Manon Schonewille [i]

Mediation Practice

Cross-border mediation: the same, but different ... [ii]

Summary

Cross-border mediation is more than just a language shift in the mediation process. It involves unique challenges that require careful consideration and preparation. This article explores the complexities of cross-border mediation through a hypothetical international case involving a contractual dispute between companies from The Netherlands, Austria, and Italy.

The article aims to provide insights and strategies to effectively navigate cross-border mediation challenges, starting from its foundational principles to practical implementation.

We delve into the potential pitfalls of cross-border mediation and get valuable insights and tips on how to approach and prepare for it. Various key points and dilemmas that participants might encounter are addressed, including expectations, applicable laws, cultural aspects, documents exchanges, position papers, information strategy and structuring the mediation process itself.

The case study reveals how differing perceptions and practices can impact the mediation's outcome. The article also delves into the design of a successful cross-border mediation process, emphasizing the importance of tailoring the approach to parties' needs. By understanding these nuances, businesses and their legal counsel can leverage cross-border mediation effectively to resolve conflicts and enhance international collaboration.

1. Introduction

Contrary to what you might think, cross-border mediation is more than 'just mediation, in another language, with partners from different countries'. The intricacies that come with crossing national boundaries may easily be overlooked. For businesses that operate internationally, mediation is a good way to limit legal and business risks and it is important to be well prepared for it.

Challenges in cross-border mediation may lie in the different expectations the parties have about what mediation entails, who takes part in it, where and how it will take place, in which language it will be conducted and what law will apply to the mediation proceedings. If such topics are not identified beforehand, the mediation process itself may give rise to new conflicts with all the associated consequences.

Drawing examples from a (fictitious) international case 2 involving contract law, this article presents an overview of the possible pitfalls and above all provides tips about what you should be aware of with regard to cross-border mediation.

2. The case [iii]

Dutch company Genes BV (Genes) had received a proposal from Austrian company i-Tech AG (i-Tech) for 1) a server, 2) customized software, 3) installation of the software on the hardware.

Genes placed an order with i-Tech to install customized software on their server (2, 3).

Costs € 1.500.000 (for 2 + 3), of which 60% (i.e., €900.000) has already been paid.

Genes bought the server hardware (1) from the Italian company CompItalia SaRL (CompItalia), which met the specifications provided by i-Tech and was € 50.000 cheaper than what i-Tech had offered.

Following completion of the project, the system does not work. Parties are discussing how to solve it.

Position Genes

Problems are caused by the software installed by i-Teach and/or the way the system was installed by i-Tech.

Two biggest customers are threatening to cancel future orders worth several million Euros because of this. Genes explained to their customers that it is i-Tech's fault.

Wants a system that works, not pay anything anymore, and for i-Tech to compensate for any/all losses due to any loss of customer orders and customers claims due to the system's non-performance.

Position i-Tech
Problems are caused by the hardware purchased from CompItalia. Demands full payment of the outstanding 40% balance (i.e., € 600.000).
Demands that Genes refrains from any negative publicity or comments on their performance.

Each of them has expert options to back up their position.

Current state of affairs
Negotiations to try and resolve this dispute during the last two months have reached an impasse. Discussions between business principals and lawyers are increasingly adversarial.
Genes want to resolve the matter quickly, and without losing their customers.
They are a small company with limited financial resources and need to resolve this matter as cheaply as possible.
Their maximum budget to solve this is € 50.000.

The contractual Dispute Resolution clause:

> *"This contract is governed by the laws of England and Wales. In the event of any dispute between the parties, they will first try to resolve it within sixty (60) days by amicable discussions. If the dispute was not resolved by amicable discussions, the dispute will be resolved by binding arbitration by a Swiss arbitration tribunal of three arbitrators located in Zurich. The language of any proceedings will be English."*

In the remainder of this article: we invite you to imagine hat you are the lawyer or involved director/CEO of this Dutch company and look at it from that perspective.

3. Initiating mediation

Genes has proposed mediation as they want to improve chances to reach an outcome through amicable discussions as regulated in their contractual Dispute Resolution clause. I-Tech say they are open discuss under the guidance of a mediator and proposes a team of co-mediators consisting of an Austrian IT consultant, Heidi Klein, and a Dutch legal mediator, lawyer, Piet de Vries.
Genes thinks this is unnecessarily complicated and feels that i-Tech tries to delay the process for its own benefit.
To speed things up, they suggest – as a compromise and because the language of the proceedings is English– appointing for a one-day mediation a well-known British barrister John Smithon, with whom their lawyer has had good experiences. I-Tech also wants to involve CompItalia in the mediation. CompItalia is prepared to take part and to pay up to € 3,800 towards the mediation costs.
i-Tech thinks this is 'typical Italian haggling', but consents, as does Genes. All those involved agree to the appointment of Smithon as mediator.

Smithon asks the parties each to send a position paper within two weeks and names a date for 'the mediation day' at his office in London. Genes knows that in the Netherlands in some cases there is a pre-mediation briefing, but they have no idea what a position paper is. The mediator explains in an e-mail to all those involved that this is a document in which each party sets out, in five to ten pages, their own point of view and what they think about the other party's point of view. These documents are exchanged between the parties before the first mediation meeting.
Smithon asks the parties to carefully indicate clearly on any other documents whether they contain confidential information intended for the mediator or if they are intended for all parties involved.

4. Key points and dilemmas

As Gene's legal advisor or representative: What matters may be particularly important for you?
Is i-Tech trying to delay or complicate matters unnecessarily? Perhaps i-Tech's attitude in this regard is less likely to raise doubts if you are aware that in Austria a male-female co-mediation team is regarded as good mediation practice, preferably with a lawyer and a non-lawyer. In some cases this is even required by law.
Moreover, in Austria the focus is not on finding a solution as quickly as possible, but on ensuring the mediation process is carried out in the best way possible.

Is CompItalia acting in bad faith by putting a cap on the mediation costs? Italian law lays down maximum amounts and for a dispute involving a financial interest with a value between EUR 500,001 and EUR 2,500,000 that is a maximum of EUR 3800 per party, regardless of the number of meetings or hours spent. From the Italian point of view it is a reasonable offer in good faith to contribute this full sum.

This excursion into mediation legislation may also raise the question of ***which law applies to this mediation***. In cross-border mediation different legal systems nearly always apply. Relevant is:
1) the **law** that governs the **existing legal relationship** between the parties, and
2) the **law** that will govern their **future relationship** if settlement is reached.
The issue of applicable law may be part of the dispute, and the law that will apply to any arrangements

made should be discussed and clearly agreed on during the mediation session and recorded in the settlement agreement.
Then there is also
3) the **law** that applies to the **mediation process itself** – in other words, the law that governs the legal relationship between the parties and the mediator.

This choice of applicable law should be made before the mediation begins and should be recorded in the mediation agreement. In practice it seems an obvious choice to opt for the law of the country of the mediator, and sometimes the mediator requires this for insurance reasons. Nevertheless, this is not a hard and fast rule, and 'mediation forum shopping' may be a good idea, for instance to avoid mediation law with unfavourable or unclear regulations, or because you want to opt for facilitating rules or a Mediation Law that you are familiar with. If no explicit choice of applicable law is made, the rules of private international law will apply, with all the associated issues and complications. Most internationally working mediators cover the applicable law on the mediation process in the mediation agreement.

What do you include in the position paper or briefing for the mediator is also important. For instance, should you write down only positions and legal arguments, or also interests, needs motivations, concerns and alternatives? Cover that for your client alone or also assess the other party's position and mention the points where you agree as well? Do you want to send any (other) documents to the mediator? What information can be shared with all parties, what to keep confidential and what information would you like to get from the other side? Or do you prefer not to exchange any documents at all in advance and start blank at the mediation table? What do you think is the other party's view on this?

Then there are also practical aspects to consider. In which country, venue; when will the (first) meeting take place and how long will it last? Who will represent your side at the mediation sessions and are there representatives of the other side whose presence you regard as crucial? What language(s) will be spoken during the mediation sessions? Are interpreters needed?
Obviously, these are all aspects an experienced cross-border mediator will raise and settle in advance, but it is also important to be aware of them as the representative or adviser of a party: it is your process, and, together with the other party, you should be able to influence and decide on the structure of the mediation process to meet your procedural and substantive needs.

5. During the mediation session

Each party already has had an independent report drawn up to answer the technical questions. It turns out that these reports are contradictory. During a mediation one jointly appointed expert can be called in to provide clarity in this regard.

As far as the intrinsic aspects are concerned, this case seems very suitable for mediation. The interests, concerns needs and motivations involved include: a rapid solution, preventing Genes's customers from pulling out (with all the associated financial and reputational damage), preserving i-Tech's good name, preventing a lawsuit against CompItalia, saving costs, avoiding a bankruptcy of Genes, etc. Apart from all else, the parties have the common interest that they all want to get back to work rather than being embroiled in legal battles. Parties to a certain extent also need each other to solve the problems and there may not be a lot of attractive alternatives. From a business perspective several attractive joint solutions seem available.

Right at the beginning of the joint mediation opening session CompItalia is surprised that Genes is represented only by its CEO, whereas i-Tech has brought along its company lawyer, the CEO the project leader and it's assistant. CompuItalita demands that both other companies – like CompItalia itself – have external lawyers take part in the mediation. After some discussion it becomes clear that unlike Italian mediation legislation, English law, which applies to this mediation, does not require legal assistance from an external lawyer in mediation. It also turns out that CompItalia had expected that the purpose of this first session would be to provide information about the mediation procedure, as is usual in Italy. Because CompItalia has experience with mediation, they are happy to go ahead.

The mediator then asks all the parties to respond in an opening statement to the other parties' position papers. He also informs them that he has also read all the other documents. As the 'plaintiff', Genes is asked to start, to which i-Tech says that the
parties should determine in consultation with each other who will be the first to speak. In their opinion it is obvious that they should begin since they agreed to initiate mediation to meet Genes' request and they also accepted the mediator that Genes proposed. They are also wondering what those other documents are. They sent only the requested position paper.
CompItalia states that they do not wish to begin. Arguing that they have already accommodated both i-Tech and Genes by agreeing to mediation.
Genes says they want to start with giving their opening statement.

The mediator asks Genes to speak first and says that immediately afterwards i-Tech will have the same opportunity.
Genes explains why they chose to do business with i-Tech, what their expectations were, what had gone wrong in communication, that they feel ripped off and that they are up to their necks in problems with customers threatening to cancel their orders. The mediator interrupts and asks Genes to limit itself for now to responding to the position papers of i-Tech and CompItalia. Genes becomes confused, because in their understanding the whole point of mediation is to explain your own perspective and not to respond to the views of others as a start. They quickly round off their opening.
In their opening statement i-Tech then does exactly as asked and responds in detail to the position papers of Genes and CompItalia by refuting the content point by point.
In their opening statement CompItalia says that their hardware works extremely well, that they serve a large number of major international customers and have never had any problems. The problem must therefore have been caused by i-Tech and i-Tech should just solve it.

Then the mediator says it is time to move on to caucuses (separate meetings) with each of the parties and invites them to each go to their own mediation room that is made available for them. I-Tech asks the mediator if they can first draw up a joint agenda of the topics they want to discuss, based on the issues they have listed in Appendix 3 of their position paper and would also like to get a better insight in all interests that play a role. By this time, they have lost all confidence in the process, partly because they have the impression that the mediator (who was proposed by Genes) is not neutral and impartial and in any case doesn't conduct the mediation properly. CompItalia has similar thoughts, except that they are quite happy about how the mediation progresses, because it seems to be working to their advantage, so they stay silent.
Genes says they first want to respond to a few points raised by i-Tech and rectify them. In addition, some new technology was mentioned, and they would like to know more about it.
At the mediator's insistence the parties finally agree to the separate meetings. The mediator starts with i-Tech. During the next caucus with Genes the mediator soon puts forward a financial offer on behalf of i-Tech: on condition that Genes lower their compensation claim by 50%, i-Tech is prepared to claim only 75% of the outstanding amount. Genes thinks this is premature and unnecessarily complicated and wants to know more about the new technology i-Tech mentioned. The mediator urges Genes to give an initial answer he can pass on to i-Tech and uses reality testing: if Genes fails to give any signal to i-Tech that they are prepared to consider moving away at least a little from their initial positions, i-Tech may well end the mediation, which will result in a lengthy and expensive international lawsuit with an uncertain outcome.
In the meantime CompItalia is calmly waiting, in the reassuring knowledge that the recent technological development i-Tech mentioned will enable the problems to be solved quickly, but only by i-Tech and CompItalia together. That means for them additional work and therefore extra turnover. If the parties cannot reach agreement, CompItalia expects that the mediator will put forward a proposal for settling the matter.
However, when the mediator puts forward a mediator proposal at the end of the afternoon because there is a persistent deadlock, i-Tech ends the mediation, catching both Genes and CompItalia by surprise.

6. Design of a mediation process

What is going on here? Everyone involved, including the mediator, has different expectations and understandings about how mediation is supposed to be conducted, and no attention has been paid to this beforehand. There are no standard rules for international mediation. How a mediation process across borders is carried out depends on what the parties need and what the mediator can offer. This is greatly determined by what is customary in their own countries.

The type and style of mediation can be defined by focusing on **two axes:**[1]

a) How directive or facilitative the neutral will be on matters of **process**
e.g., time management, whether to caucus or not, written submissions if any, opening presentations, etc.; and
a) How evaluative or non-evaluative | facilitative the neutral will be on matters of **substance**
e.g., ranging from refusing to express any views, to doing tough reality-testing and preparing to offering own opinions or give a mediator's proposal if the parties do not reach an agreement.

[1] In a series of articles, Professor Len Riskin designed a simple grid to illustrate the range and complexity of different types of mediations (and mediators) that can exist, and to assist parties in selecting the type of mediator and mediation process they seek. (Leonard L. Riskin, 'Decisionmaking in mediation: the new old grid and the new new grid system', Notre Dame Law Review 79, No. 1 (2003): 1–53. Professor Riskin is the Chesterfield Smith Professor of Law at the University of Florida College of Law, and a Visiting Professor at Northwestern School of Law in Chicago, US.

Manon Schonewille and Jeremy Lack have adapted this grid and find it to be very helpful as a basis for discussion with the parties and their counsel in all mediations, especially cross-border situations.
This grid was first published in: Mediation in the European Union and abroad: 60 states divided by a common word?' chapter 2, of The Variegated Landscape of Mediation, (2014), The Hague, Eleven Publishing. This chapter can be downloaded from: www.mundimediatores.com.

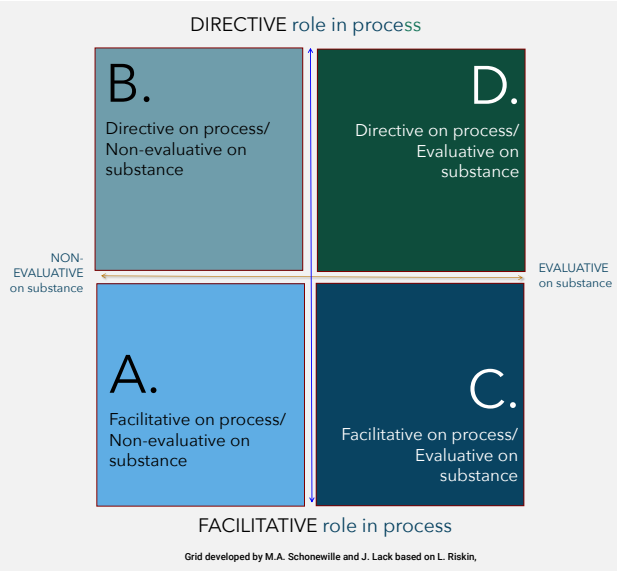
This leads to a classification in four different main types of mediation processes, which can vary greatly also within the same quadrant, depending on the degree of emphasis on process and/or substance. Mediators ideally should be flexible & able to operate in each of the quadrants according to the needs of the situation and stage of the mediation process.

In addition, in several countries there are legal requirements to be met by a mediation procedure or a mediator. The grid shown below, based on Riskin, [iv] is a handy tool which can serve as the basis for a discussion about the type of mediation process desired among all parties involved. Each type has its advantages and disadvantages, and it would go beyond the scope of this article to discuss each type.
It is important for users of mediation services to take in account their process needs and select a mediator with a style or mediation approach that meets the needs of their specific case, meaning being suitable for all the participants involved and for the situation that needs to be resolved.

As in the choice of any professional service, you first need to identify everyone's likely process needs, discuss the details of the process, and then ensure your choice of the neutral meets those needs.

The MEDIATION PROCESS

In which quadrant do you want to start?



You can read an extensive analysis of these 4 quadrants in *'Mediation in the European Union and abroad: 60 states divided by a common word?'* by M.A. Schonewille and J. Lack. (Chapter 2 of The Variegated Landscape of Mediation). [v]

How are our parties in the case described above positioned in this grid? [vi]
The Austrian company i-Tech probably inclines towards quadrant A: purely facilitative with a focus on the quality of the process which should explicitly be discussed. I-Tech may expect mainly joint meetings with in-depth direct exchange between all parties involved.
The Dutch company, Genes, with its pragmatic approach ('let's find our own solution quickly') would probably switch between quadrants A and B: facilitative to directive on process and non-evaluative on substance (although business mediation in the Netherlands is also increasingly involving evaluative elements). A caucus is seen as a tool – it is not so much a choice based on principle.

The Italian company, CompItalia, would be more likely to expect quadrant C: facilitative on process and evaluative on substance. Italian law provides that at the request of the parties a mediator puts forward a written, non-binding settlement proposal. If this proposal is rejected and the there is a subsequent legal proceeding, this proposal will become part of the file for the court. If the court's decision is similar to the mediator's proposal, this may result in cost sanctions.
A mediator from the UK or US is often expected to and experienced in operating in quadrant D: directive on process and evaluative on substance.

In a one-day mediation, after the exchange of views on position papers, often the remainder of the day is spent in caucus meetings, in which the commuting mediator soon proceeds to negotiations about the financial aspects and specific offers.
If not discussed, these widely diverging views on the role of the mediator can lead to misunderstandings such as assumptions of bad faith or incompetence, with a high risk of mediation failure. In the worst case this may result

in a new dispute and a grievance procedure about the mediation.

Another handy tool for initiating cross-border mediations is quick scan of 8 key drivers to determine what type of ADR-process would work best (**RapiDR scan**).

1. **Cost** (costs/expenses/the total budget for the process).
2. **Time** (deadlines or the final date by which the dispute should be resolved).
3. **Control of process** (e.g., convening meetings, venue, if any documents are to be provided in advance, joint or separate meetings, individual intake-meetings, etc.).
4. **Control of outcome** (e.g., interests, needs, concerns, motivations to be taken in account, findings of facts or law, or which disputants' preferences should prevail on what issues).
5. **Reputation** (the impact on the disputants' reputations).
6. **Relationships** (the ability to carefully end, preserve or generate good working relationships with other disputants or stakeholders).
7. **Enforceability** (the need to enforce any outcomes – e.g., before a tribunal or in another country).
8. **Confidentiality** (the need to e.g., keep the dispute, it's existence or substance of any discussions confidential).

Because Genes is under time pressure and want to explore business and technical solutions, it is worthwhile to consider opting for a one-day mediation with joint meetings alternating with caucuses.

Having the mediation in a different country rather than the country of one of the parties may be a good idea to balance travel time, particularly if you opt for a short mediation process.
If you opt for a mediation process with several meetings so that you have an opportunity to test the arrangements made in practice or dive into in depth explorations, or solving on relationship issues, it might make sense to have the mediation closer to home. In this case in Brussels or Munich for instance. Or part of the mediation could be done online.

7. Tips for writing a pre-mediation briefing or position paper

Note: being a Dutch mediator, I prefer the terminology pre-mediation briefing which is more inclusive of including interests and other 'soft' factors.

A. Start by summarizing the dispute and the legal aspects:
   1. Facts and events about which there is agreement or no agreement.
   2. Main substantive and legal issues.
   3. Compensation desired.
   4. Any court proceedings.

B. Then describe the conflict and progress of negotiations so far:
   1. Your client's interests, needs, concerns and motivations. And an assessment of the other party's perspective.
   2. Settlement proposals and what has been undertaken to reach a solution.
   3. Obstacles preventing the case from being solved.
   4. Expectations of the mediation, matters which require specific attention and any possible routes for solutions you would like to explore.

C. Conclude with other essential information such as who represents your party in the mediation, any procedural preferences and helpful documents that you you would like to include as appendices.

Write clearly on each document whether it is confidential and for the mediator only or that it can be shared with all parties involved.

It is also important to think through your **information strategy** beforehand. What information do you want to **give** to the other parties, what information do you want to **get** and what information is wise to **guard**. For example, as the adviser of Genes you might let the mediator know in confidence that Genes is in a difficult financial position and that they are facing the threat of bankruptcy if they do not have a functioning system soon. In the memo shared with the other parties you might say that your client's interest is that it needs a functioning system very quickly and that Genes wants to explore technical solutions. On the other hand, depending on the escalation for i-Tech preventing bankruptcy may become a joint interest (i-Tech is less likely to be paid if Genes is bankrupt, however if they are in Glasl 8-9 they may not care about that).

8. Taking cross-border mediation successfully forward

An interesting feature of cross-border mediation is the possibility of customization to meet the parties substantial and procedural needs. However, this also makes it more complicated. It is recommended to start with a preliminary meeting of all parties involved to discuss expectations and – with the help of tools such as the grid

and the 8 key drivers – how the mediation will be structured and only then decide which mediators are suitable. Consider starting in the middle of the grid and think about the best approach to reach settlment with these parties. Make it quite clear that depending on how things play out during the mediation it will be possible to work in different quadrants. Also occasionally discuss how the process is progressing and whether it is till suitable during the mediation and don't focus solely on the substance or legal aspects.

9. Conclusion: Orchestrating Cross-Border Mediation

Cross-border mediation is akin to orchestrating a complex symphony, where each instrument represents the distinct legal and cultural nuances of the involved participants, including the mediator. This article has illuminated the intricacies of this unique process, dispelling the notion that mediation across borders is a mere extension of domestic mediation. The journey we embarked upon, based on a hypothetical international case, has unveiled a world rich in challenges and opportunities.

The very essence of cross-border mediation is rooted in recognizing and addressing differing expectations, legal frameworks, and negotiation approaches. Just as a maestro meticulously tunes each instrument before the performance, parties engaging in cross-border mediation must harmonize their perspectives before the mediation starts.

Our case study underscored the pitfalls that can arise from inadequate preparation and misaligned perspectives. The intricacies of initiating mediation, the delicate balance between directive and facilitative approaches, and the influence of varying legal systems all underscored the need for a tailored and well thought through mediation process.

Before the mediation process begins, it's vital to mediate the process itself first. Comparable to tuning instruments in an orchestra under the guidance of a conductor. Engaging in collaborative discussions to define the mediator's role, understanding the key drivers that shape the process, and crafting a flexible approach to meet evolving dynamics are all critical.

In an interconnected global landscape, cross-border mediation stands as a bridge, enabling parties to resolve conflicts amicably, cultivate relationships, and minimize legal complexities. However, it requires finesse—akin to conducting a symphony—where every note is orchestrated with care. Cross-border mediation is an opportunity to mediate not only conflicts but also the intricate process of coming together across borders. By doing so, we can orchestrate harmonious resolutions, fostering enduring partnerships in our interconnected world.

Key aspects discussed in this article:

Introduction: The misconception that cross-border mediation is a straightforward extension of domestic mediation. It addresses the necessity for careful preparation in businesses' pursuit of limiting legal and business risks through mediation.

Challenges of Cross-Border Mediation: Delving into the unique challenges of cross-border mediation, the article highlights varying expectations about mediation's nature, participants, location, language, and applicable laws.

Initiating Mediation: The initiation phase of the mediation process involves discussions about the process, co-mediators, preferred languages, costs, and venue. It emphasizes the importance of open dialogue and compromise.

Key Points and Dilemmas: The article explores the perspective of Gene's legal advisor or representative, identifying crucial considerations such as delay tactics, legal representation requirements, applicable law, and effective information strategies.

During the Mediation Session: The intricacies of the mediation session are examined, including the importance of joint agendas, opening statements, responding to position papers and exploring business needs, interest, concerns and motivations. The differing approaches of parties from various jurisdictions are highlighted.

Designing a Mediation Process: The article introduces a framework for understanding mediation's directive-facilitative and evaluative-non-evaluative dimensions, leading to the classification of mediation types. The importance of tailoring the mediation process to parties' needs is emphasized.

Tips for Writing Pre-Mediation Briefing: Practical advice is provided for crafting comprehensive pre-mediation briefings, including summaries of disputes, conflict analysis, settlement proposals, and important procedural details.

Taking Cross-Border Mediation Forward: by stressing the significance of collaborative discussions among parties to define mediation's role, while considering the key drivers of the mediation process, such as cost, time, control, and confidentiality.

Conclusion: The article concludes that cross-border mediation is akin to orchestrating a complex symphony, where each instrument represents the distinct legal and cultural nuances of the involved participants. Before the mediation process begins, it's vital to mediate the process itself first. Comparable to tuning instruments in an orchestra.

The article aims to empower businesses and their lawyers with a deeper understanding of cross-border mediation's intricacies, enabling them to engage in successful conflict resolution and bolster international partnerships.

Mundi Mediatores
PROACTIVE BUSINESS MEDIATION

Navigating Cross-Border Mediation with Mundi Mediatores

There is a persistent "mediation paradox": disputants express an overall preference for mediation but mostly resort to litigation or arbitration due to various obstacles.

Strong barriers to access mediation include a fear of looking weak or too willing to settle, that one party can force the other party to litigate, repeat players or persistent litigants can "game" the process to their advantage, conflicting parties (or their lawyers) often disagree on which dispute resolution process to follow, whether the other party/ies will cooperate in good faith, which mediator to engage and where to find them.
A lot of needs for Appropriate Dispute Resolution (ADR) of companies are not met in particularly in cross-border cases.

5 hurdles underlie the "mediation paradox":
1. USER ENGAGEMENT
2. PROCESS DIAGNOSTICS
3. PROCESS DESIGN
4. BUDGETING
5. NEUTRAL SELECTION & IMPLEMENTATION

Mundi Mediatores (MM) aims to be a catalyst to address the paradox by lowering these hurdles. Getting the disputants to agree to use mediation by pro-actively reaching out to the other party, designing an optimal custom process, and connecting companies with top-tier business mediators. MM provides practical solutions to untangle complexities in initiating mediation across borders. It also works with a funding partner (InnovADR) that can pay for the costs of ADR proceedings, operating on a "no settlement, no fee" basis.

Simply said, MM is a broker who connects supply and demand in ADR.

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ENDNOTES

i **Manon Schonewille** is legal business mediator in Rotterdam, The Netherlands. An experienced expert in negotiation and mediation with the mission to empower professionals in their quest for effective and successful dispute resolution and prevention by putting interaction between people at the heart of the process, not only the problem.
With a vision to transform conflict resolution, she founded The Academy of Legal Mediation and Mundi Mediatores. The Academy offers mediation and negotiation skills training, while Mundi Mediatores connects companies with top-tier business mediators, creating custom processes to solve conflicts effectively.

ii This article was originally published in Dutch in ***Kluwer Ondernemingsrecht 2016/11 (Corporate Law Magazine).*** This translated version was updated in **November 2023**.

iii This is an imaginary case prepared for this article, and inspired by the Geneva Biotech case written by Jeremy Lack. Any resemblance to actual companies or persons is coincidental.

iv Grid developed by M.A. Schonewille and J. Lack based on L. Riskin (1994, 1996, 2003). 'Who decides what? Rethinking the Grid of Mediator Orientations'.Dispute Resolution Magazine, vol. 9 no. 2, p. 22.

v The variegated landscape of mediation. A comparative study of mediation regulation and practices in Europe and the world. M.A. Schonewille and F. Schonewille, 2014, Eleven international publishing. Chapter 2, p. 19-44: **Mediation in the European Union and abroad: 60 states divided by a common word? M.A. Schonewille and J. Lack.** This chapter can be downloaded in the resources section on www.toolkitcompany.com and www.manonschonewille.nl.

vi These are tendencies that we have seen in our international practice. I am well aware that this is a generalization and that there are many exceptions to any such case and situation. For clarity's sake in this article this is straightforwardly described, meaning it can be missing many important nuances