

Regulating mediation in Ukraine: puzzle to be solved

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Draft Laws On Mediation

Проекти, зареєстровані за всі сесії VIII скликання

Назва законопроекту або слова з назви : медіаці

Номер реєстрації	Дата реєстрації	Назва законопроекту
1666	28.12.2014	Проект Закону про внесення змін до Податкового кодексу України (щодо введення процедури медіації)
2480	27.03.2015	Проект Закону про медіацію
2480/П	07.09.2015	Проект Постанови про повернення на доопрацювання проекту Закону України про медіацію
2480-1	09.04.2015	Проект Закону про медіацію
2480-1П	07.09.2015	Проект Постанови про повернення на доопрацювання проекту Закону України про медіацію
3665	17.12.2015	Проект Закону про медіацію
3665/П	16.05.2016	Проект Постанови про прийняття за основу проекту Закону України про медіацію
3665-1	29.12.2015	Проект Закону про медіацію
10425	05.07.2019	Проект Закону про діяльність в сфері медіації

Проекти, зареєстровані за всі сесії VII скликання

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Номер реєстрації	Дата реєстрації	Назва законопроекту
2425a	26.06.2013	Проект Закону про медіацію
2425a-1	03.07.2013	Проект Закону про медіацію
2425a-1/П	28.02.2014	Проект Постанови про прийняття за основу проекту Закону України про медіацію

Dispute resolution in Ukraine

Courts: overloaded, expensive, enforcement of judicial decisions

Independent arbitrators: expensive, enforcement of judicial decisions, dubious professionalism and impartiality

Mediation: confidential, fast and effective

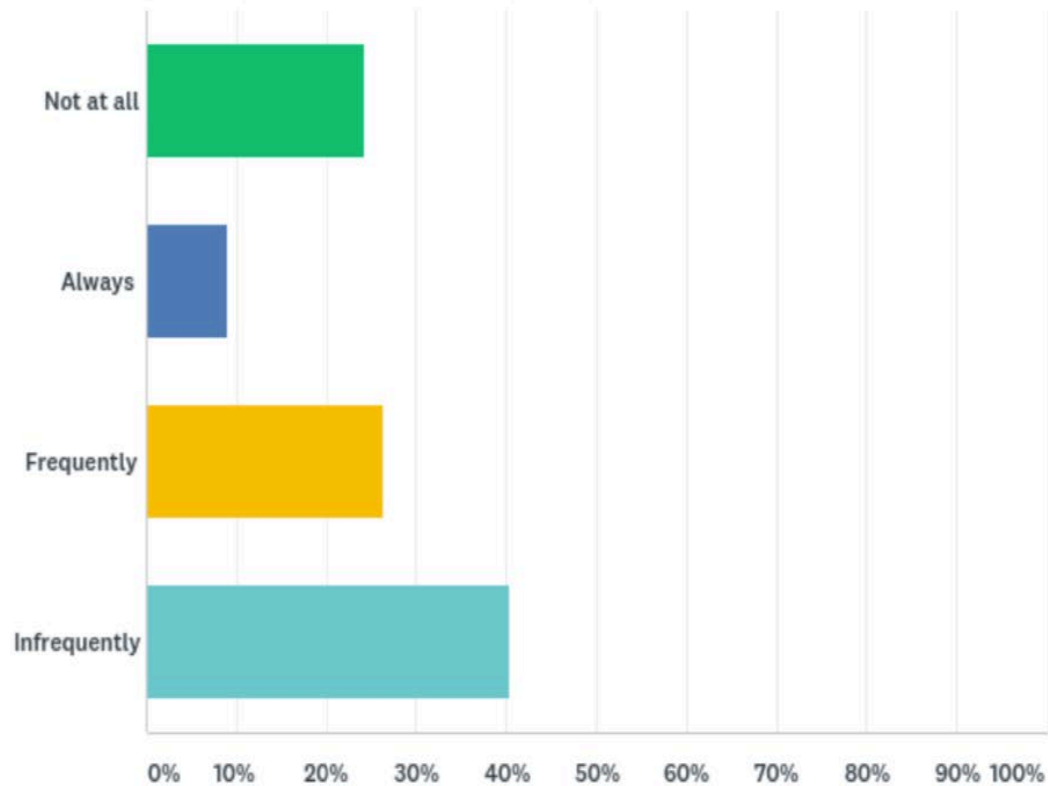
Mediation in Ukraine:

- ▶ 25 years
- ▶ 2 Associations
- ▶ Codes of ethics
- ▶ Variety of training programs for mediators
- ▶ Some courts provide a room for mediation

- ▶ **NO AWARENESS - LITTLE TRUST - LITTLE DEMAND**

Q1 As a commercial user, how often have you used or were advised to use mediation in a cross-border dispute as a best practice in business? (Cross-border dispute is defined as one where the parties to the dispute reside in different countries)

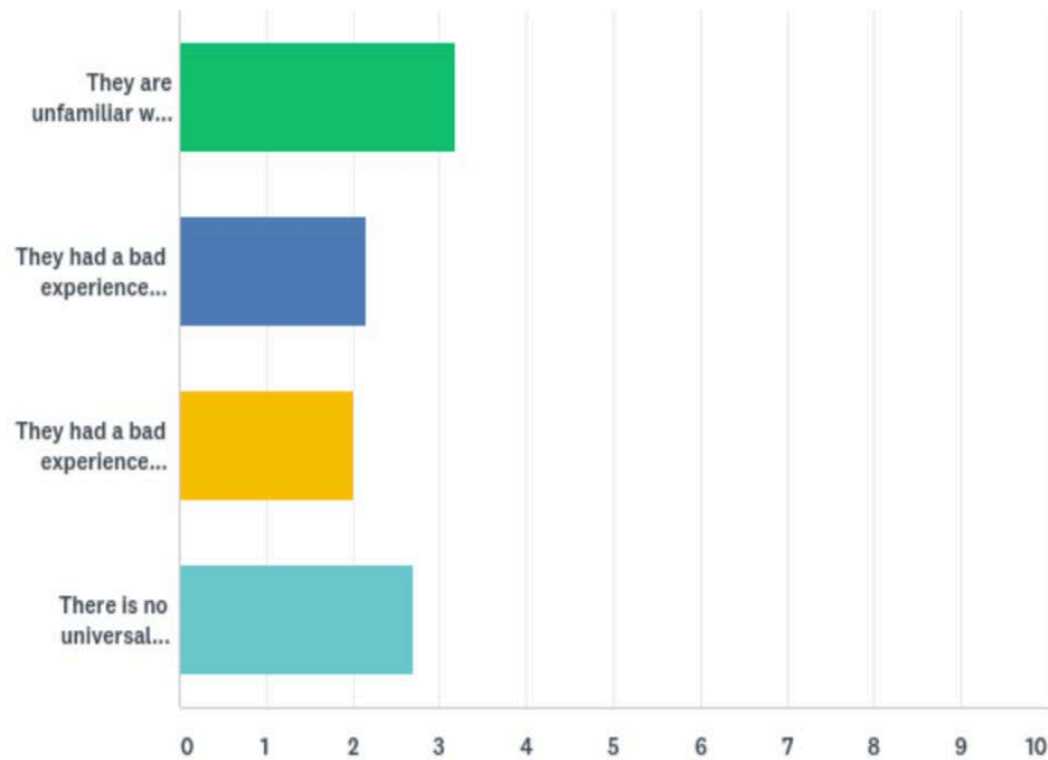
Answered: 99 Skipped: 4



Source: IMI survey, 2017

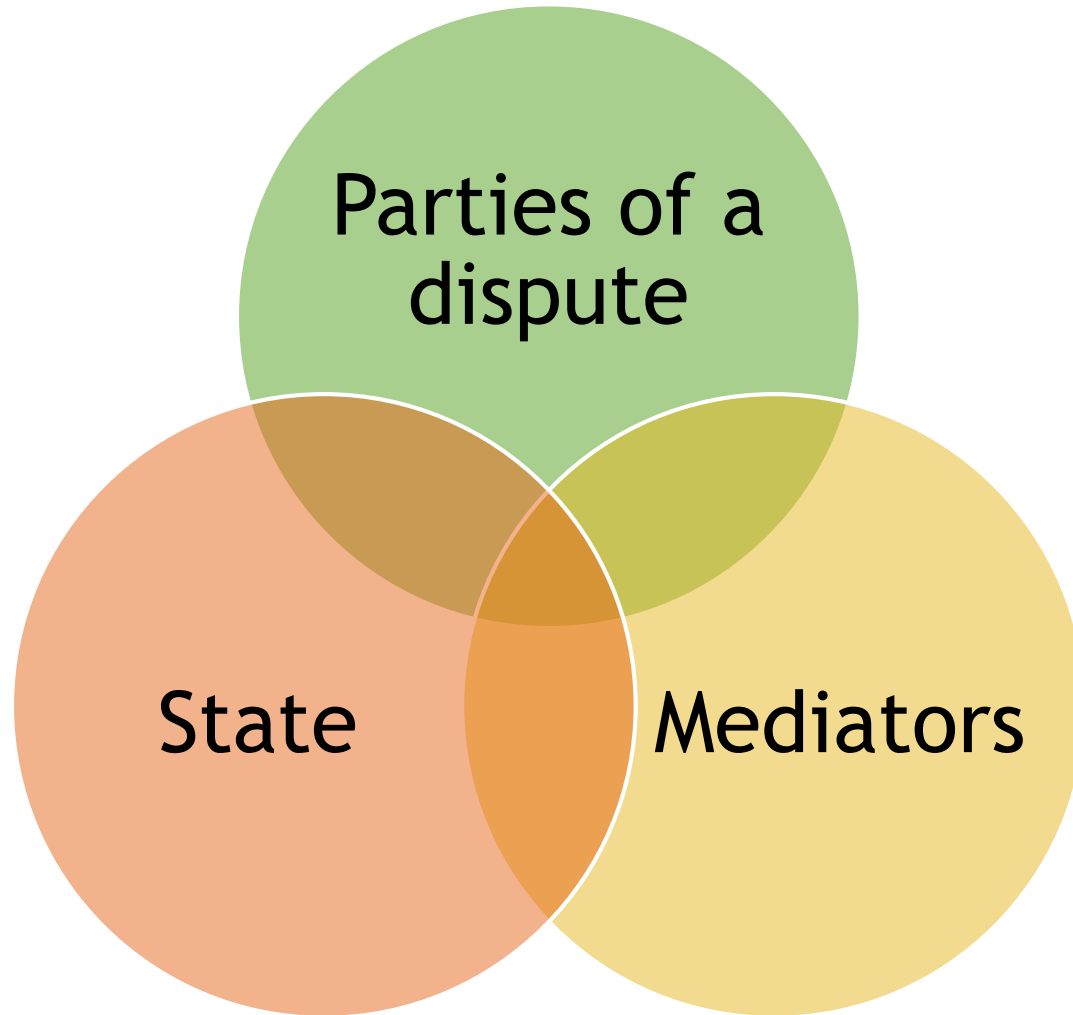
Q2 Please rank the reasons why you believe parties do not try to solve their commercial cross-border dispute through mediation? (1 is the most frequent reason 4 is the least frequent experience)

Answered: 99 Skipped: 4



Source: IMI survey, 2017

Law on Mediation: what for/for whom?



What does the State want? (when enacting Mediation Law)

- ▶ Rule of law;
- ▶ Access to justice;
- ▶ Unloading the courts;
- ▶ Protection of third person rights in mediated agreements

What do parties of a dispute want?

- ▶ Rule of law;
- ▶ Access to justice;
- ▶ Real choice of dispute resolution methods;
- ▶ Fair mediated agreements;
- ▶ Protection of their rights and interests in the mediation procedure;
- ▶ Quality of mediator's services

What do mediators want?

- ▶ Mediator's immunity;
- ▶ Strong demand:
 - 1) society trust the mediators;
 - 2) incentives to mediate disputes;
 - 3) procedural safeguards
- ▶ Profession «mediator»

Mediation vs Trial:

Expectations:

1 mediation : 2 trials,
▶ 50% mediations are effective

Reality:

1 mediation : 100 trials (8:100 in
Italy, where certain types are
dispute must be mediated)



EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE (CEPEJ)

European Handbook for Mediation Lawmaking

*As adopted at the 32th plenary meeting of the CEPEJ
Strasbourg, 13 and 14 June 2019*

What should be regulated?

- ▶ Scope;
- ▶ Requirements for mediators:
 - age
 - education
 - Special requirements
- ▶ Access to the profession (special training, accreditation, certification, mediators' registers, adherence to the Codes of ethics)

What should be regulated?

- ▶ Mediator's rights and duties;
 - Adhere to principles of mediation (voluntariness and self determination, confidentiality, mediator's neutrality and impartiality);
 - Disclose conflict of interests;
 - How to conduct and when to terminate the mediation procedure.
- ▶ Mediator's responsibility (civil, disciplinary, criminal?)

What should be regulated?

▶ Mediation model:

- voluntary;
- mandatory;

▶ Who initiates mediation

- Parties of a dispute;
- judge

What should be regulated?

Legal status of:

- 1) Mediation clause;
- 2) Agreement to mediate;
- 3) Mediated agreement.

What should be regulated?

Procedural guaranties and legislative incentives:

- ▶ Limitation periods;
- ▶ Court fees compensation;
- ▶ Tax privileges for mediator's fees;
- ▶ Enforcement of mediated agreements;
- ▶ Mediation as legal aid

What should be regulated?

Self-regulation of mediators:

- ▶ Ethics;
- ▶ Mediation rules;
- ▶ Mediator's training, accreditation and certification;
- ▶ registries;
- ▶ Disciplinary responsibility of mediators.

Thanks for your attention!

