

## **Economic Impact of Mediation: Analyzing the Strengths and Weaknesses of Portuguese Mediation System**

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**Abstract :** Mediation is an increasingly important mechanism, particularly in the European context, as demonstrated, for example, by 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. From the economic point of view, competitive negotiation can generate negative external effects in social terms. Not always the solution found in court is the most efficient solution taking into account all elements of society. 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. In the Portuguese legal system, legislative frameworks for mediation display a state committed to creating a new architecture for the administration of justice, based on the construction of a multi-faceted legal system for dispute resolution mechanisms. Understanding the way in which the system of mediation in Portugal was introduced, allows us to point out that our internal ordering is creating the legal instruments which can assist citizens in the effective protection of their rights. However, data on the use of mediation in concrete proceedings and the consequent effectiveness of mediation in settling disputes, reveal a mechanism that is still far from the ideal results that were initially sought.

**Keywords :** access to justice, alternative dispute resolution, mediation, litigation

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