

Global Pound Berlin, March 24, 2017

Kluwer Mediation Blog

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This blog comes (almost live) from the Berlin Global Pound conference, held on 24 March 2017. This was the 13th in a series of 39 coordinated events on commercial dispute resolution mechanisms around the world. The name goes back to the 1976 Pound conference in St. Paul, which marked a key moment in the advent of modern ADR and where Frank Sander floated the idea of the multi-door courthouse. In 2016 and 2017, a global conversation is underway, with the International Mediation Institute initiating a new debate on the use and state of ADR around the world today - and tomorrow.

This day at the Berlin Chamber of Commerce was well attended, with representatives from users of ADR, judges and adjudicators, providers, advisors and external lawyers, and academics and other stakeholders. The focus was on ADR in Germany, naturally, but I nonetheless felt very much part of a global conversation, knowing that all around the world participants in Global Pound events have been and will be focusing on the same set of core questions, grouped into four categories. Local events are free to add their own specific questions too.

The format of the Global Pound conferences is innovative and interactive, with participants answering the core questions in four blocks via an app, the aggregate results then displayed for all to see and for four panels of experts to discuss. All results are collected and presented in reports by the organisers.

It was good to see different stakeholders attending this event. So many ADR events and conferences focus on ADR specialists - mediators hanging out with mediators is not really the ideal format to promote the field. This was different, and has some history in Germany. The Round Table Mediation and Conflict Management of the German Economy (RTMKM) was founded in 2008, bringing together companies wishing to explore both B2B and internal conflict management processes and systems. Today, this association has some sixty members, many of them large players in the economy. In 2017, they are awarding a prize for Excellence in Mediation and Conflict Management for law firms the first time. RTMKM works closely with the Institute for Conflict Management at the European University Viadrina in Frankfurt an der Oder.

A number of themes recurred through the day, asking as to what parties to disputes really know about the resolution options available to them, the role that external lawyers and judges can play in making options transparent, and specific questions relating to German legislation in the field or to B2C conciliation programmes. There were interesting, though not always surprising, differences in the results by stakeholder group. A local question at the Berlin conference (and thus not globally standardized) asked: "Which procedure do the participants trust?" (Participants not parties - and thus left open). This was one of a number of cases of just a little cognitive bias in the results. Users of dispute resolution procedures put negotiation top at 76%, with litigation second at 48%. Advisors (external lawyers) saw litigation top at 70%, as did the judges and adjudicators (72%). For these groups mediation scored 26%, 20%, and 32%. Providers of consensual resolution services (mediators) saw negotiation and litigation both at 50% and returned the highest score for mediation at 33%. Wishful thinking by mediators? Or rather an invitation to mediators to think less about ourselves and put ourselves in their shoes?

Another local question asked as to the incentives for lawyers to recommend or use ADR (in a jurisdiction where many would say courts are widely accessible and work efficiently). Possible answers were fee incentives, ADR courses in university education, image enhancement, post-qualification training, or fines for failure to advise clients properly about ADR. Later a similar question was asked about how parties can gain better awareness of ADR options. In both answers, university education was seen to be crucial, a close second on average to fee incentives. Teaching ADR not only to young lawyers but also to students of business, public administration or engineering makes sense.

It was great to see businesspeople, lawyers, judges, ADR providers, academics and other stakeholders all reflecting together on appropriate forms of conflict resolution, and on how to raise awareness of the different options available. To a degree this was preaching to the converted, no doubt, but it reminds us that we can all play a small part in creating a world in which disputes are managed - and resolved - appropriately. Some courts in Germany are gradually opening up different doorways, but in the world of commercial dispute resolution today it is not a multi-door courthouse that we are discussing. It is much more about a range of sensible ways of addressing disputes both within and outside the courts.