FUNDACION
SIMA
Servicio Interconfederal
de Mediación
y Arbitraje

Study of the major systems for the Independent Resolving of Labour Disputes in Europe

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INTRODUCTION

The Interconfederal Service of Mediation and Arbitration (Servicio Interconfederal de Mediación y Arbitraje, SIMA), a Foundation created by the business organisations *Confederación Española de Organizaciones Empresariales* (CEOE) and the Spanish Confederation of Small and Medium-sixed Enterprises (*Confederación Española de la Pequeña y Mediana Empresa,* CEPYME) and the trade-union organisations the Workers' Commissions (*Comisiones Obreras,* CCOO) and the General Workers' Union (*Unión General de Trabajadores,* UGT). in 1996, is the institution to which the Agreement on the Independent Resolving of Labour Disputes (extrajudicial system) (Acuerdo sobre Solución Autónoma de Conflictos Laborales, ASAC) has entrusted the administration of the procedures of mediation and arbitration regulated in said Agreement. Since then successive Agreements have been renewed up until the present day with the validity of ASAC V. These agreements are the original contribution of collective autonomy to the resolution of collective disputes between companies and workers.

Ever since their origins these agreements have been renewed with slight modifications that have not essentially changed the text of the original Agreement, with their content being fully valid nowadays. The Board of Trustees of the Foundation thought it advisable to get to know at first hand the operation of the main European systems so as to be able to compare and assess the opportunity of including in the Agreement "good practices" developed in other systems of Independent Resolution current in European countries to improve their efficiency.

In order to do so, and basing ourselves on our rules of operation, we have requested from a selection of seven European countries their participation in this study, which has been essentially aimed at answering a questionnaire on the operation of their institutions and the mediation procedure they follow. We received an answer from five of them, to be precise from the National Mediation Office (NMO) of Sweden, the National Institute for Conciliation and Arbitration (NICA) of Bulgaria, the Advisory, Conciliation and Arbitration Service (ACAS) of the United Kingdom, from Poland, and from the OMED of Greece.

Methodology:

In an initial phase, in June 2015 we sent the European bodies taking part in the study a questionnaire containing 16 questions directly related to the stages of the procedure of

mediation and arbitration. The questions were asked from the perspective of SIMA's experience in mediation and arbitration.

The essential objective of the questionnaire was to get to know the practical operation of the various European bodies in the processing of the procedures established in each country for the resolving of labour disputes. There is no doubt that the analysis of the questions asked gives us a clear idea of their operation and a general comparison of the countries that have taken part in the study.

Once the answers had been received we proceeded to analyse the information provided and to draw up a report that has allowed the pooling of the peculiarities of the various mediation bodies. The study we now present represents an initial approach to the operation of the various systems so as to get to know the essential characteristics of their operation in aspects such as the development of the mediation procedures, the appointing of mediators, the development of meetings, and the concluding of the procedure.

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ANSWERS TO THE QUESTIONNAIRE

1. Who presents the initial request for a mediation/arbitration procedure?

The ASAC V establishes in its Article 13 the legitimate subjects for requesting mediation. These vary depending on the type of dispute. However, in general terms they will be legitimated at a business level; this is true of both the legal representation of workers and/or the representation of the company, and on a sectorial level the Trade-Union and Business Organisations, albeit always in agreement with the Law on Social Jurisdiction.

UNITED KINGDOM (ACAS)	It can be either single party or a jiont request. In some cases collective dispute procedures stipulate a request for mediation (conciliation) should be considered before any form of balloting for action is considered
SWEDEN (NMO)	If the parties negotiating a collective agreement accept such a course, the Swedish National Mediation Office (NMO) may appoint negotiation managers or mediators to take part in the process (voluntary mediation). In practice, this involves a request by one or both of the parties. Should one of the parties oppose such a course, the NMO is prevented from appointing negotiating managers/mediators. If the NMO considers there is a risk of industrial action, or if such action already has been initiated, the NMO may appoint a mediator without consent of the parties concerned (compulsory mediation).

BULGARIA (INCA)	According to the Collective Labour Dispute Settlement Act disputing parties are those who present the initial request for mediation/arbitration. The pointed act regulates that parties of the collective labour dispute are employers and employees unless when parties have not authorized other bodies or persons. The issue are problems related to labour and social security relations and the living standard. When an agreement between disputing parties is not reached or if any of parties refuses to negotiate each of them may ask for assistance by deposing a request for an assistance to resolve the dispute through mediation and/or arbitration by a trade union or employer`s organizations and/or by the National Institute for Conciliation and Arbitration. When disputing parties don't reach an agreement or if one of the parties refuses to negotiate each of them may ask for assistance by deposing a request for an assistance to resolve the dispute through mediation and arbitration by a trade union or employer`s organizations and/or by the National Institute for Conciliation and Arbitration.
POLAND	According to the Act of 23 May 1991 on solving collective labour disputes, if the party, which initiated the collective dispute, sustains its demands submitted to the employer as the subject of the dispute, and the record of divergences indicating the positions of the parties was drawn up, the parties shall conduct the dispute with the assistance of a person who ensures the impartiality, i. e. mediator. Mediation is an obligatory stage in the dispute solving process, which must begin after the failure of negotiations.
GREECE (OMED)	According to the national legal framework in force an application for the provision of mediation or arbitration services can be submitted by the interested parties involved in the collective labour dispute, jointly or separately, according to the respective procedure. In this framework and as it concerns the workers' side the application can be submitted by trade union organisations' and as it concerns the employers' side by employers' organisations or in the case of enterprise collective agreement by the individual employer. Relevant legislation: Law 1876/1990, articles 3, 14, 15, 16 (as in force)

As a conclusion to this initial question, it can be observed that in most of the systems studied the legitimate subjects for requesting mediation are the parties involved in the dispute, mainly the workers and the company. However, the existence of voluntary mediations and compulsory mediations, either by legal imperatives or because this has been attributed to the mediation body itself, as is the case of the Swedish system, should also be emphasised.

2. Are there rules for the procedure or the regulation of the independent solution system?

Article 6 of the ASAC establishes that the Service has its own internal regulations. These regulate the daily operation of the Service, the distribution of the tasks, the resolution of concurrence disputes if these exist, the procedure of summons and notification, and the publishing of its actions.

UNITED KINGDOM (ACAS)	Most procedures stipulate the volountary nature of the procedure/process. In arbitration terms the parties nust agree terms of reference before the process proceeds to solution. Most arbitrations are binding in honour only and are not enforcable through the courts.
SWEDEN (NMO)	The rules governing the NMO as well as the procedure for appointing mediators by the NMO is found in the Act on Co-Determination at Work, supplemented by Government ordinances.
BULGARIA (INCA)	The Rules of the National Institute for Conciliation and Arbitration for mediation and arbitration for the settlement of collective labour disputes are adopted by the Supervisory Board of NICA, which is constructed on a tripartite bases. The competence of the Supervisory board to adopt Regulations is set out in The collective labour disputes settlement act. Some matters concerning arbitration and arbitrators and mediators of NICA are regulated by the Regulations for the structure and activities of the National Institute for Conciliation and Arbitration., which in accordance with the collective labour disputes settlement act should be approved by the Minister of Labour and Social Policy. The Director of NICA approves Administrative Assistance Guide For The "Mediation" and "Arbitration" Procedures By The National Institute For Conciliation And Arbitration, which assist the employees of NICA to apply precisely the requirements of the normative acts and procedures in the course of arbitration and mediation procedure.
POLAND	In accordance with the Act on solving collective labour disputes, a mediator shall be agreed upon by parties to the collective disputes. It could be any person or mediator from the list fixed by the minister competent for labour issues in agreement with trade union organizations and employer's organizations – representative in the meaning of the law of 6 July 2001 concerning Tripartite Commission for Socio-Economic Issues and voivodship social dialogue commissions. If the parties to the collective dispute do not reach agreement within 5 days as to the choice of the mediator, mediator is indicated, on a proposal of one of the parties, by the minister competent for labour issues from the abovementioned list of mediators.

GREECE (OMED)	In order to request mediation or arbitration services from OMED, an official free collective bargaining process between the parties should have already been initiated. If collective bargaining fails, the interested parties have the right to request mediation services or to apply for arbitration. It should be mentioned, that according to the law, the terms of requesting mediation and arbitration and the entire procedure can be stipulated by relevant clauses in collective agreements. In case such clauses have not been agreed, they can also be regulated by a unanimous agreement of the negotiating parties. In the case of absence of such agreements the provisions of the law apply. Relevant legislation: Law 1876/1990 (as in force)

From the answers as a whole it can be concluded that all systems have internal regulations of procedure, some by express reference to laws by which their operation is regulated and others, moreover, by means of regulations of internal use of the bodies themselves. In any case they all have specific regulations for the operation of the system of the independent resolution of disputes.

3. What are the processing deadlines from the presentation of the request for mediation/arbitration to the final resolving of the dispute?

As far as the mediation procedures are concerned, the ASAC V establishes two essential deadlines according to the type of procedure, distinguishing whether it is a dispute prior to the formal call for a strike. In this case the procesure becomes urgent and is processed within a maximum deadline of 72 hours from the presentation of the request for the mediation meeting (Article 17 of ASAC V). Alternatively, in any procedure other than strike action the processing will take place within 10 working days from the presentation of the request for the anticipated meeting (Article 14.3 of ASAC V). By common agreement the parties may request a shorter processing time provided that they have previously agreed upon the mediator or mediators that will intervene.

In the event of Arbitration the period will be determined by the parties, but in the absence of agreement a deadline of 10 working days is established within which the arbitral award (resolution) is issued. This deadline may however be extended by the arbitrator in a reasoned resolution; the award must be issued before 40 working days have passed.

UNITED KINGDOM (ACAS)	There are none stipulated for collective mediation but time frames are usually governed by the threat of industrial action or impending action.
SWEDEN (NMO)	There are no specific such deadlines or time limits. Where a request for mediation has been presented or where the NMO considers there is a risk of industrial action, the matter of appointing mediators is handled with greatest possible priority.

BULGARIA (INCA)	Deadlines, as provided in the legislation, are different for the different procedures. Mediation shall be carried out within 14 working days from the beginning of negotiations unless parties agree upon a longer period. At the voluntary arbitration the dispute shall be settled by arbitration award/order within three days of completion of the arbitration proceedings. The Arbitration body may hear the dispute in two sittings mostly, and the recess between them cannot be more than 7 days, unless parties agree on another number of sittings or on another period of time between them. At arbitration for determining the minimum necessary activities during a strike, the dispute shall be settled within 7 days of the determination of the arbitration body.
POLAND	a joint choice of the mediator by the parties - 5 days (the term calculated from the date of drawing up the records of divergences); indication of the mediator by the minister competent for labour issues – usually 1-7 days (the term is not determined by the provisions); the duration of the mediation is not regulated by the provisions of law; the strike may not begin before the expiry of 14 days period from the notification of the collective labour dispute.
GREECE (OMED)	According to the legislation in force processing deadlines are: a) for mediation cases 20 working days from inception b) for arbitration cases 15 days and in the case of Second Level Arbitration 20 days. Please note that the duration in all three cases could be extended either on the basis of a parties' joint agreement, or if such a proposition is made by the Mediator/Arbitrator and is mutually accepted by the parties.

With regard to the deadline for processing a mediation/arbitration procedure the regulations do not coincide, as some bodies do not establish any period for the processing, which is the case of the ACAS (United Kingdom), the INMO (Sweden), and the Polish body which do not formally establish a deadline. Others however do establish processing deadlines, such as the Bulgarian (NICA) or the Greek body (OMED), regardless of whether these may be varied or altered according to the will of the parties or of the body itself if they consider it to be necessary.

4. Where do the mediation/arbitration meetings take place?

It is the Interconfederal System of Mediation and Arbitration (SIMA) that summons the parties of the dispute to the necessary mediation meetings, which are held at the Madrid headquarters.

UNITED KINGDOM (ACAS)	Usually in the offices of Acas when accommodation is available. When rooms are unavailable Acas will source venues in other locations and stand the cost where necessary. Meetings are rarely held on the premises of the parties.

SWEDEN (NMO)	The meetings normally take place in the office of the employer organisation.
BULGARIA (INCA)	In mediation procedure meetings are conducted on the place at parties in dispute, who are obliged to provide a separate room for the mediator with a proper working place, telephone and conveniences for conducting negotiations. In an arbitration procedure disputing parties propose the place, date and hour of the first meeting of the arbitration body. The Director of NICA in the Order for determining the arbitration body defines the place, date and hour of the first meeting. Arbitration meetings as a rule are conducted in the headquarter of NICA. At the discretion of the arbitration body, next meetings can be conducted in another place.
POLAND	In most cases the mediation proceedings take place in the establishment in which the collective labour dispute is carried out.
GREECE (OMED)	The mediation/arbitration meetings take place at OMED premises in Athens or Thessaloniki. If specific conditions occur (i.e. the parties' residence is regional) and such a request is made to OMED, meetings may be held at a jointly agreed place.

Where the mediation or arbitration meetings take place does not appear to be relevant, as can be observed from the replies collected. No common criteria exists regarding the convenience or existence of any benefit from holding meetings in the installations of the body or elsewhere; rather it would seem that this may be due to an economic criterion or to the work organisation of each particular body.

5. Which people intervene in the mediation and arbitration procedure apart from mediators and arbitrators? What are their duties?

In the Interconfederal System of Mediation and Arbitration (SIMA), in addition to the intervention of the mediators and arbitrators appointed for the procedures, administrative personnel from the Procedure Area are also involved. These personnel are responsible for sending notifications and summons from the mediators and the parties involved. The Area is run by the lawyers of the service, who accompany the mediators and/or arbitrators at the meetings that are held. Their duties include acting as recording secretaries and ensuring compliance with the regulations established in ASAC V in relation to the development of the mediation and arbitration procedures. The lawyers are equally responsible for promoting the processing of the mediation and arbitration procedures right from the time of instigating the request up until its completion.

It may also occur that the parties (both the workers' representation and that of the companies) attend the mediation and/or arbitration meetings advised by third party experts on the matter that is the subject of the dispute, together with whoever the parties consider appropriate, without any limitation as to the number of people attending the same.

UNITED KINGDOM (ACAS)	In particular cases independant experts are used to assess the claims of groups of employees. These are people with particular skills in the particular field and are predominately used in equal pay cases

SWEDEN (NMO)	No other persons intervene in the mediation.
BULGARIA (INCA)	The employees of NICA administrate mediation procedures. Their obligations are written in details in Administrative Assistance Guide For The "Mediation" and "Arbitration" Procedures by the National Institute for Conciliation and Arbitration. In a mediation procedure disputing parties and the mediator nominate persons who participate in meetings and also their obligations. There are no formal limitations and special requirements. Arbitration sessions are open. Except the arbitration body and parties (and their legal representatives) other persons can also attend. By decision of the Arbitration Body other third persons can participate in meetings and be heard – specialists in relation to the specifics of the dispute pointed by parties and expert witnesses may be requested by parties to provide a statement, if the arbitration body permits it. Expert witnesses provide statements and present them to the arbitration body and disputing parties in the course of the arbitration procedure. They are heard and answer to questions posed by the arbitration body and disputing parties.
POLAND	In the case of a mediation, usually at the beginning of the joint meeting, mediator presents to the parties the rules of mediation which sets out, inter alia, the role of mediator, the scope of mediation and technical issues related to the course of mediation (including the participation of advisors and experts, speaking time or the procedures concerning preparation of minutes from the meetings). Adoption and signing the Rules of procedure by the parties of the dispute has both symbolic – as a first agreement of parties, and practical character – as a point of reference during the mediation. Abovementioned issue is not regulated by the provisions of law but is related to the level of professionalism of mediator and his/her skills to maintain or achieve the balance between the parties in the procedure of mediation.
GREECE (OMED)	According to the legal framework in force, the mediation and arbitration services in general as well as those provided by the mediators of the OMED are based on the principles of right judgment, objectivity and impartiality. Mediators and Arbitrators are independent in exercising their duties and no intervention is allowed by any State authority. Mediators and Arbitrators may request from OMED's Board to be assisted by one or more experts, in case they need to be assisted to the in depth examination of the specific collective dispute, in orded to formulate their proposal. Mediators and Arbitrators may also request from OMED services: a) secretarial support in the drafting of documents, b) assistance to the formation of remuneration tables, the collection of relevant case-law and statistical data related to the specific case. OMED has sections with the respective executive staff providing support for the above procedures.

The answer to the question raised is of great interest, as it emphasises that in all bodies with the exception of that of Sweden (the NMO), where no third parties intervene in the mediation, there is a real possibility of providing the mediators and arbitrators with the tools allowing them to obtain more resources in addition to their own knowledge, either by means of independent experts that can be consulted or from support services offered by the body itself.

6. Is the procedure a flexible one or does it have formalities that must be followed? Who appoints the mediators that will intervene?

The procedure established by the ASAC V must follow certain formalities regarding the summonses of the parties, the appointment of a mediator, and summonses for the mediation meeting. It does not require any specific documents for requesting mediation, but it does however contemplate a series of requirements similar to those that would be required when bringing an action before labour courts in a collective dispute (the identification of the parties, the legitimation of whoever requests mediation, a state-level conflict, companies with more than one work centre, appointing a mediator, etc.). In order to do so the parties must have a basic knowledge of the content of the ASAC V.

Once the parties attend the mediation meeting the procedure becomes much more flexible; it is the mediator or mediators who determine the manner of holding the mediation session.

UNITED KINGDOM (ACAS)	The procedure is almost always volountary and therefore very flexible in its operation. Acas would provide the mediators in a collective dispute and appoint an arbitrator if this service was required. In the latter case the arbitrator would be drawn from an excisting list of qualified individuals and would have to be agreed by both parties.
SWEDEN (NMO)	According to the Act on Co-Determination, the mediator shall seek agreement between the parties. To this end, the mediator shall summon the parties to the negotiating table or to take other appropriate action. Parties summoned to negotiations by a mediator are obliged to attend. If a party fails to attend or fails to fulfil its obligations in another way, the mediator may ask the NMO to require the party concerned to fulfil its obligations, requirements sanctioned by fines. The mediators should also seek to persuade a party concerned to postpone or cancel a planned industrial action. If the party refuses to comply with such a request by the mediator, the mediator may ask the NMO to order the party to postpone the industrial action. The NMO may order a postponement of 14 days at the most and only once per term of mediation. A pre-condition for a postponement is that the NMO considers such action beneficial for a satisfactory settlement of the dispute. Other than these provisions, the procedure is a rather flexible one where the mediator may present proposals for the settlement of the dispute.
BULGARIA (NICA)../..	Mediation and arbitration procedures are formal as regulated by the Collective Labour Disputes Settlement act, secondary legislation and documents, adopted by the Supervisory Board of NICA, which should be obeyed. The mediation procedure is flexible with regards to the technics that

../..BULGARIA (NICA)	the mediator may use. Determination of mediators and arbitrators has the following specific features: Mediators and arbitrators are nominated by the representative organizations of employees and representative organizations of the employers and of the state, represented by the Minister of Labour and Social Policy. All the mediators are established by the Supervisory board of NICA, which is also constructed on tripartite bases with the participation of representatives of the trade unions and organizations of the employers. In a particular procedure of mediation and arbitration of NICA the Director is one, who determine a mediator. When the mediation is by a mutual request of the disputing parties, they have the right to offer a mediator or mediators in order of their preference. The Director of NICA shall comply with the appointed mediators. If the disputing parties didn't express their preference for a particular mediator in the procedure of mediation by a mutual consent of the parties, the Director determines a mediator after consultation with the parties. When the mediation procedure is by a request of one of the disputing parties, if parties reach agreement for mediation procedure, but didn't have a mutual proposal for a mediator, the Director should determine a mediator unilaterally, but considering his professional experience, applicable to the particular collective labour dispute. At the voluntary arbitration the disputing parties agreed on the type of the arbitration body, including the sole arbitrator if the arbitration body is a sole arbitrator. If the parties offer the arbitration body to be an arbitration committee, each of disputing parties offers an equal number of arbitrators for committee members. The Director of NICA determines the arbitration body by order. When an arbitration committee is appointed at the particular dispute, its members shall elect another arbitrator from the list of arbitrators for Chairman, who is determined by the Director of NICA. If the disputing parties didn't define the type of the arbitration body in the request, the Director define it after consulting with them. At arbitration procedure for determining the minimum necessary activities during a strike the Director of NICA shall determine an arbitration body by order – a sole arbitrator or an arbitration committee from the list of arbitrators of NICA. If the arbitration body is an arbitration committee, its members elect among themselves Chairman of the committee.
POLAND	The mediation process in Poland is not very formalized but there are some formalities that have to be fulfilled before mediation starts – i.e. the completion of the phase of direct negotiations between the parties of the dispute (drawing up the records of divergences indicating the positions of the parties), and a common choice of mediator or submission of an application for mediator indication by the minister competent for labour issues.

GREECE (OMED)../..	The procedure in place for recourse to OMED is adequately flexible. The Mediation procedure begins with the submission of a relevant
../..GREECE (OMED)	application by the interested parties and is submitted either jointly or by each party separately. In the latter case, the application is announced to the other party. The application includes the invitation [to mediation] made by one party to the other, the identification of the parties involved and the authorized representative of the applying party, the proposals or the demands, the reasons which justify them, any alternative proposals and other data which facilitate the negotiations. The Mediator is selected by the parties from the special catalogue of Mediators. In case of disagreement between the parties, the mediator is selected by a draw. For this purpose, forty-eight [48] hours after the submission of the mediation application, the authorized service of OMED calls upon the parties to be present at a designated place and time for the selection of the Mediator, or in the case of disagreement, for the appointment of mediator by a draw. The draw takes place in the presence of the President of OMED or his/her representative and each party has the right to reject, on one occasion, the mediator selected by the draw (each party's individual veto). The third draw is definitive. The same procedure is used to appoint the alternate Mediator. After the appointment of the Mediator, a written document is filed for the formal appointment of the mediator. The Mediator must assume duties within five (5) working days from the day of the appointment. The same procedure is applied for the appointment of the substitute Mediator, as well as the Arbitrator/Arbitrators and their substitutes.

If we analyse the replies obtained we can see that most bodies have basic regulations on the procedure to be followed, There is no doubt that the parties are thus given a certain legal security as they are clear about or can be clear about the "rules of the game". In general the formalities concentrate on the initial and processing stage and not on the mediation itself, which generally allows the mediator or mediators freedom to determine how to proceed in carrying out their duties. Insofar as the appointment of the mediator or mediators is concerned, the Greek system (OMED) stands out as being different, as its rules of operation establish that if the parties do not agree as to the choice of mediator, the latter will be appointed by a draw using a special catalogue of Mediators. The ACAS of the United Kingdom appoints and provides the mediators who will intervene in the mediation procedure, as does the NMO of Sweden, although the latter will only appoint them if the parties have not done so by common agreement, in which case the Law of Co-Determination will not be applicable. Both in the Spanish SIMA system and in the Bulgarian body (NICA) the mediators are appointed by the parties from previously established lists, although in the Bulgarian system if there is no agreement it is the body who appoints the mediators.

7. If the mediators are appointed by the parties in dispute, how is impartiality guaranteed?

In our system it is the mediators who have the obligation to declare their compatibility or incompatibility for intervening as mediators. Mediators must have no connection with the specific dispute in which they act, with no personal or professional interests

liable to alter or condition their mediating activities. Their action must be governed by the principles of capacitation, impartiality, and independence expressed in the European Code of Conduct for mediators. If there are direct personal or professional interests affecting any of the mediators appointed to intervene in a mediation procedure, the SIMA management will notify this to the party that has proposed him/her with a view to appointing another mediator.

UNITED KINGDOM (ACAS)	Non Applicable.
SWEDEN (NMO)	The mediators are appointed by the NMO. However, if the parties to the dispute are bound by a so called collaboration agreement (i.e. an agreement on bargaining procedure that contain timetables for negotiations, time frames and rules for the appointment, rule´s on mediators´ powers and rules on termination of agreements) and such agreement is reported to and registered by the NMO, they are exempt from the provisions on compulsory mediation in the Co-Determination Act (se above). Such parties, consequently, appoint mediators themselves.
BULGARIA (NICA)	The Supervisory board of NICA has adopted Ethical Code of Conduct for Mediators and Arbitrators of The National Institute for Conciliation and Arbitration. The act contains principles of the ethical behaviour of mediators and arbitrators that are a base for building confidence in the institution of mediation and arbitration. The first main principle is exactly the one of independence and impartiality. Chapter II of the Ethical Code is dedicated completely to this principle. The mediator ought to keep the expressly listed requirements. Among them is the obligation of the mediator and the arbitrator not to allow any social, political, personal, family current and previous employment relationships to Influence his/her independence and impartiality. The procedure of appointing and approving mediators and arbitrators includes an assessment not only of their professional skills but also of their personal and professional morality, respect and prestige they have before social partners and society. As a guarantee for keeping the principle of impartiality is the obligation of the mediator and the arbitrator to inform the Director of NICA and disputing parties for any existing fact and circumstances that could generate doubts in his or her independence and impartiality. Mediator and arbitrator ought to inform for the existence of any such facts and circumstances before the beginning of the mediation and arbitration procedure during the procedures till their ending. The mediator ought to withdraw whenever considers that he or she cannot be independent and impartial due to various reasons.
POLAND	Mediator's labour standards in collective labour disputes provides, inter alia, that the mediator is neutral to the subject of dispute as well as impartial and independent of the participants of mediation. This independence is not guaranteed by the law. The practice of solving collective labour disputes allows withdrawal of mediator from the mediation procedure if, during the mediation, there are circumstances that can affect the decision of mediator.

GREECE (OMED)	According to the law, impartiality is safeguarded in several stages: 1. The Mediators and Arbitrators are selected unanimously by OMED's Board which is comprised of the President, who is elected unanimously by the representatives of the social partners in the Board, four representatives of the chief employer organisations and four representatives from the third level trade union confederation, which guarantees the necessary impartiality in the choice of the Mediators/Arbitrators. 2. After their selection and the acquisition of the status of Mediator (or Arbitrator), they exercise a public mission, without holding the formal status of a civil servant and enjoy full independence during the exercise of their duties. These duties must be exercised with objectivity, upholding the Code of Ethics of the Body of Mediators - Arbitrators which is issued by unanimous decision of Board of Directors of its 9 members. 3. The appointment of a Mediator on the basis of joint decision of the interested parties, declares their common belief that the principle of impartiality is going to be observed.

All institutions monitor the independence and impartiality of the mediators/arbitrators intervening in the procedures. Some bodies have more exhaustive regulations than others but all of them address the matter as otherwise doubts regarding the partiality or lack of independence of the mediator/arbitrator would affect the nature of the system for the independent resolving of disputes. Both in the Swedish system and in that of the United Kingdom therefore, although this is not specifically mentioned it seems clear that the mediators appointed by the body have no doubt as to partiality, and if it is the parties that declare this there is no doubt either as it is they who have chosen them. In the remainder of the systems, if there is any doubt as to the possible partiality of the mediator or mediators; this will be declared to the body itself and the mediator may retire or be removed from the procedure for which he/she was selected.

8. Once the mediators have been appointed, do they hold any kind of previous meeting to analyse and deal with the matter?

Once the mediators have been appointed by the parties, the ASAC does not establish any requirement for a previous meeting at the start of the mediation. Nevertheless, at SIMA we recommend that the mediators should attend early enough to be able to consider as a whole and deal with the subject of the request, as individually and in advance they are already familiar with the content of the request for mediation.

UNITED KINGDOM (ACAS)	Again a flexible approach is adopted. Some initial information gathering can be followed up with telephone calls and in some cases seperate meeting with the parties to ascertain key issues in the dispute.
SWEDEN (NMO)	Normally, the first stage of the mediation is that the mediators meet with the parties involved separately to inform themselves of the dispute and to get any relevant material.

BULGARIA (NICA)	The mediation procedure is flexible and there are no strict legal requirements and obligations for the mediator in relation to his activities with disputing parties. The mediator receives an order when he or she is nominated and also all related to the collective labour dispute documents which are prepared by the administration of NICA.
POLAND	Strategy of mediation procedure depends on the mediator but the scope of the agreement depends on the parties of the dispute.
GREECE (OMED)	The appointed Mediator, either selected jointly by the parties or drawn by lot, when assuming his/her duties, studies the file of the case, and can request additional information from the parties, the Organisation and the competent State authorities.

Meetings prior to the mediation procedure, if they exist, would seem to be more inclined to be held with the parties involved with the objective of explaining to them the operation of the mediation and arbitration procedure, as in most bodies (as will later be seen) it is mediations with a single-person and not officially approved body that predominate. In these cases the question posed does not arise.

9. Is some kind of specialisation required from the mediators? Is there any kind of "Body of Mediators"?

The parties appoint a mediator or mediators from among those included on the list drawn by the SIMA Foundation at the proposal of the organisations that have signed the ASAC. Said list is available to interested parties on the website of the body. No manner of specialisation is required of the mediators and no specific training is needed to be a SIMA mediator, although it is true that as it is the trade-union or business organisations themselves that appoint SIMA mediators, in general they have considerable labour experience or an established connection with the world of labour relations, either as part of said organisations or as independent professionals from Employment Inspection or as university lecturers or professors. The list of SIMA mediators includes some 220 persons and any of them may be appointed.

UNITED KINGDOM (ACAS)	Internal collective mediations are carried out by internally trained mediators. A panel of external mediators is held by Acas who are used for directive mediation issues
SWEDEN (NMO)	The NMO has at its disposal a number of names of persons prepared to undertake mediation assignments. The majority of these persons have a background as presidents or chief negotiators in various employers´ and employees´ organisations. There are no particular specializations among the mediators.
BULGARIA (NICA)../..	The Supervisory Board of NICA has adopted criteria to be met by persons nominated by social partners and the state for inclusion in the list of mediators to NICA (http://www.nipa.bg/?q=bg/node/289). These criteria include at least three years professional experience in the field of industrial (labour) and social security relations; good name and reputation in the professional circles and society and knowledge, experience and skills essential for resolving collective labour disputes. Mediation can be conducted by a person included in the list of

../..BULGARIA (NICA)	mediators. The mediator may not be in a relationship of hierarchical relationship with a party to the dispute and should have given a prior written consent to participate in the dispute settlement.These circumstances the mediator confirms with a signed declaration. NICA organizes specialized trainings for mediators. An organization of mediators or a separate "Body of Mediators" are no established
POLAND	Mediators involved in collective disputes do not specialize in specific types of disputes. Methods of influencing on parties are based on knowledge of psychology, sociology, economics or law (knowledge in this areas is acquired during the training courses organized by the Department of Social Dialogue and Social Partnership, Ministry of Labour and Social Policy). In any case mediation proceedings require undertaking informal activities and mediator flexibility. Department of Social Dialogue and Social Partnership is responsible for the matters related to maintaining by the minister competent for labour issues a list of mediators and cooperation in indication of mediators responsible for conducting the mediation procedure.
GREECE (OMED)	According to the law, as in force, the candidate Mediators (and Arbitrators) must hold a degree in law or economic sciences or related studies and have at least 5 years of proven experience on issues of labour relations (for the Arbitrators is 10). At the same time Mediators must not be Board members of an employers' or workers' organisation. Additional qualifications are also taken into consideration, such as post-graduate degrees, and relevant publications, especially on issues of labour relations. According to the law, OMED's Board can decide, by regulation, to request further qualifications than those referred the law. The Mediators and the Arbitrators constitute two autonomous special Bodies. The special Mediators' Body consists of 14 members and the special Arbitrators' Body consists of 9 members.

With regard to the need for the specific training of mediators or the existence of a "Body of Mediators", the solutions adopted by the various bodies vary greatly. Bodies such as the ACAS and the NMO do not specify the requirements for being a mediator, but the NICA, the Polish system, and the OMED require compliance with a certain profile and a minimum professional experience of several years. As for the existence of a body of mediators of the organisation, in some cases a body of mediators exists and in other the mediators are proposed by ministerial departments outside of the organisation itself.

10. How many mediators intervene in each mediation/arbitration procedure? What is the function of or the part played by the mediator?

The ASAC V establishes in its Article 12 that mediation will be preferably carried out by a single-person body, but it also regulates the possibility of the intervention of up to 3 mediators, although the most common option in habitual practice is that of 2 mediators, one for the business representation and another for the trade-union representation. Nevertheless, in expressly contemplated cases up to a maximum of 3

mediators may be appointed. The role of mediators is that of "facilitators" of a possible agreement; their function is to achieve agreement between the parties by mediation, which means that they put forward proposals for resolving the dispute. They neither issue reports nor resolutions of any kind. It is the parties that will finally decide whether they reach agreement or fail to do so.

As far as arbitration is concerned the ASAC appoints an arbitrator or arbitrators without establishing the number to intervene. However, generally a single person is appointed as the arbitrator of the matter in question. The parties submit their controversy to the criterion of a third party (other than a judge), who by means of a reasoned resolution (arbitration award) will put an end to the dispute. The decision of the arbitrator must be complied with.

UNITED KINGDOM (ACAS)	On average 1/2 mediators are used for collective issues depending on complexity. Internal mediators are facilatitive while extrnal mediators more diective
SWEDEN (NMO)	Normally, two mediators are appointed for each mediation assignment. Regarding their function/role, see above.
BULGARIA (NICA)	The law does not regulate in details the institute of mediation, and the figure of the mediator. In the Rules of NICA for mediation and arbitration for the settlement of collective labour disputes only a case in which mediation is carried out by one mediator is regulated. The law regulates a case when the mediator can be replaced by another one, but there is nothing about a possibility to have more than one mediator to participate. The mediator participates actively in the mediation procedure, which is a mechanism for an amicable settlement of collective labour disputes. The aim of the mediator is disputing parties to achieve a settlement with their direct participation. The mediator has no power to decide the dispute. He achieves the desired result by the parties themselves by assisting them to reach an amicable settlement of the same through mutual concessions and compromises. The mediator is the person who has the aim to persuade the disputing parties in negotiations by mutual concessions to settle the dispute. With the assistance of the mediator, each of the disputing parties finds her own way to reach an agreement for an amicable settlement
POLAND	The solutions adopted in the Act on solving collective labour disputes suggest the single-person model of mediation services. However, provisions of the Act on solving collective labour disputes do not prohibit making an agreement by parties regarding establishing the mediation committee in order to assist in solving collective labour disputes. The mediator's role is to assist the parties in reaching an agreement.
GREECE (OMED)../..	In mediation cases a single Mediator is selected. The same applies as it concerns a joint recourse to first level Arbitration. At the first level arbitration and in the event of a unilateral application (by either the workers' or the employers' side) 3 Arbitrators are

	selected.
../..GREECE (OMED)	At the second level arbitration a five-member Committee conducts the proceedings with the participation of a) 2 Arbitrators from OMED's Special Arbitrators' Body drawn by lot, b) 2 judges appointed by the 2 national supreme Courts and c) 1 State Legal Adviser appointed by the State's Legal Council.

In general, once the replies have been analysed it can be observed that in most bodies a mediator is appointed to intervene in the dispute although in some two mediators may be designated. At the SIMA and the Polish body the single-person model is recommended, but they do both offer the possibility of the intervention of more mediators. The NMO of Sweden is the only organisation that establishes an officially approved body, and it is the ACAS system that allows the appointment of 1 or 2 mediators.

11. Does/do the mediator or mediators meet with the parties either jointly or separately?

The habitual operation at SIMA is that once the parties have appeared at the mediation meeting, the mediators (generally 2) meet at a plenary and decide on the procedure to follow. They may hold joint or separate meetings so as to work on the mediation if they believe that this method will be more productive to achieve an agreement.

UNITED KINGDOM (ACAS)	It depends on the circumstances .Usually a joint meeting will be held to explain the process followed by seperate sessiond.
SWEDEN (NMO)	Normally separately.
BULGARIA (INCA)	The mediator acts by conducting unilateral or bilateral meetings (sessions) with parties. The number of meetings is determined by parties and the mediator in the frames of the mediation procedure.
POLAND	The organization of meetings depends on the individual practice of a mediator who is conducting the mediation proceedings and the needs of the parties in this regard.
GREECE (OMED)	The Mediator invites the parties to discussions, conducts joint meetings or separate hearings with each party, inquiries, fact finding examinations and any other research or inquiry on the labour conditions.

As in the Spanish system, there is no single manner of holding the meetings, This will depend on the mediators themselves and the strategy to be followed; joint or separate mediation with the parties may be carried out as appropriate.

12. How does the mediation develop? What is its average duration? How many sessions are there?

Once mediation has been requested within a 10-day deadline (72 hours in the case of pre-strike procedures) the date and time is established, the parties meet with the

mediators, and the parties are listened to. The mediators may call as many recesses as necessary and hold meetings separately with the parties. It is by no means a formalist process; the mediators decide how to approach the subject. In 2015 the average duration of mediation meetings has been a little over 2 hours, although it is true that the meeting may be postponed until a later date if the parties need to consult or assess the proposals. For this reason a single mediation may include several sessions.

UNITED KINGDOM (ACAS)	Initial research is follwed by clarification of tghe issues. Pre-discussion with the parties will identify the issues and meeting will be used to develop solutions.
SWEDEN (NMO)	A mediation may last for a day/few days or for a longer time period. In some cases one or very few sessions are required, in other cases a mediation involves several sessions and other types of contacts.
BULGARIA (INCA)	Mediation is carried out within 14 days of the start of negotiations between parties, and in case of a written agreement between them - a longer period. There is no legally specified number of meetings (sessions) held by the mediator and parties within the regulated period. The aim is to reach an agreement on the dispute. There is no data on the average duration of mediation procedures.
POLAND	Usually mediation lasts from 3 to 7 days. In 2014 statistically average duration of mediation was 79 days. This statistic applies only to proceedings of mediation conducted by mediators designated by the minister competent for labour issues.
GREECE (OMED)	Collective labour disputes differ as it concerns their duration, due to the specific characteristics and needs of each case. Agreement may be achieved within a short timeframe, or negotiations may need to use all the timeframe provided by the law and its possible extensions, proposed so that an agreement can be reached. The average duration for a completion of a case from the stage of Mediation to the stage of Arbitration is 4 to 5 months. The number of meetings is not prearranged, while the mediator can judge how many meetings are required in order for a commonly accepted solution to be found and a collective labour agreement to be signed.

Judging from the content of the replies it is possible that the question has not been asked in the best way, as the answers to it were highly ambiguous. The duration of the mediations ranges from one day or several days to a total of 4 to 5 months; perhaps the duration of the mediation meeting has been confused with that of the whole procedure, from a request until the controversy is resolved.

13. Are minutes taken of the meetings held? If so, is a record taken of the declarations of the parties at the meetings?

At the SIMA the content of the meetings is not transcribed. One can allege whatever one wishes in the confidence that this will not be taken down anywhere, which generates an atmosphere of trust that benefits the mediation. Only what the parties wish to reflect as the details of the agreement finally reached is recorded. When the meeting ends minutes are taken in the sense of an agreement if the parties have found

a solution to the dispute. If however no solution has been found, Minutes of Disagreement are taken in which only the disagreement together with a proposal of the mediators is recorded, which is not binding under any circumstances.

UNITED KINGDOM (ACAS)	No meetings are taken although any agreement is recorded. For directive mediations a recommendations paper will be produced.
SWEDEN (NMO)	There are no minutes of the meetings. But after the conclusion of a mediation assignment, the mediators shall present a written report of the mediation to the NMO.
BULGARIA (INCA)	There is no legal obligation to take notes when conducting sessions in mediation procedures. In the arbitration procedure makes an audio recording is made with the prior consent of parties and it`s recorded by a secretary appointed by parties and approved by the arbitrator or the chairman of the arbitration commission. Minutes reflect statements of parties, of their representatives, experts and the expert witnesses, if there are appointed ones.
POLAND	Taking notes during the meetings and records of statements of mediation depends on the will of the parties and the mediator individual practice.
GREECE (OMED)	Minutes are taken by the Mediators/Arbitrators in each meeting with the parties which are signed by their representatives and the Mediator/Arbitrator. In these minutes the points of agreement or disagreement between the parties' views are recorded and also any possible agreement of the parties to extend the procedure beyond the timeframe set in law.

In both the British and Swedish systems the law requires the mediators taking part to draw up a report of the proceedings that will be sent to the body. Although at the ACAS it is mentioned that said report is more in keeping with a recommendation, the objective of this report is not clear in the Swedish system (NMO). Only the Greek system requires minutes to be taken with the content of the meetings. In the case of the NICA and Poland, the obligation of taking the minutes of the meetings or of taking note of what occurs is established; this possibility is left to the discretion of the mediators.

14. Are you obliged to draw up a proposal for the resolving of the dispute? If so, is it obligatory to comply with the proposal?

In the system established by the ASAC (Article 15.3) the mediator is obliged to issue a proposal for the possibility of the final Minutes of Disagreement, but this proposal is neither compulsory nor binding for the parties. The origin of this proposal is the mediation efforts that the SIMA requires of the mediators, which will at least be reflected in the final minutes of the meeting.

UNITED KINGDOM	Settlement/proposal is volountary and not enforseable but parties are morally bound by the agreement

(ACAS)	
SWEDEN (NMO)	As mentioned above, the mediator may present proposals for the settlement of the dispute. The parties are not obliged to comply with the mediators´ proposals
BULGARIA (INCA)	Preparation and submission of a formal written proposal for resolving the dispute is not within the competence neither of NICA and NICA's administration, nor of the mediator in the dispute. The mediator is the person who seeks to convince and persuade disputing parties in the negotiations by mutual concessions to settle the dispute. With the assistance of the mediator, each of the disputing parties has itself to pass its own way for reaching an agreement for an amicable settlement. In the current Bulgarian legislation, mediators and arbitrators are not employees of the Institute.
POLAND	The mediator organizes and manages the mediation process – drafting proposals for solutions to the dispute and taking them into account is not mandatory and depends on the will of the parties.
GREECE (OMED)	During the overall mediation process, the Mediator makes oral, or sometimes written proposals to the parties to facilitate them in mitigating their differences with a view to reach an agreement. Should the parties disagree despite the mediation effort, the Mediator is obliged to submit a formal 'proposal', i.e. a text setting out the parties of the collective dispute, the collective disagreement issues, the mode of recourse to mediation, the negotiation issues, the views of the parties, the points of convergence and divergence, as well as the draft collective agreement proposed by the Mediator. The parties are encouraged but not obliged to agree to the Mediator's proposal for a collective labour agreement to be signed.

The reply is unanimous with regard to the non binding and/or obligatory nature of compliance by the parties with the mediator's proposal. In most bodies such as the ACAS, the NMO, and Poland, the mediator or mediators are free to shape a proposal and the parties free to accept it. In none of these countries therefore will the mediation body establish a binding proposal for the parties in the dispute. It is however striking that in some systems such as the Spanish system (SIMA) and the Greek one (OMED), the mediator is obliged to present a proposal in the event of the final disagreement of the parties despite the fact that compliance is not compulsory.

15. In the event of disagreement after the mediation, is the mediator obliged to place a proposal on record?

As was already answered in the previous question, according to the ASAC mediators are obliged by Article 15.3 to issue a proposal to resolve the dispute even if this is not successful. This proposal is not binding and it is not therefore of obligatory compliance by the parties.

UNITED KINGDOM (ACAS)	No

SWEDEN (NMO)	There is no obligation for the mediator to place a proposal. If the mediator deems that a proposal does not have the necessary support from the parties involved, he or she may decide not to present a proposal.

BULGARIA (INCA)	After having made all efforts to reach an agreement between parties, but such is not reached, the mediator has no obligation to submit a proposal on record. After the termination of the mediation procedure, regardless of its outcome - an agreement between disputing parties or a continuing disagreement between them, the mediator is required within 3 days of its completion to provide the Director of NICA information about all his activities.
POLAND	Formally, there is no such obligation.
GREECE (OMED)	Please see the previous answer.

Except for the OMED of Greece and the SIMA of Spain, the remainder of the bodies do not oblige the mediators to issue a mediation proposal in the event of a lack of final agreement. The need to draw up a report (answer in question No. 13) summarising the result of the mediation is however established.

16. In your opinion, what would be necessary to make mediation or arbitration more effective?

On 18th December 2014 the Board of Trustees of the Foundation approved a Strategic Plan for 2015-2016, which aims to improve both knowledge of the activities carried out by the Foundation as the body in charge of both the procedures of mediation and arbitration, and the improvement of results. The actions devoted to this are mainly aimed at training the mediators in skills and techniques designed to strengthen agreements between the parties. As far as dissemination is concerned, the objectives designed to improve collaboration with the university include recounting our experience in the resolving of disputes by means of mediation and arbitration.

UNITED KINGDOM (ACAS)	In collective issue have it written into dispute proceedures as a prelude for any further actions.
SWEDEN (NMO)	Our experience is that for a mediator to be successful, he or she must have full confidence from the parties involved in the dispute. In Sweden, therefore, before a mediator is appointed for a particular assignment, the NMO has contacts under hand with the parties involved to be able to listen to the possible views of the parties on the intended names.
BULGARIA (INCA)../..	For better efficiency of mediation and arbitration procedures, the statement of experts of social partners and NICA is that amendments in the legislation are needed. At present NICA, together with social partners, prepare analysis and proposals aimed at the following issues: - Legal definition of the term "collective labour dispute" and determining the beginning of its occurrence; - Distinguishing mediation of conciliation, as the first one should be tied to the actions of social partners, and the second - with the actions

	of NICA;
../..BULGARIA (INCA)	- The procedure according to Article 4 of the Collective Labour Disputes Settlement Act as an opportunity for assistance from trade unions and employers' organizations and/or NICA, and the assistance from NICA to be defined terminologically as "conciliation," according to the name of the institute; - Amendments and clear rules on the status of the conciliator to NICA; - Change in the way of funding for mediation and arbitration procedures.
POLAND	Procedures related to the use of mediation should be transparent, flexible and easy in use and interpretation, so as not to cause further conflicts between the parties of the collective labour dispute. Mediation should be available to the parties at any stage of the dispute. In addition the legal provisions governing the solving of collective labour disputes should be adapted to the changing situation and prevent operations which could be seen as harmful to the relations between employers and trade unions representing workers' interests.
GREECE (OMED)	Given Greece's commitments derived from the provisions and conditionalities of the country's Financial Assistance Contracts, it appears that there is no possibility until the end of the current year (2015) for direct adaptations to the existing system for collective labour dispute resolution as described in the answers above.

3
CONCLUSIONS

The first conclusion that can be drawn from the analysis of the various questionnaires is that in most of the systems for resolving disputes studied the subjects legitimated to request mediation are the parties involved in the dispute, mainly the workers and the company. At the same time all the systems contain to a greater or lesser extent regulations of internal procedure to regulate their operation. Most bodies have established a procedure to be followed, concentrating the formalities in the processing stage and allowing the mediator or mediators greater freedom in the development of the mediation.

As far as the deadlines for the procedures anticipated in the various systems are concerned, the conclusion is that the regulations do not coincide as some bodies do not establish any deadline while others establish processing periods, regardless of whether these may be varied or altered subsequently at the will of the parties or of the organisation if they consider this to be necessary.

No clear criterion exists regarding the location of the mediation meetings; these may be held both in the installations of the body or elsewhere depending on the regulations of each system. As for the intervention of third parties, the real possibility of the mediators and arbitrators being able to count on the intervention of independent experts for the higher effectiveness of the procedure is of great interest, together with the support services offered by the bodies themselves.

As for the appointment of the mediator or mediators, in the first place it can be emphasised that most of the systems favour the appointment of a single mediator; the systems of officially approved mediators are in a minority. In most of the bodies it is the parties who appoint the mediator, who is required by some systems to have specific knowledge or to have undergone specific training, although other systems do not establish requirements for being a mediator. The mediator must be chosen either from a list provided by the body itself or by any other system, which may even be by a draw in the case of a lack of agreement in the appointment of the mediator. One of the aspects featuring in the questionnaire was that of the impartiality of the mediator. From the replies obtained we can conclude that all the institutions aim to ensure the independence and impartiality of the mediators/arbitrators intervening; some of them have more exhaustive regulations than others but it would seem to transpire from the questionnaires that they are aware that the lack of them would affect the very nature of the systems for the independent resolution of disputes. An expression of this concern

is that some bodies reserve the possibility of removing the mediator from the process for which he/she was selected.

In European bodies the essential aim of prior meetings is to explain to the parties attending the mediation the procedure to be followed in the meetings, and to a lesser extent to hold meetings between mediators so as to approach the specific matter and the manner of facing the mediation.

Once the mediation meeting begins, the great flexibility of the mediation procedure is revealed in general terms as most of the bodies do not require the taking of minutes of the meetings. Proposals do not have to been put forward in writing (unless this is requested by the parties); even when this is done they are not binding for the parties.

In short, this report constitutes an initial approximation to the operation of some of the various systems for the independent resolution of disputes existing in Europe, which has allowed us to get to know in a straightforward manner and broadly speaking the general operation of the various systems of mediation and arbitration.

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