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# Mediation “made in Germany” – a quality product

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*This article describes the development and range of mediation services offered in Germany today, and provides an overview of their practical use and the current issues that are part of the professional debate. It also provides a brief insight into the German legal culture which does not operate under the same constraints of long court delays and high costs like many common law jurisdictions. Recently the German federal government introduced legislation to promote the use of mediation in Germany and to ensure that parties having recourse to mediation can rely on a predictable legal framework. Beyond this, in some areas of practice, de facto regulation already exists in the form of professional standards and accreditation programs provided by alternative dispute resolution associations, particularly relating to professional conduct and standards of care.*

## <DIV>INTRODUCTION

Europe is a wonderful patchwork of 50 different countries, hundreds of different cultures and languages, and is home to 740 million people. About 500 million people live in 27 European Union (EU) countries, which share not only a common market and currency, but also a common philosophy with regards to human rights and constitutional privileges. Germany is right in the centre of Europe and, with close to 82 million inhabitants, is the most populous member state and the largest economy in Europe. Germany is well known for its quality products and the label “made in Germany” implies durability and craftsmanship. This is also true with regard to mediation “made in Germany”. While it is not claimed by any measure that mediation was invented in Germany, the authors intend to illustrate the way mediation has developed there and the specific legal and socio-political environment in which it has flourished. They also argue that, just like cars in Europe are made for different road conditions, German mediation has developed differently and pursues different goals than mediation in Australia. Nevertheless, it is well worth looking across the ocean and picking up on “engineering” developments in Germany to reflect on and compare practice developments in Germany and Australia.

## <DIV>MEDIATION TERMINOLOGY IN THE EUROPEAN CONTEXT

In order to compare experiences with alternative dispute resolution (ADR) and mediation, these terms need to be defined because these words are not German in origin. They have found their way into the German conflict resolution environment and have developed specific meaning in Germany. In Australia and the United States, the meaning of the acronym “ADR” is already changing from “alternative” to “appropriate” dispute resolution which seems to indicate the common use of ADR in the daily routines of businesses and citizens.<sup>1</sup> Common law countries have developed a plethora of ADR processes which are often used parallel to each other or in an escalating order of intensity of third party intervention (for example, mediation, conciliation, med-arb, case-appraisal, mini-trial

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<sup>1</sup> Astor H and Chinkin C, *Dispute Resolution in Australia* (2nd ed, LexisNexis Butterworths, 2002) p 78.