Mediation in Europe at the cross-road of different legal cultures

According to E.U. research project EMEDI@TE (www.emediate-justice.eu) an international group of specialists and academics produced this first book that, through comparative and multidisciplinary studies, tries to depict the "state of art" of the research on mediation and the know-how of professionals operating in the field of ADR. The added value of this book, indeed, consists in the contribution of so many different researchers each of them with their background and cultural and professional experience: the multidisciplinary approach means that we can read and immediately compare the different ideas of mediation and the different problems that mediation may meet, approaching the mediation not only from a narrow legal point of view but also from the point of view of the real society.

Contributors: Rosa Adamo, Penelope Agallopoulou, Annalisa Alongi, Gianfranco Amenta, Salvatore Casabona, Chiara Cirafici, Cornelia Delouka–Inglessi, Lorenzo Ferrante, Annamaria Frosina, Liborio Furco, Abdelkarim Hannachi, Marta Infantino, Antonello Miranda, Eleni Nina–Pazarzi, Michalis Pazarzis, Giulia Adriana Pennisi, Alessandra Pera, Michelangelo Russo, Giovanna Triolo, Cinzia Valente.

Antonello Miranda is Full Professor of European and Comparative Law. Dean of the Faculty of Political Science of the University of Palermo. Law Degree 1978 with Distinction and Merit. Specialised at London School of Economics and at the City of London Polytechnic. In 1980 and 1984 he was awarded two scholarships of the Italian Council of Researches in order to make his researches in England (London School of Economics and IALS). Honorary Judge since 1998 and Avvocato (bar association) since 2002. In 1998 he was elected to a fellowship of the Society for Advanced Legal Studies of the University of London. He performed his researches at various foreign university institutes and particularly at the Institute of Advanced Legal Studies of London where he was visiting fellow from Oct 2001 to March 2002. From 1st November 2003 for a period of 3 years, he was requested by the University of London to develop researches on Family Law as Visiting Senior Research Fellow of the School of Advanced Studies. He is coordinator of the project "E-medi@te". He was Member of the Board of External Examiner of the SOAS – University of London. He is member of the International Society of Family Law and General Secretary of the Italian Association of Comparative Law. He is the General Editor of the questionnaire on "Duties of care and duties of cash in Family Law" for the Common Core of European Private Law Project. He is the Co-editor of the Publications of the Faculty of Political Science of Palermo University and Member of the International Committee of the Child and Family Law Quarterly Review.

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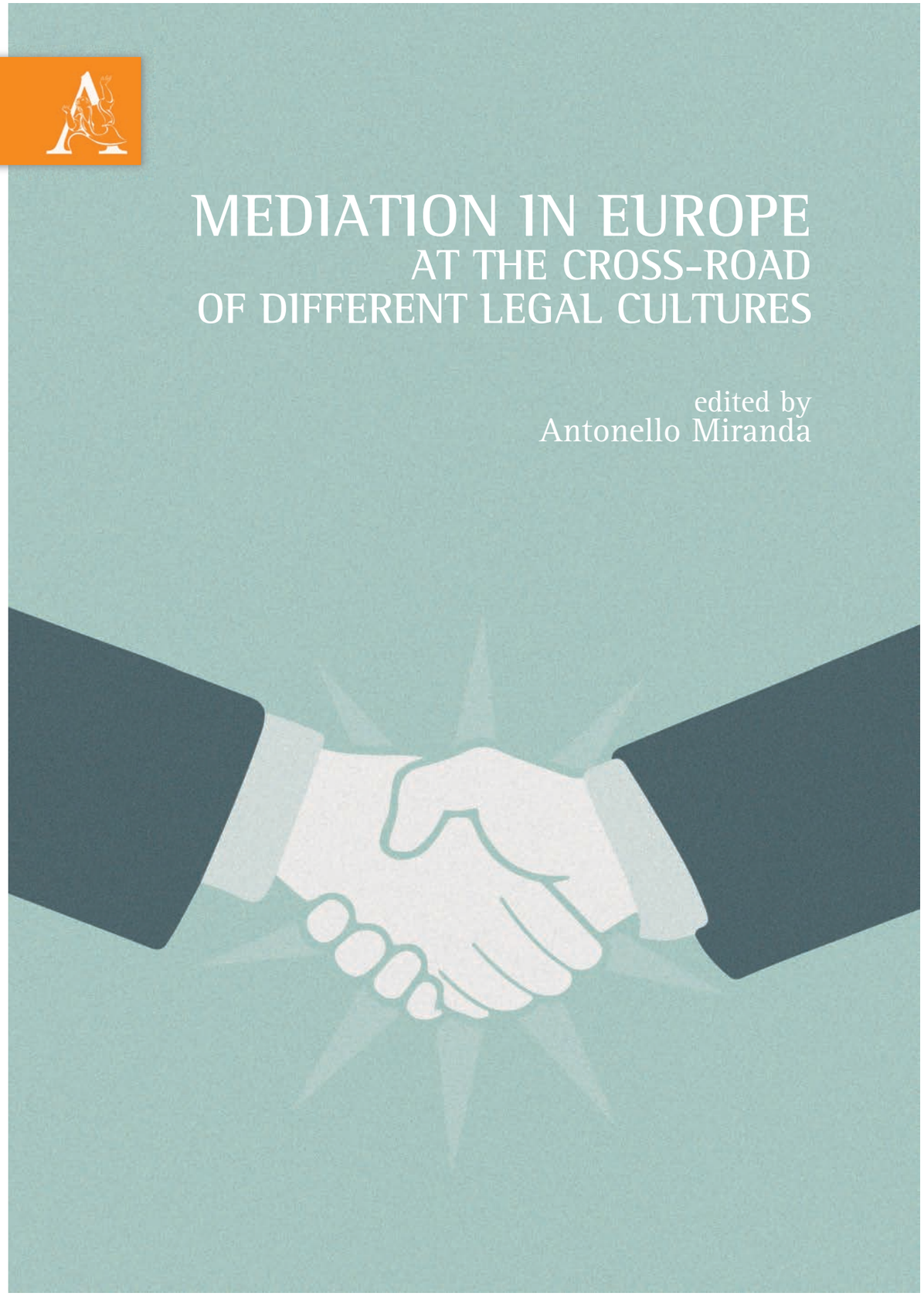

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www.aracneeditrice.it
info@aracneeditrice.it

via Raffaele Garofalo, 133/A–B
00173 Roma
(06) 93781065

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Contents

Part II
Mediation in Family Affairs

Part III
Mediation as a Process

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The European Union policies on access to justice and ADRs

Good intentions are not enough as "the way to hell is paved with..."

Alessandra Pera

1. Introduction

Forms of extra–judicial dispute resolution are widespread in legal systems belonging to the western legal tradition[1] and in the systems based on religion and tradition.[2]

With regard to the study this article refers to, cultural movements spreading and promoting ADR models have found place in legal systems based on the rule of law[3] over the past fifty years, although with the necessary distinctions of institutional and, before that, socio–cultural nature.

The United States of America[4] can be considered as the mother–country of the ADR movement, but in the past fifteen years the European Union

1. On the concept of western legal tradition see J.M. Merryman (1969), p. 2. According to the author, « A legal tradition, as the term implies, is not a set of rules of law about contracts, corporations, and crimes, although such rules will almost always be in some sense a reflection of that tradition. Rather it is a set of deeply rooted, historically conditioned attitudes about the nature of law, about the role of law in the society and the polity, about the proper organization and operation of a legal system, and about the way law is or should be made, applied, studied, perfected and taught. The legal tradition relates the legal system to the culture of which it is a partial expression. It puts the legal system into cultural perspective ». See also M.A. Glendon, M.W. Gordon and P.G. Carrozza (1994), pp. 6–8; P. Stein and J. Shand (1974); H.P. Glenn (2000), pp. 117 ff.; P.G. Monateri (2000), pp. 490 ff.; A. Somma (2004), pp. 169–205.

2. For further information on such peculiar models, see H. Wang (1959); B. Scwarz (1957); J. Woodburn (1972); I. Shapera (1956).

3. With regard to families under the *rule of law*, *rule of politics* and *rule of religion or tradition*, see the Italian doctrine Mattei U. and G.P. Monateri (1997), *passim*; U. Mattei (1994 b) pp. 775–797; U. Mattei (1997), pp. 5 ff.; U. Mattei (1994 a), pp. 222 ff.

4. *Administration of Justice, 29 American Bar Association Report* 1, 1906, pp. 395–417; R.L. Abel

has also promoted policies aimed at spreading the ADR systems, through institutional initiatives of legislative and non–legislative nature that have also imported a culture which was unknown to the legal systems of some Member States.

In a first phase, the European Union opened a broad debate to sensitize public awareness on the issues concerning the access to justice, the reduction of time and costs of a trial if compared to those when using ADRs, the respect of the weak parties in the legal–economic relations.[5] On the other hand, in a second phase the EU carried out some early non–binding[6] legislative initiatives, and later obliged Member States to legislate on the mediation in civil and commercial disputes.[7]

This step by step procedure, besides its respectful attitude towards the legal traditions of the Member States and the community rules of procedural laws, as well as the mental attitudes and the categories of European jurists (especially civil lawyers), has avoided the EU approach to these themes from being influenced by the occasionally "maximalist" character of the U.S. homologous procedure.[8]

More specifically, as far as mediation is concerned, it should be highlighted that these dispute resolution devices were brought to light and introduced mainly through the consumer protection legislation.[9] As a matter of fact, the establishment of new substantive consumer rights resulted in the need for design models of dispute resolution, especially cross–border models, [10] which protected these rights as rapidly and effectively as possible.

In particular, the Green Paper on consumer access to justice[11] focuses

(1982); S. Roberts (1993), pp. 452–470; S. Roberts (1994), pp. 9–27; S. Roberts (1996); F.E.A. Sanders (1985), pp. 253–261.

5. Resolutions and communications such as the Tampere European Council Conclusions of 15–16 October 1999 can be considered. For their analysis see M.F. Ghirga (2006), pp. 474 ff., and the European Code of Conduct, which in fact, as shown below, cannot actually be considered as a legislative act of the European Union since it doesn't have a regulatory nature and is not coming directly from EU institutions.

6. I refer to the Recommendations of March 30, 1998 (No. 98/257/EC) and April 4, 2001 (No. 2001/310/EC), to the Green Paper on the access to justice of November 16, 1993 (No. 1993/576/EC) and to the later Green Paper on the methods of alternative dispute resolution in civil and commercial matters of April 19, 2002 (No. 2002/196/EC); all available at *eurlex.europa.eu/legalcontent/EN/TXT/?qid=1406528678782&uri=CELEX* (different identification numbers for each document), accessed 27.7.2014.

7. See Directive of April 23, 2008 (No. 2008/52/EC), available at *eurlex.europa.eu/legalcontent/EN/TXT/?qid=1406528678782&uri=CELEX:32008L0052*, accessed 27.7.2014.

8. See C. Silvestri (2001), pp. 71 ff.

9. See R. Danovi (1997), c. 326; F. Ambrosi (2005), pp. 208 ff.

10. On the concept of cross–border dispute see the Report of the Commission proposing a Directive on certain aspects of alternative dispute resolution in civil and commercial matters of October 22, 2004 — EC (2004) 718, *passim*.

11. Available at *eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52002DC0196*, accessed

on the idea that these devices of protection can be found outside the judicial and procedural circuit[12] also for practical reasons, since ADR systems overcome the difficulties of access to justice that arise from the overwork of courts, from the costs of the trial in terms of time and economic resources employed.

In addition, the growth of legislative activity, the foreseeing of new categories of substantive rights, and the increase of special procedures in the Member State legal systems, make the consumer's access to justice more and more critical, especially for disputes of small value (small claims) and for the cross–border ones.

Moreover, in the internal market both a growth of trade and an always increasing circulation of goods, services, people and capital can be noted, which consequently cause the growth of disputes between citizens and/or persons (both natural and/or legal) anyway residents or domiciled in the different Member States, also thanks to the development of e–commerce.

Therefore, the cross–border disputes (especially the ones of small value) brought before the national courts, as well as the disputes that are more important from an economic standpoint increase, causing jurisdictional conflicts or language and logistic difficulties.

In this context, mediation and the other ADRs represent possible solutions to improve the access to justice and complementary — non–substitutive — means to judicial procedures.

The use of ADR systems, therefore, unlike the U.S. model, is not conceived in Europe as an alternative tool aiming at the total exclusion of the process, but rather as a means aiming at facilitating a dialogue between the parties that would otherwise be impossible, and at assessing the opportunity to apply the judge at a later stage in case of failure of the ADR procedure.[13]

What deserves consideration here is that in the Community policies on mediation the anti–judicial motivation, which has instead encouraged the ADR American movement, does not arise. On the contrary, all the legislative interventions here–in–after analysed seem to conceive ADRs as an element diversifying and completing the protection of European citizens, to whom the effective recourse to judicial protection must be guaranteed.[14]

27.7.2014.

12. For a detailed analysis of the contents in doctrine see B. Capponi (1994), pp. 361 ff.; P. Martinello (1994), pp. 333 ff.

13. It is a tool that can help promote and ensure social peace, especially in a climate of economic crisis, such as the one the European Union is currently experiencing, in which the economic difficulties often exacerbate social conflict between different actors in the market and among the categories which most traditionally take opposing positions (consumer–entrepreneur, employer–employee, public administration–user . . .).

14. It is a fundamental right stated in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as in Art. 47 of the Charter of Fundamental

2. Recommendations

This is certainly the *ratio* characterizing the EC Recommendations of 30 March 1998[15] and 4 April 2001[16], which poses the general principles applicable to all bodies responsible for the non–conciliatory (rather decisional) out–of–court settlements of consumer disputes, and to all bodies involved in the consensual resolution of consumer disputes, with a function which is neither decisional nor conciliatory.

Both regulatory actions, although not having a binding character, identify the basic safeguards that should be guaranteed at the level of Member States in the ADR procedures for consumers, and indicate the procedural standards protecting the consumer and user rights effectively and efficiently.

In particular, the *ratio* of the 1998 Recommendation refers to the need to "strengthen consumer confidence in the functioning of the internal market and the ability to draw full advantage from the possibilities that the latter offers"; and — according to the Community legislator — in order to ensure "the possibility for consumers to resolve their disputes in an efficient and appropriate way, through extra–judicial procedures" that must meet the "minimum criteria guaranteeing the impartiality of the extra–judicial body, the effectiveness of the procedure, its promotion and its transparency." The use of these procedures is functional to the Community goals if we consider that "the majority of consumer disputes, for their nature, are characterized by a disproportion between the economic aspect of the dispute and the cost of its judicial settlement".

To be more precise, the Recommendation provides the principles of:

a) independence and impartiality;
b) transparency;
c) adversarial principle;
d) effectiveness;
e) legality;
f) fliberty;
g) representation.

These are principles that the out–of–court bodies responsible for the resolution of disputes between business and consumers should conform with.

Rights of the European Union. It has been recognized repeatedly as such by the case law of the European Court of Justice.

15. Available at *http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1998:115:0031:0034:en.pdf*, accessed 27.7.2014.

16. Available at *http://ec.europa.eu/consumers/archive/redress/out_of_court/adr/acce_just12_en.pdf*, accessed 27.7.2014.

In particular, the independence principle is to be intended in the sense that the decision–making body or the individual decision maker, should ensure that:

— the person appointed possesses the abilities, experience and competence required to carry out his function, particularly in the field of law;
— the person appointed is granted a period of office of sufficient duration to ensure the independence of his action and shall not be liable of being relieved of his duties without just cause;
— if the person concerned is appointed or remunerated by a professional association or an enterprise, he must not have worked for this professional association or for one of its members or for the enterprise concerned during the three years prior to assuming his present function.

When the decision is taken by a collegiate body, the independence of the body responsible for taking the decision must be ensured by giving equal representation to consumers and professionals or by complying with the criteria set out above.

Transparency means right to access written information (or in any other suitable form) concerning:

a) the types of dispute which may be referred to the body concerned, as well as any existing restrictions in regard to territorial coverage and the value of the dispute,
b) the rules governing the referral of the matter to the body, including any preliminary requirements that the consumer may have to meet, as well as other procedural rules, notably those concerning the written or oral nature of the procedure, the attendance in person and the languages of the procedure,
c) the possible cost of the procedure for the parties, including rules on the award of costs at the end of the procedure,
d) the type of rules serving as the basis for the body's decisions (legal provisions, considerations of equity, codes of conduct, etc.),
e) the decision–making arrangements within the body,
f) the legal force of the decision taken, whereby it shall be stated clearly whether it is binding on the professional party or on both parties. If the decision is binding, the penalties to be imposed in the event of non–compliance shall be stated clearly, as well as the means for making redress available to the losing party.

In compliance with the adversarial principle, the procedure to be followed must allow all the parties in concern to present their viewpoint before the competent body and to hear the arguments and facts put forward by the other party, and any experts' statement.

Effectiveness is ensured through measures guaranteeing that:

— the consumer has access to the procedure without being obliged to use a legal representative,
— the procedure is free of charges or of moderate costs,
— only short periods elapse between the referral of a matter and the decision,
— the competent body is given an active role, thus enabling it to take into consideration any factor conducive to a settlement of the dispute.

Legality is to be intended in the sense that the decision taken by the body may not result in the consumer being deprived of the protection afforded by the mandatory provisions of the law of the State in whose territory the body is established. In the case of cross–border disputes, the decision taken by the body may not result in the consumer being deprived of the protection afforded by the mandatory provisions applicable under the law of the Member State in which he is normally resident in the instances provided for under Article 5 of the Rome Convention of 19 June 1980 on the law applicable to contractual obligations.

Moreover, all decisions are communicated to the parties in concern as soon as possible, written or in any other suitable form, stating the grounds on which they are based.

According to the principle of liberty, the decision taken by the concerned body may be binding on the parties only if they were previously informed of its binding nature and specifically accepted this.

The consumer's recourse to the out–of–court procedure may not be the result of a commitment prior to the materialisation of the dispute, where such commitment has the effect of depriving the consumer of his right to bring an action before the courts for the settlement of the dispute.

Last but not least, the procedure does not deprive the parties of the right to be represented or assisted by a third party at all stages of the procedure.

The same guarantees and principles are repeated in the subsequent Recommendation of 2001, in which no reference to the adversarial and legality principles, typical of the decisional procedure, is made.

Nevertheless, the principle of fairness in the procedure is mentioned here and considered as a guarantee for a series of rights of information and freedom for the parties.

In detail, the Community legislator believes that impartiality should be

granted by ensuring that those responsible for the procedure are appointed for a fixed term and that they can be relieved from their duties only for a right cause. In order to guarantee impartiality, the assumed conflicts of interest between the person in charge and the parties, which could be real or apparent, are always governed and for this reason, from the beginning of the procedure, the former is obliged to reassure the parties about his impartiality and competence. Transparency refers mainly to the procedure.

Therefore, the parties must be informed about the activities of the Centre they have applied, how the procedure will operate, the typologies of disputes that this procedure may resolve, and the restrictions to its use; other information the parties are due are those concerning the objective and subjective rules or requirements that parties have to meet, language used, costs, timetable of the procedure, applicable substantive rules (legislative provisions, commercial customs, criteria of equity), the role of the procedure in showing the position of the parties and their interests, and the substantial effects of the resolution of the dispute, whether it is indicated by the third party (Recommendation 1998) or it is agreed to by the parties (Recommendation 2001).

The effectiveness of the procedure has to be granted by ensuring that it will be easily available to the parties. Costs must be moderate and, however, proportional to the value of the dispute. In addition, the parties have the right to access the procedure without being obliged to use a legal representative. Nevertheless the parties may choose to be represented or assisted by a legal representative or by an expert (e.g. professional representative) in any phase of the procedure.

The procedure should be handled in the shortest time possible fitting with the nature and complexity of the dispute. The body or institution responsible for the process must control the related procedure to guarantee that all is going on quickly and correctly.

The person in charge also verifies that the parties respect the rules of the procedure and that their behaviour is functional to the research of an appropriate and shared solution to the dispute.

Otherwise, both parties should be informed of the other party's misbehaviour in order to enable them to decide whether to continue or not the dispute resolution procedure.

The fairness of the procedure is granted by informing the parties about their right not to take part at the ADR procedure, to leave it any time they decide so and to apply to the court or any other out–of–court mechanism of dispute resolution foreseen by any Member State.[17]

17. Consider, for example, the role of Chambers of Commerce, as provided by art. 140 and 141 of the Consumer Code or the *Autorità Garante per la Concorrenza ed il Mercato* (the Italian Antitrust

In addition, the parties must be helped in submitting freely their own claims, interests, information and evidence relevant to their case. The confidentiality of some information parties may decide not to give to the other party and the right to receive communication of the information each party decides to share with the counterpart have to be ensured, in order to establish a correct and useful collaboration aiming at an objective and shared solution, whether imposed by the third party or consensual.

In the case of a consensual solution, the Recommendation of 2001 provides that the parties are given a reasonable period of time to evaluate the possible solution before accepting it definitively.

In any case, the consumer has to be informed with a clear and understandable language about the substantive and procedural effects following the proposed out–of–court resolution of the dispute, about the opportunity to get an opinion from a third party before accepting the said solution, and about the possible judicial and extra–judicial remedies, that are alternative to the proposed solution.

3. The information and operative networks

Among the initiatives to identify simple, swift and effective solutions for the resolution of disputes, which are also inexpensive and alternative to the court system and aim at ensuring the consumer the access to justice, it is necessary to refer to the extra–judicial network (EEJ–NET), [18] a communication and support structure made up of national contact points — *Clearing Houses* – activated by each Member State.

The network is designed in such a way that, in case of disputes between consumers and professionals, the consumers may contact the National Clearing House of reference for advice and assistance in the preparation and start of a complaint against a body of another Member State.

Thus, in cross–border disputes the *Clearing Houses* should be able to overcome the difficulties and obstacles arising from language differences and from the lack of information, by transmitting the complaint through the network to the most appropriate body.

According to the EU recent legislative intervention of 2013[19], he EEJ–Net

Authority) with regard to unfair commercial practices, under the Decree No. 2 of August 2nd, 2007; For the doctrine see M. Dona (2008), pp. 53–56; F.A. Gagliardi (2009), pp. 33–44.

18. The project is based on the EC decision of May 28, 2001 — No. 2001/470/EC and it is shown in detail on *www.ec.europa.eu/consumer/redress/out_of_court/eej_net/index_en.htm*.

19. The reference is to Regulation no 524/2013 and Directive 2013/11/EU of the European Parliament and of the Council of 21 may 2013 on alternative dispute resolution for consumer disputes, amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC, both published on the 18.6.2013

Network will evolve in the short term, including new systems of dispute resolution, based on new technologies, which may be the basis of synergies with third countries.

Moreover, the system of "network bodies" had already been tested on financial services. The reference is to FIN–NET (Financial Services complaints NETwork), which today completes EEJ–Net by directing all systems responsible for alternative dispute resolution in the field of financial services at the national level, in order to form the Community Network, based on a wealth of knowledge and experience which already exists at the national level.

The function of these networks is twofold: on the one hand, they want to ensure flexible tools to the consumers in order to obtain compensation for the damages caused by the misconduct of a professional; on the other hand, they encourage the exchange and flow of information between the various bodies, national points of contact, through uniform procedures of cooperation agreed on by all the Member States.

4. The Green Paper

Another Community Act this study wants to deal with is the Green Paper on the methods for dispute resolution in civil and commercial matters. It gave origin to the legislative initiative followed by the issue of the Directive 52/2008/EC, referred to below. The Green Paper examines the situation of the alternative methods for dispute resolution in Europe, in order to promote the use of mediation.

The Commission pointed out how the specific advantages of these forms of alternative justice on the one hand, and the crisis and collapse of traditional forms of justice on the other, have led to a renewed interest in these methods for dispute resolution, characterized by a greater autonomy of the parties and the consensual decision if compared to the proceedings before a Court or to arbitration.

However, it is necessary to remember what has been said above about the limits of mediation and of the other forms of ADR. We refer to those issues (personal and inalienable rights, status and capacity of persons, etc.) for whom the autonomy of the parties is not considered as an absolute value, but gives way to higher values and principles. In other words, it has to be remembered here that parties are not free to dispose of their rights, or at least not of all of them.

It is also important to remember that the Commission recognizes a

in the Official Journal of the European Union L165/63.

further limitation if the parties are not actually free or cannot always make voluntary choices. This is what happens in *hard cases* or in *extreme disputes*, characterized by particular forms of hatred and bitterness between the parties or by an economic, informative or socio–cultural discrepancy.

5. The Code of Conduct

To go beyond the policies of consumer protection it is important to mention also the European Code of conduct referring to Mediation, presented in Brussels on 2 July 2004[20].

The Code is not an institutional text in the technical sense, because its drafting — although encouraged by the European Commission — was carried out by a group of people who were not interested in interfering with the Member State legislation, and it was conceived as the basic model interested institutions and bodies may have completed.

The code consists of four articles that lay down some ethical principles to which mediators should adhere voluntarily under their own responsibility. As a matter of fact, in the light of the above mentioned regulatory cross–references, the conformity is actually compulsory. It is addressed to bodies that, offering services of mediation and conciliation and administering the following procedures, comply with it and commit themselves to respect the contents of their conciliators.

The idea of a European code of conduct, as a discretionary tool to improve the quality of mediation and the trust of individuals towards this system of dispute resolution has been strongly supported by the European institutions.

Many of the measures taken so far in this subject are characterized by the fact that they focus on two main objectives:

— to ensure the mutual respect of the judgements and decisions within the European Union countries;
— to improve the access to justice of both ordinary citizens and professionals, in particular when the four freedoms characterizing the common internal market are at stake.

This topic — the access to Justice — leads us to review the role of ADR systems, because according to the Commission, even if it is true that to grant an efficient and fair judicial system is among the prerogatives of the single Member States, it is also true that the traditional legal systems are

20. Available at *ec.europa.eu/civiljustice/adr/adr_ec_code_conduct_en.htm*, accessed 27.7.2014

no longer able to provide for the best solution of all conflicts occurring in modern society.

For certain disputes other forms of disputes resolution may better respond to the wishes and intentions of the parties. These forms may allow an interest–based approach to the resolution of the conflict and can allow swifter and more cost–effective processes, to name just a few of the often quoted advantages.

It is also important to say that one form is not necessarily better than another and that it must not necessarily take the place of the other. Considering the existence of an efficient judicial system indisputable and essential, citizens should rather be ensured to have the opportunity to choose freely what form of dispute resolution more satisfies them, being previously fully informed about their rights and the different forms of protection provided by the legal system.

Such freedom of choice has also to include self–regulation forms, considered as the possibility that business operators, social partners, non–governmental organizations or associations have to adopt — among them and for them — common guidelines at the European level, such as codes of conduct or deontology and category agreements.

The Commission has, however, highlighted that the so called self–regulation, when respecting the transparency and representativeness of the parties involved, not only meets the Community law, but also "represents an added value in the general interest".

What has been absent at the European level so far, was properly the development of common guide lines (e.g. a code of conduct) and this is what the European Commission services have promoted in the works that have taken place since the enactment of the Green Paper.

The legislative instrument, however, should be used in those cases in which the legal system aims at establishing principles, rights and obligations for the community of citizens, and procedures making the conferred rights effective, especially when all this implies large and important social changes and requires a democratic legitimacy at the Community level.

Legislation obviously gives a high level of legal certainty and becomes a necessary instrument to standardize and harmonize legal solutions, considering the high degree of divergence between the different disciplines in force in the different Member States.

It can also be essential in those situations where alternative solutions had already been tried out but were not effective, as it actually happened, so that such intervention was followed in time by the debate on whether or not to act through a Community Act and the debate itself has resulted in the issuing of the directive 52/2008/CE, whose analysis can be found below.

The aim of the rules in the European Code of Conduct is to establish

greater confidence in the use of mediation and, at the same time, to improve the quality of mediation services in Europe.

The Code of Conduct should also contribute to avoid, or at least, minimize the fragmentation of the internal market respecting the freedom to provide a particular service and to receive the same kind of service.

And actually, as a model of self–regulation the code of conduct has shown its weakness: lack in tools to ensure the respect and the effectiveness of the conduct rules, also because, not being a Community Act, the Commission cannot exercise control over the respect and the effectiveness of the rules therein contained.

As a matter of fact, although a self–regulatory initiative is encouraged and promoted by the Commission, including the form of a recommendation, the Commission itself cannot do anything if there is no compliance with the rules referred to.

Actually the EU Directive on mediation in civil and commercial matters, which will be analysed in the next paragraph, expressly mentions the Code of Conduct, as many national legislative intervention, through which Member States have enacted the EU Directive in their legal systems.

What is certain with regard to this aspect is that the secret of the success of the Code is bound to and conditioned by the attitude that will be assumed in the future by those who will join it and who will continue to adhere to it. Therefore, the European Code of Conduct is a great opportunity — for mediators and organizations providing mediation services — to promote greater confidence and renewed quality in the provided services and to ensure a functional system and an internal market for mediation in Europe.

6. The EU directive on mediation in civil and commercial matters

At a Community level, mediation is governed by Directive 2008/52/EC of the European Parliament and the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters[21].

The Directive binds all Member States — with the exception of Denmark — to implement it by 21 May 2011.

The review process will be managed, as usual, by the European Commission, which by 21 May 2016 will be required to submit a report on each Member State application to the European Parliament, the Council and the European Economic and Social Committee.

As a matter of fact, the European Union's efforts to establish uniform mediation rules — in particular for cross–border disputes — is based on

21. Published in the Official Journal of the European Union of 24 May, L136.

the special meeting of the European Council, held in Tampere on 15 and 16 October 1999, to create an area of freedom, security and justice in the European Union, on the occasion of which (par. 30) "The European Council invites the Council, on the basis of proposals by the Commission, to establish minimum standards ensuring an adequate level of legal aid in cross–border cases throughout the Union as well as special common procedural rules for simplified and accelerated cross–border litigation on small consumer and commercial claims, as well as maintenance claims, and on uncontested claims.

Alternative, extra–judicial procedures should also be created by Member States"[22].

In a nutshell, the legislator's goal is to harmonize the different forms of mediation by posing certain milestones[23] with the need — at the same time — not to encroach on the individual national experiences in which mediation and conciliation have been widely diffused and regulated[24].

It should be considered, indeed, that in many EU countries, mediation — and in general the ADR — had spread out between the end of the nineteen seventies and the first half of the nineteen eighties (i.e. the Dutch and Danish models): the Directive, therefore, could not wipe out the status quo, but had necessarily to cope with, conform and adapt to the traditions of the single state.

The EU legislator, in a certain way, seems to follow three different regulatory approaches, as some articles of the Directive contain soft rules for the Member State to transpose into their national laws (such as art. 6 on the enforceability of settlement agreements or art. 7 on confidentiality), while others seems to express a desire or a wish rather than an order and require to implement a peculiar model (as art. 4 on ensuring the quality of mediation and art. 5 on the relationship between court proceedings and mediation). A third approach is the voluntarily (perhaps not) absence of any provision on crucial issues, such as the liability of mediators or the regulation of professional mediator associations.

Nor can it be forgotten that with regard to mediation EU Member States situations had been characterised by absolute heterogeneity, ranging from experiences in which mediation and ADRs in general were widespread on the basis of the US model[25] (e.g. English and Scandinavian countries) to legal systems in which the ADRs were almost unknown or very differently

22. Full text is available on *www.europarl.europa.eu/summits/tam_en.html*.
23. Uniform Approach, 2 European l. J., p. 36 (2008).
24. *Eye on the future*, 15 *JIML*, p. 512 (2009).
25. See D.J.A. Cairns (2005), p. 62.

conceived (e.g. in general in Mediterranean countries)[26].

Nevertheless, it would be short sighted to limit the interest of the Directive "to ensure an easy access to justice, as part of the EU policy to establish an area of freedom, security and justice".

As a matter of fact, mediation is also an incentive for cross–border transactions. One of the main limits to transactions between residents of different States is given by the high costs and difficulties of access to judicial means: it is enough, for example, to think that when a subject wishes to claim his/her rights beyond national borders, he/she is obliged to have the judicial act translated and to identify the competent authority for the notification of that act.

These transaction costs — added to the regular costs of justice — end up by discouraging those interested in performing a specific transaction across borders: the proof is that in e–commerce only few online contracts are between subjects operating in different countries[27].

The opportunity of using an inexpensive and speedy tool which, although not leading to a decision, allows the parties to reach an agreement, could be a solution (or could at least provide a solution) for these issues. Besides, it seems right to highlight that both parties are often interested in reaching an agreement: think of online purchases for example, and the importance of business reputation in such context.

It is clear that an entrepreneur, investing in e–commerce, will be more interested in reaching an agreement with an unsatisfied customer — regardless of any faults or reasons of the customer himself — rather than in spreading negative feedbacks — about his own commercial reliability — which could negatively influence the choice of other potential customers/users.

The agreements resulting from mediation have a double benefit: they are more likely to be respected voluntarily, on the one hand; they are more likely to preserve an amicable and sustainable relationship between the parties, on the other hand; those are all benefits which become even more pronounced in situations where cross–border elements are present.

6.1. *Scope of application of the Directive and definitions*

The application of the Directive is restricted in three ways.

26. For a general overviews on different models, with a comparative approach, see K.J. Hopt and F. Steffek (eds.) (2013); C. Hodges, I. Benohr and N. Creutzfeldt–Banda (eds.) (2012); F. Steffek, H. Unberath, H. Genn and R. Greger (eds.) (2013).

27. On E–commerce and ODR, see R.A. Baruch Bush and J.P. Folger (1994), pp. 77 ff.; V.C. Crawford (2001); B.G. Davis (2002); B.G. Davis (2006); L. Edwards and C. Wilson (2007), p. 315; M. Fabri M. and M. Velicogna (2007); Y. Farah (2005), p. 123; C.M. Hanycz (2008), p. 99; E. Katsh (2002); E. Katsh (2004), p. 271; E. Katsh (2007), p. 97; E. Katsh and J. Rifkin (2001); S.S. Raines (2006), p. 359; S.S. Raines and M. Conley Tyler (2006); A. Ramasastry (2004), p. 164.

First of all, the definition of mediation offered by art. 3 (a) is a functional one, drawing this ADR tool as a "process, however named or referred to, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an amicable agreement on the settlement of their dispute with the assistance of a mediator".

In respect of such a general definition, according to art. 3 (b), it includes "mediation conducted by a judge who is not responsible for any judicial proceeding concerning the dispute in question. It excludes attempts made by the court or the judge seized to settle a dispute in the course of judicial proceeding the dispute in question".

Moreover, the Directive protects the single national experiences, establishing the principles of the institute and showing indifference for the *nomen* given to mediation and conciliation by national legislators. Letter a) then specifies that the procedure "may be initiated by the parties or suggested or ordered by a court or prescribed by the law of a Member State".

The Italian legislator has implemented all these possibilities, including both mandatory and voluntary or private mediation, as well as mediation suggested by the court at any time until the last day in Court, in the d.lgs. no. 28/2010.

The Decree of enforcement, however, has not considered the possibility of "a mediation conducted by a judge who is not responsible for any judicial proceedings concerning the dispute in question". The mediator, according to Art. 3, point b), is instead "any third person that is asked to conduct a mediation in an effective, impartial and competent way, regardless of the denomination or profession of that third person in the Member State concerned and of the way in which the third person has been appointed or requested to conduct the mediation". Also in this case, it is possible to consider that the Directive wanted to preserve the previous legislative experiences: for example, those legal systems which allow access to the list of mediators to people without any legal training (e.g. psychologists)[28].

Secondly, the Directive is conceived for cross–border disputes, and a general principle of private international law is suitably taken into account to determine the cross–border nature of a dispute. Perhaps in a tautological way, Art. 2, par. 1 of the Directive indeed states that "a cross–border dispute shall be one in which at least one of the parties is domiciled or habitually resident in a Member State other than that of any other party"[29] on the date

28. A possibility that seems also to have been accepted recently by the Italian national legislator through the Ministerial Decree (DM) no. 180/2010.

29. In order to identify the place of residence, national law is applied in accordance with provisions of Art. 59 of EC Regulation no. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters. The same Regulation also states how to determine the residence of companies or other legal persons or associations that, pursuant

on which a) the parties agree to use mediation after the dispute has arisen; b) mediation is ordered by a court; c) an obligation to use mediation arises under national law; d) under art. 5, an invitation by a Court to use mediation or attend an information session is made to the parties.

The "voluntary element" does not refer to the typology of mediation, but to its voluntary nature even when national legislation — as in Italy — considers it a condition of admissibility in front of a Court Judge for certain kinds of disputes.

In other words, the Directive regards negotiations in which parties are free to agree or not and, for this reason, they are among the non–adjudicative ADRs and negotiations in which an impartial third party exists, assisting the parties in their decision making processes.

As the Directive requires Member States to ensure a minimum level of harmonization, it expressly applies to cross–border litigation, which mainly affect the EU economic market goals, but it does not prevent the States from enacting laws that cover cross–border as well as purely national mediations.

The Directive also highlights the different objectives to be achieved at Community and national levels. In the first case, indeed, the Directive aims at adding a further element for the effective realization of a unified market and at eliminating barriers to the free movement of services: anyway, cross–border mediations are the subject matter of the Directive.

Actually, one set of rules for national and international mediations is desirable, as this would foster the understanding and practice of mediation and avoid arbitrarily different regulations.

Moreover, in terms of time costing, the use of mediation — both for national and transnational disputes — can solve or reduce the impact of litigation. Not by chance, Italy has been repeatedly penalized for the procedural delays[30] which violate Art. 6.1 of the European Convention for Human Rights.

This is proved by the limited residual space reserved by the d.lgs. no. 28/2010 to cross border mediations which, in comparison with domestic

Art. 60, will be located in the place where they have their headquarters, or central administration, or principal place of business. With regard to a European society, former EC Regulation no. 2001/2157 the possibility of identifying alternative locations fails in presence of art. 7, which establishes that "the registered office of an SE shall be located within the Community, in the same Member State as its head office". In Italy those provisions have been interpreted and applied by Courts in some leading cases, such as Cass., 14 April 2004, n. 7037, in *Ced Cassazione*, 2004; Cass. SS.UU., 5 May 2006, n. 10312, in *Foro it.*, 2006, 1, 3388, note V. Porreca; Cass. SS.UU. 1 February 2010, no. 2224, in *Ced Cassazione*, 2010.

30. Italy is the European country that has the highest number of outstanding disputes — nearly six million cases in the civil sector alone at the time of writing — according to the Report of the CEPEJ, European Judicial Systems — Edition 2012, at *coe.int/t/dghl/cooperation/cepej/evaluation/2012/Rapport_en.pdf*.

mediations, are considered as an exception, and by the inclusion of the joint ownership, whose cross–border profiles are difficult to imagine, among the matters for which mediation is foreseen as a condition of admissibility.

Thirdly, pursuant to Art. 1, par. 2, the Directive is applied in « cross–border disputes to civil and commercial matters except as regards rights and obligations which are not at the parties' disposal under the relevant applicable law ».

Of course, legitimate rights considered such by Member States and frequently related to family and labour law are excluded.

If, for example, the applicable Member State law requires a court decision for the divorce as such but allows for private autonomy in other fields of family law, such as the pecuniary effects of a divorce, only the latter is dealt with in the Directive.

The same provision specifies (but perhaps it is a superfluous clarification) that the Directive does not apply to "revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority".

Coming back to the first "(de–)limitation" arising from the definition of mediation, it is important to stress that no. 10 states that "processes whereby two or more parties to a cross–border dispute attempt by themselves, on a voluntary basis, to reach an amicable agreement on the settlement of their dispute with the assistance of a mediator".

So the EU definition deals only with the concepts of mediation and mediator; unlike the Italian implementation decree, the Directive does not define conciliation.

This is a choice that perhaps, observing the Italian experience, can be explained. Art. 1 of the Decree no. 28/2010 describes mediation as the process of negotiation between the parties and conciliation as the phase, if any, in which the agreement is reached.

This dichotomy is not found, however, in the Community Directive and in the opinion of the writer it is a solution as admirable as the one adopted by national legislation.

Mediation and conciliation, as defined by the national law (d.lgs. no. 28/2010), are two sides of the same coin since they represent two different phases of a case which, however, maintains its unity. Reasoning by analogy, there is no difference between this situation and what happens in the contractual field when negotiations (corresponding to mediation) and the conclusion of the contract (corresponding to conciliation) are separated and yet the regulatory scheme is unitary without being split up from the progressive formation of the case. Similarly, the distinction between mediation and conciliation seems to have a merely classificatory value, without any substantial effect on the applicative level.

6.2. *Relations with the process and with litigations*

Art. 8 of the Directive deals with the relationship between mediation and the judicial trial stating that "Member States shall ensure that parties who choose mediation in an attempt to settle a dispute are not subsequently prevented from initiating judicial proceedings or arbitration in relation to that dispute by the expiry of limitation or prescription periods during the mediation process". In other words the Directive demands the States to ensure that parties who choose mediation to settle a dispute are not subsequently prevented from initiating judicial proceedings or arbitration in relation to that dispute by the expiry of limitation or prescription periods during the mediation process. Thus would consent parties to concentrate on the research for mutually beneficial solutions without the worry of suffering disadvantages from the mediation attempt.

According to art. 5 the Court can invite the parties to use mediation in order to settle the dispute or to attend an information session on the use of mediation. The Directive, in fact, does not implement a compulsory model of mediation, but gives priority to party autonomy and the principle of voluntariness. Yet art. 5 (2) expressly does not keep the Member States from making the use of mediation compulsory, from foreseeing incentives to use mediation and sanctions for not using it. Limits to those incentives and sanctions are connected to the superior and fundamental guarantee of the right to access to justice, which cannot be violated or sullied, in the sense that such measures cannot have in any case the effect of preventing the parties from exercising their right for the access to the judicial legal system[31].

Moreover it is worthy of note that the Italian legislator has provided that the request for mediation prevents the "expiry on one occasion" (Art. 5, par. 6 of d.lgs. no. 28/2010), suggesting that mandatory and voluntary or optional mediations may coexist. To be more explicit, there could be a case in which mediation is a condition of admissibility but the parties do not reach an agreement; thereafter, the court may invite the parties to a second mediation because of the stage of the case and the specificity of the dispute, or the parties themselves could ask the court to suspend the proceedings (for four months) in order to allow them to perform a mediation.

Art. 6 of the Directive also regulates the enforceability of the agreements resulting from mediation. This is a fundamental aspect that had already been widely considered by the two EC Recommendations in 1998 and 2001.

31. Such measures can consist, foe example, in binding Court orders to try mediation which are common in Norway; financial assistance to use mediation, as foreseen in Austria; possible cost sanctions for rejecting mediation without a good reason, implemented in the United Kingdom and in Italy.

Generally speaking, mediation agreements should have a higher chance of compliance compared with Court decisions, as they are based on party autonomy instead of an authoritative third party decision. In fact, parties only settle if they really like and want the solution, which can possibly be more elastic than the judicial ruling in taking into account financial difficulties, ethnic origins, cultural identities and peculiar needs of individuals.

In any case, it could be necessary for the parties to have at their disposal an enforceable agreement, especially in those situations when the obligations agreed on are far in the future or if any party has peculiar financial or emotional security needs.

Also in this case, the generic statements of legislative expressions may be justified by the large discrepancies between national legislations and the well known difficulties to harmonize the procedural law.

The second paragraph of the above cited article, for example, refers comprehensively to the possibility to make the agreement enforceable « by a court or other competent authority in a judgement or decision or in an authentic instrument in accordance with the law of the Member State where the request is made ».

Moreover, the general rules on cross–border and national enforcement can be applied. Therefore, if a mediation agreement leads to a settlement in court, it is enforceable under the national rules and art. 58 Brussels I Regulation[32]; as the agreement is settled totally out of court, it is enforceable both under national rules and art 59 Brussels I.

There is, however, a substantial difference between the Directive and the Italian implementation model.

The faculty to make the agreement enforceable is given by the Directive to the parties or to "one of them with the explicit consent of the others".

Under Italian law, on the contrary, a similar agreement is not necessary: the homologation of the minutes, although it is a possible phase (referring only to the possibility that parties do not fulfil the obligations put forward in the minutes themselves) does not require the consent of the party that, so to say, will have to undergo the executive procedure.

Moreover the recent reform of the Decree has recognized the lawyers, who assist all the parties involved in the mediation procedure, the power to certificate the coherence of the minute to public order and imperative rules, so that it could be considered as homologated by the judge[33].

32. Regulation 2001/44/EC, available at *eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001R0044:en:HTML*, accessed 27.7.2014.

33. Art. 12 d.lgs. 28/2010.

6.3. *The confidentiality of mediation*

Generally speaking, parties' will to disclose and share pieces of information is the keystone for an agreed solution to mediation.

But, at the same time, it can also be that the discussion between the mediator and only one of the parties can be favourable, especially when it offers an opportunity to put on the table sensitive issues, which the mediator may use to suggest hypothetical solutions.

In both cases, plenary mediation session and separate ones, statutory and contractual rules on confidentiality have the function to avoid a fundamental risk connected to the disclosure. In fact, parties are quite often afraid of sharing pieces of information with the others. Their reluctance comes from the fear that such pieces of information can be used against them out of the mediation procedure (in front of the court judge or during an arbitration procedure).

The Directive also devotes a specific article to the confidentiality of mediation processes. It is expected that "neither mediators nor those involved in the administration of the mediation process shall be compelled to give evidence in civil and commercial judicial proceedings or arbitration regarding information arising out of or in connection with a mediation process"[34].

But this shall not apply if the parties want so, for reason of public policy and order, or if the disclosure is functional in order to enforce or give execution to the final agreement.

In this regard a significant difference in the Italian implementing legislation appears clear.

As the Directive does not "preclude Member States from enacting stricter measures to protect the confidentiality of mediation"[35], such measures could be rules that limit the rights of the parties to testify and introduce evidence in court proceedings.

More rigorous provisions are, therefore, admissible, such as the one adopted by Legislative Decree 28/2010, to protect confidentiality.

In fact, Art. 10 of that Decree states that parties cannot use the information coming from mediation during the judicial proceedings regarding the same matter, "except with the consent of the party who stated them or from whom information originated".

In the final part of the first paragraph it is established that on the statements and the information obtained during the mediation process "the testimonial evidence and the decisive oath are not admitted".

Confidentiality, nevertheless, can be ignored for "overriding considera-

34. Art. 7, para. 1, of the EU Directive in comment.

35. Art. 7, para. 4, of the EU Directive in comment.

tions of public policy", when it is necessary "to ensure the protection of the best interests of children or to prevent harm to the physical or psychological integrity of a person" or where "disclosure of the content of the agreement resulting from mediation is necessary in order to implement or enforce the agreement"[36].

Art. 9 regulates information for the public providing that Member States shall facilitate and encourage "the availability to the general public, in particular on the internet, of information on how to contact mediators and organisations providing mediation services".

This is a prediction that will be easily applied in the Italian system, where the mediation organizations and bodies work in a competitive environment and, therefore, should be interested in providing information on their services.

But, generally speaking, mediation actually does not achieve its potential because of a lack of information about its characteristics, requirement and practical implementation also among relevant groups: judges, lawyers, stakeholders and parties.

7. Conclusions

After this brief overview on the main Community actions with regard to access to justice and to alternative dispute resolution systems, it is necessary to reflect on the impact of the ADRs considering the phenomena of globalization from the economic and legal standpoint.

In order to spread a global legal culture, taking into account the opposition to multicultural instances and the identity claims of some religious, cultural and social components, [37] globalization tends to reduce the differences between modern legal systems, and in the European frame, to determine a progressive harmonization and unification of legal models.[38]

The political choices beyond all those actions are oriented in the direction of promoting alternative means of out of court settlements of disputes without devaluing litigation, trying, firstly, to trace a balanced relationship between ADR systems and judicial proceeding and, secondly, to improve institutional cooperation between Member States; thirdly, to facilitate citizens' access to justice.

But these aims can be and have been pursued at national levels with

36. Art. 7, para. 1, points a) and b).

37. E. Colombo (2008); Z. Bauman (1999); R. Robertson (1999).

38. We share here the considerations by F. Cuomo Ulloa (2008), pp. 44–46 and, more generally, C. Geertz (1999); M. Martinello (2000); F. Constant (2000). With regard to legal sciences see N. Irti (2006); S. Cassese (2003); S. Cassese (2009); Y. and G. Dezalay (1996); G. Teubner (1997).

different approaches and strength.

Some Member States have considered the "mediation Directive" of 2008 as an occasion to reflect in a comprehensive way on the regulation concerning conflict resolution, so that States as Germany, France and Italy have promulgated new, comprehensive laws and regulations, which do not follow the limitation of the EU Directive in scope, especially having regard only to cross–border disputes.

Other legal systems, as England and Austria, have limited the legislative reform only to cross–border disputes.

The latter choice determines a dichotomous set of rules, respectively for internal disputes and cross–border ones and demonstrates in itself that national attitude and traditions are far from each other and that the call for harmonisation is not necessarily shared and welcome in such area of law.

Many good intentions — at a European level — are not enough, as "the way to hell is paved with good intentions".

In fact, the harmonizing process certainly concerns models of conflict resolution which are closely linked to our economic and social context, and for this reason inclined to follow the same dynamics and to become global phenomena, but this can probably be done with greater difficulty in the case of judicial models of trial, which are often strongly related to the national culture and legal tradition, a typical form of the exercise of State sovereignty.

Actually, it has to be said that these legal irritants[39] are less critical as long as the forms of conflict resolution based on assent and, therefore, on private autonomy, rescind the application of legal rules in a rigid and exhaustive way, and can better meet the needs of the market and of globalized relationships, responding to more flexible principles of regulation.[40]

In fact, not by chance the dissemination of the Emedi@te questionnaires in Italy and the answers — both by the general public and the professionals addresses — have shown a scepticism and disapproval of legal professionals and potential users versus mediation. There is a strong movement of opposition to ADR's implementation amongst lawyers and other qualified operators (judges, companies, insurances...) and such attitude provokes strong hindrances to its diffusion. On one side, the legal sector was characterized by an over–load in judicial procedures, which runs parallel to the idea that litigation is the unique way to solve a dispute.

The Italian legislation has a relative brief history in mediation experiences. Even if some forms of conciliation were known since the first codification

39. The expression is used improperly, with regard to a (not totally) foreign model (mediation) imposed on a domestic culture, which is not transplanted into another organism rather it works as a fundamental irritation. The father of such expression is G. Teubner (1998).

40. On the specific topic of the interactions between the globalization phenomena and the ADR systems, see K. Van Wezel Stone (2001).

(in 1865) mediation was introduced in the civil procedural law only in the second part of the last century. The initial applications were in labour law, followed by the commercial area and the small claims disputes. The possibility to provoke a settlement with the supervision of the judge was considered in the civil procedure code, but its use remained in the sphere of the discretionary power of the Court and, for this reason, a remote option.

In 2003 the trend moved towards a wide use of mediation, which received a stimulus in the commercial area thanks to the enactment of the Legislative Decree 5/2003. However, the institution remained unknown to the majority of potential users and the number of mediation did not increase. The recent development of mediation has been characterized by an animated discussion about its scope, limits and, above all, compulsoriness. The European Directive on Mediation 2008/52/EC gave new impulse to the growth of the ADR model and it clarified the relationship between mediation and judicial procedure.

The Statute n. 69 of 19 June 2009 and the Decree 28/2010 established a mandatory system which provided for the compulsoriness of mediation for many civil and commercial disputes and an optional recourse to mediation in the residual areas of law; later, others legislative instruments[41] disciplined the practical aspects of mediation such as organism of mediation, requirements for mediators, mediators training and costs. Beside the statutory instruments, private regulations disciplined other aspects of mediation in the form of a code of conduct.

After an intervention of the Constitutional Court[42], which stated the illegitimacy of the mediation compulsoriness[43], the interest of the Italian government in ADR prevailed and the importance of a fair and fast remedy to solve dispute has brought to a new regulation of mediation.

The decree 69 of 21 June 2013, which has reintroduced the mediation procedure as pre–action in the matters listed at the art. 5 of the Decree 28/2010 since 20 September 2013, represents a compromise between opposite points of view; the deflective effect pursued by the legislative power and the interests of the lawyers for an active involvement in the ADR procedure have been the main elements considered.

Actually, generally speaking, the legal culture has been strongly influenced by the winner–looser vision in resolving the divergences and this

41. Decree 180/2010; Ministry of Justice n. 145/2011, both available at *www.giustizia.it/giustizia/it/mg_1_8_1.wp?contentId=SDC470966*, accessed 28.7.2014.

42. Constitutional Court, 6 December 2012 n° 272, available at *www.cortecostituzionale.it/actionSchedaPronuncia.do?anno=2012&numero=272*, accessed 28.7.2014.

43. We do not ignore that the question was debated by the European Court of Justice, which has declared the legitimacy of mandatory mediation (R. Alassini and others [C–317/08 and C–320/08] 18 march 2010).

does not facilitate a settled solution. On the other side, the mandatory mediation attempt was thought, at legislative level, without considering the attorney's role inside mediation procedure.

Lawyers stand opposite the procedure and raise doubts about its legitimacy, as it limits the right for the access to justice[44]. The uncertainty which has characterized the development of the mediation phenomenon, as well as scepticism towards the interference of a third private party (even if impartial) have severely affected the diffusion of mediation and will continue to do so. Furthermore, the number of cases handled by mediators is not relevant yet, as the recourse to this remedy has been interrupted in 2012 after the Constitutional Court's decision.

This datum is confirmed by the Emedi@te questionnaires judges or lawyers (non mediators) respondents, who have recommended or ordered mediation just because mediation is mandatory in some areas of private law disputes and since in the major part of such cases no agreement was reached mainly because of the immovable conduct of the parties.

Moreover neither the judges or lawyers (answering) can propose themselves as mediators and, in appointing a mediator, they think it might have the following characteristics: experience, certification, references, registration, training.

The parties' attitude or — better said — non attitude towards mediation is also proved by official statistic studies carried out by the Ministry of Justice. In particular, the data now available show an increasing number of mediation (due to its compulsoriness), which doesn't find a correspondent growth of settled cases; on the contrary, the mandatory system has produced the aberrant result of a decrease of reached agreements[45].

Those results reflect a general approach to mediation, which is considered as a pre–condition to initiate the litigation and not as a real possibility to solve the dispute, probably for the lack of information about this instrument and its potentiality.

Yet, the absence of networking and dialogue between the institutions (private and public) involved in the promotion and implementation of mediation severely compromises the public acknowledgement of mediation.

These "political" evaluations could partially explain the approach of the interviewed persons and the deficiency of information about mediation showed through the questionnaires.

Not by chance, the majority of interviewed has declared itself not famil-

44. Also formal problems were denounced: the decree 28/2010 exceeds the power delegated by law; in addition the procedure was too expensive and the training of mediators was not sufficiently guaranteed.

45. See the data collected at 31 December 2013 compared with data available at 31 December 2012: *http://webstat.giustizia.it/AreaPubblica/Analisi%20e%20ricerche/Forms/Mediazione.aspx*.

iar with mediation; a great number of persons abstained in the reply and more than half of the interviewed is not involved in mediation procedures.

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