (1)]
  - e.g. (5) "family mediation is a valuable alternative means of solving family disputes in certain circumstances"  
[CM (2004) Rec 1639 final]
  - e.g. (6) "issues concerning violence in couples or families could constitute criminal offences and in these circumstances the use of the mediation process may not be appropriate" [CM (2004) Rec 1639 final]
- 

#### vi. The limits of applicability of family mediation established *ope legis* and not by virtue of its characteristics

A specific aspect which we consider important to underline concerns family mediation in cases in which the couple carry out actions based on physical violence: European legislation states that in cases of violence, there is no possibility of resolving disputes through mediation. Assuming that violence within the family is not a process that can be managed with the help of mediation, the law establishes that mediation must manage situations in which the conditions for an agreement or for conflict resolution already exist. Thus the conception of the mediation procedure emerges as a procedure for regulating agreements, rather than as a procedure for the reappropriation of the management of the dispute that the parties themselves have helped to cause.

In this sense the operational scope of mediation is sanctioned in advance (with strong limits of applicability), including it in a sphere of action that has already been established politically rather than operatively according to the characteristics of the instrument.

This distinction keeps the plane of ordinary justice separate from the plane of extra-judicial justice (where there is behaviour based on the use of violence, mediation is not used as an instrument to support the "system of justice"). Implicitly, in this way, substance is given to a theory of mediation as an operational "instrument" that makes it possible to "regulate agreements" or to "resolve" disputes when there are already

actions of the parties to a conflict that lead to the management of the conflict itself. In this sense, mediation is possible as an operational instrument, not of ordinary justice but exclusively of extra-judicial justice.

#### vii. Defining the role of the family mediator: towards the definition of a competence profile

From the results of the research it emerges that the legislator, who has acted at a European level to adopt this operational instrument, does not refer to univocal definitions with regard to the foundations of this instrument or the profile of competences to which the role should refer. The instrument and the role appear to be legitimated exclusively when its aims and institutional competences are established; however the legislation is not an instrument that allows family mediation in Europe to become a practice, or an instrument with specific foundations and requirements, a method that can be transferred to different contexts and competences and that produces results that can be compared.

In this sense building the case refers more to a common understanding (or a plurality of interpretations of family mediation), rather than to a scientific understanding (or explicit and shared definitions).

The legislator therefore, not being able (as yet) to refer to an already available scientific understanding, can attempt to find definitions that are precise only in some cases, but in the majority of cases, the conceptual instruments and definitions on which the operational instrument is based are not homogeneous or organic in the laws enacted.

#### viii. The place of family mediation in separation and divorce proceedings

The following is a presentation of the national legislations of the states which mention family mediation within separation and divorce proceedings (Box 5).

## Box 5. The place of family mediation in separation and divorce proceedings

<b>France</b> (Loi n. 95-125 du 8 février 1995 relative à l'organisation des juridictions et à la procédure civile, pénale et administrative)	<ul style="list-style-type: none"><li>• The judge can appoint a mediator at any stage of the proceedings to try to reach an agreement between the parties</li><li>• In case of agreement the parties can submit it to the judge who can approve it and make it enforceable</li></ul>
<b>France</b> (Loi sur l'autorité parentale, la résidence alternée, la prostitution des mineurs, l'enlèvement international d'enfant) Loi promulguée le 4 mars 2002 - Applicable (modifications du Code civil)	<ul style="list-style-type: none"><li>• In order to try to reach a consensual exercise of parental responsibilities, the judge can suggest the parents a measure of mediation and, after receiving their consent, appoint a family mediator to proceed</li><li>• The judge can enjoin the parents to meet a family mediator who will inform them on the objectives and on the process of mediation</li></ul>
<b>France</b> (Loi n° 2004-439 du 26 mai 2004 relative au divorce)	<ul style="list-style-type: none"><li>• The judge can suggest the couple a measure of mediation and, after receiving their consent, appoint a family mediator to proceed</li><li>• The judge can enjoin the parents to meet a family mediator who will inform them on the objectives and on the process of mediation</li></ul>
<b>Ireland</b> (Family Law (Divorce) Act, 1996)	<ul style="list-style-type: none"><li>• In order to ensure that parties are aware of alternative measures to divorce proceedings, lawyers shall discuss with their clients the availability of family mediation to ease the process of separation or divorce on the basis of an agreement and they shall give them names and addresses of people qualified to help in connection with family mediation</li></ul>
<b>United Kingdom</b> (Family Law Act 1996)	<ul style="list-style-type: none"><li>• The regulations concerning the declaration of the end of the marriage must provide information on mediation</li><li>• Initially, an information meeting should be held in order to give information on services of family support, such as mediation, and to help the couple to understand the consequences of divorce, especially for the children.</li><li>• Section 7 prescribes a period for reflection and consideration, which can last, barring exceptions, from a minimum of nine months (starting from the fourteenth day following the date on which the matter is referred to the competent judge) to a maximum of twenty-seven months. This "spatium deliberandi" has the explicit aim of making parents "consider the possibility of saving the matrimonial relationship through reconciliation and, if this is impossible, think carefully about their future outside the couple, thoroughly assessing the effects of their decisions" (Section 7 (1) (2)).</li></ul>

- If reconciliation is not possible, the main aim of the period for reflection and consideration is to allow the couple to agree on the modalities of separation through self-mediation or mediation by a third party.
- Self-mediation leads to agreements, as mentioned in section 9, through which the couple regulate their respective rights and duties of economic nature or concerning their children. These agreements must then be submitted to the competent judge, who will evaluate them by devoting special attention to provisions concerning the couple and to the way the best interest of minors is protected.
- Section 13 (Directions with respect to mediation) prescribes that the judge can, at any stage of the proceedings, upon request of the parties or "ex officio", refer the parties to participate in an exploratory meeting at a mediation centre (mediation by a third party), so that they can receive explanations on the mediation process and decide whether this measure is suitable for their controversies.
- The judge has the power to order the parties to participate in a mediation meeting (S.13); the order also specifies the person who will conduct the meeting and requests him/her to write a report to inform the judge whether the two parties were present and whether they agreed to participate in other meetings with the family mediator. Afterwards (Section 14 Adjournments) the judge is given power to order adjournments, including some to try to reach a friendly settlement of the controversies. At the end of these adjournments the judge will ask for a report which shall state whether the parties have initiated and participated in any mediation; whether an agreement has been reached; whether any issues have been solved and to which degree; whether more mediation is necessary and whether its continuation could be useful.
- The competent judge can ask the lawyers to ensure that their clients have evaluated the feasibility of mediation and to certify that they have discussed such topics with their clients.
- Mediation must be accessible to everyone, whatever their financial resources are: legal aid can be granted for family mediation.

### Portugal (Law no.133/99)

- At any stage of the proceedings concerning the exercise of parental responsibilities, the judge can, whenever (s)he deems it appropriate, with the consent of the parties or upon their request, determine the intervention of a public or private mediation service



#### ►► Box 5. The place of family mediation in separation and divorce proceedings

	<ul style="list-style-type: none"><li>• The judge shall approve the agreement reached through mediation, provided that it meets the best interest of the minor</li></ul>
<b>Finland</b> (Marriage Act 234/1929; amendments up to 1226/2001 included)	<ul style="list-style-type: none"><li>• Family disputes, controversies and legal issues should primarily be settled through negotiations between the family members and decided by agreements</li><li>• Family mediators offer assistance and support upon request in case of family disputes and controversies</li><li>• Family mediators can offer assistance and support upon request in case disputes and controversies arise with regard to tribunal orders or to agreements on child custody and access</li></ul>
<b>Malta</b> (Mediation Act) 21 December 2004 To encourage and facilitate the settlement of disputes in Malta through mediation, to establish a Malta Mediation Centre as a centre for domestic and international mediation, and to make provisions regulating the conduct of the mediation process	<ul style="list-style-type: none"><li>• Parties to any proceedings may, by a joint note, request the court or other adjudicating authority to stay proceedings while they try to settle the dispute in front of a mediator</li></ul>
<b>Belgium</b> (Chambre des Représentants de Belgique, 3.2.2005 Projet de loi modifiant le code judiciaire en ce qui concerne la médiation)	<ul style="list-style-type: none"><li>• Except for the court of cassation and for the arrondissement tribunal, at the judge can, any stage of the proceedings, upon joint request of the parties or on his/her own initiative, but with the consent of the parties, order mediation before the case is decided. The parties agree on the name of the mediator.</li></ul>

#### ix. The contribution of national legislation to the promotion of family mediation

The national legislations of member States of the European Union have contributed promoting the instrument of family mediation in a peculiar and specific way for each State. Indeed, it has emerged that States:

- have created forms of public funding to offer economic support to couples who start the process of family mediation (“Legal aid” in Great Britain);

- have prescribed that lawyers provide information and refer their clients to centres of family mediation, thus taking an “anticipatory” approach, i.e. the promotion of a culture of family mediation by all the roles dealing with family disputes, starting from lawyers (Ireland, Great Britain);
- have instituted public centres of family mediation as a project of research-action (Portugal, where an office is created, under the Ministry of Justice, with the objective of providing a public service of family mediation in situations of divorce and separation);
- have instituted family mediation as a procedure whose specific aim is the protection of the minor (“child protection mediation procedure”), also in the course of enforcement procedures (Hungary), or when the judicial authority is protecting from family abuse, so that the judge may also order, where necessary, the intervention of a family mediation centre, in order to support and shelter women and children or others subjects who are victims of abuse and ill-treatment (Italy)
- have activated public funds for the promotion and institution of family mediation services and advisory services for families and minors aimed at solving relational difficulties (Italy, Law 285/96)
- have regulated the procedural aspects of such institute within the justice system with regard to separations and divorces (France, Great Britain, Portugal, Finland, Malta, Belgium)

In particular, some States have established univocal criteria and standards for the legitimation of the role of mediator, for the centres of family mediation and for training centres for family mediators. Thanks to these legislations the practice of family mediation can become a “good practice”.

Indeed, a “good practice” is one which, on the basis of specific performances and indicators, can be considered among the best applications at an international level. With this definition in mind, the results of the analysis of the legislations have highlighted that the States whose legislations help to build the operational instrument of family mediation as a **Good Practice** are the States which, beyond promoting it as an operational instrument, have:

- instituted state diplomas (France)
- established criteria and standards for the training and legitimation of the role of family mediator (France, Austria, Poland, Slovakia).

Indeed, when the legislation gives shared and univocal definitions of the practices to be followed, firstly, it is possible to compare the practices of different services of family mediation and, secondly, it is possible to create systems for monitoring and evaluating the efficacy of interventions. Indeed, such processes can be implemented when the text prescribes shared and univocal criteria concerning the role of family mediator and the process of mediation.

### 5.2.2 The discursive practices of roles involved in family mediation

#### x. The services of family mediation in Europe: 4 profiles of methods and practices

On the basis of the results of a research carried out through questionnaires filled in by workers in centres of family mediation, we have elaborated 4 profiles of methods and practices of family mediation concerning starting procedures and service monitoring. The four centres are located in United Kingdom, France, Belgium and Italy.

#### Box 6. Centre of Family Mediation UNITED KINGDOM

Town	Bristol
Type of service	Private, with an agreement with the public social services Financing: Legal Services Commission (National Government Body)
Headquarters	Legal offices
Date of beginning of the service	Bristol Family Mediators Association (BFMA) since 1991
Number of operators	9
Working hours of the service	24 hrs a week
Number of interventions last year	272 informative meetings of mediation / 97 interventions of mediation
How mediation was started	<ul style="list-style-type: none"> <li>• voluntarily</li> <li>• voluntarily after the judge ordered an informative meeting</li> </ul>
If the informative meeting is ordered by the judge, who chooses the service of family mediation	/
Roles referring to the centre	GP; psychologist; social services; lawyer; other clients; relatives of the couple; tribunal



#### Box 6. Centre of Family Mediation UNITED KINGDOM

Children's participation in the process	Children's presence is assessed case by case. In most cases, on issues concerning the children, the parents choose to discuss them directly with their children and often during mediation the parents discuss how to illustrate agreements to the children
Follow up (yes/no)	Yes
% of Follow up	10%
% of interventions with a positive outcome	58%
Number of cases of intercultural, interethnic or cross-border mediation	It is a minority of cases

#### Box 7. Centre of Family Mediation FRANCE

Town	Angers
Type of service	Private, with an agreement with the local authorities
Headquarters	Health Care System premises
Date of beginning of the service	Since 1992
Number of operators	9
Working hours of the service	36 hrs a week
Number of interventions last year	63
How mediation was started	<ul style="list-style-type: none"> <li>• voluntarily</li> <li>• voluntarily after the judge ordered an informative meeting</li> </ul>
If the informative meeting is ordered by the judge, who chooses the service of family mediation	<ul style="list-style-type: none"> <li>• the judge</li> <li>• the couple</li> <li>• the judge informs the couple on public services</li> </ul>
Roles referring to the centre	GP; psychologist; social services; lawyer; other clients; relatives of the couple; tribunal
Children's participation in the process	Children's presence is assessed case by case.
Follow up (yes/no)	No
% of Follow up	/



### ►► Box 7. Centre of Family Mediation FRANCE

% of interventions with a positive outcome	50%
Number of cases of intercultural, interethnic or cross-border mediation	5

### Box 8. Centre of Family Mediation BELGIUM

Town	Brussels
Type of service	Public
Headquarters	University
Date of beginning of the service	Since 1995
Number of operators	4
Working hours of the service	More than 24 hrs a week
Number of interventions last year	60
How mediation was started	<ul style="list-style-type: none"><li>• voluntarily</li><li>• voluntarily after the judge ordered an informative meeting</li></ul>
If the informative meeting is ordered by the judge, who chooses the service of family mediation	The couple
Roles referring to the centre	GP; psychologist; social services; lawyer; other clients; relatives of the couple; tribunal
Children's participation in the process	Children's presence is assessed case by case.
Follow up (yes/no)	Yes
% of Follow up	80%
% of interventions with a positive outcome	70%
Number of cases of intercultural, interethnic or cross-border mediation	15

### Box 9. Centre of Family Mediation ITALY

Town	Lecco
Type of service	Private, with an agreement with the municipality
Headquarters	Private centre
Date of beginning of the service	Since 2000
Number of operators	7
Working hours of the service	6 hrs a week (always open by appointment)
Number of interventions last year	40
How mediation was started	<ul style="list-style-type: none"><li>• Absolutely voluntarily</li><li>• Order of tribunal</li></ul>
If the informative meeting is ordered by the judge, who chooses the service of family mediation	The municipality
Roles referring to the centre	Social services; lawyer; other clients
Children's participation in the process	Children are always excluded
Follow up (yes/no)	Yes
% of Follow up	Almost 100%
% of interventions with a positive outcome	90%
Number of cases of intercultural, interethnic or cross-border mediation	None

### xi. Children's participation in the mediation process

Concerning the results of the research into the roles of those involved in family mediation actions (workers in centres of family mediation, workers in training centres for family mediators, lawyers and judges), it emerges that the decisions as to the participation /non participation of children in the mediation process are strongly diversified. These choices concerning the

practice of family mediation do not appear to be legitimated so much on a theoretical-methodological plane, since they are prevalently considered to be “right”, “necessary” or implicitly repropose without a reason rooted in the theoretical approach adopted. The implications that derive, by virtue of what has been observed, may reveal a scenario in which “schools of thought” are created or adhered to as regards the proposal of a specific set of techniques. Thus the debate between operators is centred on whether one belongs to one school or the other, rather than on the consideration of the theoretical-methodological foundation of the instrument of mediation. The operational outcome of this is that strategic choices become solely “ideological” choices, rather than choices based on theoretical-methodological reasons. The critical aspect that emerges as a consequence concerns the difference between what is univocally mentioned in the legislation and that which on the other hand, in a specific and local way, in terms of implementation, is proposed by the operators involved in various ways in the mediation process.

#### **xii. The plurality of expressions in family mediation as a condition to overcome in order to be able to demonstrate its efficacy**

In terms of critical aspects that have emerged, we add some results of the research into the roles of the people involved in various ways in family mediation actions. It has been found that the knowledge categories used by the respondents to build the theoretical-methodological context, and also the evaluation of the efficacy of an action, are highly diversified. This implies the absence of a shared model of family mediation and of a relative shared model for the evaluation of its efficacy. On the whole, what emerges from these scenarios is a complex reality. So if on the one hand there may be a potential scenario in which a model for mediation and evaluation of its efficacy is consolidated as *best practice*, there is the risk of aiming for an Efficacy Certification Procedure rather than an Evaluation of the same. The distinction between certification of efficacy and its evaluation means a shift from paying attention to visibility so that the services will be accredited and legitimated by a scientific community, rather than aiming to use the instrument of evaluation of efficacy as an added value to equip the service with a working method and to direct it towards continuous improvement.

Moreover this distinction involves a change from the visibility legitimated on an ideological plane (“I belong to this school” or “I refer to this operational model”), to a visibility based on an operational efficacy plane (“the evaluation of the results achieved against the aims set with reference to the operational model of family mediation”).

#### **xiii. The management of the network of services dealing with families in dispute**

The network of services dealing with families in dispute has a structure in which each role becomes a precise point of reference with its own mandate and objectives: tribunal, social services, psychological services, legal assistance.

The research has highlighted that some competences of the role of the mediator are confused with the ones pertaining to the roles of the lawyer or of the psychotherapist. Therefore, the inclusion of the role of the mediator in a network of services is not seen as an offer of new and substantial competences in the management of family needs. It ends up being an offer of a service which cannot be “expert” on legal issues nor on issues pertaining to clinical psychology: it is a role which is in many ways defined in terms of what “it cannot be” rather than in terms of the peculiar competences it can offer to the institutional network. Therefore, all the different roles dealing with family disputes strongly request a clear definition of the fields of competence of the family mediator.

Where effective networks have been put in place, they are like “islands”, i.e. they are based on a long experience which mediators, working in a network with judges, lawyers, social and psychological services, have acquired on their specific fields of competence. Therefore, it was possible to lay down the foundations for a coordination, which, in many cases, was based first of all on agreement protocols drafted at dedicated institutional debates. This was possible even before legislation regulated the procedural aspects of mediation within the justice system.

However, this scenario has a critical aspect, i.e. it certainly helped to build effective and interesting approaches, but these cannot be transferred to other contexts (thus becoming “practices”) which present different needs and/or cultural, institutional and local peculiarities.

Indeed, the experience is based on people, not on the competences of the roles which form an institutional network (as in the case of “practices”).

### 5.2.3 The statistical framework

A critical aspect of statistical data collection in Europe is the lack of comparable data at national level. In fact data collection and aggregation are performed according to national rules and standards leading to the following possible scenarios:

- Not all countries collect the same statistical data and as a result there is a lack of data pertaining to some countries concerning some thematic areas;
- The Countries collect statistical data in the same areas but use different data collection methodologies and tools and consequently data are available but not comparable;
- The Countries collect statistical data using the same terminology for the same object but the context of the use of this terminology is different as well as the real situation it describes. Again data at European level are available but not comparable.

This lack of comparable data was found in specific areas such as: transnational marriages, recomposed families, international adoption, national, cultural and ethnic origin of adopted children, children in foster care.

An additional problem is the lack of data pertaining directly to family mediation in Europe. Indeed, at national level, there are no statistical data available on the practices of family mediation, therefore it is hard to know at a statistical level the practices of family mediation in each member State of the European Union.

#### xiv. The data about marriage and divorce in Europe

With regard to the phenomenon of stability of the institution of marriage the survey carried out has enabled us to record, from 1970 to 2001, a decline in marriages and the corresponding marriage rates. Therefore this is an important information about the changes in the family and its attendant needs.

#### Box 10. Marriage and divorce in Europe

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In particular marriage rates went down from a EU average of 7.6 in 1970 to 6.3 in 1980, with a further drop to 5.1 in 1999, 2000 and 2001.

In parallel with this decrease there was a rise in the number of divorces and in the corresponding “divorce ratio”<sup>8</sup>.

In particular, the latter shows that the EU average went from 10.1 in 1970 to 22.4 in 1980 and then up to 36.0 in 1997.

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Data referring to the year 2000 show that BELGIUM (59.8), SWEDEN (53.9), UNITED KINGDOM (50.5) and FINLAND (53.2) are the EU member countries with the highest ratios.

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The countries with the lowest ratios are ITALY (13.4), IRELAND (13.7)<sup>9</sup>, SPAIN (18.0) and GREECE (21.1).

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Finally there is a large group of countries with intermediate ratios: PORTUGAL, NETHERLANDS, LUXEMBURG, GERMANY and DENMARK. The most recent data available for FRANCE only refer to 1999 with a ratio of 40.8.

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The critical aspect concerns the fact that these data do not enable us to identify specific needs in relation to the possible implementation of an action of family mediation. The scenario that emerges from these data is therefore aspecific and involves for those who have various roles connected with mediation the need to ask themselves how these data can be a reference for an effective implementation of family mediation.

The observation of the increase in the phenomenon of divorce highlights the needs and requests that may aspecifically have to do with all the bodies, institutions, organisations that conduct their own activity in this sphere: the judicial system, the social and welfare services, the psychological and psychotherapeutical services, family mediation services, legal aid and legal advisory services.

#### xv. The data about the child population

Concerning the research on the statistical framework, starting with the statistics recorded, it has been observed that in Europe since the 1960s there has been a decrease in the child population (0-17 years) compared

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<sup>8</sup> By “divorce ratio” we mean the number of divorces out of 100 marriages.

<sup>9</sup> In this country divorce came into force in 1996.

with the total population. Moreover against a phenomenon of decline in the birth rate in recent years, an increasingly multiethnic and multiracial character of the European continent has been observed. In all the countries of the EU, the incidence of the foreign resident child population has increased in comparison with the total child population.

#### Box 11. Child population in Europe

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In 2002 children represented 20.2% of the total EU resident population. Taking this figure as a reference value, EU countries can be broken down into the following groups:

- Below EU average  
GERMANY (18.7%), GREECE (19.0%), SPAIN (18.0%) and ITALY – with the lowest percentage of resident children among EU countries: 17.4%.
  - In line with EU average  
PORTUGAL (19.6%), AUSTRIA (20.5%) and BELGIUM (21.0%).
  - Above EU average  
SWEDEN (21.8%), DENMARK (21.9%), LUXEMBURG (22.1%), NETHERLANDS (22.2%), FRANCE (22.5%), UNITED KINGDOM (22.6%); IRELAND - with 26.0% of children out of the total resident population - is the country with the highest percentage
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#### Box 12. Foreign child population in EU member states

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In LUXEMBURG, where the percentage of foreign children is the highest when compared with other EU member countries, this figure went up from 33.4% in 1994 to 38.9% in 1999. GERMANY and AUSTRIA show high figures as well: from 10.8% in 1998 to 10.5% in 2001 and from 9.7% in 1999 to 10.3% in 2001 respectively.

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There is an intermediate group including the following countries: NETHERLANDS (from 4.7% in 1999 to 4.3% in 2002), SWEDEN (from 5.9% in 1999 to 4.9% in 2002), DENMARK (from 6.2% in 1999 to 5.8% in 2002) and FRANCE (data are available only for the year 1994: 6.8%).

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The last group is made up of countries with the lowest percentages: GREECE (available data refer to 1998 with a percentage of 0.4), ITALY (from 2.3% in 1999 to 2.8% in 2001), FINLAND (from 1.8% in 1999 to 2.0% in 2002), UNITED KINGDOM (from 2.1% in 1997 to 2.6% in 2000), IRELAND (from 2.2% in 1999 to 2.8% in 2001), PORTUGAL (available data only refer to 1998 with 2.2%) and SPAIN (from 2.8 in 1999 to 2.9 in 2002).

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The type of statistical data recorded contains critical aspects in the sense that, if on the one hand it provides information about the condition of children in the EU, on the other it is not an instrument that can be used to

plan and carry out family mediation actions that consider the children's specific needs. In fact although family mediation addresses parents – for it tries to settle their dispute – its final goal is to safeguard children's well being by preserving the integrity of their family. Consequently we need to identify those statistical data that are inextricably linked to the condition children experience and not to the condition of adults.

### 5.3 Operational and research perspectives

Here we will outline the operational and research prospects which on the basis of the strong points and the critical aspects identified, may allow family mediation to be consolidated as *Best Practice*.

#### Operational perspectives I

Firstly, the definition of an operational family mediation model that allows the aim of the action of mediation and the profile of the mediator's competences to be univocally identified, and therefore a precise outline of the theoretical reference models and the relative practice. In this sense the operational effects of a scientific foundation and of a rigorous methodology would give the possibility of:

- providing the legislator with rigorous definitions that enable him to create legislation where he intends to adopt and/or regulate family mediation (through provisions of a binding or non-binding nature);
- providing the legislator with instruments to establish the fields of implementation and the procedural aspects of mediation by virtue of its main characteristics and strength and not on the basis of of evaluations of a political or local nature;
- creating models for evaluating the efficacy of the actions performed, a necessary step especially as regards cross-border mediation as a sphere that is just emerging and that will be developed in future scenarios;
- building and maintaining a network of institutional relations that includes family mediation as a “new” addition to an institutional matrix with existing relations (the court, social services, psychological services, legal service). Therefore, only where this operational

instrument is univocally identified by all roles will it be possible to lay the foundations for the establishment and consolidation of the institutional relations matrix.

### Operational perspective II

Concerning the statistical data and their possible contribution, the proposals cover three spheres: statistical data on the condition of children, statistical data on the phenomenon of marriage and divorce, monitoring indicators that provide a periodical evaluation of the efficacy of the action.

In the first two cases it was a question of identifying the statistical data that could provide specific information about the needs of those potentially involved, for whom the mediation action should be intended, through a feasibility study. In the third case we have proposed indicators that will make it possible to monitor the efficacy of the implementation of mediation as an operational instrument.

#### A) statistical data on the condition of children

Using the statistical data on the child population involved in divorce proceedings, the aim is to study the “context of needs” that is referred exclusively to the condition of children, rather than, as happens at present, exclusively referred to the adult condition. In this sense a change of viewpoint would be produced: in view of the fact that in the sphere of the action of family mediation the priority interest is that of the children, statistical recording and analysis becomes relevant where it is referred exclusively to the condition of the children themselves. Mediation is provided for the parents, taking care of the management of the dispute, but the final aim remains that of contributing to the maintenance of the children’s welfare, from the viewpoint that it is the parents who are responsible for maintaining the integrity of the family nucleus. Therefore we must identify the statistical data necessarily linked with situations involving the children and not those that refer exclusively to the adults. The proposal follows (Box 13).

#### Box 13. Proposal for the collection of statistical data about the condition of children

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- Child population involved in divorce proceedings
  - Incidence of foreign child population as against total child population
  - Incidence of foreign child population involved in divorce proceedings as against foreign child population
  - Incidence of foreign child population involved in divorce proceedings as against total child population involved in divorce proceedings
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#### B) Statistical data on the phenomenon of marriage and divorce

With reference to EU legislation, family mediation is defined as “an alternative instrument for the resolution of family conflict and disputes”<sup>10</sup>. From this definition it thus emerges that if the sphere of separation and divorce is a field of implementation of family mediation, family conflict or disputes are its main object. Therefore the action of mediation is not implemented in the case of a separation or a divorce, but when a conflict or a dispute is taking place.

In this sense we wish to propose a change in viewpoint that will make it possible to build and record statistical references relevant to an effective use of family mediation: from an analysis of the sphere of separation and divorce to the analysis of the sphere of “conflict” or “dispute” within it. This change would make it possible to know the object of the action of family mediation, conflict or dispute, and the relative outcome with regard to families and the judicial system. The operational aspect that derives from this will be that of conducting appropriate evaluations of the feasibility of an action of family mediation as an instrument in support of the system of justice. The proposal follows (Box 14.).

#### Box 14. Proposal for the collection of statistical data about the dispute

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- Number of judicial divorces as against total number of divorces
  - Average length of legal proceedings in months and years
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<sup>10</sup> *European convention on the exercise of children’s rights/96; Recommendation N. R (98) 1; Council directive 2002/8/EC; Recommendation 1639 (2003) (1); CM (2004) Rec 1639 final; Council regulation (EC) N. 2201/2003.*

**C) Monitoring indicators that allow a periodical evaluation of the efficacy of the action**

The efficacy of an action is the degree to which it has achieved results in comparison with the planned aims. Evaluation of efficacy is an essential instrument for the consolidation of an action as the *best practice*. Here follows a proposal for an index or monitoring indicator that is the result of the combination of three indexes.

**Box 15. Proposal for an index monitoring the efficacy of mediation in the case of divorce**

- I. Incidence of consensual divorces obtained with the assistance of family mediation as against the total number of consensual divorces
- II. Incidence of the number of judicial divorces obtained with the assistance of family mediation as against total number of judicial divorces
- III. Number of appeals against divorce orders obtained with the assistance of family mediation as against the total number of divorces<sup>11</sup>.  
This indicator can be compared with the following one:
- IV. Number of appeals against divorce orders obtained without the assistance of family mediation as against the total number of divorces

**Research perspectives**

In order to maximise the items listed in the two previous points, the basic survey could become an instrument able to monitor the aspects listed and to be able to demonstrate the efficacy of the instrument of mediation.

In this sense the proposal is to make a basic, permanent survey which should be recognised with a special statute within an institutional framework that is to be defined and which, through the identification of suitable indicators, will supply useful monitoring and also piloting the use and the efficacy of family mediation in Europe.

In the light of what the present research has highlighted on the plurality of definitions, methods and practices of family mediation in Member States

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<sup>11</sup> Appeals can come from the denunciations of the parties for: a) not respecting the economical obligations; b) not respecting the right to access; c) physical or psychological violence. We need therefore to identify the number of judicial interventions required by the parties after a divorce obtained with the assistance of family mediation.

of the European Union, we will underline the aspects which can be considered as dividing criteria for monitoring the efficacy of the instrument of family mediation at a European level (Box 16).

The research perspective used in the survey emerges within a framework of activation and promotion of local experiences which Europe has developed so far. The reason for this approach is based on its implications: on the one hand, working on the basis of past experiences allows their capitalization and use as a resource for member States with less experience and for member States with a consolidated experience which want to improve their services in order to face changing needs (for instance the emergence of cross-border, interethnic and interracial family disputes). On the other hand, working on the basis of past experiences allows their transfer and adaptation to other contexts and to different cultural and political frameworks from their original ones.

**Box 16. Research perspectives: the contribution of the research**

General objective

To suggest strategic-methodological guidelines to member states of the European Union for the effective application of family mediation

Strategic lines

- A) Identification at a European level of experiences of centres of family mediation which can be classed as "Best Practice"
- B) Definition of a Research Action with the aim of
  - B1) Implementing systems for the monitoring of the efficacy of interventions;
  - B2) Implementing systems for the monitoring of the efficacy of the creation/administration of the institutional network of various services involved in the management of family disputes;
  - B3) Identifying actions to improve the offer of services.
- C) Elaboration of strategic and methodological guidelines for the effective application of family mediation on the basis of the
  - C1) Identification of performances and indicators which make centres of mediation and institutional networks examples of "Best Practice".
- D) Comparative Analysis of strategic and methodological guidelines of centres participating in the Research Action