

The Economic Impact of Mediation: An Analysis in Time of Crisis

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Abstract : In the past decade mediation has been legally implemented in European legal systems, especially after the publication by the European Union of the Directive 2008/52/EC on certain aspects of mediation in civil and mercantile matters. Developments in international trade and globalization in this new century have led to an increase of the number of litigations, often cross-border, and the courts have failed to respond adequately. We do not advocate that mediation should be promoted as the solution for all justice problems, but as a means with its own specificities that the parties may choose to consider as the best way to resolve their disputes. Thus, the implementation of mediation should be based on the advantages of its application. From the economic point of view, competitive negotiation can generate negative external effects in social terms. A solution reached in a court of law is not always the most efficient one considering all elements of society (economic social benefit). On the other hand, the administration of justice adds in economic terms transaction costs that can be mitigated by the application of other forms of conflict resolution, such as mediation. In this paper, the economic benefits of mediation will be analysed in the light of various studies on the functioning of justice. Several theoretical arguments will be confronted with empirical studies to demonstrate that mediation has significant positive economic effects. The objective is to contribute to the dissemination of mediation between companies and citizens, but also to demonstrate the cost to governments and states of still limited use of mediation, particularly in the current economic crisis and propose actions to develop the application of mediation.

Keywords : economic impact, litigation costs, mediation, solutions

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