Summary

Civil pre-court proceedings in Belgium, Norway and Germany

Background
In 2011 the Minister of Security and Justice drew up an innovation agenda for improvements in judicial proceedings and the broader legal system. One of the aims of this agenda is to develop proceedings to resolve civil disputes more easily, quickly and effectively. In the context of this agenda, an investigation was announced into civil pre-court proceedings in three countries. These procedures pertain to conciliation proceedings at the Justice of the Peace Court in Belgium, the *Forliksråd* in Norway and the *Schiedsamt* in Germany. These reconciliation procedures precede court proceedings, do not exist in the Netherlands, are recommended as cheap, simple and quick, and might play a complementary part within the current Dutch legal system.

Research question
Are reconciliation proceedings at the Justice of the Peace Court in Belgium, the *Forliksråd* in Norway and the *Schiedsamt* in Germany simple, fast and effective modes of settlement of civil disputes, which may be useful in the Dutch context?

The following questions were addressed:
1 To what extent and in which cases are these procedures used? Are the procedures voluntary or mandatory before starting a lawsuit?
2 What is known about the simplicity, speed and effectiveness of these procedures?
3 How are the procedures organized and managed and what are the public costs?
4 What are other advantages and disadvantages of these procedures?
5 Might these procedures be useful for the Dutch system?

The second and third research questions were examined by the indicators in table s1 below.

Table s1 Summary of indicators for simplicity, speed, effectiveness, organisation and management, public costs

Simplicity	Speed	Effectiveness
Way of starting proceeding	Waiting period	Success rate
Course of proceeding	Duration of proceeding	Writ of execution
Costs for parties		Possibility of appeal
Legal representation		Satisfaction of parties

Organization and management	Public costs
Number of locations (per 100,000 inhabitants)	Location expenses
Number of persons employed (per 100,000 inhabitants)	Staff expenses
Quality of the conciliator	Legal aid expenses

Research method
The study is based on information from literature and websites, information from ministries and/or organizations and interviews with experts in each country.

The conciliation procedure at the Justice of the Peace Court in Belgium
A conciliation procedure at the Justice of the Peace Court may be requested before a lawsuit is started. The Justice of the Peace attempts to settle the matter amicably at a conciliation meeting. The conciliation procedure is a simple and cheap (free) procedure for litigants, and, depending on the court, may lead to a rapid settlement. The dispute is settled definitively, in the sense that no appeal is possible and the minutes of conciliation are enforceable. However, the following comments can be given:

- Only 20% of the conciliations is successful. In this respect the procedure increases the workload of courts, whereas it often does not lead to effective results;
- At some courts the conciliation procedure is not fast. The waiting period between the application and the conciliation meeting may last several months;
- The procedure can be used strategically to postpone a lawsuit;
- The dual role of the Justice of the Peace – that of conciliator and that of judge – may cause confusion and give rise to confidentiality claims.

The *Forliksråd* in Norway
In Norway, most civil cases have to be submitted to a *Forliksråd* (Conciliation Board) before the case can be brought before the court. A Conciliation Board is allocated to each municipality. Each Conciliation Board consists of three laymen and an equal number of deputies, elected or appointed by the town council for terms of four years. Conciliation Boards try to settle the dispute and are authorised to pronounce a judgement in certain cases. In 2012, the Boards dealt with a total of 115,000 cases. A settlement was reached in 4% of the cases, a judgement was delivered in 75% (mostly judgement by default), while 4% was referred to the court. In that sense, the Boards relieve the workload of the civil courts. However, proceedings are not necessarily easy, fast and effective for litigants. The costs, delays and effectiveness of the procedure vary, depending on the way the dispute is dealt with by de Board, to which Board the dispute is submitted, and whether an appeal is lodged.

Important comments are:

- The Boards do not always work effectively; there may be long waiting times. Treating undisputed claims could be done much simpler and more efficiently by a professional organization;
- The members of the Board are laymen. The quality of the members is called into question, in terms of both legal and conciliation skills;
- Only 4% of the cases is concluded by settlement. In this respect the term 'Conciliation Board' seems deceptive.

The *Schiedsamt* in Germany
Twelve of the sixteen German federal states have a conciliation procedure through municipal *Schiedspersonen*. For certain civil cases, this procedure is mandatory before the dispute can be brought to court. The legislation with respect to the *Schiedsamt* is different in each federal state.
The conciliation procedure via the *Schiedsamt* is simple, cheap and fast. The procedure is fairly effective in the sense that about half of the conciliations is successful. The dispute is settled decisively, which means that no appeal is possible and the settlement agreement is enforceable.

However, there are comments to post:

- *Schiedspersonen* deal only with a few cases per year (23 per 100,000 inhabitants). In Germany, the *Schiedsamt* is an institution that has existed for centuries and therefore is well established in the culture. In the Netherlands, a similar

institute does not have such roots, making it even more difficult to get off the ground;
- *Schiedspersonen* are laymen. No legal or conciliation qualifications are required. Their quality is under discussion;
- The introduction of a mandatory conciliation procedure in Germany did not lead to fewer lawsuits, a new culture to solve problems or durable solutions of disputes. For disputes in which parties are not willing to reach an agreement and want a 'power' judgment, the obligation to conciliate leads to lower success rates and unnecessary hurdles that cause delay and additional costs.

Usefulness for the Dutch legal system

In addition to the aforementioned advantages and disadvantages of the procedures, the following points emerged.

The first is that attention has to be paid to the quality of the conciliators. In all three proceedings, the conciliator did not have to qualify with regard to conciliation skills. The quality of the conciliation is therefore variable. The success rate of the proceedings might increase if more attention is paid to the skills of the conciliator.

Secondly, the pros and cons of mandatory procedures have to be considered. The experiences show that not all cases are suitable for conciliation, while in some cases mandatory conciliation was lifted because of the negative consequences. It may lead to unnecessary steps that cause delay, extra time and extra costs for both litigants and public bodies. It may also lead to strategic behaviour to postpone a lawsuit. In addition, the obligation does not apply for the defendant. As a consequence, in many mandatory procedures the defendant does not show up.