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საქართველოსთვის  
The European Union for Georgia



# WORKSHOP ON ALTERNATIVE DISPUTE RESOLUTION Mediation working methodology

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EU Georgia project, funded by the European Union and implemented by the European Union Intellectual Property Office (EUIPO)

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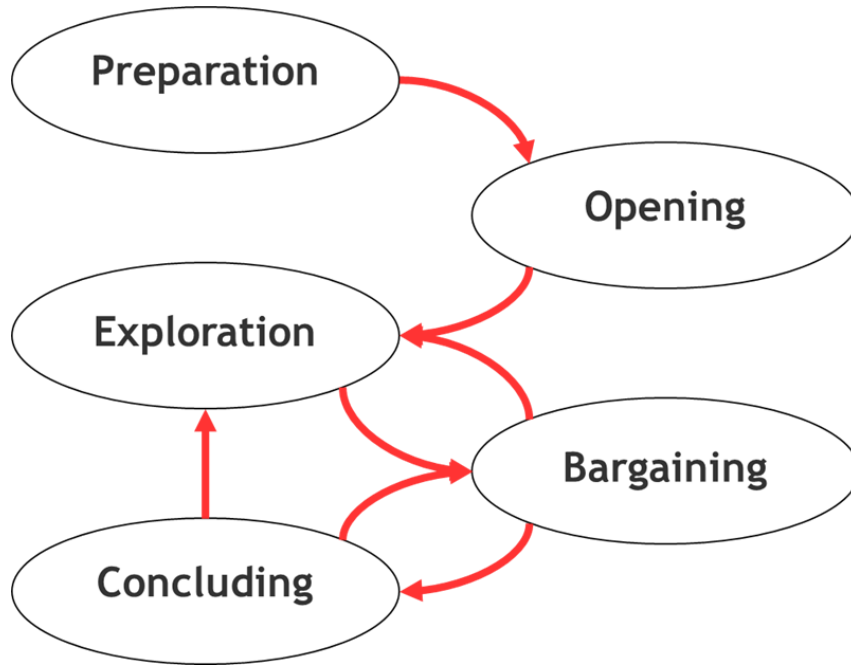
## Mediation working methodology

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- a. Identifying issues and common ground
  
- b. Formulating offers and bargaining
  - a. Concluding the mediation process

## The phases of mediation

5 phases



## Identifying issues and common ground

- Initial joint session, opening statements → list of **issues**
- Individual private sessions (caucuses)
- Building **trust**
- **Emotions**
- **Fact-finding** (open questions)



## Identifying issues and common ground

- **Needs and interests** versus positions
- Legal versus **business**
- Moving the parties from the past to the **future**



## Formulating offers and bargaining

### **Bargaining / negotiation / offers phase**

- Individual private sessions / possible intermittent joint sessions
- Importance of **confidentiality**
- Avoiding relay of 'insult offers'



## Formulating offers and bargaining

- **Reality testing** and evaluative mediation techniques
  - ✓ **BATNA:** *Best Alternative to a Negotiated Agreement*
  - ✓ **WATNA:** *Worst Alternative to a Negotiated Agreement*
  - ✓ **ZOPLA:** *Zone of Possible Agreement*
- **Reformulating**
- **Facilitative** mediation techniques



## Concluding the mediation process

### Where settlement is reached

- Drafting settlement agreement
- It is the lawyers' responsibility
- The mediator shall not be liable for the legality and enforceability of the settlement agreement.





## Concluding the mediation process

### Finalising detailed settlement terms

- Applicable law / competent jurisdictions
- Ensure that the agreement satisfies the parties and is workable
- Clear and comprehensive record of what has been agreed
- Clarify follow-up actions



## Concluding the mediation process

### Where settlement is not reached

- progress achieved
- outstanding matters
- next steps



## Concluding the mediation process

### Formal steps at the EUIPO post-mediation

- Send out satisfaction questionnaire
- Destruction of all documentation
- Parties' formal request of termination of proceedings
- Notification of decision closing proceedings



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