Enforceability of mediation agreements in European Union

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DISCOURAGE LITIGATION. PERSUADE YOUR NEIGHBORS TO COMPROMISE WHENEVER YOU CAN. POINT OUT TO THEM HOW THE NOMINAL WINNER IS OFTEN A REAL LOSER—IN FEES, AND EXPENSES, AND WASTE OF TIME.

—ABRAHAM LINCOLN
I would like to thank my family
and my friend Dimitri Kliatsi
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Abstract

Unlike litigation and arbitration, mediation is a more informal way to settle disputes. The whole process is quick, cheaper than the other two forms of justice and interested-based, but the most important is that mediation is promoting amicable dispute settlements. Moreover, mediation is a very flexible process since there are no formal rules of procedure for the mediation sessions. There is no judge or even an arbitrator and the role of the mediator is very different from the other two, since he/she is acting as a neutral negotiation facilitator, helping each party analyze its position and trying to facilitate the parties find a common solution to their problem, and not to find solution that will be imposed to the parties. This is exactly the key of mediation’s success. The solution is chosen by the disputants and not by an outside force, as in arbitration and in litigation. Due to the fact that the outcome of mediation is solely under the control of the parties, mediation is likely to go well beyond the traditional negotiation settlements. Yet, mediation is not commonly used as a dispute resolution method all over Europe, although it is promoted by EU institutions and the European parliament. The Council has adopted has adopted a Directive (Directive 2008/52/EC) which ensures that EU citizens can, in cases that are falling within the scope of application of the Directive, have the possibility to choose mediation as a dispute resolution method. The Directive gives the possibility to the parties to enforce the mediation agreement, requiring at the same time all parties’ consent.

This thesis investigates the mechanism of recognition and enforcement of mediation agreement in the European Union in the light of Directive 2008/52/EC and in particular the mechanism of enforcement of these agreements in the Greek legal order. The aim of the thesis is to examine whether the language and thereby the scope of the provisions of enforceability lying in Article 6(1) of Directive 2008/52/EC may limit the underlying objectives of the Directive in preamble 5 and to what extent these provisions have already affected the Greek harmonization.
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Introduction

In our ordinary life it is possible that we face some difficulties with other people that sometime may result in disputes or conflicts of different variety. They may be the result of the multicultural society we live in or because everyone has been grown up with different values and consequently has different opinion in a certain aspect. Frequently we can resolve such a dispute, but sometimes this may be easier said than done, examples of such conflicts everyone can face in both personal and professional life e.g. between partners, friends, and business-partners or between fellow passengers. Most of the time people try to solve their dispute and continue their relationship on a friendly way. On the other hand, there are some relationships that by their nature are more complicated and may require another person to intervene and help them resolve their dispute. In these situations, a neutral person, a mediator, may help the disputing parties to understand each other, respect the other point of view and in a certain way help them find an amicable solution to their problem.

A dispute can be solved between the disputing parties either on a voluntary basis through a polite discussion or can be settled by a court or an arbitral tribunal, where the result is a binding decision for the parties. The problem with the last method is not only that such a procedure is time consuming and expensive, but also that the decision-resolution is something that was made by another person and sometimes may be not suitable for the parties.

Mediation as an alternative dispute resolution is designed to cover exactly these disadvantages of litigation and arbitration. The parties choose and trust a third and neutral person – the mediator - to help them reach a solution to their problem. Mediators, which are trained to act in a proper way, use various techniques to make the parties discard the malicious feeling the have for each other in order to start a productive dialogue. Through this dialogue the parties are lead to understand their real problems and needs and us a result to reach a common agreement to settle their dispute. This agreement is the resolution that the mediator writes down as a mediation settlement agreement, the one that the parties previously have agreed on.
Mediation as a dispute settlement method is frequently used in some countries such as the United States of America (USA), and less used in other countries such as Greece. The main reasons why mediation is so frequently used in the USA and not so frequently used i.e. in the EU countries have to do with differences between the law systems in common law and civil law countries. The higher cost of a litigated solution and the will power to eliminate the aggression between the parties are some reason for the flourishing of mediation in the USA.

On 15th and 16th October 1999, the European Council held a meeting in Tampere, Finland, and the European Union (EU) expressed the opinion that the enjoyment of freedom requires a “genuine area of justice, where people can approach courts and authorities in any Member State as easily as in their own. “1. It was also said that every Member State should create extrajudicial procedures. In April 2002, the European Commission's Green Paper on ADR in civil and commercial law described ADR2 as “a political priority”3. By means of Directive 2008/52/EC of the European Parlament and of the Council of 21 May 2008, the European Union (EU) has provided the criteria for the regulation of mediation in civil and commercial matters in EU Member States.4 The aim of the Directive was 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”.5

4 Antonio Maria MARZOCCO Michele NINO, THE EU DIRECTIVE ON MEDIATION IN CIVIL AND COMMERCIAL MATTERS AND THE PRINCIPLE OF EFFECTIVE JUDICIAL PROTECTION, LESIJ NO. XIX, VOL. 2/2012, p.105
In order to promote mediation and ensure that citizens can “rely on a predictable legal framework” 6, the European Parliament and Council requested that the Regulation 52/2008/EC be adopted and implemented by all Members States to their national legislation within 21st May 2011, except Denmark, which has chosen not to implement it.

Although, the EU was very ambitious on the matter of mediation, the process itself raises question not only during the actual procedure but also even after. Questions about the enforceability of the content of the settlement agreement arise. What legal effects do have an agreement resulting from a mediation process actually? What are the possibilities to enforce such an agreement? And last but not least, what is happening in cases of cross-border mediation.

This thesis is trying to answer the question in the matter of enforceability and to highlight the issue of enforceability of the content of an agreement resulting from a mediation process. Finally, other perspectives on enforceability that are mentioned in this thesis, other than European and Greek ones are not examined exhaustively.

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Chapter 1

Enforceability of the mediation outcome

The concept and the meaning of mediation have been defined in several ways. “Mediation means a structured process, however named or referred to, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a mediator.”

or

“(1) “Mediation” means a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.”

Regardless of which definition anyone chooses to read, the basic meaning is common: The disputing parties choose a neutral third person who facilitates their discussion and help them reach a common agreement. Nothing is said in every definition if this agreement is obligatory to the parties or the parties can chose if they want to respect it or not. This is because at the time of its birth, the mediation agreement is not binding to the parties. The parties can comply with the content of the mediation settlement agreement voluntarily or otherwise the agreement can be enforced.

Agreements resulting from a mediation process have a higher chance of performance compared with court decisions. The fact that mediation is based on party autonomy ensures that the parties reach a decision only if they really want the solution, hence the higher performance rates. What is more, since the parties create their own solution to the problem, it is more possible to take into consideration

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7 See the definition in Article 3(a) of Directive 2008/52/EC.

8 See the definition in Section 2(1) of the Uniform Mediation Act

financial difficulties of the parties or other obstacles to the performance of the agreement, they feel it is more fair to them and they are capable of performing, the likelihood of not fulfilling obligations of the settlement are reduced. For example, a structured settlement with payment terms within a party’s ability to pay is much more likely to be paid and useful to the other party than a judgment which leaves the prevailing party with the unhappy task of moving forward with collection actions as the loser simply cannot make the payment.\textsuperscript{10}

It is important for the parties to know that their agreement is enforceable, especially since there is always the risk that one party may breach the agreement. These breaching problems might occur in the case of voluntarily mediation settlement agreements as the compliance with these are based on the parties’ good will.

1.1 Why Enforcement

Unlike litigation judgments and arbitral awards which are legally binding, mediation settlement agreements are not enforceable immediately. As it is said before, a mediation outcome is not enforceable in itself but it needs a supportive authority such as a court order\textsuperscript{11}. The mediation outcome has to be adopted by a whole legal system as an enforceable outcome. In other words, domestic legislation has to create a mechanism in order to recognize and enforce the mediation settlement agreements or even better to create a new mechanism properly designed for every aspect of mediation. The important piece that must be completed in every legislature is to create a mechanism to make the mediation agreements enforceable to the same extent as any judgment issued by a court\textsuperscript{12}. What is needed is not exceptional. It is an operational system similar to the one used for arbitral awards. Additionally, because the arbitral


awards are in a way imposed to the parties by the tribunal, while the mediation outcome is a consensual solution chosen by parties to put an end to their dispute\textsuperscript{13}, it is rational to ask for the same treatment.

1.2 The need for an enforcement mechanism

Once advocates promoted arbitration as a means of avoiding the contention, cost and expense of court trial; economy, efficiency and the opportunity to fashion true alternatives to litigation are still associated with conventional perceptions of arbitration.\textsuperscript{14} Just as arbitration has developed in part to avoid expensive and protracted court proceedings, mediation is now viewed as a useful additional tool to counter the perceived increase in cost and delay in arbitration.\textsuperscript{15} A mediation agreement is reached in less time and spending less money in comparison with arbitration; still, the main question exists: Why is there no global mechanism for the enforcement of mediation settlement agreements?

The basis on which mediation settlement agreements should be enforced has been the subject of much debate, but no single mechanism for the enforcement of such agreements has emerged\textsuperscript{16}. There was a strong effort made by the experts working on United Nations on International Trade Law (UNICITRAL) to create a


\textsuperscript{15} Edna Sussman, The New York Convention Through a Mediation Prism, Published in Dispute Resolution Magazine Volume 15, Number 4, Summer 2009. © 2009 by the American Bar Association. P. 10

\textsuperscript{16} Edna Sussman, The Final Step: Issues in Enforcing the Mediation Settlement Agreement, p.4 (available at \url{http://www.sussmanadr.com/docs/Enforcement_Fordham_82008.pdf})
unique mechanism for the enforcement of mediation agreements but despite the efforts there was nothing to be achieved. Article 14 provides: “If the parties conclude an agreement settling a dispute, the settlement agreement is binding and enforceable, [the enacting state may insert a description of the method of enforcing the settlement agreement or refer to provisions governing such enforcement]”17 The comments to Article 14 recognized that “many practitioners put forth the view that the attractiveness of conciliation would be increased if a settlement reached during a conciliation would enjoy a regime of expedited enforcement or would for the purposes of enforcement be treated as or similarly to an arbitral award.”18 It is clear that the experts of UNCITRAL found it difficult to reach a common mechanism for the enforcement of mediation agreements, because of the differences between national legislations. The provisions of Art. 14 leave the enforcement, defenses to enforcement and designation of courts (or other authorities from whom enforcement of a settlement agreement might be sought) to applicable domestic law.19

In the field of EU legislation, the Mediation Directive recognizes the importance of enforcement and states in paragraph 19 that “mediation should not be regarded as a poorer alternative to judicial proceedings in the sense that compliance with agreements resulting from mediation would depend on the good will of the parties.”20 Despite the importance of para 19, Article 6 the Directive does not provide for a certain mechanism for the enforcement and asks Members States to ensure that the parties can have their mediation settlement agreement “enforceable by a court or


other competent authority in a judgment or decision or in an authentic instrument in accordance with the law of the Member State where the request is made.”

It can be easily said that both the DIRECTIVE 2008/52/EC and UNCITRAL Model Law on International Commercial Conciliation result in the same place. This assumption as to enforcement of the mediation agreements places the interest to the issue concerning the enforcement mechanism for mediation settlements. Consequently, some interpreters discuss that care should be taken not to introduce an enforcement mechanism that eliminates the ability of the parties to raise such issues as coercion to defeat enforcement.

1.3 Approaches in Enforcing Mediation Agreements

The result of the failure to conclude a global mechanism for the enforcement of mediation agreements similar to the New York Convention, lead national jurisdictions to adopt three ways on enforcing mediation settlement agreements: enforcement as a contract, enforcement as a judgment, or enforcement as an arbitral award.

1.3.1 Enforcement as a contract

In many jurisdictions, including the United States, England and many

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21 Article 6, para 2 DIRECTIVE 2008/52/EC


other jurisdictions around the world, the foremost method to enforce mediation agreements is as a contract. It can be said that the settlement agreement, reached through mediation, is a contract and is thus governed by the principles of the common law of contracts. In a mediation agreement we meet the three basic elements of a contract which are the offer, the acceptance and the consideration. Similar to a mediation agreement, a contract depends upon the parties’ intent. Before an enforceable contract can arise, there must be a mutual meeting of the minds. That is, the parties must have agreed to the same terms. This is exactly the philosophy of a mediation agreement. However, the MSA is a contract, and contract defenses are available to the parties and litigated in the courts.

1.3.2 Enforcement as a judgment

If a lawsuit has been filed before the mediation has commenced, it is possible in many jurisdictions to have the court enter the settlement agreement as a consent decree and incorporate it into the dismissal order. The court may, if asked, also retain jurisdiction over the court decree. The EU Directive 2008/52/EC expressly contemplates such court action in providing “shall ensure that it is possible for the parties, or one of them with the explicit consent of the others, to request that the content of the written agreement be made enforceable… by a court or other competent authority in a judgment or decision or in an authentic instrument in accordance with the law of the member state where the request is made.”


In some cases many obstacles may be presented in the enforcement of foreign judgments. These difficulties may be overcome if the mediation agreement could be enforced as an arbitral award. Doing this, someone can gain the benefit of the enforcement mechanisms of the New York Convention.

1.3.3 Enforcement as award under the New York Convention

The main question is whether a consent award, i.e. an award that is made to record a settlement agreement reached through mediation may be enforced under the New York Convention.29 Some jurisdictions give the possibility to the parties for the entry of an arbitral award to record an agreement reached through the mediation process.30 Although the use of this mechanism could be a very useful path for the enforcement of mediation agreements, such a solution may find many obstacles in national jurisdictions, because under local law there must be a dispute at the time the arbitrator is appointed.31 There are they who expressed an opinion in order to overcome this problem by appointing the arbitrator before the mediation is started and having the mediation conducted as an “arb-med-arb,” but there are others who say that such procedures definitely make the whole mechanism more complex.


30 For example, article 18(3) of the Arbitration Rules of the Korean Commercial Arbitration Board provides: If the conciliation succeeds in settling the dispute, the conciliator shall be regarded as the arbitrator appointed under the agreement of the parties; and the result of the conciliation shall be treated in the same manner as such award as to be given and rendered upon settlement by compromise under the provision of Article 53, and shall have the same effect as an award.

Chapter 2

EU Mediation Directive 2008/52/EC

The European Institutions were interested in the promotion of mediation within the EU. Mediation was seen as a cost-effective and as a quick method to resolve disputes of civil and commercial matters and the process was considered to be “tailored to the needs of the parties”. However, without formal legislation, it has proved difficult to establish predictable and equal opportunities for mediation across Member States.

With the approval of the EU Directive on Certain Aspects of Mediation in Civil and Commercial Matters by the European Parliament on 23 April 2008 the European Union tried to overcome the lack of a consistent legal framework for mediation in its Member States. The European Parliament adopted in 2008 Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters (“the Directive”). Its purpose is to build trust in the process of mediation within the EU.

The Directive represents an intentional effort, on a pan-European scale, to achieve a degree of homogeneity and predictability in the treatment of mediated resolutions of commercial disputes. The Directive applies to all 27 Member States of the EU, with

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33 See Preamble (6) of Directive 2008/52/EC.

34 Linklaters, Commercial Mediation – A comparative review 2013, p. 3 (available at www.linklaters.com)

35 IBA e-book, mediation techniques, Edited by Patricia Barclay, p.194

36 REBECCA ATTREE, (1) THE IMPACT OF THE EU MEDIATION DIRECTIVE: A UNITED KINGDOM PERSPECTIVE (2) ESSENTIAL SKILLS OF MEDIATION FOR LAWYERS A PAPER PREPARED FOR THE LIBRALEX MEETING PERUGIA, ITALY 22ND OCTOBER 2011 AND UPDATED ON 16 APRIL 2013, p. 1

the exception of Denmark\(^{38}\), which were obliged to incorporate it into their domestic law until the 21st May 2011.

The Mediation Directive covers the following topics:

- Scope of application (Art. 1 – 3);
- Quality of mediation (Art. 4);
- Courts and mediation (Art. 5);
- Enforceability of agreements resulting from mediation (Art. 6);
- Confidentiality (Art. 7);
- Effect of mediation on limitation and prescription periods (Art. 8);
- Information on Mediation (Art. 9 – 10).

The extent and the precise nature of the Articles of the Mediation Directive reflect the different regulatory approaches of the Member States and the fact that mediation as a dispute resolution mechanism is still in the process of development. Some Articles contain concrete and hard rules for the Member States to transpose into their national laws, such as Art. 6 on the enforceability of settlement agreements reached through mediation\(^{39}\).

\(^{38}\) See Article 1.3 of the Directive

\(^{39}\) Felix Steffek, Mediation in the European Union: An Introduction, Cambridge, June 2012, p. 8

\(^{40}\) Antonio Maria MARZOCCO Michele NINO, THE EU DIRECTIVE ON MEDIATION IN CIVIL AND COMMERCIAL MATTERS AND THE PRINCIPLE OF EFFECTIVE JUDICIAL PROTECTION, LESIJ NO. XIX, VOL. 2/2012, p.112
administrative matters or implying the responsibility of the State for activities and omissions in the exercise of its authority are excluded from the scope of the Directive.\textsuperscript{41}

The application of the Mediation Directive is restricted in three general ways\textsuperscript{42}. First, the Directive only applies in the procedure of Mediation, as defines in Art. 3. Art. 3(a) states:

“Mediation means a structured process, however named or referred to, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a mediator.”

In line with the functional definition offered above and according to Art. 3(b)\textsuperscript{43}:

“It includes mediation conducted by a judge who is not responsible for any judicial proceedings concerning the dispute in question. It excludes attempts made by the court or the judge seized to settle a dispute in the course of judicial proceedings concerning the dispute in question.”

Secondly, the Directive only applies to civil and commercial matters and excludes rights and obligations which are not at the parties’ disposal under the relevant applicable law (Art. 1(2)). For example, in Greece the matter of a divorcement of a couple falls outside the scope of application of the Directive as it is incorporated in the Greek domestic law, but other aspects of family law can be solved through mediation.

Thirdly, the Directive only applies to cross-border disputes as defined in Art. 2. Under the Directive, a dispute is “cross-border” when at least one of the parties is domiciled or habitually resident in a Member State different to the other party \textsuperscript{44} on the

\textsuperscript{41} See Article 1(2) of the Directive

\textsuperscript{42} Felix Steffek, Mediation in the European Union: An Introduction, Cambridge, June 2012, p. 9

\textsuperscript{43} Felix Steffek, Mediation in the European Union: An Introduction, Cambridge, June 2012, p. 9

\textsuperscript{44} Linklaters, Commercial Mediation – A comparative review 2013, p. 3 (available at www.linklaters.com)
date on which (a) the parties agree to use mediation after the dispute has arisen; (b) mediation is ordered by a court; (c) an obligation to use mediation arises under national law; or (d) for the purposes of Article 5 an invitation by a court to use mediation or attend an information session is made to the parties.\textsuperscript{45}

2.2 The main provision for the Enforceability

Article 6 of the Directive 2008/52/EC can be easily characterized as a key provision. Through this article, the Directive asks from the Member States to create a mechanism into their legislation that will ensure that the content of a written agreement resulting from mediation can be made enforceable with the consent of the parties.\textsuperscript{46}

It is wiser, in order to understand the meaning of the exact role of Article 6 of the Directive and the role of the Member States, to analyze the main provisions of the Article.

Pursuant to its Article 6(1), sentence 1:

‘Member States shall ensure that it is possible for the parties, or for one of them with the explicit consent of the others, to request that the content of a written agreement resulting from mediation be made enforceable’.\textsuperscript{45}

In the first sentence of Article 6, the Directive asks the Member States to ensure that in case the parties want to enforce the written mediation settlement agreement, there will be special provisions in their legislation to ensure this parties’ willingness. However, if it is only one of the parties who wishes to make the agreement


enforceable, the other party’s explicit consent is required\textsuperscript{47}. If one party decides not to uphold the mediation agreement, the other party is excluded from the enforcement mechanism.

The second sentence of Article 6 (1):

“The content of such an agreement shall be made enforceable unless, in the case in question, either the content of that agreement is contrary to the law of the Member State where the request is made or the law of that Member State does not provide for its enforceability”

should be read combined with the wording of the Recital 19 of the Preamble of the Directive which says:

‘ it should only be possible for a Member State to refuse to make an agreement enforceable if the content is contrary to its law, including its private international law, or if its law does not provide for the enforceability of the content of the specific agreement ’.

Both of them contain limitations in the enforceability of the mediation agreements by taking into consideration specific particularities of the states’ national laws.\textsuperscript{48} Normally, a mediation agreement should be made enforceable automatically, without any further questions. However, under the provisions of these two sentences, a Member State can refuse the enforcement of an agreement, if the authority of that certain Member State, which is competent for the enforcement procedure, finds out that the subject of the mediation agreement is contrary to the law of its Member State or that the subject matter of the dispute solved through mediation falls out of the scope of application of the domestic law concerning the mediation process and as a result there are no provisions for the enforceability of the matter of the agreement.


Under Article 6(2) of the Directive:

‘the content of the agreement may be made enforceable by a court or other competent authority in a judgment or decision or in an authentic instrument in accordance with the law of the Member State where the request is made’.

It is either a court or other competent authority of the Member State, in which the request of the enforcement is made, that can make the content of the agreement enforceable.49 This provision entails implementation obligations for Member States and the obligation for the Commission to make publicly available information on the competent courts or authorities competent to receive such requests.50

The use of the (non-compulsory) English term ‘may’ instead of ‘shall’ under Article 6(2) of the Directive becomes clearer when taking recourse to paragraph 20 of the preamble of the Directive which clarifies that:51

‘[the] content of an agreement resulting from mediation which has been made enforceable in a Member State should be recognized and declared enforceable in the other Member States in accordance with applicable Community or national law’.

These mean that such agreements are enforceable in other Member States in accordance with existing EU Community law or domestic law.52 Additionally, the


52 Ann Brady, MEDIATION DEVELOPMENTS IN CIVIL AND COMMERCIAL MATTERS WITHIN THE EUROPEAN UNION, February 2009, p.12, (available at www.rougemontchambers.co.uk)
general rules on cross-border and national enforcement apply. Hence, if a mediation agreement leads to a settlement in court, it is enforceable under the national rules and Art. 58 Brussels I (Regulation 2001/44/EC). If a mediation agreement is fixed as an authentic instrument, it is enforceable under the national rules on such instruments and Art. 57 Brussels I.\textsuperscript{53}

\section*{2.3 Comparative overview of the implementation of Article 6 of the Directive in EU Member States: UK, Italy, Spain}

Directive 2008/52/EC should have been incorporated in the EU Member States’ domestic laws before 21 May 2011\textsuperscript{54}. A directive is binding upon each Member State, but only to the extent that its results can be achieved.\textsuperscript{55} However, it is up to each Member State to decide how the provisions of a directive should be implemented into its domestic law.\textsuperscript{56} In other words, this means that the Member States are not obliged to follow the exact orders of a directive if the Member State can reach the same results through a different way. Consequently, if an EU Member State has already provisions in its domestic legislation that reach the minimum standard set by a directive, this Member State have no obligations to change its domestic legislation.


\textsuperscript{54} See Article 12 of Directive 2008/52/EC


This paragraph presents the main concerns regarding the legal transposition of Directive 2008/52/EC and specifically of the Article 6 in 3 Member States: United Kingdom, Italy and Spain.

2.3.1 The implementation of Article 6 of the EU Mediation Directive in England and Wales.

In order to set up a procedure for giving the mediated settlement agreement the same authority as a judicial decision, the Civil Procedure Rules have been amended and a new Section- Section III- Mediation Directive has been introduced under Part 78.\textsuperscript{57} The new system that implemented the Article 6 of the Directive in England and Wales are found in “The Civil Procedure (Amendment) Rules 2011” that came into effect from 6 April 2011. Rules 78.24 and 78.25 provide for “making a mediation settlement enforceable” by means of a “mediation settlement enforcement order” issued by the court on application by the parties to a mediation settlement agreement. According to the rule 78.24 (3) “the mediation settlement agreement must be annexed to the application notice or claim form when it is filed.”\textsuperscript{58} The parties are obliged to give their “explicit consent” to the application for the mediation settlement enforcement order by agreeing “in the mediation settlement agreement that a mediation settlement enforcement order should be made in respect of that mediation settlement”. To this end “the parties must file any evidence of explicit consent to the application” and “the court will make an order making the settlement agreement enforceable” (rule 78.24) (mediated settlement enforcement order).\textsuperscript{59}

It is very interesting that there is no further suggestion in the procedure to the form and content of the “mediated settlement enforcement order”. Nevertheless, it is

\textsuperscript{57} Anna Giordano Ciancio, Mediation at the intersection with contract law: the settlement agreement, p. 18 (available at \url{http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2272989})

\textsuperscript{58} Anna Giordano Ciancio Mediation at the intersection with contract law: the settlement agreement, p. 18 (available at \url{http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2272989})

\textsuperscript{59} Anna Giordano Ciancio Mediation at the intersection with contract law: the settlement agreement, p. 18 (available at \url{http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2272989})
probable to judge this order as being a “consent order” since it is founded on the consent of parties to make their mediation agreement enforceable as a court order.

2.3.2 The implementation of Article 6 of the EU Mediation Directive in Italy

In Italy, the EU Mediation Directive was implemented on March 24, 2010, by virtue of the Legislative Decree No 28/2010 (decreto legislativo No 28/2010). The new Legislative Decree No 28/2010 does not confine itself to cross border mediation, but it applies also to internal mediation processes. Because it is possible after a mediation settlement agreement is reached one of the parties to change its mind, according to Article 12 of Legislative Decree No 28/2010, signed written agreements achieved through an Italian mediation shall be made enforceable by the President of the competent court (Tribunale) upon a party’s application (so called “homologation” or “exequatur proceedings”).

Briefly summarizing, the Legislative Decree No 28/2010 provides that the President of the Tribunal (exequatur) is in charge for the enforcement procedure, which is obtained upon application of an interested party, even without the willing of the other party. The Legislative Decree No 28/2010 sets no time limit on enforcing the mediated agreements. Exequatur proceedings are conducted inaudita altera parte. Finally, in order to uphold the request and to enter an order of homologation, the President of the Tribunal has to find out the prima facie existence of the agreement.

2.3.3 The implementation of Article 6 of the EU Mediation Directive in Spain


The Spanish Mediation Act (Ley de mediación en asuntos civiles y mercantiles 30) at its Article 26, para. 3, expressly provides for enforceability of written mediation settlement agreements («Dicho documento será título que lleva aparejada ejecución»). 62 Article 26, para. 4 says that the mediated agreement has the authority of res judicata between the parties. Moreover, the Spanish legislation sets the time limit of 30 days to have the mediation agreement enforceable, beginning from the day the agreement was signed. Finally, the parties are given the possibility to annul the agreement under certain circumstances.

Chapter 3

From European Directive 2008/52/EC to Article 9 of Greek Law 3898/2010 for the enforcement of mediation agreements\textsuperscript{63}

Mediation became a Greek legal reality through the Law 3898/2010 which attempted to harmonize the Greek legislation with the European Directive 2008/52/EC. Similar to the Directive, the Greek Law also provides an alternative dispute resolution away from the aggressiveness of litigation.

The scope of the Greek Law as it is analyzed in Article 1 and it is not only aimed at harmonizing the Greek legislation with the European one, as mentioned before, but also at opening the door to mediation and let it enter the Greek legal culture. Like the European Directive, the Greek law applies to civil and commercial disputes\textsuperscript{64}. Although, the legislator does not give the definition of “civil and commercial matters”, the European practice and the case law of the ECJ leave no doubts about what disputes fall within the scope of application of the Greek Law.

Regarding the type of the agreement, only a written mediation agreement is accepted by the Greek legislator and not an oral one. Agreements before a notary are not imposed, even if the dispute has to do with property issues. In these cases, it is obligatory to inform the competent land registry\textsuperscript{65}.

\textsuperscript{63} I would like to express my thanks to Katerina Gkratziou –lawyer and certified mediator- for her priceless help. Without her intervention, this chapter would have never been completed appropriately.

\textsuperscript{64} See Article 1 (a) of the Greek Law 3898/2010

\textsuperscript{65} Apostolos Anthimos, Alternative Dispute Resolution, The role of Article 214 A of the Greek Civil Procedure Code, Armenopoulos 2009, p. 1828
According to Article 3, the disputing parties can mediate before the court proceedings or during lis pendence\textsuperscript{66}. It is also possible a court or the national legislation to propose mediation as a dispute resolution process, but in no case the parties are obliged to mediate.\textsuperscript{67} The Greek legislator decided so in order to give the parties a wide range of freedom in the field of alternative dispute resolution.

3.1 **Enforceability of mediation settlement agreements under Article 9 of Law 3898/2010**

Some scholars have expressed the question why there is a need to enforce the outcome of the mediation process since the mediation agreement itself shows the willingness of the parties to settle their dispute in an out-of-court procedure.\textsuperscript{68} The answer to the question aforementioned is simple. Such a possibility given by law, works as a guard to the law provisions and at the same time ensures the parties that the context of their mediation agreement is respected by the legal order\textsuperscript{69}. In any other case, if the enforceability of the mediation outcome would be depended on the parties’ good faith, it would be possible for the mediation agreement itself to be uncertain and unreliable.\textsuperscript{70}

The provision of Article 6 of Directive 2008/52/EC has been incorporated in the Greek Law with Article 9 of the Greek Law 3898/2010 with exactly the same title [“Enforceability of agreements resulting from mediation”]. The Article states:

\textsuperscript{66} See Article 3 (1) (a) of the Greek Law 3898/2010

\textsuperscript{67} See Article 3 (1) (b), (c), (d) and Article 3 (2) of the Greek Law 3898/2010

\textsuperscript{68} Apostolos Anthimos, The arrival of a “new” institution – Mediation, Armenopoulos 2010, p. 480

\textsuperscript{69} Apostolos Anthimos, The arrival of a “new” institution – Mediation, Armenopoulos 2010, p. 480

\textsuperscript{70} As said by Katerina Gkratziou –lawyer and certified mediator- during a lecture on 05/04/2013 in International Hellenic University concerning the enforceability of mediation agreement in the greek legal order.
“(1) the mediator constructs a mediation settlement agreement, which must consist of:

a) The name and surname of the mediator

b) The place and date of the mediation process

c) The names and surnames of those who participated in the mediation process

d) The agreement for mediation

e) The mediation settlement agreement or the failure of the proceedings and the matter of the dispute

(2) After the mediation, the mediation settlement agreement is signed by the mediator, the parties and their lawyers. The original mediation settlement agreement is filed, with the sole consent of one of the parties, by the mediator, to the secretariat of the one-member Court of first instance of the region where the mediation took place. By filing the mediation agreement, the party interested in this action pays a fee, the amount of which is determined by a common decision of the Minister of Economics and the Minister of Justice, Transparency and Human Rights. In case of failure of the mediation process, the mediation report can be signed only by the mediator.

(3) From the filing of the mediation settlement agreement to the secretariat of the one-member Court of first instance, it can be enforced according to Article 904 para 2 (c) of the Greek Civil Procedure Code”

According to Article 9 (1), the mediation report, which is written by the mediator in collaboration with the parties’ lawyers, expresses the willingness of the parties to solve their dispute or their failure to settle it. It is advisable that the mediation settlement agreement has a provision for the enforceability of the mediation outcome, even though it is not included in the provisions of Article 9.71

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71 As said by Katerina Gkratzioú—lawyer and certified mediator—during a lecture on 05/04/2013 in International Hellenic University concerning the enforceability of mediation agreement in the greek legal order
It is already mentioned that the procedure described in Article 9 (2) of Greek Law looks like the one that is predicted in Article 214A (3) of the Greek Civil Code Procedure. Article 9 (3) equalizes the mediation settlement agreement that is filed to the secretariat of the one-member Court of the first instance of the region where the mediation took place, with the enforceable order provided by Article 904 (2) (c) of the Greek Civil Procedure Code. The last provision applies to all record of proceedings of Greek courts that enclose conciliation. There is also, a similar provision in Article 214B of the Greek Civil Code Procedure, regarding judicial mediation. The differences between them will be analyzed in a later chapter.

It is worth mentioning that the mediation settlement agreement falls under the provisions of Article 904 (2) (c) of the Greek Civil Code Procedure only after its filing to the secretariat of the one-member Court of the first instance and it cannot be offended by judicial proceedings and does not create res judicata effect. Since there is no res judicata effect, the parties that have already signed the mediation settlement agreement are still capable to sue each other. The only case that the parties are not allowed to sue for the dispute is when they have excluded such an action written in their mediation settlement agreement.

3.2 Comparative approach between Articles 214A and 214B of the Greek Civil Procedure Code and Greek Law 3898/2010

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72 Apostolos Anthimos, The arrival of a “new” institution – Mediation, Armenopoulos 2010, p. 480

73 As said by Katerina Gkratziou –lawyer and certified mediator- during a lecture on 05/04/2013 in International Hellenic University concerning the enforceability of mediation agreement in the greek legal order

74 As said by Katerina Gkratziou –lawyer and certified mediator- during a lecture on 05/04/2013 in International Hellenic University concerning the enforceability of mediation agreement in the greek legal order
Directive 2008/52/EC made an important start for the strengthening of mediation in the European Union and its function. The Greek legislator had chosen to give more than one possibilities to the disputing parties to solve their arguments in out-of-court proceedings. These possibilities that are predicted in Articles 214A and 214B of the Greek Civil Procedure Code and Greek Law 3898/2010 are not competing but co-existing in peace in the Greek legal order. Although all of them are in a way similar to each other, there are some differences between them that make them unique.

The provisions of Article 214B and of Law 3898/2010 permit the parties to choose judicial mediation or mediation in order to settle their dispute whenever they want, before suing the dispute or even during the discussion before a court. It is obvious, that the parties can mediate without preconditions. On the other hand, if the parties want to mediate according to Article 214A, it is only possible for them to act so if there is already a pendency of a lawsuit.

Additionally, the field of application between Articles 214A and 214B is not the same. According to the provisions of Article 214A (1), the parties can choose this mechanism only for private disputes that can be resolved though conciliation.

According to the provisions of Article 214B and Law 3898/2010, it is obligatory for the parties to be present with their lawyers, something that is not necessary for the procedure predicted under the provision of Article 214A. Furthermore, the mediation agreement reached through the first mentioned procedure of Law 3898/2010 in order to be enforceable after its filing, it should be accompanied by the payment of a fee.

There are also differences among these provisions after the completion of the procedures. According to Article 214A para 3 each party can ask the judge or the President of the court in which there is a pendency of a lawsuit to certify the outcome of the procedure. The judge or the president of the court certifies it, only if the preconditions set in the Article are met. Article 214B predicts that the judge signs the mediation settlement agreement and after filing it to the secretariat of the Court of the first instance, the agreement is enforceable under the provisions of Article 904 of the Greek Civil Procedure Code. Article 9 of Law 3898/2010 says that the mediation
outcome is filed to the secretariat only upon the request of one of the parties after being signed by the mediator and at least one of the parties.

3.3 Enforcement of mediation agreements in Greece reached in another EU Member States

It is very important to examine the cases where a mediation settlement agreement reached in another EU Member State, is asked to be enforced in Greece. Article 6 (1) of Regulation 2008/52/EC states that: “The content of such an agreement shall be made enforceable unless, in the case in question, either the content of that agreement is contrary to the law of the Member State where the request is made or the law of that Member State does not provide for its enforceability.” This provision has been subject to German scholars who found that there are cases that permit the examination of the validity of the mediation agreements by the court and also there are reasons that the court may refuse the enforcement.\(^{75}\) In these cases the mediation agreement is invalid or the rights and obligations were not at the parties’ disposal under the relevant applicable law\(^{76}\).

The examination of the mediation agreement that concerns its validity and its context according to each national legal order should be appropriate in order to achieve a fair and equitable treatment. The recognition of a foreign court decision or an arbitral award is deemed to be contrary to public order, when there is a manifest diversion from domestic law\(^{77}\).

\(^{75}\) As said by Katerina Gkratziou –lawyer and certified mediator- during a lecture on 05/04/2013 in International Hellenic University concerning the enforceability of mediation agreement in the greek legal order

\(^{76}\) See Article 1 (2) (1) of Directive 2008/52/EC

\(^{77}\) Athanasios Kaisis, Aspects of legal order in recognition and enforcement of foreign court decisions and arbitral awards, Sakkoulas 2003, p. 12
Chapter 4

The enforcement of mediated agreements in Member States on the basis of Council Regulations (EC) 805/2004 and 44/2001

Council Regulation (EC) No 805/2004 concerning the European Enforcement Order for uncontested claims and Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters offer valuable grounds for the enforcement of mediation settlement agreements, once declared enforceable. The possibilities offered by these two regulations are innovating as the enforcement of judgments and court orders is made almost automatically among the EU Member States and facilitates at the same time the enforcement of the agreements reached through mediation. Because of these regulations, the cross border enforcement of judgments in the united European judicial area has been facilitated. Regulation 44/2001 which has replaced the Brussels Convention, limited the problems made by the latter. Regulation 805/2004 made the big step for the creation of a really united enforcement mechanism through EU.


Article 1 of the Regulation states that:

“The purpose of this Regulation is to create a European Enforcement Order for uncontested claims to permit, by laying down minimum standards, the free circulation of judgments, court settlements and authentic instruments throughout all Member
States without any intermediate proceedings needing to be brought in the Member State of enforcement prior to recognition and enforcement”

The subject matter of the regulation is also highlighted in its preamble. Its scope in the field of recognition and enforcement of orders in a pan-European justice area is first to overcome the mechanism of exequatur, and secondly, to achieve the immediate enforcement of judgments and other orders among the EU Member States. Moreover, it is also referred in the European Commission’s Green Book of 20.12.2002 that the European Enforcement Order is the first half of the way to achieve free circulation of judgments and other court orders among EU Member States.

The Regulation applies in civil and commercial matters which means that any judgment or other order of civil or commercial nature can turn into a European Enforcement Order without being related to any court jurisdictional matter. The characterization of a dispute as civil or commercial is not up to every national domestic law that applies in a certain legal relationship, but it is defined by the scope of the regulation and its system in accordance with its principles as it was done previously with other regulations such as with Council Regulation (EC) No 44/2001.

Article 3 states that the Regulation creates a European Enforcement Order for claims which are uncontested by debtors. A claim shall be regarded as uncontested if the debtor has expressly agreed to it by admission or by means of a settlement which has been approved by a court or concluded before a court in the course of proceedings; or the debtor has never objected to it in the course of the court

78 See Article 1 of the Regulation 805/2004

79 Koutsoulelos Kostas, European Enforceable Order for uncontested claims, Sakkoulas 2005, p.46

80 Dimitrios Tsikrikas, European Enforcement Order, Cross Border Enforcements in EU zone, Sakoulas 2008, p. 8

81 See Article 2 of Regulation 805/2004.

82 Koutsoulelos Kostas, European Enforceable Order for uncontested claims, Sakkoulas 2005, p.46

proceedings; or the debtor has not appeared or been represented at a court hearing regarding that claim after having initially objected to the claim in the course of the court proceedings; or the debtor has expressly agreed to it in an authentic instrument.  

4.1.1 Mediation agreements enforced through Regulation No 805/2004

According to the before mentioned about Regulation 805/2004 and its scope of application, it could be said that since a mediation settlement agreement, which was reached through domestic mediation, once declared enforceable, it can be enforced in the Member State where the settlement was reached as well as in another Member State.  

According to Article 24 of Council Regulation (EC) No 805/2004, a settlement, approved by a court or concluded before it, can become a European Enforcement Order upon application to the court that approved it or before which it was concluded. Consequently, a mediated agreement declared enforceable by the court of the Member State in which it was concluded, if concerning for example the payment of a specific sum of money, shall be certified as a European Enforcement Order. The certification of a mediation settlement agreement as such implies the


87 Except Denmark, which does not take part in the adoption of the Regulation No 805/2004 and is not bound by it or subject to its application.

immediate enforceability of mediation agreement in almost every EU Member State. On one hand there is no need to use the mechanism of “exequatur” and at the same time\textsuperscript{89} the mediation agreement is not only enforceable in the country of its origin but also its enforceability is extended over all EU Member States.

A mediation agreement which is certified as a European Enforcement Order in the Member State of its creation can be enforced in other EU Member States with the only precondition being the enforceability in the country of origin\textsuperscript{90}, and without any possibility of opposing its enforceability from the debtor’s point of view. Since the minimum standards, set by the Regulation, were checked once from the competent court in the country of origin, the pan-European effect of the enforceability of a mediation agreement cannot be challenged.

Before mentioning anything more, it is very important to notice that if the mediation agreement involving financial claims is recorded into a notary deed in the Member State of origin, the mechanism described in Article 25 of the Regulation (EC) No 805/2004 is the appropriate one for its certification, without any inquiry into the existence of a “real competence”, by the foreign notary, to create authentic instruments.\textsuperscript{91} Article 4 para 3 of the Regulation gives an autonomous definition about the meaning of an “authentic instrument”.\textsuperscript{92}

Every time a foreign mediation agreement is certified as a European Enforcement Order, it is thought to be equal with other domestic mediation settlement agreements and their possibilities to be enforced. In other words, the possibilities of enforcement of a mediation agreement, are not only delimited by the country of

\textsuperscript{89} Dimitrios Tsikrikas, European Enforcement Order, Cross Border Enforcements in EU zone, Sakkoulas 2008, p. 126

\textsuperscript{90} Koutsoulelos Kostas, European Enforceable Order for uncontested claims, Sakkoulas 2005, p.93


\textsuperscript{92} Dimitrios Tsikrikas, European Enforcement Order, Cross Border Enforcements in EU zone, Sakkoulas 2008, p. 72-73
origin\textsuperscript{93} but at a later stage by the legislation and the civil procedure of the foreign
country\textsuperscript{94}, as its effects are extended to every legal order of the EU Member States.

It is easily understood by the above mentioned that attempting to enforce a
mediation agreement taking advantage of the possibilities given by the regulation
805/2004, someone will also benefit because of its innovations. The existence of such
an instrument within the borders of Europe enables the uniform application of Article
6 of the Directive, helping the harmonization of European law system and at the same
time keeping safe the differences among national legislations. Of course there are
those who believe that nothing is perfect and find some points to be skeptical. All
these will be analyzed in combination with regulation 44/20001.

4.2 Council Regulation (EC) No 44/2001

Primarily, the Regulation intends to facilitate the judicial remedy of suits and
judgments among Member States.\textsuperscript{95} The Regulation aims at an easier and more
uniform field of simpler procedures for civil cross- border litigation within EU. It is
based on the principal of mutual trust in the legal system and judicial institutions of
each Member State.

According to Article 1 (1), the Regulation applies “in civil and commercial
matters whatever the nature of the court or tribunal. It shall not extend, in particular,
to revenue, customs or administrative matters.”\textsuperscript{99} The problem is that the text of the
regulation does not define the exact meaning of the terms “civil and commercial” and
we should interpret autonomously. In this interpretation we can use the ECJ’s case
law to understand the exact meaning of these words. This is to say that the terms

\textsuperscript{93} See Article 11 of the Regulation 805/2004, see also Dimitrios Tsikrikas, European Enforcement
Order, Cross Border Enforcements in EU zone, Sakkoulas 2008, p. 135

\textsuperscript{94} Dimitrios Tsikrikas, European Enforcement Order, Cross Border Enforcements in EU zone, Sakkoulas
2008, p. 130

\textsuperscript{95} European Commentaries on Private International Law, Brussels I Regulation, Edited by Ulrich
Mangus and Peter Mankowski, 2007 p7

\textsuperscript{99} See Article 1 para1 of Council Regulation (EC) 44/2001
“civil and commercial matters” are determined according to each Member State’s domestic law but based on autonomous criteria that take into consideration the system and the aims of the Regulation.100

4.2.1 Mediation agreements enforced through Regulation No 44/2001

It is already mentioned that regulation 805/2004 is valuable for the enforcement of mediation agreements among EU Member States. On the other hand, the Regulation itself set specific preconditions for its application.103 For example, Regulation 805/2004 is only applicable on uncontested claims. In contrast, Regulation 44/2001 even though it keeps alive the exequatur mechanism, which is set aside by Regulation 805/2004, it enables the enforcement of any kind of judgment or courts’ order concerning civil and commercial disputes.

For Regulation 805/2004, it is problematical when a situation concerning agreements involving the delivery of specific assets (so called movable properties or immovable properties) needs to be enforced. This is so because, on one hand, such kinds of obligations fall outside the scope of the Regulation (EC) No 805/2004. A mediation agreement concerning such disputes shall be enforced in another Member State according to Article 57 and 58 of the Council Regulation (EC) No 44/2001.

Again, as it was discussed previously about the meaning of authentic instruments under the provisions of Regulation 805/2004, the idea of authentic instrument should be understood as an autonomous concept. Agreements certified by lawyers, constituting non-enforceable private documents, do not fall under the Article 57. By contrast, judicial decisions and notary deeds do. Thus, an agreement issued by a lawyer is made enforceable by way of a decisions or a notary deed. Hence, the

100 Delikostopoulos St. Iwannis, Matters deriving from the application of the Regulation 44/20001, Sakkoulas, 2005, p. 16

103 Dimitrios Tsikrikas, European Enforcement Order, Cross Border Enforcements in EU zone, Sakkoulas 2008, p. 179
document becomes subject to Article 57, since is completed by a competent authority of the original Member State.\textsuperscript{104}

Moreover, mediation settlement agreements do not generally fall under the provisions of Article 57, because these agreements are understood to be private instruments and do not represent authentic instruments.\textsuperscript{105} The settlement governed by Article 58 must not be seen in a national context but in a way that aids the simplification of the enforcement.\textsuperscript{106} A settlement in the meaning of Article 58 should be approved by a court. In the light of this understanding, the mediation agreements are not covered by the provisions of this Article. In order to have a settlement reached before a mediator enforceable it should be first approved by a court.

There is considerable debate about Article 58 and its interpretation due to the difference between the English and French language version. The English version of Article 58 refers to a “settlement approved by a court”\textsuperscript{107} and under the explanation given before the notion seems to include mediated agreements. The French, Italian, German and Spanish version refers to a “settlement reached before the court”.

It should be remembered that the ECJ, in its case-law has made clear that\textsuperscript{108} “the need for a uniform interpretation of the provisions of Community law makes it impossible for the text of a provision to be considered in isolation, but requires, on the contrary, that it be interpreted and applied in the light of the versions existing in the other official languages”\textsuperscript{109}. Consequently, “Where there is divergence between the

\textsuperscript{104} European Commentaries on Private International Law, Brussels I Regulation, Edited by Ulrich Mangus and Peter Mankowski, 2007 p 692 para 3

\textsuperscript{105} European Commentaries on Private International Law, Brussels I Regulation, Edited by Ulrich Mangus and Peter Mankowski, 2007 p 692 para6

\textsuperscript{106} European Commentaries on Private International Law, Brussels I Regulation, Edited by Ulrich Mangus and Peter Mankowski, 2007 p 696 para 9

\textsuperscript{107} See Article 58 of regulation 44/2001 (English version)


\textsuperscript{109} ECJ, Case C-63/06, Profisa, ECR I-3239, para. 13.
various language versions of an EU legislative text, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part.\(^{110}\)

Additionally, this wider approach is also verified by recital No 30 of Directive No 2008/52/EC under which “The content of an agreement resulting from mediation which has been made enforceable in a Member State should be recognized and declared enforceable in the other Member States in accordance with applicable Community or national law. This could, for example, be on the basis of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters”, including – it seems – Articles 57 and 58.

\(^{110}\) ECJ, Case C-52/10, Eleftheri tileorasi AE «ALTkmjER CHANNEL», para. 24.
Conclusion

Looking back over the last five years, when the European Council adopted the Directive 2008/52/EC, it can be seen that legislation, case law and structures have been set in place in an attempt to increase public access to the mediation process. Mediation is a creative idea that results from the honest, mutual efforts of mediators and other creative individuals and organizations to settle disputes in an elegant way that satisfies parties’ interests, eliminates the costs and the time of the procedures. It can be said that mediation is still tested. EU Member States have already incorporated into their domestic legal orders the Directive, and in this way there is a kind of harmonization in the field of mediation process. However, mediation agreements cannot still be enforced immediately. There is the necessity that the mediation settlement agreement be re-issued as an outcome by a court in order to be enforced.

The practical scope of Article 6 of Directive 2008/52/EC is almost achieved but is still uncompleted. With the 50th anniversary of the New York Convention in 2008, there has been a great deal of discussion over whether and how Europe Union can achieve to create a powerful instrument for the enforcement of the mediation settlement agreements though its zone. Nowadays, there is a mechanism that ensures the parties that they can have their mediation agreement enforced, but this mechanism is not consisted only by one instrument. The fact that the enforcement is based on each Member State’s domestic law makes this mechanism more complex and in any means unsure.

Mediation has been verified to be on the rise throughout Europe and is a progressively important mechanism in the menu of options for dispute resolution. Even though Europe has achieved a lot in the field of mediation, the provisions on the enforceability are still weak and need improvement in order to solve the puzzle. Much remains to be achieved.
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✓ Tsikrikas Dimitrios, European Enforcement Order, Cross Border Enforcements in EU zone, Sakoulas 2008