Single Market Forum
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ADR and Internal Market

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Commercial Alternative Dispute Resolution (ADR)
most common schemes:
  Negotiation
  Mediation
  Arbitration

less common:
  Case evaluation
  Early neutral evaluation
  Ombuds
Why ADR is a HUGE chance to support and boost Internal Market?
It is a quite predictable answer: boosting intra-european commercial exchange is a matter of harmonization of regulations.

Trust

Easy access to justice… just in case something goes wrong

Eurobarometer Report September 2011: Obstacles citizens face in the Internal Market
Is national Court a viable solution?
Duration of civil proceedings (days) in Italy

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<thead>
<tr>
<th>entity</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
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<td>Court of Appeal</td>
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<td>Court</td>
<td>1.121</td>
<td>1.107</td>
<td>1.108</td>
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<tr>
<td>“Judge of Peace”</td>
<td>453</td>
<td>506</td>
<td>533</td>
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Data available on the Ministry of Justice website 2011
No further data available after 2008
Directive 2008/52/EC - on certain aspects of mediation in civil and commercial matters
designed for cross-border disputes

(“but nothing to prevent Member States from applying it to internal mediation processes”)
Mediation is a negotiation assisted by a third NEUTRAL party (the mediator) who is not a decision maker (judge or arbitrator or ombudsperson) – the mediator helps both parties in reaching an agreement which is good and satisfying for both

- Voluntary access
- Confidential
- Consensual outcome
On paper, mediation is the best tool to resolve cross-border disputes:
It is:
informal
Quick
Cost effective
and it bypasses the issues of applicable law/jurisdiction
My personal view:

In B2C negotiation power is too unbalanced in favour of businesses and the risk is that mediation will turn into a sort of “second hand” justice leading to non consensual agreements just because if the consumer doesn’t agree to the business settlement proposal he/she won’t have a single chance of solving the problem in Court (costs, timings)
1) mediation is a very customized tool, and not economically self sustainable for low value disputes – the costs of mediation for B2C disputes should be charged to public entities (?)

2) mediation in itself is based on DIALOGUE between the parties and the parties and the mediator: mediating cross-border issues is very difficult because of LANGUAGE issues
RisolviOnline Project
www.risolvionline.com

The Arbitration Chamber of Milan started the project aiming to try to solve domestic and cross-border disputes with online mediation.

Website and Rules are translated in 23 languages.

Over the last 2 years 94 cross-border cases were managed (average economic value between 500 and 1.000 Euros).

In 80 cases the respondent refused to enter in the mediation proceedings!

7 cases had a positive solution.
Reasons why the party invited to take part in an online mediation proceedings didn’t take the chance:

1) cultural reasons – mediation is still widely unknown in Italy but the recent Decree 28/2010 which regulated mediation at a national level will have probably a role in boosting the awareness of citizens about mediation.

2) use of technologies – unfamiliarity with the Internet tools, discussion forums, web conference, skype, etc.

3) LANGUAGE issues
Possible alternatives

Paritetical Mediation – it is a direct negotiation indeed, there’s no third neutral assisting the parties in finding an agreement, but 2 representatives (by a consumer’s association and a business) who discuss the case and try to find a viable solution.

Ombudsman – a person appointed by an organization who decides about the claims filed.

Arbitration – depending on costs which are usually quite high.
Thank you!

Q&A

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