

THE ENFORCEMENT OF THE AGREEMENT ACCRUING OUT OF A MEDIATION PROCESS IN CIVIL AND COMMERCIAL MATTERS

I. EUROPEAN DIRECTIVE 2008/52 AND THE GREEK LAW 3898/2010 REGARDING MEDIATION IN CIVIL AND COMMERCIAL MATTERS

By means of its disposition, European Directive 2008/52 sets forth the legal frame within which the Member States have or had to act either to introduce Mediation in their respective National Legislation as an Alternative Dispute Resolution method of civil and commercial disputes (where such a method was not provided when the above European Directive has been issued) or, if Mediation was already provided in order to harmonize and / or to adapt – in case harmonization or adaptation was needed – the dispositions of their National Legislation regarding Mediation in civil and commercial matters to the dispositions of the European Directive 2008/52.

The dispositions of the above mentioned European Directive and the obligations, which accrue out of it for the Member States of the European Union concern Mediation in **transborder** civil and commercial disputes, i.e. those disputes where at least one of the concerned parties is domiciled in a Member State other than the one(s) where the other concerned parties are domiciled. The Member States are not prevented from providing that the dispositions regarding Mediation in civil and commercial matters will apply also to **domestic** civil and commercial disputes. Are considered as domestic disputes those where all the concerned parties are domiciled in the same Member State.

In case of a Member State of the European Union, in the Legislation of which dispositions are already contained or in which dispositions will be included afterwards regarding Mediation in civil commercial cases being not in compliance with the dispositions of European Directive 2008/52, said dispositions of National Legislation will apply to domestic cases, but not to transborder cases. A classical example is the case of some Legislations where, in order for someone to acquire the capacity of mediator, some specific qualifications are required in addition to those provided for by the European Directive. For instance, in Greece, Law 3898/2010, which has been issued in compliance with the above mentioned European Directive expressly provides that **the mediator must be a lawyer**, trained, assessed and accredited as mediator.

The prerequisite that the mediator be **also** a lawyer cannot apply in case of a transborder dispute, since such a capacity of the mediator is not set forth by the European Directive. Consequently, in case a Mediation process is conducted in Greece regarding a domestic civil or commercial case, the trained, assessed and accredited mediator **must also be a lawyer**. On the contrary, if a Mediation process is conducted in Greece regarding a transborder civil or commercial case, the trained, assessed and accredited mediator **must not** mandatorily be also a lawyer. Actually, article 6 para 2 of Presidential Decree 123/2011, which has been promulgated by application of the dispositions of article 5 para 2 of Law 3898/2010, provides the possibility for persons being not lawyers to be trained as mediators setting forth simultaneously the prerequisites for this.

The prerequisite that the mediator be **also** a lawyer - even though this applies only to domestic disputes - creates a «closed profession», the one of mediator – while one important concern of the European Union is that all the «closed professions» become open. Taking into consideration that in our country the profession of lawyer has been opened already as of July 1, 2011, it is questionable whether it will be possible to maintain further for long the «restrictive» condition that the mediator be mandatorily **also** a lawyer.

The above do not affect the possibility to have Mediation in domestic civil and commercial cases conducted by any third party acting as a «conciliator», but such a Mediation will not offer the guarantees of Law 3898/2010, while the agreement, which will possibly accrue out of it, shall have – in order to become an enforceable title – to be in the form of a notarial deed including an express stipulation that the contracting parties declare that it is enforceable or to be submitted to the competent Court for ratification, which assumes – prima facie – that a law - suit has already been filed regarding the dispute solved through Mediation.

II. THE ENFORCEMENT IN GREECE OF AN AGREEMENT ACCRUING OUT OF A MEDIATION PROCESS HAVING TAKEN PLACE IN GREECE AS WELL.

1. What will happen at the stage of the enforcement in Greece of an agreement having accrued out of a Mediation process conducted in Greece regarding a transborder dispute by a mediator, who is not also a lawyer ?

In the light of what has been exposed hereinabove, the lack of the capacity of lawyer from the mediator does not harm the validity of the process

in case of a transborder dispute, provided that the mediator is lawfully trained, assessed and accredited.

Further, the submission of the agreement having accrued out of such process to the Clerk of the One Member Court of First Instance, in the territorial area of which the Mediation process has taken place, shall make of it an enforceable title according to the dispositions of article 9 paragraph 3 of L. 3898/2010 and of article 904 paragraph 2 subparagraph (c) of the Code of Civil Procedure.

Consequently, the enforcement in Greece of an agreement having resulted from a Mediation process conducted in Greece as well, regarding a transborder case, by a mediator who is not **also** a lawyer does not create any problem, in principle. Yet, it is not excluded that any third party having a legal interest in this respect files an opposition with the competent Court against the enforcement procedure based - besides the reasons provided for by the relevant dispositions of the Code of Civil Procedure – **also** on the ground of lack of the capacity of lawyer by the mediator. To our opinion, such an opposition would not be successful.

2. By application of the relevant dispositions of article 6 paragraphs 1 and 2 of the European Directive 2008/52, the document including the agreement of the parties, which has derived out of a Mediation process, must be submitted to the competent Court or to any other competent Authority in order for it to be made enforceable following a relevant application of the concerned parties acting jointly or following an application of one of them acting solely, but with the consent of the others. The contents of the agreement are made enforceable by means of a judgment of the Court or a decision of such other competent Authority or by means of an authentic instrument, in accordance with the Law of the Member State where the relevant application is filed.

On the contrary, according to the dispositions of article 9 paragraphs 1, 2 and 3 of L. 3898/2010, if an agreement is reached during a Mediation process, it is included by the mediator in the Minutes he draws up at the end of the process, which are the sole Minutes drawn up such a process. The Minutes in question are **submitted, by the mediator, to the Clerk of the competent One Member Court of First Instance following a relevant request of at least one of the parties**. As of the submission as above of said Minutes, the agreement they contain becomes an enforceable title provided it concerns the existence of a claim which can be the object of a compulsory enforcement. **Consequently, in order for an agreement resulting from a**

Mediation process to become an enforceable title neither the cooperation, nor even the consent of all the parties is needed, in case the Mediation process has taken place in Greece.

To our opinion, the provisions of article 9 para 3 of L. 3898/2010, based on which, as of its submission to the Clerk of the competent Court, the agreement having accrued out of a Mediation process **becomes an enforceable title according to article 904 paragraph 3 (c) of the Code of Civil Procedure is not appropriate.** Actually, article 904 paragraph 2 (c) provides that the Minutes of a Court containing a compromise are – among others – an enforceable title. Yet, the Minutes, which are submitted by the mediator to the Clerk of the competent Court and which contain the agreement of the parties, do not constitute neither Minutes of a Court nor do they contain necessarily a compromise. Therefore, it would be more accurate either to add one more category of enforceable titles in article 904 para 2 of the Code of Civil Procedure or merely to make reference to subparagraph (f) of para 2 of the above article, according to which are enforceable titles also any orders, as well as the acts (besides those set forth in its other subparagraphs) acknowledged as enforceable by the Law.

According to article 918 of the Code of Civil Procedure, a compulsory enforcement can be done only based on a copy of the enforceable title bearing the enforcement formula (first enforceable copy of the enforceable title). The enforcement formula consists of the issue of the first enforceable copy of the title in the name of the Greek People and of the order to all competent Organs to enforce the title.

Further, in its paragraph 2 the above article 918 provides the documents to which the enforcement formula is attribute of the Code of Civil Procedure. Among them are : (a) the Court judgments, the orders of payment and the other orders of the Greek Courts. The enforcement formula is set on them by the Judge who has issued the judgment or the order, (b) the Minutes of the Greek Courts, to which the enforcement formula is attributed by the Judge who has tried the case, (c) the notarial deeds, to which the enforcement formula is attributed by the Notary, (d) the arbitral awards, to which the enforcement formula is attributed by the Judge of the One Member Court to the Clerk of which they have been submitted and (e) the foreign titles, as well as the foreign arbitral awards, to which the enforcement formula is attributed by the Judge of the One Member Court of First Instance having declared them enforceable in Greece.

Up to now, nothing is provided regarding the way in which the enforcement formula is set on to the Minutes drawn up by the mediator when they contain an agreement of the parties regarding the existence of a claim which can be enforced in a compulsory way. Consequently, one of the dispositions of the above mentioned article 918 para 2 should be applied *mutatis mutandis*, in this case. To our opinion, based on the wording on the various cases of said paragraph, the only one which could be considered adequate to this end is the one concerning the arbitral awards, since submission to the Clerk of the competent One Member Court of First Instance of the act to which the enforcement formula will be attributed is provided only for arbitral award. That is to say that in case of Minutes containing an agreement reached by the parties through a Mediation process, the enforcement formula should be set on them by the President of the Court to the Clerk of which they have been submitted as it is the case for arbitral awards.

3. It has to be explored to what extent the submission of the agreement to the Clerk of the competent One Member Court of First Instance can be considered as constituting one of the ways provided for by para. 2 of article 6 of the above European Directive, in order for the agreement of the parties to become an enforceable title and whether a compulsory enforcement above Minutes, which contain the agreement of the parties, can be done validly based on it. In case the enforcement will be done in Greece – regardless to whether it concerns a transborder or a domestic dispute – it is doubtless that the fact that the agreement having accrued out of a Mediation process conducted in Greece as well, becomes an enforceable title following its mere submission as above does not create any problem since the compulsory enforcement is governed by the Legislation of the State where it takes place.

The question arises only regarding disputes where the agreement having accrued out of a Mediation process conducted in Greece and having become an enforceable title following its submission to the Clerk of the competent One Member Court of First Instance has to be enforced in another State Member of the European Union. Actually the question is to what extent the submission of the agreement in the way provided for by the dispositions of L.3898/2010 and its vesting with the enforcement formula as stated above are sufficient for it to be declared enforceable also in the other State Member, where the enforcement is sought.

It is obvious that the submission of the agreement to the Clerk of the One Member Court of First Instance and its vesting with the enforcement formula are not equivalent neither to a Court judgment nor to a decision of

another Authority which are the two first means provided by article 6 para 2 of the European Directive, for the agreement under discussion to become an enforcement title. Consequently, what is left to be explored is whether it can be considered that, following its submission as above, the agreement acquires the character of a public document since, in case of a positive answer, the third way among those provided in para 2 of article 6 of the European Directive would concur so as an agreement deriving out of Mediation process become an enforceable title.

It accrues out of the dispositions of article 438 of the Code of Civil Procedure that public documents are **those which have been worded according to the legal forms, by a public servant or agent or by a person exercising public service or function.** Said documents constitute full proof vis - à - vis everyone regarding anything which is ascertained in them as having been done by the person who has worded them or as having been done in his presence, provided said person has *ratione materiae* and *ration loci* competency in order to proceed to such an assertion.

It is obvious that the agreement accruing out of a Mediation process, which is included in the Minutes drawn up by the mediator at the end of said process, does not constitute a public document in the above sense given that the mediator is neither a public servant nor a public agent nor a person exercising a public service or authority. Further, the Minutes in question, which containing the agreement in question, do not become a public document in the sense of article 438 of the Code of Civil Procedure through their submission to the Clerk of the competent One Member Court of First Instance, since neither the Court nor the Clerk ascertain anything regarding its contents.

Subsequently to the above, it is advisable – to our opinion – that the agreement accruing out of a Mediation process conducted in Greece regarding a transborder dispute – but also regarding a domestic dispute in case the agreement regarding its solution might be enforced in another Member State – be done in the notarial form so as a document being a public one according to article 438 of the Code of Civil Procedure be submitted to the Clerk of the competent One Member Court of First Instance so as it be possible later to have it declared enforceable in the other Member State as well, where the enforcement will take place according to what is exposed more specifically in Chapter III.

III. THE ENFORCEMENT OF AN AGREEMENT HAVING ACCRUED OUT OF A MEDIATION PROCESS IN A MEMBER STATE OTHER THAN THE ONE IN THE TERRITORY OF WHICH THE MEDIATION TOOK PLACE.

The enforcement in Greece of an agreement having accrued out of a Mediation process conducted in another Member State of the European Union or the enforcement in another Member State of the European Union of an agreement having accrued out of a Mediation process conducted in Greece – regardless to whether it concerns a domestic or a transborder dispute (the enforcement in a State Member other than the one where the Mediation took place does not give per se to the dispute, which was solved, a transborder character) – can be done in one of the following ways :

1. After the agreement is declared enforceable title by application of the dispositions of Regulation number 44/2001 of the European Parliament and of the Council, in the Member State in the territory of which it is to be enforced, provided the conditions set forth by the relevant dispositions of the Regulation in question are fulfilled.

It has to be investigated whether the enforceability can be declared by application of article 57 or by application of article 58 of Regulation 44/2001.

a. In case of an agreement having derived out of a Mediation process conducted in Greece, the agreement in question cannot be declared enforceable in another Member State based on article 58 of Regulation 44/2001, inasmuch as said article sets forth two conditions, which do not concur in the case under review. More particularly, article 58 assumes, cumulatively: **(a) solution of the dispute by means of a compromise, which is approved by a Court and (b) approval of the compromise during the trial.**

As it was already exposed, the agreement accruing out of a Mediation process conducted in Greece is not ratified or approved by any Court. Merely the Minutes containing it are submitted to the One Member Court of First Instance having *ratione loci* competency and the enforcement formula is set on it by the Judge of said Court. Consequently, neither the condition under **(a)** nor the condition under **(b)** hereinabove are fulfilled, even if the Mediation took place after the starting of the judicial proceedings.

On the contrary, an agreement which has derived out of a Mediation process conducted in Greece can be declared enforceable in another Member

State by application of article 57 of Regulation 44/2001, which sets forth the two following conditions : **(1) (i)** the document, which is to be declared enforceable, has to be drawn up in a formal way **or (ii)** it must have been registered as a public document **and (2) it must be enforceable in the Member State where it was issued.** Therefore, even though the submission to the Clerk of the competent one Member Court of First Instance does not make a public document of the agreement having accrued out of a Mediation process conducted in Greece, the document containing it (i.e. the Minutes of the mediator) have been drawn up in the formal way provided by L. 3898/2010, the condition under **(1)(i)** being thus fulfilled, while the condition under **(2)** is also fulfilled since the agreement in question becomes an enforceable title in Greece (State where it was issued) as of its submission as above.

b. An agreement having derived out of a Mediation process conducted in another Member State might fulfill the conditions of article 58 of Regulation 44/2001. If so it might be declared enforceable in Greece by application of the dispositions of said article. This will occur regarding an agreement having accrued out of a Mediation conducted in another Member State, which has introduced in its National Legislation dispositions identical to those of article 6 of the European Directive 2008/52 providing that an agreement deriving out of a Mediation process becomes enforceable by means of a judgment of a Court of by decision of another Authority. Therefore, if a Member State has introduced in its Legislation dispositions providing that the agreement in question becomes enforceable by means of a Court judgment (not a decision of any other Authority) approving it and provided that it concerns the solution of a dispute for which legal proceedings have already started, said agreement might be declared enforceable in Greece by application of the dispositions of article 58 of Regulation 44/2001. This view point assimilates, obviously, the agreement of the parties accruing out of a Mediation process to a compromise, which is not always true, inasmuch as the agreement reached by the parties at the end of the Mediation process does not necessarily include a compromise.

Further, an agreement, generated during a Mediation process conducted in another Member State, might possibly fulfill also the conditions of article 57 of Regulation 44/2001. In such a case, it will be possible to declare the agreement enforceable in Greece either by application of the dispositions of article 57 or by application of the dispositions of article 58 of the above Regulation. This is particularly important regarding, especially, agreements accruing out of Mediation processes taking place before the

starting of any judicial proceedings the second condition of article 58 being then not fulfilled. In such cases, i.e. in the cases where the judicial proceedings have not started previously, at least article 57 of the above mentioned European Regulation could apply, in the same way as in case of agreements having accrued out of Mediation processes conducted in Greece, since the Member States, acting in the frame of the dispositions of Directive 2008/52, shall necessarily provide the form to be given to the agreement under discussion or its registration in a way making of it a public document, as well as the way in which it will become enforceable in the Member State where the Mediation process will have taken place. Subsequently, the conditions of article 57 of Regulation 44/2001 will be fulfilled for an agreement having derived out of a Mediation process conducted in another Member State be declared enforceable in Greece by application of the dispositions of this article as well.

2. The second way, in which an agreement having accrued out of a Mediation process might be enforced in a Member State other than the one where the Mediation took place, could be the certification of the agreement of the parties as a European Enforcement Title by the competent Authorities of the State Member in the territory of which the Mediation will have taken place. In such a case, it will be possible to enforce the agreement in any Member State by application of the dispositions of Regulation 805/2004 of the European Parliament and of the Council.

More precisely, the delivery of a certificate stating that the agreement having derived out of a Mediation process constitutes a European Enforcement Title can be done by application of either the dispositions of article 24 or of the dispositions of article 25 of the above European Regulation.

More specifically, it accrues out of the combination of articles 24 and 4 (2) of Regulation 805/2004 that the agreement pertaining to the solution of a dispute regarding a financial claim for the payment of a specific amount of money, which has fallen due or regarding which the date on which it becomes exigible is mentioned in a Court compromise or in a public document may – provided it has been ratified by a Court **or** – alternatively – provide it has been concluded before a Court during the judicial procedure **and** – cumulatively – provided it is enforceable in the Member State where it has been ratified it – be certified as a European Enforcement Title, following an application filed with the Court having ratified or in front of which it has been concluded. Subsequently, by application of the dispositions of paragraph 2 of article 24,

the agreement under discussion can be enforced in any other Member State, without need to have it declared enforceable also there.

Obviously, what is exposed above apply only when the agreement concerns the solution of a dispute having as object a financial claim fulfilling the conditions mentioned hereinabove. The conditions of article 24 do not concur regarding agreements having accrued out of Mediation processe conducted in Greece, for the same reasons for which the very similar dispositions of article 58 of Regulation 44/2001 do not concur in respect to such agreements. Actually, the conditions of article 24 of Regulation 805/2004 are different as compared to those of article 58 of Regulation 44/2001 only to the extent that article 24 of Regulation 805/2004 provides – as an alternative to the approval by a Court – that the solution must have occurred **before** a Court. Neither such an alternative concur in respect to an agreement having derived out of a Mediation process conducted in Greece, even if the Mediation took place after the judicial proceedings have started.

Regarding an agreement having been generation during a Mediation process conducted in another Member State, most probably the conditions of article 24 of Regulation 805/2004 will concur in order for it to be certified as a European Enforceable Title, regardless to whether said agreement occurs before or after the judicial procedure has started since, according to article 24 of Regulation 805/2004, it is sufficient that the solution be approved by a Court and it is not needed that the approval be done **during** the judicial procedure as required cumulatively according to article 58 of Regulation 44/2001.

In respect to the above, it has to be examined whether the disposition of paragraphs 1 and 2 of article 6 of the European Directive 2008/52 set forth the approval by a Court or by another competent Authority of the agreement having accrued out of a Mediation process or whether they merely provide the setting of the enforcement formula on such an agreement by a Court or by another competent Authority in an “automatic” way, if it can be said so. The right to refuse the declaration of the enforceability provided by the European Directive – even though only in few specific cases – supports the interpretation that an approval of the agreement is provided.

In case a Member State has not provided such an “approval”, as it is the case of Greek Law 3898/2010, one should turn towards article 25 of Regulation 802/2004, which concerns the certification of public documents as European Enforceable Titles in order to ascertain whether the conditions are

fulfilled so as an agreement having accrued out of a Mediation process conducted in the Territory of a Member State be certified as a European Enforceable Title in it.

Based on combined dispositions of articles 25 and 4(2) of the above Regulation, a public document concerning a claim, which has fallen due or regarding which the date on which it falls due is provided in a Court judgment, in a Court compromise or in a public instrument and provided the public document is enforceable in the Member State of origin, it can be certified as a European Enforceable Title following an application to the Authority designated by the Member State in question. Thereafter, by application of the dispositions of paragraph 2 of article 25, it can be enforced in any Member State with no need for its enforceability to be declared there as well.

By application of the dispositions of article 4 paragraph 3 of Regulation 805/2004, a document is considered as a public or authentic one when it has been drawn up in a formal way or when it has been registered as a public document. Up to this point, the dispositions under discussion are identical to those of paragraph 1 of article 57 of Regulation 44/2001. Yet, article 4 of Regulation 805/2004 provides, in addition, in its paragraph 3 **(a)**, that **(i)** the authenticity (public character) of the document must concern the signature and the contents of the document **and (ii)** the document must have been drawn up by a Public or other Authority, duly authorized to this end by the Member State where the document has been drawn up. Obviously, the fulfillment of the above conditions depends on the Legislation of each specific Member State.

An agreement having derived out of a Mediation process conducted in Greece, does not fulfill the prerequisites of article 4 para 3 **(a)** of Regulation 805/2004 in order for it to be certified as a European Enforceable Title by the Authority designated to this end by Greece. In order for such an agreement to rank for certification as a European Enforceable Title, it should be vested with the notarial form so as it becomes a public document in the sense of article 4 para 3 of Regulation 805/2004.

In respect to the nature of the document containing an agreement generated by a Mediation process conducted in another Member State and the conditions, which it should fulfill to be considered as a public document and to be certified as a European Enforceable Title, the issue should be explored based on the Legislation of the specific Member State.

3. Another way for an agreement having been generated during a Mediation process conducted in Greece to be enforced in another Member State or in order for an agreement accrued out from a Mediation process conducted in another Member State to be enforced in Greece could be the obtaining of a European Order for Payment based on said agreement, provided that the prerequisites of European Directive 1896/2006 are fulfilled.

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To be noted that what is exposed in the present document in respect to the enforcement of an agreement having derived out of a Mediation process conducted in Greece concerns exclusively the agreement accruing out of Mediation processes conducted by application of the dispositions of L. 3898/2010 and not agreements having been generated by Judicial Mediation, which was recently introduced in Greek Legislation by virtue of Law 4055/2012, which has added in the Code of Civil Procedure a relevant article having number 214B.

IV. THE MAIN DIFFERENCES BETWEEN EUROPEAN DIRECTIVE 2008/52 AND LAW 3898/2010 IN RESPECT TO THE ENFORCEABILITY OF AN AGREEMENT ACCRUING OUT OF A MEDIATION PROCESS.

1. The basic element, which should be pointed out, is that by granting the possibility to the mediator to submit to the Clerk of the competent One Member Court of First Instance – **following an application of even one of the concerned parties, without even the consent of the others** – the Minutes containing the agreement having accrued out of a Mediation process in order for it to become an enforceable title, Greek Law 3898/2010 regulates the question of the enforceability in a way more dynamic, more fair, more logical, quicker and less expensive as compared to the way in which the same matter is regulated by European Directive 2008/52.

The main advantage of the way in which the Greek Law regulates the matter under discussion is that it does not leave any margin for withdrawal – malicious or not – to any of the concerned parties, who would possibly change his mind after the signing of the agreement regarding the solution of the dispute submitted to Mediation. It is granted that, in order for a dispute to be

submitted to Mediation all the concerned parties must agree to this. The Law allowing to make an enforceable title of the agreement by virtue of which the parties have solved their dispute following a request submitted to the mediator even by only one of them, diminishes the risk that one of the parties agrees to have recourse to Mediation process merely to win time, i.e. without true will to have the dispute solved. Thus, the other party does not lose time and does not incur expenses, which prove to be useless at the end inspite of the successful result of the Mediation process.

There is an adverse opinion according to which the regulation of the matter by the Greek Law, which allows the mediator to submit the agreement to the Clerk of the competent Court, **even if this is requested by only one of the concerned parties, the consent of the other, being not even needed**, the confidential character and the secrecy of the Mediation are infringed, inspite of the fact that, according to the third subparagraph of the first paragraph of article 10 of L. 3898/2010, the confidentiality can be extended, by virtue of a written agreement of the parties, also to the contents of the agreement to which the Mediation might lead. To our opinion, this opinion is not correct, since it does not take into consideration the fact that, in the same subparagraph of its abovementioned article 10, the Law provides in respect to the agreement of the parties pertaining to the extension of the confidential character also to the agreement by means of which they will possibly solve their dispute, that such an extension **does not apply if it is necessary to make known the contents of the agreement in question make possible its enforcement according to article 9 para 3 of the same Law**.

By exonerating expressly from the obligation of confidentiality and from the secret character of the Mediation process the case where to make known the agreement is necessary for its enforcement, the Law leaves no doubt that the submission as above of the agreement having accrued out of a Mediation process does not constitute in any way an infringement of even the obligation possibly subscribed by the parties to keep secret the contents of their agreement, if any.

2. It accrues out of what has been exposed above that, according to Greek Law 3898/2010, in order for a compulsory enforcement to be done based on an agreement having been reached through a Mediation process, it suffices that same has become an enforceable title by means of its submission by the mediator to the Clerk of the competent Court and that an enforceable copy has been issued according to article 918 of the Code of Civil

Procedure. On the contrary, European Directive 2008/52 provides – as it has been already exposed as well – that the agreement having accrued out of a Mediation process can become an enforceable title by means of a Court judgment or a decision of another competent Authority or by means of a public document according to the Legislation of the State where the enforceability is requested. Said dispositions are to be explored only if the compulsory enforcement is to take place in another Member State. If it is to take place in Greece, the dispositions of Greek Legislation prevail regardless to whether we are in presence of a domestic or a transborder dispute.

The question is, therefore, to what extent the way in which the agreement of the parties becomes an enforceable title according to L. 3898/2010 might be an obstacle to the declaration of its enforceability in such other Member State where the enforcement is to take place.

We believe that it is not excluded that the way, in which an agreement accruing out of a Mediation process becomes an enforceable title according to the dispositions of L. 3898/2010, might constitute a ground of appeal against the procedure of enforcement when same takes place in another State Member, due to the fact that the specific way is not in line with the dispositions of article 6 para 1 of European Directive 2008/52 as exposed hereinabove.

Most probably the same issues will be faced as those raised in Chapter III of the present document in respect to the declaration of the agreement of the parties having resulted from a Mediation conducted in Greece – which is an enforceable title based on L. 3898/2010 – enforceable also in another Member State.

3. Another important issue is that – to the contrary of Law 3898/2010 – European Directive 2008/52 provides that an agreement having accrued out of the Mediation process might not be declared enforceable: **(a)** in case its contents are adverse to the Legislation of the Member State where the declaration of its enforceability is sought and **(b)** if said **Legislation** does not provide the enforceability of the agreement in case.

Consequently, the European Directive allows, at least in the case mentioned hereinabove under (a), the verification of the merits of the contents of the agreement under discussion, while L. 3898/2010 does not provide such a possibility being understood that the Judge, who is competent in order to

affix the enforceability formula on a copy of the agreement for it to become an enforceable title based on which the compulsory enforcement will take place, may verify formally the agreement in order also to ascertain whether it is contrary to the Greek Public Order or to boni mores and possibly to mandatory dispositions of Greek Legislation.

Athens, December 31, 2012.

Catherine Cotsaki.

Accredited Mediator

MCiArb