



**ITALY, “THE COUNTRY, WHERE EVERYTHING ENDS IN COURT”.
NEW RULES ON MEDIATION, 2023¹⁻²**

**ITÁLIA, "O PAÍS, ONDE TUDO TERMINA EM TRIBUNAL".
NOVAS REGRAS SOBRE MEDIAÇÃO, 2023**

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ABSTRACT: Mandatory civil and commercial mediation was ruled in Italy⁴ in 2010 and came in force in 2011. In the following eleven years, mediation has developed, but the success ratio (settlement agreements to new mediation proceedings) in 2022 was 15%. Too little. However, in the proceedings, where all parties were present and decided to go on the first information meeting, the success rate in Italy was 47%. Why is it so difficult to “bring” parties to the mediation meeting? New rules: Law 206/2021 and Legislative Decree 149/2022 - The civil justice reform was approved; particular attention is paid to ADRs: mediation, assisted negotiation and arbitration. Publication in the Official Gazette 17.10.2022. Effective from 30.06.2023. Targets: increase of matters subject to mandatory mediation; enhancement of court-appointed mediation; involvement of the Public Administration; more effectiveness of the mediation proceeding thanks to the first mediation meeting effective; the personal presence of the parties expressly provided for; financial penalties and tax incentives; fees; quality of training. For the first time, family mediation is ruled. Risk: the “lawyerization” of mediation.

KEYWORDS: ADR; mediation; mandatory mediation; judicial referral; training; Italy

RESUMO: A mediação civil e comercial obrigatória foi regulamentada na Itália em 2010 e entrou em vigor em 2011. Nos onze anos seguintes, a mediação desenvolveu-se, mas a taxa de sucesso (acordos de resolução para novos procedimentos de mediação) em 2022 foi de 15%. Muito pouco. Contudo, nos procedimentos, em que todas as partes estavam presentes e decidiram ir à primeira reunião de informação, a taxa de sucesso em Itália foi de 47%. Porque é tão difícil “trazer” as partes à reunião de mediação? Novas regras: Lei 206/2021 e Decreto Legislativo 149/2022 - A reforma da justiça civil foi aprovada; é dada especial atenção aos ADR: mediação, negociação assistida e arbitragem. Publicação no Diário da República 17.10.2022. Em vigor a partir de 30.06.2023. Metas: aumento de matérias sujeitas a mediação obrigatória; reforço da mediação judicial; envolvimento da Administração Pública; maior eficácia do processo de mediação graças a primeira reunião de mediação eficaz; a presença pessoal das partes expressamente prevista; as sanções financeiras e os incentivos fiscais; taxas; a qualidade da formação. Pela primeira vez, a mediação familiar é regulamentada. Risco: a “judicialização” da mediação.

PALAVRAS-CHAVE: ADR; mediação; mediação obrigatória; formação; referência judicial; formação; Itália.

1. INTRODUCTION

¹ Artigo recebido em 09/04/2023, sob dispensa de revisão.

² Many thanks to fellow colleagues Dmitry Davdenko (Russia) and David Shimoni (Israel) for comments on early draft of the article. Needless to say, the responsibility for the content is only mine.

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⁴ Italy has an estimated population of 60 million people, GDP 29.071euro per inhabitant. There are 9,401 judges and 242,000 lawyers, almost 2,500,000 new filed civil proceedings a year, 155,122 civil mediation proceedings, 550 mediation providers and 23,386 certified civil mediators.



“From neighbour disputes to civil rights and schools. Controversies, slow politicians, quibbles. Why do we delegate our daily lives to judges, while we continually contest that justice does not work? ... Barking dogs, hanging laundry, snacks, school failures. Inefficacies, however, that draw a picture in which, having disappeared the organs of ‘mediation’, the parties, associations, trade unions, committees, cultural centers, leave the individual citizen with the only ‘mediation’ called upon to decide today: justice”, Pierluigi Battista, 2017. ⁵

In Italy trials last too long (duration time in 2020: first instance courts 419 days; appeal courts 891 days⁶) and, at the beginning of the 2000s, the backlog in civil courts was steadily increasing. Many attempts had been made to simplify the procedures and to let lawyers and judges use voluntary mediation. Without success. As a result, pending civil cases peaked at around six million in 2009.

In 2010, compulsory civil and commercial mediation was introduced into the contemporary Italian legal system and came in force in 2011⁷. This triggered huge criticism and opposition.

Eleven years later, in 2022, there were:

- 2,482,755 new proceedings filed in civil courts;
- 155,122 civil mediation proceedings;
- 23.268 mediated settlement agreements⁸.

⁵ BATTISTA, Pierluigi: *Dalle liti tra vicini di casa fino a diritti civili e scuola. Diverbi, politici lenti, cavilli. Perché delegiamo ai giudici la nostra vita quotidiana, mentre contestiamo continuamente che la giustizia non funziona. ... Cani che abbaiano, panni stesi, merende, bocciature scolastiche. Inezie, che però disegnano un quadro in cui, scomparsi gli organi della «mediazione», i partiti, le associazioni, i sindacati, i comitati, i centri culturali, lasciano il singolo cittadino con l'unica «mediazione» oggi chiamata a decidere: la giustizia* - in *Il Paese* dove tutto finisce in tribunale, *Il Corriere della Sera*, 29.03.2017 - the translation is mine. Available at: https://www.corriere.it/cronache/17_marzo_29/paese-dove-tutto-finisce-tribunale-935c7212-14c5-11e7-a7c3-077037ca4143.shtml.

Doubtful about the possibility of the spread of mediation in Italy, SCATOLERO, Duccio. *Ma il nostro è un Paese per mediatori? Breve storia dei tentativi di diffondere la mediazione in Italia - But is ours a country for mediators? A brief history of attempts to spread mediation in Italy*. Pisa University Press, 2013.

⁶ ITALIAN MINISTRY OF JUSTICE. *Movimento e durata dei procedimenti civili, anni 2014/2020*. Available at: <https://webstat.giustizia.it/Analisi%20e%20ricerche/Procedimenti%20civili%202014-2020.pdf>.

⁷ NOAKES, Adam. *Mandatory Early Mediation: a vision for civil lawsuit worldwide*. *Ohio State Journal on Dispute Resolution*, v. 36:3, 2020, p. 409. Available at: https://kb.osu.edu/bitstream/handle/1811/101673/1/OSJDR_V36N3_409.pdf.

⁸ Statistics based on data by ITALIAN MINISTRY OF JUSTICE. *Statistiche sulla mediazione, 2022*. Available at: <https://webstat.giustizia.it/StatisticheGiudiziarie/Mediazione%20Civile.aspx>.



In the 2011 / 2022 period there has been

- a decrease in civil court litigation (- 5% per year), because of the economic crisis and the pandemia;

- a strong increase in mediation proceedings (+14% per year) and

- a strong increase in mediated settlement agreements (+12% per year).

And according to the European Parliament, “*Italy ... uses mediation at a rate six times higher than the rest of Europe*”.⁹

But, in 2021, the ratio of

- settlement agreements to new mediation proceedings (success ratio) was 15 %;

- settlement agreements to new proceedings filed in civil courts was 0,9%.

Still too little.

However, in the proceedings, where all parties were present and decided to go to mediation, following the first mandatory information meeting, the success rate in Italy was 47%. It is difficult to “bring” parties to the mediation meeting? It is a matter of social and economic mindset (Italians like tradition, do not appreciate innovations too much) and, above all, knowledge. Since the 1930s, in Italy, mediation was no longer taught in universities for over seventy years¹⁰.

To increase the use of mediation and to overcome the inefficiencies that occurred from 2011 to 2021, Law 26.11.2021, n.206 was approved and, on 28.07.2022, the Italian Council of Ministers issued the implementing decrees of the civil justice reform, in which particular attention is paid to ADRs: mediation, assisted negotiation and arbitration (see *infra*, §5).

⁹ EU Parliament, Resolution P8_TA (2017)032, Implementation of the Mediation Directive, 12.9.2017 (2018/C 337/01) A. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017IP0321&rid=4>.

Giovanni Matteucci, *European Court of Justice, in case C-75/16, judgment of 14 June 2017* : - the obligation to mediate is compatible with the access to justice provided that it complies with the principles already ruled by the Italian law; - the presence of the lawyer is not mandatory in consumer vs. professional disputes; - the consumer may refuse to participate in a mediation procedure only for a justified reason, provided that he can retire after the first meeting with the mediator (as already required by the Italian law) - in Italian Mediation Law is all right’, the European Court of Justice said! *Academia.edu*, 24.06.2017. Available at: https://www.academia.edu/33626206/_Italian_Mediation_Law_is_all_right_the_European_Court_of_Justice_said_

¹⁰ COSI, Giovanni. *Interessi, diritti, potere (gestione dei conflitti e mediazione)*. *ADRMaremma*, 2017. Available at: <http://www.adrmaremma.it/cosi01.pdf>.



Once again, criticism: the Italian mediation model is, sadly, increasingly distant from the European one,¹¹ being full of deadlines, prescriptions, formalisms and sanctions. More and more pre-judgement and less ADR! What can be the forecast?

2. A BIT OF HISTORY

The Italian State was founded in 1861. In the first Civil Procedure Code (1865), the heading of the seven introductory articles was “Conciliation”. According to a law issued in the same year, police officers must first of all reconcile conflicts among private citizens. In 1880, the Justices of Peace (“*Giudici di Pace*”) issued 70% of all judgments delivered in Italy. According to Law no. 261/1892, the judge “*in order to reach a conciliation, could call for the single party in a private hearing*” (an *ante litteram* caucus).

At the beginning of the XX century, the Italian bankruptcy law (n.197/1903) also provided for negotiation agreements managed during the debtor crisis procedure, under the control of the judge, who, in small claims, could also act as a mediator (“*amichevole compositore*”).

The totalitarian regime carried out during the Fascist period (1922 – 1943) disliked conflict resolutions reached by private citizens; they must be managed by a state body, the judges, through sentences. Since the 1930s, in Italy, mediation gradually lost its importance and it was no longer taught in universities for over seventy years.

¹¹ Wrong statement – EU Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008L0052&from=EN> on certain aspects of mediation in civil and commercial matters

Article 5 - Recourse to mediation

1. *Member States shall encourage, by any means which they appropriate and having regard to all the circumstances of the case, invite the parties to use mediation in order to settle the dispute. The court may also invite the parties to attend an information session on the use of mediation if such sessions are held and are easily available.*

2. *This Directive is without prejudice to national legislation making the use of mediation compulsory or subject to incentives or sanctions, whether before or after judicial proceedings have started, provided that such legislation does not prevent the parties from exercising their right of access to the judicial system.* EU Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008L0052&from=EN>.



Mediation was (and still is) part of the Italian legal tradition, but it was forgotten¹².

In the early 2000s, the backlog in judicial civil cases increased continuously, reaching the number of almost six million at the end of 2009.¹³ In 1992, all the Chamber of Commerce were required to set up Arbitration and Conciliation Chambers (Law 580/1992); extremely modest results, moreover with huge differences from district to district.

Justices of the peace, by law, could (and can) attempt conciliations. There are no reports of significant results.

Legislative decree 5/2003 ruled mediation in the fields of corporate, banking, credit and finance, areas with a high number of disputes. Nobody (more precisely, no lawyer) used the procedure, and when I asked why, the lawyers answered: “*Because it was not compulsory*”!

5,826,440 pending civil litigation cases in courts at 31 December 2009 (two-thirds of which had a value of less than euro 3,000). In 2010, D.Lgs. (Legislative decree) 28/2010 and D.M. (Ministerial decree) 180/2010 introduced the compulsory civil and commercial mediation into the contemporary Italian legal system. Furious opposition by lawyers (a matter of culture and fear of Alarming Drops in Revenues) and benign neglect by judges (a matter of culture). The mandatory mediation came in force in 2011, was revoked in October 2012 and reintroduced in September 2013.

3. CURRENT SITUATION

¹² MATTEUCCI Giovanni. *Mediazione civile in Italia, excursus storico*, 2020. Academia.edu, 2020. Available at: https://www.academia.edu/43988050/Mediazione_civile_in_Italia_excursus_storico_2020.

SWANSON, Donald L. *A History of Mediation in Italy (including bankruptcy)*. *Mediatbankry*, 2021. Available at: <https://mediatbankry.com/2021/09/14/a-history-of-mediation-in-italy-both-ancient-including-bankruptcy-and-recent/>.

¹³ Outside the judicial system, in Italy, a first shy attempt to re-introduce conciliation/mediation into economic relationships has been made with the reform of the Chambers of Commerce in 1993 (L. 29.12.1993, n.580, art.2 c.4): each of them had to establish an Arbitration and Conciliation Chamber, with the task of providing the service relating to disputes among businesses and consumers. Each Chamber, anyway, was autonomous in managing the service and the first common regulation was adopted only in 2005. Therefore the effectiveness was not uniform throughout the country and users could not find anywhere a well-known homogeneous and qualified service. The mediation proceedings managed by the Italian Chambers of Commerce were 112 in 1997, 1,138 in 2002, 14,051 in 2007, 20,246 in 2008, 18,642 in 2009 (Source, Unioncamere); very little compared to the 5,826,440 pending civil proceeding on 31.12.2009.



In Italy, the conflicts subjected to mandatory mediation are about 9% of all the conflicts filed in the Italian civil courts; they had a 10% increase in 2013, when mandatory mediation was revoked, and a 15% decrease in 2014, when it was reinstated. These few data are sufficient to sum up the utility of compulsory civil mediation¹⁴.

Mediation can be voluntary, compulsory by law, delegated by a judge and provided by contract¹⁵.

D.Lgs. 28/2010 and D.M 180/2010 regulated mandatory mediation in the following 11 civil matters, most of them identified among those that during the years had recorded higher litigation rates: property (*diritti reali*), lease (*locazione*), insurance contracts (*contratti assicurativi*), partition (*divisione*), wills and inheritance (*successioni ereditarie*), medical malpractice damages (*risarcimento danni da responsabilità medica*), insurance, banking and financial contracts (*contratti assicurativi, bancari e finanziari*), loans (*comodato*), business rents (*affitto di azienda*), libel (*risarcimento da diffamazione a mezzo stampa*), family covenants and agreements (*patti di famiglia*).

In 2020 all economic disputes related to the Covid 19-pandemic were introduced too.

Interim and preventive procedures (injunction proceedings, notice to quit, possessory proceedings, civil action inside the criminal proceedings, etc.) were exempted from the mandatory attempt at mediation.

¹⁴ Leonardo D'Urso, *In matters listed in D.Lgs. 28/2010, art. 5, the new filings in the courts decreased by 40% from 2013 to 2018 (except in banking matters), compared with an average decrease in overall litigation of about 25%. The participation in the first mediation meeting had a strong above-average deflationary effect* - in L'ambito della mediazione andrebbe ampliato, non ridotto. MondoADR 28.11.2019. Available at: <https://www.mondoadr.it/articoli/lambito-della-mediazione-andrebbe-ampliato-non-ridotto.html>. The translation is mine

¹⁵ There are several ADR systems in Italy:

ITALIAN MINISTRY OF JUSTICE. Rapporto statistico sulla diffusione della giustizia alternativa in Italia (dati fino al 2008), 2009. Available at: https://www.giustizia.it/resources/cms/documents/DGS_Rapporto_sulla_Giustizia_alternativa_in_Italia_ADR_v_1.2.pdf.

ISDACI. Rapporto sulla diffusione della giustizia alternativa in Italia, 2017, 2019. Available at: https://www.academia.edu/42419793/RAPPORTO_SULLA_DIFFUSIONE_DELLA_GIUSTIZIA_ALTERNATIVA_IN_ITALIA.



Compulsory mediation procedures (by law or court-ordered) can only be managed by mediators and mediation bodies accredited by the Ministry of justice. The providers' statutes must be authorised by the Ministry. Mediation providers can be public or private¹⁶.

¹⁶ MARINARI, Marcello (former Chairman of Court). Civil and commercial mediation in Italy, The implementation of the 2008/52/EU Directive. *Mediacion es Justicia*, Gemme Espana, 5/6.6.2014. Available at: <https://mediacionesjusticia.files.wordpress.com/2015/07/mediation-road-of-peace-for-justice-in-europe.pdf>.
D'URSO, Leonardo; CANEZZA, Romina. The Italian Mediation Law on Civil and Commercial Disputes. *MondoADR*, 2017. Available at: www.mondoadr.it/wp-content/uploads/The-Italian-Mediation-Law.pdf.
MATTEUCCI Giovanni. Civil mediation, how to kick-start it; the Italian experience. Training, compulsory, tax relieves, control. *Revista de EMERJ Escola da Magistratura do Estado do Rio de Janeiro*, v. 19, n. 4, set. dez., 2017. Available at: https://www.emerj.tjrj.jus.br/revistaemerj_online/edicoes/revista19_n4/revista19_n4_78.pdf.
SILVESTRI, Elisabetta Too much of a good thing: Alternative Dispute Resolution in Italy. *Academia.edu*, 2017. Available at: https://www.academia.edu/84369124/Too_much_of_a_good_thing_Alternative_Dispute_Resolution_in_Italy.
D'URSO, Leonardo. Italy's 'Required Initial Mediation Session? Bridging the Gap Between Mandatory and Voluntary Mediation. *ADRCenter*, 2018. Available at: <https://www.adrcenterglobal.com/2020/04/28/article-italys-required-initial-mediation-session-bridging-the-gap-between-mandatory-and-voluntary-mediation/>.
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ROMUALDI, Giuliana (University of Siena). Problem-Solving Justice and Alternative Dispute Resolution in the Italian Legal Context (January 29, 2019). *Utrecht Law Review*, v. 14, n. 3, p. 52-63, December 2018. Available at: <https://ssrn.com/abstract=3334442>.
MARINARO, Marco. Ministerial Panel on Extrajudicial Proceedings in Civil and Commercial Matters. For a sustainable and co-existential justice. The Italian Manifesto of Complementary Justice. *Mediate.com*, 2020. Available at: <https://www.mediate.com/articles/marinaro-manifesto.cfm>.
CACCIALANZA, Manuela; BOVO, Loris; VILLANI, Alessandro. An interview with Linklaters discussing dispute resolution in Italy. in *Lexology*, 2020. Available at: https://www.lexology.com/library/detail.aspx?g=a85251d0-3b64-4bae-bfa8-75141c974efa&utm_source=Lexology+Daily+Newsfeed&utm_medium=HTML+email&utm_campaign=Lexology+subscriber+daily+feed&utm_content=Lexology+Daily+Newsfeed+2020-09-30&utm_term=.
COMINELLI, Luigi; JACQMIN, Arianna (University of Milan). Civil and commercial mediation In Italy: Lights and Shadows. *Revista de EMERJ Escola da Magistratura do Estado do Rio De Janeiro*, v. 22, n. 1, 2020. Available at: https://www.emerj.tjrj.jus.br/revistaemerj_online/edicoes/revista_v22_n1/revista_v22_n1_11.pdf.
POZZOLI, Galileo; SABELLI, Daniela; TRULLY, Ian; VISMARA, Fabrizio; LIBERATORE, Francesco. Italian Parliament Passes Reform of the Civil Justice System. *Lexology*, 8.12.2021. Available at: https://www.lexology.com/library/detail.aspx?g=60f13738-6a19-4c3e-b2b4-8aff6d5df1951&utm_source=Lexology+Daily+Newsfeed&utm_medium=HTML+email+-+Body+-+General+section&utm_campaign=Lexology+subscriber+daily+feed&utm_content=Lexology+Daily+Newsfeed+2021-12-08&utm_term=.
ANTICH, Federico; FRANCESE, Maria Francesca. The Italian model on mediation: an update. *Ibanet*, International Bar Association, 20.12.2021. Available at: <https://www.ibanet.org/the-italian-model-of-mediation-an-update>.
DERINGER Freshfields Bruckhaus. Italy: Parliament passes civil justice reform bill. *Lexology*, 13.1.2022. Available at: https://www.lexology.com/library/detail.aspx?g=20e086d5-bf76-4248-8b5f-db9584013cf2&utm_source=Lexology+Daily+Newsfeed&utm_medium=HTML+email&utm_campaign=Lexology+subscriber+daily+feed&utm_content=Lexology+Daily+Newsfeed+2022-01-13&utm_term=.
D'URSO, Leonardo. Mediation legislation in Italy. *Tijdschrift Conflicthantering*, number 3, 2022. *Linkedin*, 5.9.2022. Available at: [https://www.linkedin.com/feed/update/urn:li:activity:6972798445203931136/?commentUrn=urn%3Ali%3Acomment%3A\(ugcPost%3A6972798444566384640%2C6972852038346891264\)&dashCommentUrn=urn%3Ali%3Afsd_comment%3A\(6972852038346891264%2Curn%3Ali%3AugcPost%3A6972798444566384640\)](https://www.linkedin.com/feed/update/urn:li:activity:6972798445203931136/?commentUrn=urn%3Ali%3Acomment%3A(ugcPost%3A6972798444566384640%2C6972852038346891264)&dashCommentUrn=urn%3Ali%3Afsd_comment%3A(6972852038346891264%2Curn%3Ali%3AugcPost%3A6972798444566384640)).



Compulsory mediation proceedings require the lawyers' assistance to the parties and, if the mediation report is signed by the parties, the lawyers and the mediator, it becomes an enforceable title for compulsory expropriation, satisfaction and release, the fulfilment of obligations and the registration of a judicial mortgage.

Voluntary mediation agreements can be enforced under the control of the court.

In cross border disputes, referred to in the EU Directive 2008/52/EU, Article 2,¹⁷ the mediation report is approved by the court in whose district the agreement must be executed. The same principle according to the Italian Law, D.Lgs. 28/2010, art. 12¹⁸.

There are no mediation institutes owned by the Government and there are no mediators annexed to courts; in many towns, the mediation provider managed by the local bar association is located in rooms inside the court.

In order to be an official mediator it is necessary:

- to hold a BA degree in any subject or to be a member of a professional association (in the last case, mediators are only allowed to manage proceedings related to their professional competences);
- to complete a 50 hours training course;

DANOVI, Filippo (interview to former Deputy Head of the Legislative Office of the Ministry of Justice). *Al via la riforma della mediazione Blog Mediazione*, 8.3.2023. Available at: <https://blogmediazione.com/2023/03/08/al-via-la-riforma-della-mediazione/>.

IMPERIALE Marco. *The Italian Mediation Reform: Elements and Perspectives*. Mediate.com 23.3.2027. Available at: <https://mediate.com/the-italian-mediation-reform-elements-and-perspectives/>.

TEDOLDI, Alberto. *Le ADR nella riforma della giustizia civile (process is dead, long live negotiation and mediation!)*. *Questione giustizia*, 27.3.2023. Available at: <https://www.questionegiustizia.it/data/doc/3495/a-m-tedoldi-1.pdf>.

¹⁷ EU Directive 2008/52/EU, Article 2 - Cross-border disputes

1. *For the purposes of this Directive 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 on the date 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; or*
- (d) *for the purposes of Article 5 an invitation is made to the parties.*

2. *Notwithstanding paragraph 1, for the purposes of Articles 7 and 8 a cross-border dispute shall also be one in which judicial proceedings or arbitration following mediation between the parties are initiated in a Member State other than that in which the parties were domiciled or habitually resident on the date referred to in paragraph 1(a), (b) or (c).*

3. *For the purposes of paragraphs 1 and 2, domicile shall be determined in accordance with Articles 59 and 60 of Regulation (EC) No 44/2001.*

¹⁸ D.Lgs. 28/2010 - Art. 12 – Efficacia esecutiva ed esecuzione - ... “*Nelle controversie transfrontaliere, di cui all'articolo 2 della direttiva 2008/52/CE del Parlamento europeo e del Consiglio, del 21 maggio 2008, il verbale è omologato dal presidente del tribunale nel cui circondario l'accordo deve avere esecuzione*”.



- to attend an 18-hour advanced training course every two years and to be present in at least 20 procedures, managed by a professional mediator¹⁹.

In my opinion, a 50-hours basic course is sufficient to **IN**-form about mediation, but not to properly train mediators²⁰.

According to the law, if a specific expertise is necessary, the parties and the mediator can ask for a technical consultant. And, in order to save time and money, if the parties fail to reach an agreement, they may authorize the expert's statement to be used in the following judicial proceeding.

¹⁹ The training model of mediators is specified by D.M. 180/2010, Art. 18: *... a training program, its total duration not less than 50 hours, divided into theoretical and practical courses, with a maximum of thirty participant per course, including simulated sessions attended by the students, and a final evaluation lasting a minimum of four hours separately articulated for theory and practice; the theoretical and practical course should relate to the following matters: national, community and international mediation and conciliation, methodology of facilitative and adjudicative negotiation and mediation and related techniques of conflict management and communicative interaction, also with reference to mediation referred to by the court, and validity and effectiveness of mediation and conciliation contract clauses, the structure, content and effects of the application for mediation and conciliation agreement, and the duties and responsibility of the Mediator; ... continuing education training, of a total duration of not less than 18 hours every two years, structured in advanced theoretical courses, including simulated sessions attended by the students or, alternatively, of mediation sessions; ...*

²⁰ Patrizia Macciocchi - In 2012, according to the head of the Italian Ministry of justice's legislative office: *When this adventure began, the fear was that we would not have enough coverage on the ground. In the wake of this, we dictated rules that are now applied to a different reality; this can create problems for the system* - in *Autoselezione per la qualità dei mediatori*, Il Sole 24 Ore, 21.03.2012; *Norme e tributi*, page 26 - translation is mine. Carlo Ricciardi - *Some time ago, during a round table discussion on training, it was argued, in order to justify the high number of mediators leaving basic courses, that training had been a necessity. In my turn to speak I argued that, rather than a necessity, it had been a business.*

... On the one hand, words were spent calling for quality training ... and on the other hand we witnessed the descent of institutions and trainers, who were not always able to guarantee an acceptable level of quality. The system has not created the 'de facto' conditions for a homogeneous training movement nor for guaranteeing quality trainers - in *Formare alla mediazione*. Blogmediazione, Milan Chamber of Commerce, 2014. Available at: <https://blogmediazione.com/2014/06/21/formare-alla-mediazione/>.

ITALIAN MINISTRY OF JUSTICE. Between 2014 and 2016, the Ministry of Justice carried out investigations: The inspections carried out -amounting to 125- led to the cancellation or suspension of almost half of the mediation providers – in, *Direzione Generale della Giustizia civile: Commissione di studio per l'elaborazione di ipotesi di organica disciplina e riforma degli strumenti di degiurisdizionalizzazione, con particolare riguardo alla mediazione, alla negoziazione assistita e all'arbitrato* (Pres. Alpa) page 151, 2017. Available at: <http://www.adrmaremma.it/norm76.pdf>.

Greg Bond : *... I have always been sceptical about one-week forty-hour mediation courses leading to accreditation and people being able to say they are qualified mediators. ... I was proud to have to do two hundred hours of mediation training, then several mediations, and coaching on those mediations before I could become accredited by the German Mediation Association (Bundesverband Mediation). I was and am convinced that this is a sign of quality"* – On the benefit of mediation training, and on getting things wrong. An interview with Ewa Chye. *Kluwer Mediation Blog*, 3.2019. Available at: <http://mediationblog.kluwerarbitration.com/2019/03/24/on-the-benefits-of-mediation-training-and-on-getting-things-wrong-an-interview-with-eva-chye/>.



In Italy, people generally know little about ADRs. There is no real efficient promotion of mediation. Tax benefits, provided for by the law, have been only partially implemented (because of the public debt).

In the universities, there are no official training programmes on ADRs, at a national level, but initiatives by individual professors, which are increasing.

Judges can:

- order litigants to undergo mediation in all subjects related to alienable civil rights (delegated mediation);

- issue a solution proposal based on equity in all subjects related to alienable civil rights, which the parties were free to accept or refuse (not binding arbitration).

In many cases the judges blend these two options: a solution proposal and, if rejected, an order to mandatory mediation (arb-then-med).

As mentioned above, initially the judiciary regarded mediation with distrust; at a very slow pace they began to realise its importance. Moreover, if they resolve disputes entrusted to them by conciliatory methods, they work “pro-bono”; positive results achieved are not taken into account in evaluations for career advancement.

4. THE PROCEDURE

If a conflicting party wants (or is obliged) to start a mediation, he is required to file the application to a mediation provider, located in the same district as the competent court that would have been able to decide the matter.

The mediation body appoints the professional according to his area of expertise and experience. Only if all parties request the same mediator, the body must take account of their request.

The provider communicates the invitation to the other party, which does not always accept it; and, if it does, it is often only to communicate that it is not interested in getting on. A waste of time. This practice, however, is very slowly declining.

Each party to the dispute must be assisted by a lawyer.



The first meeting has to be scheduled no later than 30 days after the request is filed. The overall proceeding must last no longer than three months, unless the parties, and the mediator, agree on a longer duration.

The proceeding is informal and flexible. Confidentiality is paramount.

There is a first information meeting, during which the neutral explains the main features of the proceedings and asks the parties if they want to start the mediation. Parties can OPT-OUT for justified reason (“*per giustificato motivo*”, D.Lgs. 28/2010, art. 8, 4.bis). If they “opt-in”, the voluntary mediation starts.

Many times the invited party waives to start the proceeding without a significant reason. In addition, too often the party(ies) is (are) not present themselves, but are represented by a lawyer, thus deeply undermining the effectiveness of mediation. Judges try to oppose both these flaws.

If the parties do not settle, an agreement might be proposed by the mediator, by his own initiative or requested by both the parties. The mediator delivers the text of the agreement to the mediation provider secretariat. Parties must agree or refuse the proposed agreement by seven days.

The mediator forms the minutes of the procedure, in which he specifies if parties shared or not the proposals, if they failed to participate at the meetings or if they reached an agreement.

5. NEW RULES ON THE WAY²¹

As mentioned above, the 2011/2022 period, mediation procedures and mediated settlement agreements increased. But, in 2022, the ratio of settlement agreements to new mediation proceedings was 15 % and the ratio of settlement agreements to new proceedings filed in civil courts 0,9%. Too little. But, in the proceeding, where all parties were present and

²¹ D’URSO, Leonardo. Mediation legislation in Italy. *Tijdschrift Conflicthantering*, number 3, 2022. LinkedIn, 5.9.2022. Available at: [https://www.linkedin.com/feed/update/urn:li:activity:6972798445203931136/?commentUrn=urn%3Ali%3Acomment%3A\(ugcPost%3A6972798444566384640%2C6972852038346891264\)&dashCommentUrn=urn%3Ali%3Afsd_comment%3A\(6972852038346891264%2Curn%3Ali%3AugcPost%3A6972798444566384640\)](https://www.linkedin.com/feed/update/urn:li:activity:6972798445203931136/?commentUrn=urn%3Ali%3Acomment%3A(ugcPost%3A6972798444566384640%2C6972852038346891264)&dashCommentUrn=urn%3Ali%3Afsd_comment%3A(6972852038346891264%2Curn%3Ali%3AugcPost%3A6972798444566384640)).



decided to go on the first information meeting, the success rate, in 2022, was 47%. The Italian “mediation paradox”: not many parties agree to mediate disputes, but if they do, a good percentage reaches settlement.

Moreover, according to CEPEJ, “8th Evaluation Report on European Judicial Systems”, (the reference year for the evaluation was 2018), the Italian justice system works very slowly compared to other Member States ²².

Under the NRRP (National Recovery and Resilience Plan) 2020²³, as part of the European Next Generation (NGEU) program, the Italian Government undertook the commitment “to reduce the average length of civil proceedings by more than 40 per cent” (page 99) and the “backlog of cases in the ordinary courts of first instance”, reducing by 65 per cent the number of pending cases compared to 2019 (by mid-2024). This was one of the commitments with the EU in order to receive the necessary funding to restart the country and its economy after the Covid-19 pandemic.

On March 12, 2021 the Italian government set up the “Commission for the elaboration of suggestions on civil proceedings and alternative dispute resolution procedures”, chaired by Prof. Francesco Paolo Luiso, which delivered his report on 24.5.2021²⁴.

On 26.11.2021, the Italian Parliament passed Law No. 206/2021, delegating the Government to adopt one or more decrees to “simplify, expedite and rationalize civil proceedings”²⁵. Substantial attention was given to ADRs: arbitration, assisted negotiation

²² CEPEJ. *8th Evaluation Report on European Judicial Systems*, 2020. (the reference year for the evaluation was 2018). Available at: <https://eucrim.eu/news/cepej-8th-evaluation-report-on-european-judicial-systems/>.

²³ NRRP (National Recovery and Resilience Plan) 2020. Available at: <https://italiadomani.gov.it/en/home.html>.

²⁴ ITALIAN MINISTRY OF JUSTICE. *Commission for the elaboration of suggestions on civil proceedings and alternative dispute resolution procedures*”, chaired by Prof. Francesco Paolo Luiso, 2021. Available at: https://www.giustizia.it/cmsresources/cms/documents/commissione_LUIISO_relazione_finale_24mag21.pdf.

MATTEUCCI Giovanni. *Adr and civil proceeding in Italy 2021, potential developments*. Commissione Luiso. *Revista Electronica de Direito Processual REDP*; UERJ Universidade do Estado do Rio de Janeiro, v. 22, n. 3, 2021. Available at: <https://www.e-publicacoes.uerj.br/index.php/redp/issue/view/2593>.

²⁵ Legge 26.11.2021, n. 206 - *Delega al Governo per l'efficienza del processo civile e per la revisione della disciplina degli strumenti di risoluzione alternativa delle controversie e misure urgenti di razionalizzazione dei procedimenti in materia di diritti delle persone e delle famiglie nonché in materia di esecuzione forzata*. (21G00229) -

The bill was published in the Official Gazette on 9.12.2021 and entered into force on 24.12.2021.

<https://www.gazzettaufficiale.it/eli/gu/2021/12/09/292/sg/pdf>

The civil justice reform is part of a comprehensive overhaul of the judicial system: criminal justice (Law 27.9.2021, n. 134), tax justice, public administration and the judiciary bodies.



(settlement negotiations assisted by lawyers) and mediation. It also aims at reforming enforcement proceedings and the Trial Office (“Ufficio per il Processo”).

D.M. 14.01.2022 appointed the working groups for civil justice reform²⁶.

To enact the bill 206/2021 (26.11.2021), the Council of Ministers approved two delegated decrees on 28.07.2022²⁷, later on under parliamentary scrutiny²⁸. Finally, at last, D.Lgs. (Legislative Decree) 149/2022, in Official Gazette n.243, 17.10.2022. Entry in force 18.10.2022. Effective from 30.06.2023²⁹.

Main changes are focused on:

Increase of the subjects covered by mandatory mediation:

To date, according to D.Lgs. 28/2010 – as already underlined-, the topics covered by mandatory mediation are: condominium (*condominio*), property (*diritti reali*), partition

²⁶ MINISTERO DELLA GIUSTIZIA. Decreto 14 gennaio 2022 - Costituzione presso l'Ufficio legislativo del Ministero della giustizia di sette gruppi di lavoro per l'elaborazione degli schemi di decreto legislativo in materia civile. Available at:

https://www.giustizia.it/giustizia/it/mg_1_8_1.page?contentId=SDC362413&previousPage=mg_1_36.

²⁷ <https://www.governo.it/it/articolo/comunicato-stampa-del-consiglio-dei-ministri-n-91/20341>

²⁸ Riforma processo civile a ADR - Atti Parlamentari - XVIII - Camera dei Deputati - Atto n.407 – 02.08.2022
<http://documenti.camera.it/apps/nuovosito/attigoverno/Schedalavori/getTesto.ashx?file=0407.pdf&leg=XVIII#pagemode=none>

UFFICIO del processo - Atti Parlamentari - XVIII - Camera dei Deputati – Atto n. 406 – 02.08.2022. Available at:

<http://documenti.camera.it/apps/nuovosito/attigoverno/Schedalavori/getTesto.ashx?file=0406.pdf&leg=XVIII#pagemode=none>.

Senato della Repubblica e Camera dei Deputati, Dossier A.G. 407, *Riforma del processo civile e revisione della disciplina degli strumenti di risoluzione alternativa delle controversie*, 06.09.2022

<https://www.senato.it/service/PDF/PDFServer/BGT/01360250.pdf>

²⁹ Decreto Legislativo 10 ottobre 2022, n. 149 - Attuazione della legge 26 novembre 2021, n. 206, recante delega al Governo per l'efficienza del processo civile e per la revisione della disciplina degli strumenti di risoluzione alternativa delle controversie e misure urgenti di razionalizzazione dei procedimenti in materia di diritti delle persone e delle famiglie nonché in materia di esecuzione forzata. (22G00158) – G.U. Serie Generale n.243 del 17.10.2022, S.O.

https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2022-10-17&atto.codiceRedazionale=22G00158&elenco30giorni=false

ITALIAN MINISTRY OF JUSTICE. Comunicato, “Relazione illustrativa al decreto legislativo 10 ottobre 2022, n. 149: «Attuazione della legge 26 novembre 2021, n. 206, recante delega al Governo per l'efficienza del processo civile e per la revisione della disciplina degli strumenti di risoluzione alternativa delle controversie e misure urgenti di razionalizzazione dei procedimenti in materia di diritti delle persone e delle famiglie nonché in materia di esecuzione forzata». (22A06017) - in GU Serie Generale n.245 del 19.10.2022 – Suppl. Straordinario n.5 - 19.10.2022.

Available

at:

https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2022-10-19&atto.codiceRedazionale=22A06017&elenco30giorni=false.

Some regulations effective from 28.02.2023.



(*divisione*), wills and inheritance (*successioni ereditarie*), family covenants and agreements (*patti di famiglia*), lease (*locazione*), loans (*comodato*), business rents (*affitto di azienda*), medical malpractice damages (*risarcimento del danno da responsabilità medica e sanitaria*), libel (*risarcimento danni da diffamazione a mezzo della stampa o altro mezzo di pubblicità*), insurance, banking and financial contracts (*contratti assicurativi, bancari e finanziari*). In 2020 all economic disputes related to the Covid 19-pandemic were added.

According to Law 206/2021, mandatory mediation will be applied also to: joint ventures (*contratti di associazione in partecipazione*), consortium (*consorzio*), franchising, service agreements (*contratto di opera*), network agreements (*contratto di rete*), supply agreements (*di somministrazione*), personal partnerships (*società di persone*), subcontracting (*subfornitura*). All relationships that usually last over time.

Anyway, in order to fulfil the condition of judicial proceeding, the parties may also revert, for the matters and within the limits regulated therein, to the procedures provided by the ABF - Arbitro Bancario Finanziario (banking controversies), ACF - Arbitro per le Controversie Finanziarie (financial controversies), Arbitro Controversie Assicurative (insurance controversies), utility disputes (phones, electricity, gas – Corecom, Arera)

Mediation provided by a contract or by an institution statute is mandatory condition for judicial proceeding, as well.

Enhancement of court-appointed mediation

When mandatory mediation was introduced, the vast majority of judges considered it to be a “Child of a lesser God”. However, the judiciary at a very slow pace began to realize the usefulness of the institute. And it is likely that mediation in Italy strengthened, thanks to the judges. According to data issued by the Italian Ministry of justice, mediation triggered by the judiciary amounted to 2% of the total in 2011; in 2022 this figure rose to 17%. But there is plenty of room to grow³⁰.

³⁰ MATTEUCCI Giovanni. Mediation and judiciary in Italy 2019. *Asia Pacific Mediation Journal*, 2019 /2, p. 65. Available at: <http://mediate.or.kr/base/data/APMJ.php>.

Massimo Moriconi, *Non solo sentenze*, Il pensiero giuridico, 2020.

SCUOLA SUPERIORE DELLA MAGISTRATURA. I metodi di risoluzione alternativa delle controversie: Focus su mediazione, negoziazione assistita e conciliazione giudiziale. *Quaderni n.7*, March 2022. Available at: <https://www.scuolamagistratura.it/quaderni>.



According to current legislation, the magistrate, who settles a lawsuit in his role through a non-judicial solution, it is as if he/she did not work. The assessment of his/her productivity is based on the number of issued judgments; if he/she spends time to analyze the “mediability” of a dispute, then makes a proposal for a solution, the parties reach an agreement and do not revert to court, the time he/she devoted to that case does not count for assessing his/her professionalism³¹. According to the new law, the expertise of judges will be evaluated also on the basis of disputes settled by mediation and, above all, the magistrate must attend mediation training organized by the Higher School of the Judiciary (knowledge is the basis for any activity!). The “mediability” of a court disputes will be assessed also through a new branch in the courts, the Trial office (“Ufficio per il processo”)³².

Involvement of the Public Administration

Officials, representing the public administration, generally do not attend mediation proceedings for fear of accounting liability; the new regulations will limit this liability to case of fraudulent intent; this will be a huge change in mindset.

Further innovations include:

Length of the proceeding - The procedure must last three months; an additional three-month period may be requested by the parties, with the agreement by the mediator. Nothing is

³¹ MORICONI, Massimo. Mediazione e proposta del giudice: le problematiche relative alla acquisizione, rilevazione e valutazione dei dati relativi. *Judicium*, 03.11.2013. Available at: <https://www.judicium.it/mediazione-e-proposta-del-giudice-le-problematiche-relative-alla-acquisizione-rilevazione-e-valutazione-dei-dati-relativi/>.

³² The project is based on the collaboration among young researchers, judges and mediation providers; and it is divided in four phases:

1 – analysis of the trial files by the researcher, who

. selects the files;

. draws up the report for each file, with the information needed to assess the mediability of the judicial proceeding;

. collaborates in the filing of data on each case in the computer system;

. delivers the file and the report to the judge;

2 – referral to mediation – the judge assesses whether or not to agree with the researcher’s proposal; with the latter’s assistance, he draws up the order to refer the case to mediation, forwards it to the disputing parties and sets the return hearing (at the end of the mediation) within a maximum of six months;

3 – mediation provider – the provider undertakes the proceeding within the time limit set by the judge, to enable the parties to return to court with a result (successful or negative) already achieved; every month the provider sends the judge data on the mediations carried out;

4 – back to court – the judge reviews the results of the return hearing and assesses the effectiveness of his previous decision; if mediation has not taken place, he may also order to revert again to it.

MATTEUCCI Giovanni. Compulsory Civil Mediation in Italy 2011/ 2021; past, present and (likely) future. *Mediate.com*, 24.05.2022. Available at: <https://www.mediate.com/compulsory-civil-mediation-in-italy-2011-2021/>.



stated if these limits are exceeded. The problem is that mediation procedure, which should be informal and slim, is becoming increasingly proceduralised in Italy. According to the Italian Ministry of justice data, the average time length of the procedures, with a final agreement, was 65 days in 2012, 115 in 2016 and 186 in 2022 (a problem that seems to be shared by other countries, as well).³³ Question: if the agreement will be reached after the six months period, no problem; if not, will the subsequent court proceeding be forbidden?

Mediation technical expert (CTM – Consulente tecnico in mediazione). If the dispute has a highly technical content, an expert may be appointed by decision of the parties and agreement of the mediator. The expert's conclusions must remain confidential. But, to save time and money, the parties may agree that his report may be submitted to the court. The report's reliability will be assessed by the judge³⁴.

ODR - Legislation enacted in 2010, and rules approved during the Covid-19 pandemic, pay little attention to ODR. However, during the pandemic itself, the use of online proceedings grew enormously and is now an enduring trend. The new legislation underlines that “*mediation and assisted negotiation procedures may be conducted, upon agreement of the parties, by telematic means and that meetings may take place with remote connections*”. Problem: the certainty of the signature on the minute if one, or both, parties do not have IT tools to validate it.

³³ Nolan-Haley, Jacqueline M. - *Mediation once offered disputing parties a refuge from the courts. Today it offers them a surrogate for arbitration. As lawyers become increasingly involved representing parties in mediation, the boundaries between mediation and arbitration are blurring. Lawyers generally control the mediation process, considering it the functional equivalent of a private judicial settlement conference. Legal mediation has taken on many of the features traditionally associated with arbitration - adversarial posturing by attorneys in the name of zealous advocacy, adjudication by third party neutrals, and the practice of mediator evaluation. While mediation advances toward an arbitration model, arbitration is becoming the “new litigation.” I argue that mediation's move to the zone of arbitration practice is problematic because it clashes with mediation's core values of self-determination and participation. This directional shift limits the spectrum of options available to disputing parties, depriving them of mediation's benefits-- the opportunity to experience individualized justice as a relief from the rigidity of the formal justice system. Mediation stands at the crossroads and it is worth reflecting on whether the time has come to pull in the reins* -

in, *Mediation: The 'New Arbitration'*. *Harvard Negotiation Law Review*, Forthcoming, Fordham Law Legal Studies Research Paper No. 1713928, 2010. Available at SSRN: <https://ssrn.com/abstract=1713928>.

SALISBURY, Mary. The Lawyerization of the Mediation Process. *Mediate.com* 03.10.2020. Available at: <https://www.mediate.com/the-lawyerization-of-the-mediation-process/>.

³⁴ The appointment of the expert is already provided for in 2011 legislation. The possibility of using his report in any subsequent judgement is controversial. In practice, with due care, it has already been possible for years.

MATTEUCCI Giovanni. Consulente tecnico in mediazione: una guida operativa. *Altalex*, 2019. Available at: <https://www.altalex.com/documents/news/2019/09/24/consulente-tecnico-in-mediazione-guida-operativa>.



But the most important (and most difficult) goal to be achieved will be:

More effectiveness of the mediation proceeding

The legislator envisaged financial penalties and tax incentives.

As already underlined, many times the invited (and, also, the inviting) party to mediation waives to start the proceeding without a significant reason; in addition, too often the party(ies) is (are) not present (themselves), but is (are) represented by a lawyer, thus deeply undermining the effectiveness of mediation.

Financial penalties - to encourage the personal participation of the parties, as well as effective discussion on the issues in dispute, penalties are stated in the subsequent trial: in the event of compulsory mediation, the party not present without a justified reason is ordered to pay a sum equal to twice the fee due at the start of the judgement (*contributo unico unificato*); in addition, the judge, if requested, may order the losing party to pay a sum not exceeding the costs of the trial (art. 8 and art. 12-bis).

Very mild penalties. It would have been more effective for the party not present at the mediation, even if successful in the judgement, to pay the full costs.

Tax incentives - The Legislative Decree 28/2010 already provided: “*All acts and documents relating to the mediation procedure are exempt from the registration tax (imposta di registro) and from all expenses, taxes or fees of any kind and nature*” / c.3 “*The record of the agreement is exempt from the registration tax up to the value of euros 50,000.00, otherwise the tax is due for the exceeding value*”.

The new rules will increase the exemption from registration tax up to 100,000.00 euros; recognize a tax credit proportional to the lawyer’s fee for assisting the party in the mediation proceeding, up to 600.00 euro; allow for a tax credit, related to the court fees paid at the beginning of the judicial proceedings, following an agreement in mediation related to that dispute, up to 518,00 euros (implicit aid to the mediation requested by the judge).

Legal aid, free of charge, shall be provided to non-affordable party for the assistance of a lawyer in the compulsory mediation proceedings.

An adequate increase in available funds is provided.

6. FEES AND QUALITY OF TRAINING



Two major problems have not been approached by the regulations under analysis. They will have to be dealt by a ministerial decree, amending the existing D.M. 180/2010: fees to be paid to the mediation provider and to the mediator; the quality of training.

Fees - the fees for the mediation procedure, compulsory as well, are paid by the parties. There are initial fees (usually euro 40,00+VAT) paid by each party to the mediation provider before starting the procedure. If the mediation starts, each of the parties will pay amounts, fixed by a ministerial decree, proportionate to the value of the mediation (generally low). But if the parties, assisted/ represented by a lawyer, at the first meeting decide not to start mediation, they do not pay anything more. That is, the lawyers are paid, the mediator works for free. Top professionals are not interested in being qualified mediators.

Quality of training - according to my opinion, this should be the most important prerequisite for a real development of mediation in Italy (and elsewhere).

As already mentioned, in Italy certified mediators are required to hold a BA degree in any subject, or a membership in a professional association (in this second case, mediators are only allowed to manage proceedings related to their professional competences) and complete a 50 hour training course on theory and practice. But, mediation is a multidisciplinary science; a 50 hour course is enough *to inform*, but not *to form* professionals. Moreover, most trainers and trainees are lawyers; therefore, lectures mainly focus on civil procedure rules, as applied to mediation. Will future legislation deal properly with these issues?³⁵

7. CROSS-BORDER MEDIATION IN ITALY

The use of mediation for the resolution of international disputes in Italy is up to now very low. The Milan Chamber of Arbitration/Mediation is one of the very few Italian providers, dealing cross border mediations: 26 international proceedings out of 850, 3%, in 2019; 104 out

³⁵ On April 4, 2023 the Italian Ministry of Justice issued a regulation on requirements for retaining registration in the register on civil and commercial mediation providers. More severe rules for the organization, structure and quality of the mediation providers and for the quality of trainers. A ministerial decree is awaited for.



of 926, 11%, in 2020; 51 out of 1000, 5%, in 2021. The procedures concern delivery of goods, price collection, shipbuilding, mining and many others, but there are no specific areas.

In Italy there are no specific rules referring to cross-border mediations.

The administered proceeding mediation, according to D.Lgs. 28/2010, can be followed: pre-established low fees and the minute automatically enforceable, in Italy, if undersigned by the parties, the lawyers and the mediator. Art. 12 - *“In the case of cross-border disputes referred to in Article 2 of Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008, the minutes shall be approved by the president of the court, in whose district the agreement is to be implemented”*³⁶. The agreement is enforceable, if to be executed on the Italian territory, otherwise it is considered a tested agreement, according to the individual national rules on *exequatur* or enforcement.

A full voluntary proceeding can be followed, according to principles set out by the D.Lgs. 28/2010 or the European legislation, directly effective in the Member States³⁷.

³⁶ D.Lgs. 28/2010, art. 12 - *Nelle controversie transfrontaliere di cui all'articolo 2 della direttiva 2008/52/CE del Parlamento europeo e del Consiglio, del 21 maggio 2008, il verbale è omologato dal presidente del tribunale nel cui circondario l'accordo deve avere esecuzione* - translation is mine.

³⁷ Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters - *The Mediation Directive*

10) *Directive should apply to 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. It should apply in civil and commercial matters. However, it should not apply to rights and obligations on which the parties are not free to decide themselves under the relevant applicable law. Such rights and obligations are particularly frequent in family law and employment.*

Article 1- Objective and scope

1. *The objective of this Directive is to facilitate access to alternative dispute resolution and to promote the amicable settlement of disputes by encouraging the use of mediation and by ensuring a balanced relationship between mediation and judicial proceedings.*

2. *This Directive shall apply, 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. It shall not extend, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority (acta iure imperii).*

3. *In this Directive, the term 'Member State' shall mean Member States with the exception of Denmark.*

Article 2- Cross-border disputes

1. *For the purposes of this Directive 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 on the date 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; or*

(d) *for the purposes of Article 5 an invitation is made to the parties*

Article 6 - Enforceability of agreements resulting from mediation

1. *Member States shall ensure that it is possible for the parties, or for one of them with the explicit consent of the others, to request that the content of a written agreement resulting from mediation be made enforceable.*



In 2019 an international convention on mediation was signed by forty-six countries³⁸ and was named Singapore Convention on Mediation (SCM). According to it, the cross-border commercial mediation agreements can be enforceable³⁹. Forty-six countries signed it, including the United States, China, India, South Korea and Saudi Arabia; Russia, Japan and the European Union up to now (April 2023) have not signed the convention⁴⁰.

Training initiatives in Italy, focused on international commercial mediation, are very few (they mainly concern arbitration) and there is plenty of room to teach international rules, cultural differences and the operational criteria of mediation providers located in other countries.

The content of such an agreement shall be made enforceable unless, in the case in question, either the content of that agreement is contrary to the law of the Member State where the request is made or the law of that Member State does not provide for its enforceability.

2. The content of the agreement may be made enforceable by a court or other competent authority in a judgment or decision or in an authentic instrument in accordance with the law of the Member State where the request is made.

3. Member States shall inform the Commission of the courts or other authorities competent to receive requests in accordance with paragraphs 1 and 2.

4. Nothing in this Article shall affect the rules applicable to the recognition and enforcement in another Member State of an agreement made enforceable in accordance with paragraph 1.

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008L0052&from=en>

Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on ADR for consumer disputes (and amending Regulation (EC) no. 2006/2004 and Directive 2009/22/EC) - *Directive on Consumer ADR*

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0011&from=EN>

European Code of Conduct for Mediators – 2004.

https://www.euromed-justice.eu/en/system/files/20090128130552_adr_ec_code_conduct_en.pdf

European Code of Conduct for Mediation Providers, Cepej 2018.

<https://rm.coe.int/cepej-2018-24-en-mediation-development-toolkit-european-code-of-conduc/1680901dc6>

³⁸ The SMC official website at <https://www.singaporeconvention.org/index.html>

the UNCITRAL official website at <https://uncitral.un.org>.

more material on the Singapore Convention at:

https://uncitral.un.org/en/texts/mediation/conventions/international_settlement_agreements

the status of the treaties table on the Singapore Convention UNCITRAL website

at: https://uncitral.un.org/en/texts/mediation/conventions/international_settlement_agreements/status

³⁹ The agreement can be enforced, but within limitations, not all of which are yet well defined (articles 1 and 5).

⁴⁰ Timothy Schnabel - Hostility of the EU to the SMC, *The only strong opposition to authorizing work on the topic came from the European Union and some of its member States. The European Union stated that it saw non evident need for harmonization on the topic and opined that finding agreement on a harmonized approach beyond the model law's decision to leave the issue of enforcement to domestic law was unrealistic* - in "The Singapore Convention on Mediation: A Framework for the Cross Border Recognition and Enforcement of Mediated Settlements", (27.8.2018).

BRINK, Henneke The Singapore Convention on Mediation - Where's Europe? *Mediate.com*, 2021. Available at: <https://www.mediate.com/articles/brink-singapore-europe.cfm>.

O'NEILL Jan. UK government consults on whether to sign the Singapore Convention on mediated settlements. *Lexology*, 2022. Available at: <https://www.lexology.com/library/detail.aspx?g=5e73b988-0156-420d-bebf-c5d114cddacd>.



8 CIVIL AND COMMERCIAL MEDIATION IN ITALY

	Incoming mediation proceedings	The invited party present	Agreement the invited party present	Agreement	Agreement
				over all success rate	absolute values
			[1]	[2]	
	A	B	C	$B \times C = D$	$A \times D = E$
2011 °	60,810.	31.%	53.%	16.%	9,912.
2012	154,879.	26.%	41.%	11.%	15,647.
2013	41,604.	32.%	42.%	14.%	5,700.
2014	179,587.	40.%	24.%	10.%	17,599.
2015	196,247.	45.%	23.%	10.%	19,821.
2016	183,977.	47.%	24.%	11.%	20,421.
2017	166,989.	48.%	25.%	12.%	20,373.
2018	151,923.	50.%	27.%	14.%	20,965.
2019	147,691.	49.%	29.%	14.%	20,824.
2020	125,754.	48.%	29.%	14.%	17,253.
2021	166,511.	50.%	27.%	14.%	22.812.
2022	155,122.	52.%	29.%	15.%	23.268.

° 21.2 / 31.12.2011

[1] In 2011, 2012 and until 19.9.2013 first information meeting was not required. On 20.9.2013 the "OPT-OUT" procedure entered into force, with the possibility for the present parties to decide wheter or not to initiate the mediation proceeding. Data from 2014 shows the success rate when all parties are present and decide to continue beyond the first meeting.

If all parties were present and decided to go beyond the first meeting, the success rate in 2022 was 47% in Italy.

[2] Overall success rate, including mediations in which invited party is not present and those in which parties do NOT go further the first information meeting.

In the comparison between years, it has to be taken into account that:

- from 24.10 / 13.12.2012 to 19.9.2013 the compulsory attempt at mediation was suspended;
- in 2012 there were approximately 45,000 mediations (an average of 11,165 per quarter) for damages from circulation of vehicles and boats; this subject matter it has been no longer



mandatory since 20.9.2013.

Statistics in columns A, B and C, source Italian Ministry of Justice⁴¹.

9. CONCLUSIONS

In Italy, in the early 2000s, the backlog in judicial civil cases increased continuously, reaching the number of almost six million at the end of 2009. Several initiatives had already been tried in the civil court proceeding to cope with this problem, but without success. Rules, already in the Italian legal system, provided for the use of mediation, but they were generally not complied with, because not mandatory and because mediation was almost unknown. Since the 1930s it had not been taught in universities.

Compulsory civil mediation was implemented in 2010, in force since March 2011. Furious opposition by lawyers (a matter of culture and fear of Alarming Drops in Revenues) and benign neglect by judges (a matter of culture). The main problem was the lack of knowledge. 50-hour introductory courses (too little) were established to become a certified mediator, generally managed by lawyers (adversarial techniques)! There was an expectation of one million disputes to be handled in mediation in the first five years, therefore a rush to become a certified mediator. In 2011/2012 there were more mediators than proceedings!

Nevertheless, mediation began its journey and step by step, with a lot of misunderstanding, started to be known. Results. In the 2011 / 2022 period there has been

- a decrease in civil court litigation (- 5% per year), because of the economic crisis;
- a strong increase in mediation proceedings (+14% per year) and
- a strong increase in mediated settlement agreements (+12% per year).

And according to the European Parliament, “*Italy ... uses mediation at a rate six times higher than the rest of Europe*”. But, in 2022, the ratio of

- settlement agreements to new mediation proceedings (success ratio) was 15%;
- settlement agreements to new proceedings filed in civil courts was 0,9%.

Still too little.

⁴¹ MINISTERO DELLA GIUSTIZIA. Available at:
<https://webstat.giustizia.it/SitePages/St statisticheGiudiziarie/civile/Mediazione%20Civile.aspx>.



However, in the proceedings, where all parties were present and decided to go on the first information meeting, the success rate in Italy, in 2022, was 47%. Italy faces a “mediation paradox”: not many parties agree to mediate disputes, but if they do, a good percentage reaches a settlement.

Moreover, the Italian judicial system is not one of the most efficient at European level. To improve this situation, Italy received funds from the EU, with the commitment to reduce the average length of civil lawsuit by more than 40 per cent and the number of pending cases in the ordinary courts of first instance by 65 per cent, 2024 v. 2019.

The Italian government has undertaken substantial reforms, not only in the civil trial, but also in the criminal and fiscal one. Considerable attention to ADRs, including mediation as a mandatory condition for proceeding: increase of the number of areas where it must be applied, special attention to mediation ordered by judges (and their training), involvement of the public sector, greater efficiency and effectiveness of the mediation procedure itself. Rules on family mediation issued for the first time.

Two main topics are still missing: the costs of the mediation procedure (and mediators’ fees); above all, training, starting from the universities.

Will the new rules enhance the effectiveness of mediation in Italy?

Grosseto, 07.04.2023

Giovanni Matteucci

Websites assessed at 07.04.2023

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