

# **EQUINET**

**MEDIATION AND ADR: TO USE OR NOT TO USE?**

**A conflict is seldom about the issue.....**

# Who am I?



- Director CVC/ ADR Institute, the Netherlands
- Mediator since 1997 with: Court of Appeal The Hague, Courts in Rotterdam and Amsterdam, Council of State
- Chair European Mediation Network Initiative EMNI
- Chair Environmental mediators NL
- Specialized in:
  - ❖ Business mediation
  - ❖ Cross-cultural mediation
  - ❖ Team/multiparty mediation
- International consultant: 15 years, 35 countries

## Who are you? Test:

- Please stand up:
  - 45 and younger?
    - ❖ .....please sit down
  - Non-lawyers?
    - ❖ .....please sit down
  - More than 5 mediations/ year?
    - ❖ .....please sit down
  - Organisation refers to mediation/ADR?
    - ❖ If not:.....please sit down

# Content

- 1. What is mediation and ADR?**
- 2. When:**
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- 6. Conclusions**

# 1. What is mediation and ADR?

- **ADR** = Alternative Dispute Resolution (Effective Dispute Resolution) = a *variety* of dispute resolution processes where a neutral party assist the disputing parties in resolving their disputes
- **Mediation** = an ADR technique in which a neutral third party assist the parties by helping them in creating a mutually acceptable solution to their conflict

## 2. Definitions

### ❖ Definition of mediation

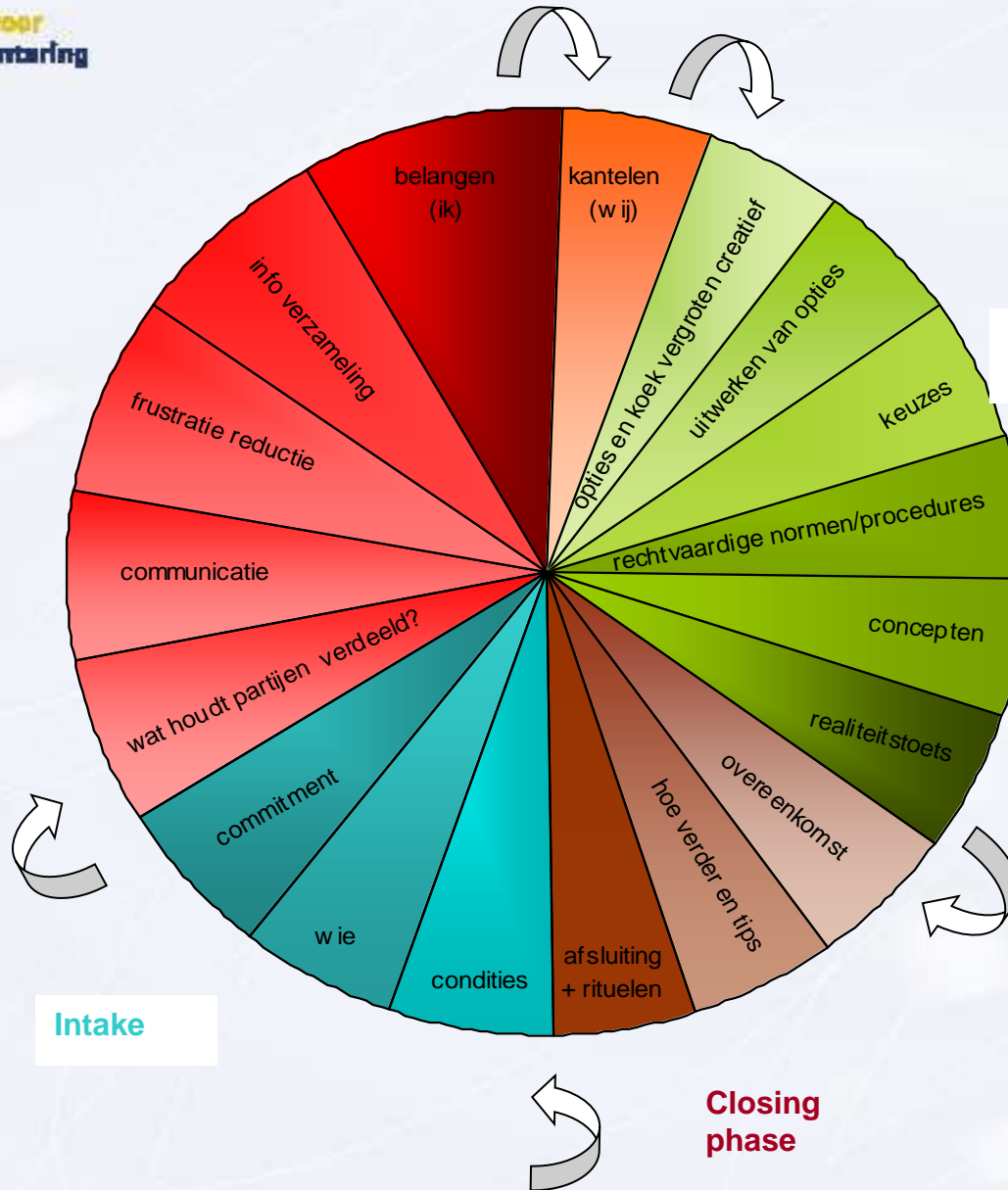
- **Structured** process
- Parties attempt by **themselves**
- On voluntary basis
- With assistance of mediator

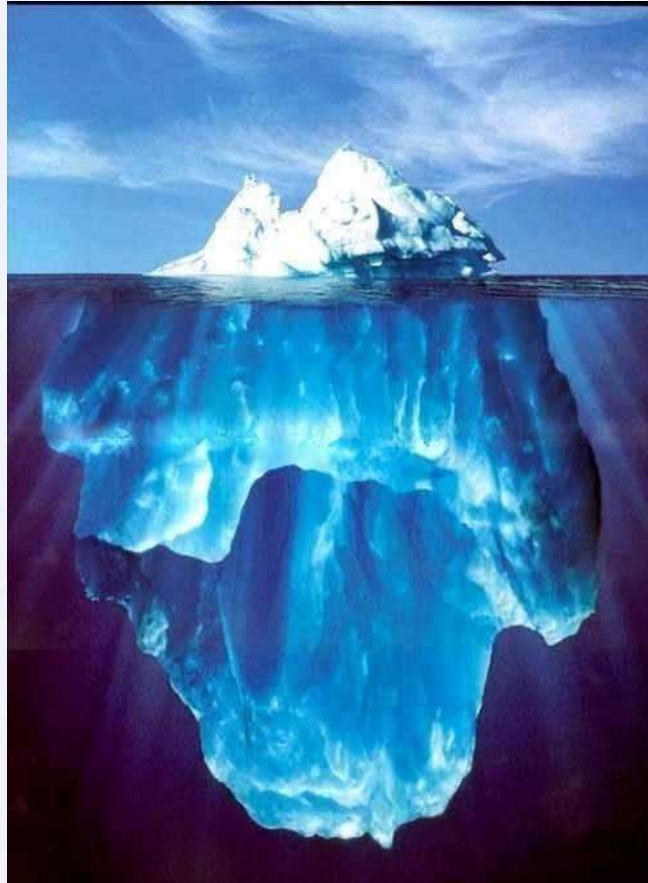


### ❖ Definition of a mediator:

- any third person who is asked to conduct a mediation in an **effective, impartial and competent way**

**Exploration phase**







### 3. When? Criteria for mediation

Indicators	Contra-indicators
<ul style="list-style-type: none"> <li>• Conflict</li> <li>• Relationship to be continued</li> <li>• Sustainable solution required</li> <li>• Confidentiality</li> <li>• When a verdict will not bring a solution</li> <li>• Common ground???</li> <li>• Different cultural background</li> <li>• When parties prefer mediation</li> <li>• Room and willingness to negotiate; room for manoeuvre</li> <li>• Costs and length</li> <li>• Procedural justice!</li> </ul>	<ul style="list-style-type: none"> <li>• Legal dispute</li> <li>• Jurisprudence</li> <li>• Precedency required</li> <li>• Former unsuccessful mediation in same case</li> <li>• Purely legal issue</li> <li>• Little or no willingness to mediation</li> <li>• Fishing expedition</li> <li>• Power difference too big</li> </ul>

**Most cases are suitable for mediation, but not all persons!**

### 3. When proposed (NEB)? Cases (employment cases)

Type of cases	Less succesful
<ul style="list-style-type: none"><li>• Sex</li><li>• Sexual preference</li><li>• Race</li><li>• Age</li><li>• Nationality</li><li>• Political opinion</li><li>• Labour</li><li>• Illness/ Handicapped</li><li>• Marital state</li></ul>	<p>Value conflicts:</p> <ul style="list-style-type: none"><li>• Religion</li><li>• Cultural values</li></ul>

**A conflict is never about the dispute!**

**Most cases are suitable for mediation, but not all persons!**

### 3. When? Before or after hearing?

#### ➤ Before:

❖ EU study on quantifying the cost of not using mediation:

- Calculation of impact of mediation on length and costs of litigation procedure
- Average cost litigation (commercial dispute) = €10.449 versus € 2789

#### ➤ Afterwards:

➤ A conclusion or verdict may have aggravated the conflict =>

❖ Relationship deteriorated or exit procedure (employment) = difficult

➤ Med-arb: a verdict AND mediation in order to solve the dispute AND the conflict

## 4. Results

- -Referral in 8% of cases
- Succesrate: 70% – 75%
- Cost reduction of 40%
- Time reduction: 4,5 month average in stead of app. 6 -9

## Exchange: threats and opportunities of mediation

- Exchange with your neighbour (2 x 2 minutes):
  - ❖ Will the implementation of mediation be useful with respect to the objective of your organisation?
  - ❖ Does it bring any threats to your profession?
  - ❖ Does it bring opportunities?



## 5. How? Succes factors for implementation

- Trained mediators (80 – 100 hours)
- Trained staff:
  - ❖ Mediation secretary/ coordinator
  - ❖ Referrers: not pushing, but asking questions!
- Systems change: competences, **yearly evaluations**, reward system, etc.
- Effective communication (all levels):
  - ❖ Internally: MT, key persons, others
  - ❖ Externally
- **Seduce!**

## 6. New developments: EU Mediation Directive Objective

- “The objective of this Directive is to facilitate access to alternative dispute resolution and to promote the amicable settlement of disputes by encouraging the use of mediation and by ensuring a **balanced relationship** between mediation and judicial proceedings”.
- EU directive promotes multi-step approach:
  - ❖ mediation => court/ arbitration

## 7. Conclusions Why mediation?

- Procedural justice
- Cost saving
- Time saving
- High success rate
- High satisfaction rate
- Contributes to:
  - ❖ implementation of equal rights ( => objective of Bodies of Equality)
  - ❖ Learning organisation
- To solve the dispute AND the conflict!!



# 1: EU Mediation directive

➤ Objective:

- ❖ Better access to justice
- ❖ Encouraging use of mediation
- ❖ Balanced relationship
- ❖ (reducing court caseloads)

## Mediation in Europe: schemes and providers

- Belgium, Denmark, Germany, Netherlands, Portugal, Slovenia and UK have mediation schemes.
- Majority of schemes use mediators from a legal background (judges or lawyers), not in NL
- Earliest in UK (1996), others followed
- Success rate mediation: appr. 65 – 80% agreements (but data are limited)

## EMNI

- Founded as an association in Austrian Law on the Status of non-profit Associations (Bundesgesetz über Vereine [Vereinsgesetz 2002 - VerG, BGBl. I Nr. 66/2002])
- Members from 40 different countries
- GA ↔ local coordinators ↔ board
- Every 2-year highly qualified Conference: 2012 Bratislava
- `Under construction`
- Partner of Mediation World
- Collaboration with IMI



## EMNI (2)

- Aims and objectives of EMNI:
  - ❖ Promotion of an international exchange of information, know-how and mutual support; facilitating contact between members;
  - ❖ Promotion of the development of effective mediation policies, services and legislation; of principles, ethics, standards and good practice.
  - ❖ Exploration and development of the theoretical basis of mediation and promotion of research;
  - ❖ Through all means available promoting mediation as such on a European level.

# EMNI

➤ Knowledge exchange:

- ❖ Website
- ❖ Conferences and meetings: 2013 Bratislava
- ❖ Networking

# EMNI

- ❖ Membership is open to:
  - Individual members
  - Organisational members
  
- ❖ Candidate members can send their application to [info@mediationeurope.net](mailto:info@mediationeurope.net)
  
- ❖ More info: [www.mediationeurope.net](http://www.mediationeurope.net)

## More information?

➤ Training:

- ❖ Centre for Conflict Management [www.cvc.nl](http://www.cvc.nl)
- ❖ Amsterdam ADR Institute: [www.adrinstituut.nl](http://www.adrinstituut.nl)

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➤ European Mediation Network Initiative:

- <http://www.mediationeurope.net/>