

POLAND: PRESENT STATUS OF MEDIATION IN RESOLVING CIVIL AND COMMERCIAL DISPUTES — PREMISES FOR REFORM

ABSTRACT OF A CONFERENCE PRESENTATION REGARDING:
IMPLEMENTING UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS.
OPPORTUNITIES, CHALLENGES AND NATIONAL ACTION PLAN.

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1. Empirical efficiency of mediation

Mediation is an exceptionally efficient tool of resolving social disputes. This phenomenon has been uniformly underscored by numerous empirical studies conducted in the U.S. and E.U., like the Cornell Study of 1998, AAA Study of 2003-2006 E.U. Green Paper of 2002, Oxford Project of 2008 and the 2010 Study of ADR Center in Rome: The Cost of Non ADR - Surveying and Showing the Actual Costs of Infra-Community Commercial Litigation ("The Rome Study") The below cost and time table contained in the Rome Study amply illustrates how far mediation is more time - and cost- efficient in comparison with litigation and arbitration in resolving commercial disputes in EU countries.

VALUE OF THE DISPUTE	COURT DOMESTIC DISPUTE OF € 200.000			ARBITRATION DOMESTIC DISPUTE OF € 200.000			MEDIATION DOMESTIC DISPUTE OF € 200.000		
	Time	Cost in EUR	Cost as % on disp	Time	Cost in EUR	Cost as % on disp	Time	Cost in EUR	Cost as % on disp
€ 200.000									
Austria	540	14.660	7,3	540	46.480	23,2	90	14.790	7,4
Belgium	525	16.000	8,0	630	19.500	9,8	45	7.000	3,5
Bulgaria	870	17.885	8,9	480	15.372	7,7	14	4.676	2,3
Cyprus	1445	6.796	3,4	732	8.300	4,2	45	7.000	3,5
Czech Rep	1280	21.004	10,5	289	20.950	10,5	75	7.667	3,8
Denmark	380	46.600	23,3	250	66.000	33,0	45	7.000	3,5
Estonia	291	45.337	22,7	205	51.149	25,6	45	7.000	3,5
Finland	800	17.046	8,5	713	30.546	15,3	368	17.000	8,5
France	330	20.500	10,3	345	28.000	14,0	60	10.000	5,0
Germany	246	9.854	4,9	200	21.788	10,9	45	7.000	3,5
Greece	970	14.700	7,4	250	19.600	9,8	60	4.275	2,1
Hungary	765	11.312	5,7	540	21.038	10,5	90	14.000	7,0
Ireland	515	53.800	26,9	357	66.661	33,3	45	7.000	3,5
Italy	2205	19527	9,8	2935	65.400	32,7	47	17.000	8,5
Latvia	420	6.900	3,5	260	9.780	4,9	75	3.500	1,8
Lithuania	460	21.4100	10,7	150	29.000	14,5	90	15.400	7,7
Luxemburg	321	15.500	7,8	113	25.500	12,8	98	13.900	7,0
Malta	1575	8.100	4,1	665	5.100	2,6	300	3.600	1,8

VALUE OF THE DISPUTE € 200.000	COURT DOMESTIC DISPUTE OF € 200.000			ARBITRATION DOMESTIC DISPUTE OF € 200.000			MEDIATION DOMESTIC DISPUTE OF € 200.000		
	Time	Cost in EUR	Cost as % on disp	Time	Cost in EUR	Cost as % on disp	Time	Cost in EUR	Cost as % on disp
Netherlands	700	32.000	16,0	600	33.500	16,8	40	6.000	3,0
Poland	540	47.000	23,5	352	51.000	25,5	42	10.000	5,0
Portugal	450	11.428	5,7	480	20.161	10,1	90	3.050	1,5
Romania	342	19.414	9,7	398	17.347	8,7	32	3.010	1,5
Slovakia	570	51.993	26,0	730	57.761	28,9	125	8.603	4,3
Slovenia	600	8.087	4,0	290	15.190	7,6	180	6.05	3,0
Spain	730	30.000	15,0	320	21.632	10,8	74	7.667	3,8
Sweden	610	65.710	32,9	405	94.990	47,5	45	7.000	3,5
UK	333	51.536	25,8	357	66.661	33,3	85	37.011	18,5
Average	697	25.337	13	503	34.385	17,2	87	9.488	4,7

2. Mediation in Poland: regulatory setting

- i. mediation in resolution of collective labor disputes (1991)
- ii. mediation in criminal matters (1997, 2003)
- iii. mediation in juvenile matters (1982, 2001)
- iv. mediation in consumer matters (2000)
- v. mediation in administrative-court matters (2002)
- vi. mediation in civil matters (2005).

3. Polish Mediation in Civil Matters in Numbers (2006-2011)

	CIVIL	COMMERCIAL	LABOUR	FAMILY	JUVENILE	ALL
2006	1,448	256	33	270	326	2,333
2007	1,399	258	74	326	366	2,423
2008	1,455	210	107	427	261	2,460
2009	1,842	540	252	716	293	3,643
2010	2,196	848	195	988	337	4,564
2011	2,514	1,429	65	1,149	253	5,410
2006-2011 (cumulatively)	10,854	3,541	726	3,867	1,838	20,833

4. Status quo and conditions to be met to ensure success of the proposed mediation reform in Poland.

4.1 **The present status of mediation in Poland**, as measured by the very low statistics and deep dissatisfaction of its users, is unsatisfactory.

4.2 Mediation perceived as an important component of a rendering justice system requires deep changes. There are the following key components of the successful mediation reform:

- **mediation: a new constitutional paradigm of access to justice and remedy** by individuals derived from the principles of human freedom and individual's autonomy. The Mediation Act will be a recommended legislative setting to regulate and anchor mediation in the legal system of Poland;
- **positive government's systemic vision of ADR** - arbitration and mediation and its lasting place in the country's policies;

- **societal awareness and acceptance of ADR: PLEDGE TO ADR BY BUSINESS AND LAW FIRMS;**
- active and coordinated court policy on ADR;
- * availability of well-trained mediators based on a nationally adopted training and certification program sponsored by the government, lawyers' associations, business organizations and chambers;

5. Implementing UN Guiding Principles on Business and Human Rights: a proposed action plan for Poland

The Council of Ministers, upon recommendation of the Minister of Foreign Affairs, and the Minister of Justice adopts an implementing program to include:

- A. **The Government Guidelines** issued to all government agencies and bodies, as well as, all regional administrative and self-government bodies, to adopt and implement the UN Guiding Principles in all contractual undertakings with their business partners;
- B. Governors, presidents and mayors will invite business to join in a special initiative: **PLEDGE TO USE UN GUIDING PRINCIPLES IN CONTRACTS.**
- C. Presidents of Bar Associations of Advocates and Legal Counsels will invite and recommend to law firms to adopt: **PLEDGE TO USE UN GUIDING PRINCIPLES IN DEALINGS WITH CLIENTS AND ON BEHALF OF CLIENTS.**



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Sylwester Pieckowski, advocate, arbitrator and mediator, head of dispute resolution practice at Chadbourne & Parke's Warsaw office. He has a broad range of international business experience based on more than 20 years of practice in Polish and U.S. aviation industry and international trade. His present practice is focused on ADR in business dispute resolution, including negotiation, mediation and arbitration.

Mr. Pieckowski is a frequent speaker on alternative dispute resolution and international commercial arbitration as well as on U.S. trade laws and regulations. Among his publications there are: "Civil Mediation", Difin, 2006, and "How the New Polish Civil Mediation Law Compares with the Proposed EU Directive on Mediation", AAA Dispute Resolution Journal, August-October 2006. He served as a legal advisor for the Ministry of Foreign Trade in Warsaw for 10 years. Mr. Pieckowski earned an LL.M. from the University of Michigan Law School and received his Master of Law degree from the University of Warsaw Faculty of Law and Administration. Mr. Pieckowski is fluent in English and Russian.

He serves as President of the Polish Arbitration Association and President of the Civic Council for ADR at the Ministry of Justice. Mr. Pieckowski is a member of: ICDR, VIAC, Czech Arbitration Court, Court of Arbitration at the Kraków Chamber of Commerce and Industry, Lewiatan Court of Arbitration in Warsaw.

Sylwester Pieckowski has been for years recognized by *Chambers Global* and *Chambers Europe* in dispute resolution, in particular for his accomplishments in mediation and arbitration. In *Chambers Europe 2012* he was praised as "extremely responsive and passionate about the cases he is working on." According to *Legal 500 2011* Sylwester Pieckowski is "an excellent lawyer and skilled litigator."