

***EU Mediation Law Handbook: Regulatory Robustness Ratings for Mediation Regimes***  
**Edited by Nadja Alexander, Sabine Walsh and Martin Svatos (Wolters Kluwer, 2017)**

Jan Coulton

*Anvers Mediation, UK*

[jancoultono8@gmail.com](mailto:jancoultono8@gmail.com)

Being asked to review this weighty tome provided me with an opportunity to consider two work-related passions (i.e. mediation and professional standards in mediation practice). The book is unique and looks at the regulatory framework for mediation in each of the 28 EU Member States, charting the implementation of the European Parliament and the Council of the European Union directive (2008), aimed at encouraging the use of mediation. The handbook is edited by Nadja Alexander, Sabine Walsh and Martin Svatos, all well known and recognised in the international world of conflict resolution, and draws on the work of 43 authors in different jurisdictions in a continually evolving legal-regulatory landscape. Many of the authors have been actively involved in forming legal policy and practice in their respective countries and are therefore ideally placed to comment upon the current state of mediation in Europe.

Over the past 20 years, EU states have used mediation in various forms and its introduction into justice systems has been gradual and steady. Where the benefits of mediation have been understood, the advance of

mediation has been well supported and drove the demand for it. Today mediation is not only widely practiced across Europe it is supported by the legislative framework and regulation described in this book. Current debate no longer focuses around whether mediation is an appropriate method of dispute resolution; it now looks at how to implement mediation schemes and encourage its use by parties in dispute.

The book considers what makes good mediation law and what makes a particular jurisdiction attractive for cross-border mediation in terms of its regulatory framework. It addresses not only the status quo but also answers two practical questions that should be in the minds of legal practitioners and identified by Michael McIlwrath in his foreword:

- What should I expect if my client has a dispute in a particular EU jurisdiction?
- In relation to situations for which I can plan, which jurisdiction offers the best legal framework to support a potential future mediation of my client's dispute?

Lawyers and mediators are no strangers to regulation and its daily developing process. The means to assess and answer McIlwrath's two questions is based upon the 'Regulatory Robustness Rating' ('RRR'), described as 'a best practice for multi-jurisdictional summaries.' The RRR assesses how 'friendly' various jurisdictions are to the practice of mediation and focuses on the robustness of the regulatory framework rather than how much mediation is taking place in different countries. The benefits of mediation may be well known; however, its uptake remains relatively low. The accessibility and predictability of mediation law are important factors to secure an increase in the use of mediation in cross-border disputes.

The RRR enables legal advisers and other users of cross-border mediation process to attain an understanding of the main relevant features of the regulatory environment in which the mediation will take place. It is not a comprehensive and complete analysis of the law on mediation on a jurisdictional basis however it identifies potential strengths and weaknesses of the regulatory regime and is a starting point for further in-depth research. It can be best described as an analytical tool. No overall rating is given as it is felt that this would tend to draw the reader's attention away from the merits of the individual criteria and the system best suited to the potential mediation.

The RRR is based upon twelve criteria that are legal-regulatory in nature and jurisdictions are given a star rating of up to five stars (the highest score) in relation to each criterion; a half star rating may also be awarded. Not all criteria carry equal weight; therefore, a weighting system has been introduced. The RRR is set out in tabular form: criteria, a description, underlying principles and weighting and is simple to follow. Chapter 1 takes the reader through the theory of RRR and S1.06 takes the reader through the practice (i.e. ‘The RRR system in action’). Chapter 1 explains ‘the mediation star matrix’ as a rubric that builds on the value propositions set out in S1.04. Table 1.2 presents the Mediation Star Matrix in a six-column tabular matrix. It sounds complicated and requires the reader to set aside a little time in preparation prior to reading the comparative chapters. In practice, it is easy to use after the initial preparation.

A separate chapter deals with each member state of the EU, looking at the application of the RRR, followed by an editor’s note and narrative relating to basic terms and definitions, sources of mediation regulation, initiating mediation, process, recognition and accreditation of mediators, confidentiality and admissibility of mediation evidence, mediation outcomes and many more relevant factors relevant to determining jurisdiction.

This book is a mass of information relating to matters mediation in EU member states and is fascinating. It is a good ‘go to’ reference book with solid information and inspiration. The detailed analysis of England and Wales (Chapter 9) sets the scene for current debate relating to ‘without prejudice’ and casts a fresh eye over the system. As an assessment of a long-term mediation provider, the editors’ note makes interesting reading:

England and Wales is a major European hub for cross-border dispute resolution and its significant practical experience with mediations shines through in the pages of this chapter. The jurisdiction is notable for its lack of detailed top-down governing regulation, which is unusual in predominantly civil law Europe. What civil lawyers may see as a lack of certainty, and in some cases, clarity of the law applicable to cross-border mediation in the EU, common lawyers tend to embrace as the preservation of party autonomy and the flexibility and choice that comes with it. Here the authors set out a very clear and structured guide to English ‘mediation law’ and

explain how prime International law applies to cross-border mediation in England and Wales.

As the individual rating for aspects of regulation show, England and Wales' strength as a robust legal jurisdiction for cross-border mediation lies in the experience of the legal profession and the courts with (cross-border) mediation practice. This jurisdiction's flexibility makes it an attractive place to practice for International mediators with a variety of backgrounds. From a foreign lawyer's (especially a civil lawyer's) perspective, however, the attractiveness of the English legal framework for cross-border mediation suffers somewhat from the lack of clarity and accessibility of certain aspects of the applicable mediation law as the body common law on cross-border mediation continues to develop.

I would suggest that this book is not only useful to practitioners seeking a mediation jurisdiction but also the larger dispute resolution community in Europe and beyond in selecting the most appropriate regulatory jurisdiction for a cross-border mediation. Its clear analysis of various systems enables legislators and policy makers to assess their own jurisdiction and supporting framework and identify where improvements and updates may be needed. This comparative study could also form the basis for formulating best practice in new or emerging mediation jurisdictions.

A truly ground-breaking piece of work.