



Η ΚΑΘΗΜΕΡΙΝΗ

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SUSTAINABILITY IN DISPUTE RESOLUTION MEDIATION AS AN ESG PRACTICE

Sustainability is a key element of the ESG criteria. The components of Mediation fit with the ESG criteria as they share a common culture of sustainability, making Mediation an ESG practice and the most appropriate way to (also) resolve ESG disputes.

The acronym ESG stands for Environmental, Social and Governance and it is a set of environmental, social and corporate governance standards (criteria) that are taken into account for the overall evaluation of companies, together with their financial data, mainly for investment purposes, but also in general (ESG). An essential element of ESG is the **sustainability** of business practices.

ESG **relates** to a broad range of issues, including a company's overall environmental footprint, its general social profile and in particular its behaviour towards its employees, suppliers and customers, as well as its corporate practice on issues such as the rights of its shareholders, the composition of its governing bodies and its remuneration policies.

ESG **standards** vary, especially depending on the scope of the business and the country in which it operates, and are **set** by international organisations such as:

MSCI¹, Global Reporting Initiative (GRI)², The UN Principles for Responsible Investment (UNPRI)³, Sustainability Accounting Standards Board (SASB)⁴.

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Promoting sustainable and responsible corporate practices through ESG rewards companies that implement it by creating multiple benefits that are reaped by the companies themselves, the recipients of their ESG policies and their investors⁵.

ESG - IMPORTS

A corollary of the key importance of ESG for business is the **increasing trend** in:

- ESG investments⁶,**
- legislation**, internationally and in the European Union (EU), most recently the adoption of Directive (EU) **2022/2464** as regards "Corporate Sustainability Reporting" (Corporate Sustainability Reporting Directive - **CSRD**)⁷, adopted in the context of:
 - the European Commission's 2021 **Sustainable Finance Action Plan**⁸ and
 - the **European Green Deal**, 2021-2022⁹,
- corporate analysis - reports¹⁰,** in response to b),
- third party claims** for damages or omission of practices related to ESG¹¹. This trend is expected to be boosted by Directive (EU) **2020/1828**¹² on representative actions, which was transposed in Greece by Law No 5019/2023, as it facilitates collective claims in the EU for numerous Union laws.



MEDIATION – OVERVIEW AND USEFULNESS

As a regulated form (considering that there are various unregulated variants), Mediation is a structured process of attempting a consensual resolution of a private (civil or commercial) dispute, where the parties have the power to dispose of the subject matter of the dispute "in good faith and with commercial responsibility", with the assistance of a third party, a suitable and unbiased individual who acts as mediator, and based on the pillars of confidentiality and private autonomy. The scope of Mediation is very broad, subject to the boundaries of morality and public order, and its procedure is very flexible and non-binding until such time as the parties may reach an agreement (Articles 2 par.1,2 & 3, 3 par.1, 5 par.3-5, 12-15, Law 4640/2019).

In its **essence**, Mediation aims to highlight the interests and feelings instead of pursuing the positions of the parties, to expand the pie instead of sharing the existing one, to view things creatively as opposed to a sterile assertiveness and ultimately to resolve the dispute instead of asserting claims, indeed even faster and more economically compared to litigation. Thus, Mediation is an opportunity for a comprehensive and realistic assessment of a dispute (even if it does not ultimately lead to an agreement), which is created by the assistance of the mediator, something that distinguishes it from negotiation.

The recognition of the advantages and usefulness of Mediation is demonstrated by the numerous references to it made by the Greek and EU legislator¹³.

MEDIATION AND ESG – COMMON CULTURE OF SUSTAINABILITY

The ESG framework finds in Mediation the most appropriate dispute resolution method, since it, rather than litigation, can offer a quick, flexible, consensual and win-win solution based on the mutually accepted interests of the parties, thus a **viable**, i.e. practical and workable, solution.

Thus, the **use** of Mediation to resolve disputes, especially ESG disputes, is a practical demonstration of a sustainability-oriented business **culture**.

This is why Mediation is **preferred** as a practice for ESG dispute resolution by recognised international organisations such as the Centre for Effective Dispute Resolution (CEDR) and its recent ESG-specific dispute resolution mechanism ("**ESG Resolve - Independent Accountability Mechanism**"¹⁴) where Mediation is the default method, unless otherwise specified.

Mediation is an ESG tool and its use adds ESG value to businesses.

¹ <https://www.msci.com/our-solutions/esg-investing>.

² <https://www.globalreporting.org>.

³ <https://www.unpri.org>.

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<https://www.sasb.org/standards/download/>.

⁵ For example, <https://www.sustainalytics.com/corporate-solutions/esg-solutions/sustainalytics-esg-training>, ESG investing and sustainability | Deloitte Insights and the above-mentioned standards organisations.

⁶ For example, ESG assets may hit \$53 trillion by 2025, a third of global AUM | Insights |, ESG investing - statistics & facts | Statista.

⁷ Corporate sustainability reporting (europa.eu).

⁸ Sustainable finance package (europa.eu).

⁹ A European Green Deal (europa.eu).

¹⁰ For example, <https://kpmg.com/xx/en/home/insights/2022/09/survey-of-sustainability-reporting-2022/esg.html>.

¹¹ For example, <https://www.bloomberg.com/news/articles/2023-01-25/class-action-wave-is-coming-for-esg-claims-green-insight>, <https://kpmg.com/xx/en/home/insights/2021/08/esg-in-claims-vision-strategies-and-decision-making-for-better-outcomes.html> <https://sustainablefutures.linklaters.com/post/102hj8s/esg-legal-outlook-2022-litigation-risks>.

¹²

<https://www.kodiko.gr/nomothesia/documnt/859201/nomos-5019-2023>.

¹³ See. D. Emvalomenos, Mediation: The "Formal" and Various "Informal" Forms, Off- & Online, Arbitration & Mediation, V. 6, Year 3, Jul.-Dec. 2020; In the end, why opt for mediation?, SYNIGOROS, vol. 152/2022, pp. 34 et seq.; The special meaning of Mediation in the EU digital market: P2B, DSM & the DSA proposal, Arbitration & Mediation, V.7, Year 4, Jan-June 2021.

¹⁴ <https://www.cedr.com/wp-content/uploads/2023/04/ESG-Resolve-IAM-Procedures-and-Guidelines-March-2023-1.pdf>