**MEDIATION AS A SOLUTION TO RESOLVE INTERNATIONAL BUSINESS DISPUTES IN EU**

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# CHAPTER 1: INTRODUCTION

## 1.1 Research Background

In a globalized world, in which the circulation of goods and services is constant, the figure of the mediator to manage conflicts in international markets is ideal, since it can facilitate communication between the parties in conflict and create a space of trust for the parties reach an agreement. Mediation is understood as the intervention of a neutral third party in the conflict of interest formed by the revelries, to provide assistance to the disputants to resolve the conflict through the adoption of "their own decision."[[1]](#footnote-1) In mediation, the intermediary tries to isolate the disputed problems to reach a settlement that meets the needs and expectations of those involved in the conflict. However, Mediation can be defined as a regulated procedure in which two or more parties to a disagreement willingly try to reach an agreement with the help of a neutral and qualified person outside the conflict to find a solution[[2]](#footnote-2). This procedure can be started by the parties, ordered or recommended by a court, or governed by means of the laws of the Member States. A mediator can help both parties reach an agreement without having a formal decision on possible solutions to the conflict[[3]](#footnote-3).

During mediation, parties are encouraged to enter into or resume dialogue and avoid confrontations. The method of conflict resolution is chosen by the parties and the parties play a particularly active role in finding solutions that best suit their needs[[4]](#footnote-4). In some cases, especially in consumer disputes, the mediator looks for a solution and proposes it to the parties. The resolution of the conflict depends on the agreement of the parties[[5]](#footnote-5). However, If they fail, the mediator will not impose a solution. Mediation is considered to be a faster and cheaper solution than conventional lawsuits[[6]](#footnote-6). This prevents confrontation between the parties inherent in the lawsuit and allows them to maintain their professional or personal relationships after the conflict. Mediation also offers parties the opportunity to resolve conflicts through creative solutions that cannot be resolved in a lawsuit[[7]](#footnote-7).

In the international arena, mediation is a diplomatic means of resolving disputes. Compared to judicial methods, the subject of access to justice retains the freedom to act and the freedom to settle the final settlement of conflicts[[8]](#footnote-8). In addition, his decision is contained in a binding international contract, which should be centered on international law, but could take into consideration some or all the elements of political opportunity[[9]](#footnote-9). It is a dynamic tool: an international mediator is not restricted to contacts with parties, it can also be an international mediator. They can also participate, make suggestions and negotiate[[10]](#footnote-10).

Mediation should not be seen as a worse option than litigation, because the performance of the agreement rest on on the willingness of the parties. It is therefore essential to make sure that all Member States submit procedures, resolutions, decisions or documents adopted by courts or public bodies confirming agreements between them[[11]](#footnote-11). An effective quality control mechanism should be established with regard to the provision of brokerage services and training to ensure sufficient trust between Member States with regard to confidentiality, suspension rules and timetables, recognition and implementation of brokerage contracts and training of intermediaries[[12]](#footnote-12).

International commercial mediation has great advantages, among which it is worth highlighting the fact that the solution - in principle definitive - of the conflict remains in the hands of the companies themselves, which have been trapped in an unwanted situation and born of disagreements over the interpretation and / or execution of the agreement. It is they, and not a third party arbitrator or judge, who have the power and freedom to decide how to resolve the discrepancies arising from the contract, counting at all times with the indispensable help and support of the third party who acts as mediator[[13]](#footnote-13). In this sense, and for the process to achieve the expected objectives, the professionalism and qualities of an intermediary who, in principle, is selected by the parties to successfully complete a process initiated with the purpose of resolving their differences, is of particular relevance. Since a good part of the success in the final resolution of the dispute depends on the skills, knowledge, capacities, abilities and competencies of the intermediary for the exercise of the position. [[14]](#footnote-14)Thus, the prestige baggage and recognition of the chosen institution is an essential element, as it constitutes one of the keys to be able to give the most adequate response to the controversies initiated by the parties, without the need to resort to ordinary judicial channels[[15]](#footnote-15).

Mediation is characterized by being an out-of-court figure for agile, fast and cheap dispute resolution, which undoubtedly affects the legal security of the companies involved in the conflict. Thus, and in principle, in a few days or weeks it is possible for the parties to adopt the most appropriate decisions to their interests, minimizing the uncertainties associated with the situation and avoiding, as far as possible, that the litigation and its possible, harmful and negative consequences. Likewise, the mediation rates are cheaper, since it is really the parties who solve their dispute and the mediator the intermediary who facilitates and drives the process[[16]](#footnote-16).

The extrajudicial means of dispute resolution is of paramount importance as a tool to facilitate the final agreement and the settlement of the discrepancies that arise between the parties in relation to the interpretation and / or execution of the commercial contract that sustains the interest and the corresponding operation[[17]](#footnote-17). The authorities of the European Union have been fully aware of this reality, as well as the effect that mediation generates, relieving ordinary courts of a part of the heavy burden that the large number of cases to solve, which has ended up generating the overcrowding of the courts, as well as constant delays and countless pending cases[[18]](#footnote-18). Thus, Directive 2008/52 / EC of the European Council of the Parliament, of 21 May, 2008, on definite aspects of mediation in commercial and civil matters, in its descriptive memorandum states that the objective of mediation is no other to ensure improved access to justice, as part of the strategy of the EU aimed at establishing an area of justice and security, freedom, and ought to include access to both extrajudicial as well as judicial means of conflict resolution[[19]](#footnote-19).

The increasing complexity and uncertainties that define and characterize the modern international business scenario oblige any company to adopt, from prudence and strategy, all the necessary measures to achieve the planned commercial objectives, minimizing possible risks[[20]](#footnote-20). Thus, international commercial mediation is established as an option and an especially relevant alternative to achieve the rapid and safe resolution of problems and discrepancies arising in relation to the contract and through this research it will be reviewed in different European Member States.

## 1.2 Research Problem

There are many problems that regulate the impact and effectiveness of international business intermediaries such as terms of payment, letter of guarantee, foreign exchange rate as well as documentation error. It has been recognized that contractual and financial disputes rise in businesses when the counterparty disagrees with the unsettled amount to be paid and when the counterparty encroach upon a signed contractual settlement respectively[[21]](#footnote-21). Moreover, a Guarantee Letter is another reason behind business disputes occurring at an international level which arises when the buyer puts forward a letter of guarantee to attain extra capital for liquidity purpose while the seller acts according to the contractual terms. Furthermore within the international marketplace contracts are signed between the counterparties in currencies other than their state currency which makes foreign exchange rates as another cause of commercial disputes at an international level.  Even though ligation has been the method to resolving disputes three have been some strong points to take ADR (Alternative Dispute Resolution) into consideration[[22]](#footnote-22). As per the current era there is more emphasis on resolving international trading disputes using ADR method; Mediation[[23]](#footnote-23). Thus, different mandatory mediation systems of different EU states will be discussed in this study to resolve business disputes at an international level.

## 1.3 Aims and Objectives

The main aim of this study is to investigate various diverse aspects of Mediation concerning business disputes occurring at an international level.

* To examine mediation purpose and initiatives within EU
* To shed light upon the benefits of Mediation concerning conflicts of the International contracts
* To analyze mediation of various difficulties in the European Union Member States while discovering some mandatory European mediation structures in Spain, UK, France, Italy and Germany
* To investigate future inferences to expand the European mediation system in different European member states.

## 1.4 Research Questions

1. What is the purpose of mediation and what are its initiatives within EU?
2. What are the benefits of Mediation within the European Union states concerning conflicts of the International contracts?
3. How mediation acts in various matters in in Spain, UK, France, Italy and Germany and what are the mandatory European mediation systems within these EU states?
4. What are the future implications to improve the European mediation systems in different EU jurisdictions?

***1.5 Significance of the Research***

This research is carried out to fill the research gap as well as to encourage business organizations to take a step towards mediation by demonstrating various aspects of mediation at an international level with the integration of laws, policies and regulations and how it is regulated within different EU states. This research will also offer great significance in terms of building a strong relationship among the civil procedures and mediation. . Through this research business organizations will develop a better understanding of the judicial systems of the EU states which will reassure them to adopt mediation to resolve disputes.

## 1.6 Research Methodology

This research is based on a qualitative approach to develop an enhanced understaing of the research problem. This research has incorporated secondary data including; articles, legislations, case laws, books and journals as it is a case study driven research methodology. As the researcher is more inclined to appraise diverse and new aspects of mediation system within EU in accordance with the rules, policies, case laws etc. to subside the business disputes at an international level thus the researcher has adopted exploratory kind of investigation.

## 1.7 Research Structure

Chapter 1 is the introductory chapter which is followed by chapter 2o.e. Literature Review. In this chapter all the important literature and supporting material with respect to the topic is shared with the readers. Next to it is Chapter 3, within which relevant case studies are put forward. In addition to it is Chapter 4 which discusses the main findings of the research and further analysis is carried out on these findings. In the last is the conclusion chapter i.e. Chapter 5 where the whole research is summarized and determined.

# CHAPTER 2: LITERATURE REVIEW

## 2.1 Mediation within the EU

Mediation as an alternative dispute resolution mechanism, the judicial system constitutes a relatively recent issue in the European Union (EU onwards), at least on the legislator’s agenda, which has stormed into this scenario since it was decided to promote the resolution amicable conflict within the Union[[24]](#footnote-24). Management and the promotion of mediation in Europe can contribute interesting benefits for the citizen in multiple aspects. It is, first of all, an opportunity to resolve their conflicts in a more agile way and usually more economic than going to court. Second, it will also allow taking an active role in shaping the process and, above all, in the final decision to the conflict[[25]](#footnote-25).  The mediation is also a new opportunity for the citizen who needs assert rights and fulfill obligations in different Member States, from the moment in which such rights or obligations can find their basis in agreements of mediation and these can circulate as public documents within the Union European to the extent that will be analyzed in this comment.

The European Union is a great supporter of mediation as a method of conflict resolution. Proof of this is that since 2008 we have had a unitary regulation on this mechanism in all Member States when a Directive on this matter was approved that extended to the civil and commercial fields. In addition, in 2013 another Directive and a Regulation were drawn up that must also be applied in all the territories of the Union and which, this time, are aimed at regulating everything related to consumer issues[[26]](#footnote-26). The entry into force of these instruments has been a great boost and a greater knowledge among the population of the figure of the mediator, the advantages, the phases and the different areas to which the use of this technique can be extended.

In the European Union, when discussing the formation of an area of ​ security, justice and freedom the European Council, at its conference in Tampere on October 15 and 16, 1999, called on the Member States to create alternative and extrajudicial procedures aimed at improving access to Justice in Europe. In 2000, the Council embraced decisions on alternative dispute resolution procedures.[[27]](#footnote-27) However, in accordance with commercial law, declaring that the formation of elementary principles in this regard was a necessary step to allow the expansion and correct functioning of extrajudicial measures of dispute resolution in commercial problems, in order to streamline and advance access to justice.

On April 19, 2002, the European Commission put forward a Green Paper, where alternative forms of conflict resolution in the field of commercial regulation were studied, and, through Directive 2008/523, certain aspects of the law were harmonized. Mediation in cross-border commercial matters, which had to be incorporated into the Legal System of the Member States before May 21, 2011[[28]](#footnote-28). It is necessary to publicize this institution and the beneficial effects it implies, although not all conflicts are suitable to be resolved through mediation; in some of them, negotiation will be enough, and, in others, it is essential to go to court or arbitration, so that a third party can decide on the conflict if the parties are not able to resolve it on their own, or with the assistance of an impartial and neutral third party i.e. The mediator.

The experience of the cases already submitted to mediation shows that, due to its characteristics, it is a means of quick and inexpensive conflict resolution and that, when agreements are reached, they are easier to execute[[29]](#footnote-29). On the other hand, since in the commercial sphere it is not possible to be oblivious to reality, the agreements that are reached in a mediation process can be elevated to a public deed, at a reduced cost due to having the document treatment without amount. Also, if the parties so wish, it can be approved in court, obtaining a judicial title, if the process had already begun, even though experience also shows that fewer problems arise when executing the agreements when they have been reached through mediation.

In commercial legal disputes in which technical issues arise, another virtue of mediation is the flexibility of the procedure and the possibility that the parties agree to request the neutral opinion of experts, with greater flexibility than the expert evidence in the processes, for being a volunteer of the parties from the beginning to the end[[30]](#footnote-30). This neutral opinion is confidential for third parties, without it being able to be contributed to a possible litigation that would have to be processed if an agreement is not reached, which enables communication between the parties on technical aspects that is not reached in the processes before the Courts, dealing flexibly and efficiently with all technical issues that affect the conflict.

Ultimately, professionals face the challenge of knowing mediation as a means of access to justice to offer, knowingly, this possibility to the parties to a conflict whom they have to advise or defend; parties who have to decide whether to initiate and remain in a mediation process, so that the issues that must be resolved before the courts or arbitration are only those that cannot be resolved by the parties and it is mandatory that a third party decides , even when mediation can deal with, and include in the agreement, issues that do not reach the scope of a judgment or award, expanding the issues to be discussed and facilitating the achievement of a good agreement between the parties, which is stable[[31]](#footnote-31) .

The European Directive on mediation in commercial and civil field represents a milestone in the development of mediation in Europe, since Member States have the obligation to legislate on this matter and, in addition, they have the obligation to promote the use of alternatives for dispute resolution (ADR), as complementary systems to the traditional contentious judicial system[[32]](#footnote-32).  The interest of the legal media for this methodology has increased noticeably in recent months, and it is the logical consequence that a standard community introduces mediation and regulates certain aspects of it.

The substitution of the Directive, especially in the procedural field, will affect important to the laws that to date have been enacted in some communities autonomous, since they will have to conform to the common community framework, and also to the State framework in those matters that are the competence of the Spanish Parliament[[33]](#footnote-33). But the construction of an alternative system to the classic judicial means of resolution of Controversies is not a simple task, nor can it be improvised in a short time. It is a task of many years which will consolidate this methodology that, regardless of the postulates and legal principles, it will only be prestigious if there are good mediators, well trained, responsible for their important role and possessed of the skills that only study and experience can contribute. The Resolution of the European Parliament of 11.9.2011 reports on the status of the obligation to transposition by the various Member States, and makes a series of recommendations to reinforce certain measures that may be useful for the implementation of mediation, especially in the field of incentives to favor their harmful use[[34]](#footnote-34).

## 2.2 Mediation Initiatives taken within the EU

By promoting the use of mediation, conflicts can be resolved, and it helps to overcome hassle and loss of money as well as time associated with legal litigation, allowing citizens to effectively protect their privileges. The Mediation Directive relates to cross-border disputes in commercial problems[[35]](#footnote-35). This applies to disagreements in which at least one of the parties is residing in another member state from others on the date when the parties settle to mediation, or when the mediation is brought to law court. However, the main purpose of this legal mechanism is to encourage the use of mediation amongst Member States. Conversely, to this end, the Directive established 5 basic directions[[36]](#footnote-36):

It instructs Member States to encourage mediators training and ensure great eminence mediation; (2) authorize any judge to request parties on a conflict to attempt mediation, if deemed suitable in the statuses of the case; (3) it has been pointed out that the agreement concluded as a result of mediation is enforceable and can be implemented upon request; (4). It assurances that the mediator will not be required to make a declaration in court regarding what will happen in the mediation procedure if conflicts arise between the same parties in the future, and (5). It ensures that time spent by the parties in mediation does not lose the possibility of litigation or going to trial.

The program was established on the occasion of its tenth anniversary in 2011 and was a valuable opportunity to assess ITU’s progress and rebuild the commitments made in 2001[[37]](#footnote-37). Summing up the results continues, the Council’s conclusion of Foreign Affairs of June 20 is completed, and the anniversary has received political support at a certain level. Conversely, the Council invited the High Representative and other applicable union groups to take a number of concrete steps in the questioned areas in this case and decided to evaluate the case beforehand the year end, by which, foreseeably, it will be encompassed as agenda matter in the consequent CAE Meetings[[38]](#footnote-38).

As a result, in recent years, the alliance has not been satisfied with what has already been achieved, but has been actively working to improve its intermediary capabilities. Christopher Coleman (Head of Policy Planning and Mediation Support Department, Political Department comments on “Since the inception of the United Nations Secretariat’s intervention on ‘Lessons Learned from United Nations Mediation Support’), the following was[[39]](#footnote-39):

• The European Union will consider budgetary issues to upsurge its financial involvement to the UN Mediation Support Unit to stabilize capital for mediation procedures and its initiatives.

• The European Union will strengthen collaboration with the United Nations in this area in order to achieve synergies and avoid duplication.

Mediation is a method of international conflict management by which third parties try to contribute to the peaceful resolution of (intense) conflicts. Although countries are the leading and most common providers of mediation, international organizations are not lagging behind. In recent times, the European Union (EU) has become a relatively new player in this area, acting both as a mediator itself and as a member of collective coordination mechanisms supporting peace processes such as the United Nations Contact Group and the Group of Friends. Present initiatives such as the EU-facilitated dialogue between Pristina and Belgrade demonstrate the potential of the EU as a peace mediator.[[40]](#footnote-40)

Although the number of mediation activities in the EU is still relatively small compared to that of the United Nations mediation involvement, the EU has had significant mediation experience over the past ten to fifteen years. During his tenure as High Representative Javier Solana, mediation has become an increasingly important part of the EU’s foreign and security policy tool[[41]](#footnote-41). For example, in August 2001, the European Union and the United States successfully participated in the drafting of the Ohrid Framework Agreement to resolve the 2001 conflict between the Macedonian government and the Albanian ethnic group. A few months later, the senior representative and his team intervened in the mediation process to reach an agreement between Serbia and Montenegro, which led to the Belgrade Agreement establishing a national alliance in March 2002. While the Western Balkans certainly remains one of Solana HR’s top priorities, the European Union has also played an important role in multilateral policy mediation efforts. In the context of the Orange Revolution in Ukraine in 2003, Ukraine experienced a crisis. It is the main supporter of the efforts of the Finnish nongovernmental organization Crisis Management Initiative (CMI) to promote the peace agreement on the conflict in Indonesia, Aceh, 2004-2005.

When Javier Solana was Senior Representative (1999-2009), the EU was already very active in the field of mediation, but during her tenure as HR Catherine Ashton (2009-2014), the EU supported mediation activities and continued to participate in mediation activities[[42]](#footnote-42). All processes since the adoption of HR by Federica Mogherini. In particular, the EU-led dialogue between Belgrade and Pristina is the most prominent example of EU mediation. Little is known about the EU’s work as coordinator of the EU’s Geneva International Symposium (GID) on the territorial conflict in Georgia. The UN Special Representative / Envoy acts as a co-chair in the dialogue between the representatives of Georgia, South Ossetia, Abkhazia, Russia and the United States. In addition to being directly involved as mediators, EU members have also participated in many mediation support programs that are usually rarely seen by the general public[[43]](#footnote-43). For example, the efforts of the EEAS Mediation Support Group to support Myanmar’s democratic transition, and the organization and financial support of the EU Delegation to the National Dialogue Conference in Yemen[[44]](#footnote-44).

To implement this vision and encourage a more methodical approach to mediation, the Mediation Support Team (MST) was established in 2011 under the EEAS and has now become an important hub of mediation expertise and experience[[45]](#footnote-45). However, MST is not the only institutional innovation in the 2009 vision. The establishment of the European Parliament Mediation Support Service to assist members of the European Parliament in mediation initiatives and the establishment of the European Institute for Peace demonstrate that mediation remains an active area of ​​EU foreign policy.

## 2.3 Benefits of Mediation against ADR within the disputes of International Agreements

Mediation is a method of resolving conflicts rising from international contracts that nurtures the steadiness of business associations. This indicates that disputes are resolved in international agreements in the area of ​​commercial disputes, in which parties involved are more likely relish a business relationship which they don’t want to lose due to a particular conflict. Hence, there is no loser or winner in arbitration and mediation as it occurs in the jurisdictional manner[[46]](#footnote-46). However, only two parties can mutually agree and arrive at a solution that both parties believe is beneficial to their own interests, not only ensuring that the agreed agreement has a high degree of intended compliance, but can even reinforce the relationship between the parties[[47]](#footnote-47). There is no doubt that the introduction of Law No. 5/2012 of 6 July abridged mediation in commercial matters which did not bridge the prevailing gap amongst the two figures[[48]](#footnote-48). Meanwhile it is not only the judge’s decision, but also the arrangement on the above legal [[49]](#footnote-49)provisions stretched in the mediation process; it is undoubtedly beneficial for the use of mediation. In addition, neither of the two separately tuned ADRs has shown that it can solve the serious problems of international commercial conflict. Therefore, in the absence of a mediation agreement, the process may be terminated, and in arbitration the parties not only lose control over the final decision. As a method of contradiction, people will see the potential relationship and all participants, and therefore many authors recommend calling the contract the so-called hierarchical proposal, which allows combining two alternative systems of conflict resolution[[50]](#footnote-50). It is stipulated that if no agreement is reached after reaching the next arrangement, the parties must arbitrate to resolve the disagreement in the mediation process[[51]](#footnote-51).

Mediation can offer numerous advantages to the parties as a way to reduce the risk, the main challenge mediation faces today is that it is still practically unknown or relatively little practiced in many countries.[[52]](#footnote-52) Thus, to encourage and increasing its use as a means of commercial dispute resolution, some companies have mediation was adopted as a matter of hiring policy, while others were limit themselves to signing commitments by which they are obliged to try to resolve any dispute over and done with mediation before proceeding to the judicial resolution of conflicts[[53]](#footnote-53). While mediation can provide the parties with a proven means of suppressing or simplify the process of resolving future disputes, the parties should not assume that their counterparts will be willing to consider this option when a conflict arises, and this will because mediation suffers from a low level of awareness not only in society, but also among lawyers, which varies significantly with geographic location[[54]](#footnote-54).

The mediator will be totally impartial and neutral and will help the parties to facilitate both communication and obtaining a beneficial agreement for both. Mediation versus other traditional dispute resolution systems disputes, such as arbitration or the judicial process, supposes, among other advantages: rapid , cost reduction, flexibility, confidentiality (advertising is avoided which involves a judicial process thus preserving reputational damage to the Companies and validity and enforceability of the agreements reached[[55]](#footnote-55). Besides, the company’s image is reinforced when it uses this resolution route conflict, generating confidence in the market and greater reliability and reputation commercial mediation. Through commercial mediation, the parties are enabled be able to reach an agreement that ends the conflict on acceptable terms for both parties avoiding the risks posed by the uncertainties of leave the decision in the hands of a judge or an arbitrator, who controls the process oblivious to their particular circumstances, since in mediation the parties are those in control, being able to reach the agreement that suits them best to individuals interests[[56]](#footnote-56). Commercial disputes usually arise between companies and professionals who need each other in the market: customers, suppliers, partners, etc., so business relationships are established on the basis of mutual collaboration.  In the international arena, there are also normally delicate and complex issues that cannot be resolved in a procedure judicial, without causing serious damage to both parties[[57]](#footnote-57). Thus it can be said that mediation is an ideal system as an alternative to conflict resolution with respect to arbitration or judicial proceedings well, in the arena of international contracting[[58]](#footnote-58). Mediation enables the upkeep of the underlying affiliation, and also allows the parties in control at all times over the potential resolution that, if applicable, finally reaches, clearing up innumerable uncertainties that would be derived from follow a judicial or arbitration procedure.  In line with the foregoing, recent doctrinal articles put in evidence, that companies increasingly turn to international mediation to resolve cross-border disputes[[59]](#footnote-59). Mediation has come to be classified as the “New Arbitration”, putting It is shown that arbitration mainly due to costs, slowness in issuing awards, as well as the growing adversarization of parties in conflict are moving arbitration closer to the judicial route, and thus ceases to be an attractive and effective mechanism for resolving internal disputes of an International -company[[60]](#footnote-60). In this way the so-called evaluative mediation that is applied in greater measured both in countries with legal systems influenced by traditional Anglo-Saxon, like international commercial mediations, is substituted for progressively going to arbitration within the preferences of the companies to resolve business disputes[[61]](#footnote-61).

## 2.4 Mediation within the European Member States

Mediation, one of the alternative out-of-court dispute resolution procedures, has moved into the focus of the European Union over the past twenty years. On May 21, 2008, it issued “Directive 2008/52 / EC on definite aspects of mediation in commercial as well as civil matters” to promote the use of mediation.  So far in Europe, all European Union member states have seen an escalation in the usage of mediation, as parties who choose to use this method have an advantage over litigation or even arbitration[[62]](#footnote-62). Consequently, Member States must select whether and how the mediation practice is regulated. In some European countries, mediation is deeply entrenched and widespread in numerous fields.

### 2.4.1 Germany

Mediation may be initiated by the parties or suggested by the court. Unless contractually agreed, there is no obligation to mediate and there will be no adverse costs order for failing to do so. However, legislation encourages mediation, by requiring the statement of claim to state whether the parties have attempted to mediate and by giving courts the power to reduce court fees where a dispute is settled by mediation[[63]](#footnote-63). Mediations are confidential, subject to some exceptions. Settlement agreements can be enforced as contracts or deeds, or may be immediately enforceable through a special procedure. Mediators are required to undergo regular training.

In the economic field, lawyers and eco-services representatives are increasingly using mediation measures to guarantee quality standards. However, Labor disputes seek solutions through mergers and alternative laws applicable to consumption and rental authorities[[64]](#footnote-64). On the contrary, mediation procedures are not regulated, but they are implemented because the law provides for litigation during the judicial process in order to reach amicable agreements between the parties[[65]](#footnote-65).

In Germany, commercial law is centered on the principles of private sovereignty and freedom of contract. Thus, there is no legal framework that defines how and when the parties negotiate. Since mediation is a form of negotiation assistance, it can protect the parties from the statute of limitations and can safely do whatever it takes to discover an amicable settlement by means of mediation[[66]](#footnote-66). In addition, the German Federal Supreme Court has ruled that if the parties have already developed a mediation clause noticeably indicating that they intend to use litigation as a preceding option, the court will impose the agreement to go for ADR upon protest by any of the two parties’ therefore declining the claim as temporary unacceptable[[67]](#footnote-67).

Belgium passed the Mediation Commandment in 2005, which contains a number of key elements to protect the mediation procedure. If the contract contains a mediation clause, the law requires the court to suspend the proceedings at the request of either party[[68]](#footnote-68). It also provides that the suspension only applies to mediation carried out by a recognized mediator, a certified agency that guarantees the mediation’s independence and quality. Lastly, between other provisions, Belgian law also provides that all communications and documentations related to mediation or made in the progression of mediation are confidential.

### 2.4.2 France

In France, mediation is used as an exploring function for the parties that help to discover a solution to a conflict between parties. The mediation cannot last more than three months. To ensure confidentiality, the mediator’s compensation must be de-sends with the magistrate and borne by the parties. If both parties do not have legal assistance, the mediator must provide funds at the beginning of the proceedings except they get benefited from as jurisdictional support (corresponding to legal assistance)[[69]](#footnote-69). However, if mediation takes place extra-judicially then it is not delimited worldwide[[70]](#footnote-70).

### 2.4.3 England

Within the Anglo-Saxon republics, settlement and negotiation of disputes between parties through agreements are part of the prevailing legal principles. There are more alternative solutions than in continental Europe[[71]](#footnote-71). In addition, arbitration, mediation, settlement and other forms of decisions that have been made include neutral investigation (especially with regard to technical complexity), impartial evaluation, and expert decisions of mediation and arbitration, which are expected to be used in the following situations: If mediation fails, the parties must agree to arbitration. With respect to consumer issues, consumers can refer to various negotiated resolution mechanisms of SOS[[72]](#footnote-72). However, civil procedural law permits the judiciary to encourage the practice of alternative methods to resolve alternate conflicts where appropriate, while the law does not contain extrajudicial processes but parliament act does provide a number of schemes/services of mediation and arbitration.

In England and Wales, a new united code of civil procedure was announced in 1999, which encouraged the practice of out-of-court dispute resolution and facilitated disputes settlement as quick as possible. These new procedural rules to facilitate mediation have led to the creation of many state-sponsored mediation organizations, such as the C and the National Mediation Helpline and Civil Mediation Council. These institutions provide a forum for mediation in England and Wales and educate potential users on the mechanisms and benefits of mediation, thereby facilitating mediation. In addition to these measures, the UK Commercial Court ruled in Cable & Wireless v. IBM UK19 that the dispute would continue until the parties referred their disputes to alternate dispute resolution decisions. The English courts even impose sanctions on parties that did not consider the proposal of mediation, even if they were not requirement to mediate in first place.

### 2.4.4 Italy

Unlike Germany, Italy has enacted several statues and provisions on mediation. The most imperative of these is Bill 5492, which defines the meaning of mediation and its room in the dispute resolution system of Italy[[73]](#footnote-73). This statute offers that courts can bring up cases to mediation and thus suspend proceedings, while lawyers are also required to inform clients about mediation and outlines time frames as well as pecuniary restrictions for mediation. Additionally, the Italian mediation legislation offers that if the parties do not reach an agreement, the mediator can offer a final resolution upon the parties’ appeal[[74]](#footnote-74).

### 2.5 Spain

The Spanish legislator, with Royal Decree Law 5/2012, of March 5, and Law 5/2012, of July 6, has regulated mediation in commercial matters, both internal and cross-border[[75]](#footnote-75). Due to the situation of justice in Spain, there is, in the commercial sphere, and in other areas, a “need” for mediation. Both the courts and the professionals are being trained to meet this need, although there is still no intense demand for mediation, which should arise from the interested parties themselves, once they have adequate information.

# CHAPTER 3: CASE STUDIES

## 3.1 Case Studies of Mandatory mediation systems in European countries

It has been identified that some of the European states for instance Italy, Germany and England have chosen to include a mediation structure or a preceding mandatory resolution of commercial and civil matters, even though with lesser or greater force.

## 3.1.1 The intermediate case of England and duty of collaboration

In English law, mediation is voluntary and is not subjected to a particular regulation. Nevertheless, based on the evaluation of the general rules and regulations expected in the Civil Procedure Guidelines, the new voluntary nature is not clear[[76]](#footnote-76). As per Act. 26.4, in force, the judge have the power to indicate the parties to reach a settlement through mediation beforehand and during the proceedings, as well as to append the proceedings in the final case for about one month[[77]](#footnote-77). However, this kind of appeal is not necessary, but if the court or another party offers mediation on a reasonable basis, the party who unreasonably refuses to participate in the mediation possibly will be penalized with legal charges of the trial[[78]](#footnote-78).

Consequently, the law court should definitely take the parties conduct into deliberation as well as their great efforts to resolve existing conflicts, by means of using this alternative method of mediation during the proceedings and before it[[79]](#footnote-79). For example: If the party that rejected the mediation appeal then wins the court case, the magistrate can approve that party by freeing the defeated party to pay the costs, which is a new method to enforce the duty of collaboration in addition to the righteous judgement of the conflicting parties regardless of its complexity, that this can lead to its casuistic manifestation[[80]](#footnote-80).

Generally, the mediation structure here is provided to the Ministry of Justice as well as to the association of Mediation Council within Civil Cases[[81]](#footnote-81). This body reflects the role of commercial and civil mediation facility providers whereas it is also found accountable for the provision of endorsement services of mediators. Thus, the jurisdiction groups subsequently denote cases only to mediation facility providers recognized by the Center. Thus, as per the data obtained from the Center of Effective Dispute Resolution (CEDR) and as a result of the implementation of this system in 2009 alone, 6,000 commercial or corporate issues were solved through mediation in that Centre[[82]](#footnote-82).

## 3.1.2 German Case: Mandatory prior conciliation for minor matters

As it can be seen that conciliation, even though conceptually dissimilar from mediation as an auto-composition method, establishes a tool of general submission within German ruling[[83]](#footnote-83). The section 278.1 of the Civil Procedure Act necessitates the court of law to always attempt as well as promote a direct agreement amongst the parties. In addition, under section 2 of the same provision integrated in the year 2002, judges are required to offer conciliation procedure as a condition for judicial proceedings, as it is not useless and it will be transformed into a weakened or intermediate preceding mandatory system which will eventually depends on court’s decision[[84]](#footnote-84).

Although the foregoing provisions of section 15 (1999), of the Law of Introduction to the German Civil Procedure Act, sanctions the federal government to include former mandatory mediation in low-income cases of property[[85]](#footnote-85). However, up to 750 euros amount must be fulfilled to an extrajudicial body of conciliation. This approval, obtained by several states, has been translated into advanced formulas, such as the Bavarian formula, in which Notaries are appointed as the agencies responsible for carrying out these procedures.

## 3.1.3 The Italian case

Since the 1990s, in particular Law No. 580/1993 on the reorganization of the Chamber of Commerce, Italian regulation has made significant progress in the field of mediation, which is finally reflected in Decree No 28/2010 of 5 March, which rejected the reasoning of the sectorial interference of the policymaker in this regard to apply the common principle of mediation in civil as well as commercial issues[[86]](#footnote-86). Therefore, Article 5 of the DL facilitated previous mediation in Italy as an obligation of process ability to settle disputes over real rights, co-ownership, division, inheritance; loan, leases, and rent of ascend[[87]](#footnote-87). In addition to it, liability for damage caused by the movement of ships and vehicles, medical responsibility and liability for damage caused by written defamation or other public means, as well as liabilities arising from insurance, financial and banking contracts are underprivileged of predisposition to the judge’s authority in respect of recommending mediation throughout the court case progression[[88]](#footnote-88).

Correspondingly, differentiating the North American system and that of majority of the European states, the Italian model is primarily formed with private or public mediation bodies, instead of discrete mediators endangered to free competition in addition to market procedures and are measured by the State by means of prior action in the record of the Ministry of Justice[[89]](#footnote-89). Similarly, the DL is accountable to ensure the value of training for mediators, which is also measured by the government via the mandatory pre-registration of such organizations beforehand similar ministries.

## 3.1.4 Spanish Case and voluntary mediation

From the promulgation of the Civil Procedure Act in 1881[[90]](#footnote-90), until its transition on August 31, 1984, mediation in Spain was denoted as resolution, which was mandatory and even increased to the level of the bureaucratic budget due to the impact of Cadis Constitution (1812) which dedicated 3 apprenticeships to the prior mandatory conciliation. Though, in the absence of elementary corresponding guidelines which will encourage their application and improve their effects with time that has turn out to be a rite devoid of content, and deprived of appeasing effectiveness of contentions, social life or the efficiency of the corporate world.

Years later, Spanish law No. 5/2012 of 6 July[[91]](#footnote-91) on mediation in commercial and civil matters was integrated into the aforementioned Spanish legal directive 2008/52 / EC. However, with respect to this regulation, the commandment goes far beyond the aspects and contents that are directed to transfer by the community guidelines. Its main purpose is to embolden the usage of mediation in cross-border engagements which usually applies to all the private decree disputes arising in Spain, with the exception among others of consumer undertakings[[92]](#footnote-92).

However, with respect to its Explanatory Memorandum, the law grants mediation powers as a privileged tool to enhance the efforts of national courts, with the understanding that this helps to view court of law in this area of ​​the authorized system as the ultimate remedy. It has been determined that under any circumstances, it is not possible to create an environment based solely on the will of revelries, and therefore can make a significant contribution to the decline of their workload. In turn, within its sections II and III, the same Exhibition sets out the key objectives and guiding principles of the law, pointing towards (a) litigation of commercial as well as civil cases with the aim of weakening the capacity of judges, (b) the flexibility of the post-agreement content from mediation, as well as the possibility of reaching a solution where the equivalence of winner to overcome i.e. typical hetero complex trials do not apply and (c) the pre-eminence of the assertive rules and autonomy of the parties will, beyond the prominence of the law.

Thus, in accordance with the provisions of the UNCITRAL Model Law of June 24, 2002[[93]](#footnote-93) on international commercial mediation, Spanish law assigns the first line of commercial conflicts to the parties involved in commercial mediation, in accordance with equality standard of the corresponding parties and the autonomy of determination in regard to the admiration and balance of their approximations (as mentioned in article 8) in the disinterest and detachment (as mentioned in article 9) of the mediator. Moreover, the basic principle of confidentiality does not include the mediator and other information obtained in the litigation and publicly obtained by the parties throughout proceedings, and exempts other interferers from liability, as well as exempts from obligations announced later in court or arbitration proceedings (Article 9)

To sum up all, it turned out that two functions are also very important for the appropriate working of the entire gear unit; (a) the mandatory delay of the limitation decree and its expiration throughout the mediation process, since this is another important support for the working of the system, preoccupied this time to eradicate the potential deficiencies in order to prevent the conceivable exploitations as a result of the unwanted effects of law (article 4) and (b) the executory allowed to the titles contained in the mediation contracts depends on whether conciliation was reached through or prior to arbitration inside or outside the country (Article 25 et seq).

## 3.1.5 Case of the French experience of Mediation to date

It has been found that France does not possess a sound understanding regarding mediation. Even though the practice of arbitration has been recognized by French courts and culture but it does not apply in case of mediation. Previously, France has taken harmonized actions to encourage mediation, even though it had partial access at first but this can largely only explain the level to which mediation is not used in the state[[94]](#footnote-94).

Consequently, in 2006, the VP (Vice President) of the Mediation Committee of the International Bar Association, Mr. Thierry Gaby, composed an article advising organizations to resolve disagreements by means of mediation. As per Gabi, mediation is a great and powerful instrument that can prevent the suspension of business dealings between money and time, therefore, people can mediate any dispute before going to court, as a result of which every corporate manager will contemplate it necessary. While he defined mediation effectiveness, Mr. Gabi at the same time identified that there are very few commercial disputes in France which are resolved through mediation. Thus, Garby formed an assembly named Academy of Mediation to embolden organizations to participate in ADR in addition to endorse mediation in the business procedures of France. Moreover, in 2006, the Conciliation Committee requested the main French business corporations to sign their charters and assure to decide impending disagreements through mediation. This conduct becomes famous within France.

However, taking the more unique concerns of France into consideration, some intellectuals considered that the convention of a centralized French state inhibits the adoption of mediation. Moreover, the current implementation of the law and the way it is taught is fundamentally the outcome of unique outlook of France's development and continue to be a problem to amend. Subsequently the rebellion, the French tradition of the ultra-centralized state that has constantly considered federalism to be dissolute, and the submission of guidelines and regulations have continuously requisite that they are initiated from Paris. Consequently, the convention of this centralized state has given rise to occurrences in which past deviations are viewed with distrust and suspicion[[95]](#footnote-95). This disbelief has hampered the development of French mediation practice.

While there are many social and cultural interpretations of barriers to mediation in France, thus it ought to be prominent that ever since 1996 the French Code has enacted a number of commandments on mediation. Article 131-1-131-5 of the French Civil Procedural Act states that while these regulations might specify that the perception of the importance of mediation has begun; their efficiency should not be undervalued[[96]](#footnote-96). According to these laws, French courts can resolve disputes and order the parties to act as mediators in their disputes, but only with parties consent. Conversely, mediation is not a substitute to proceedings but in France no cases have been taken to court. Additionally, the court holds the right to dismiss mediation at the request of the parties, lawyers or mediators. None of the paragraphs above mention these laws, which indicate that until now they have slight effect on the state of mediation in France.

Primarily, France did not endeavor to transfer the Directive into state law for a certain time period. Nevertheless, in July 2011, France turned into one of the nine additional member states of the EU and established legal notification commencing the European Commission, but no contract was mentioned. Lastly, in November 2011, the French Ministry of Justice and Freedom allotted Decree No. 2011-1540, which sets the principles for mediation procedures. However, the main aim of this Directive is to encourage the expansion of unconventional methods of dispute resolution. The law foremost defines the word “mediation” in French law, and the Ministry of Freedom and the Ministry of Justice specified that this explanation is directly constructed on the EU Directive of 2008. The demarcation of this kind of mediation is intended to a comprehensive denotation. Mediation is well-defined as a procedure within which two or more parties to a dispute try to resolve an issue amicably with the assistance of an impartial third party. This verdict was formally encompassed in the French Civil Code No. 2012-66 of January 20, 2012[[97]](#footnote-97).

# CHAPTER 4: ANALYSIS

## 4.1 Investigating the role and initiatives of mediation within the European Union

Under the 2017 Mediation Act, it was determined that conflicts resolution within the framework of the European associations; the practice of mediation or further approaches is not unfamiliar. To strengthen alternative ways of resolving conflicts is important as this allows residents to protect their rights and thus evade the extensive delay for the perseverance of the conflicts[[98]](#footnote-98).

Moreover, it was found that during the general debate of the 66th UN General Assembly (September 22, 2011, New York), President of the European Council, Herman Van Rompuy, stated that one of the most effective way of contributing to security and peace is through mediation all around the world[[99]](#footnote-99). The European Union endorses stronger encouragements for mediation. Nearly ten years after the acceptance of the European Mediation Directive, the European Parliament has issued a resolution that implements this resolution over the years.

Subsequently, in 2008, the European Parliament approved the Mediation Directive. The first article of the Directive clearly states that the use of mediation should be encouraged, especially to ensure a balance between mediation and litigation. It has been nearly a decade and mediation is still practised in cases lesser than 1% which are brought to the European Court. Majority of the Member States have expanded the room of their national procedures[[100]](#footnote-100). Though, there are still significant differences in the transposition of instructions in different countries. The difficulties that have arisen over the years in implementing the Directive reflect the cultural differences in the legal systems of different countries. Therefore, the European network of legal professionals continues to propose to change mind sets by adopting a culture of mediation and friendly conflict resolution[[101]](#footnote-101).

Legal differences amongst EU member states, the European Parliament emphasizes that national legislators are aware of the benefits of mediation, i.e. alternative, voluntary and confidential out-of-court procedures. Thus, mediation can become an expedient mechanism to improve the overstrained legal system and be a quick and reasonable tool for out-of-court settlement of disputes concerning legal or natural individuals.[[102]](#footnote-102) Presently, all the European Member States anticipate the probability for the court to direct the parties to the dispute to use mediation, or at least to participate in mediation briefings. In some states, it is mandatory to participate in such briefings either on judge’s initiative (Czech Republic) or by means of legal provisions on disputes (Luxembourg, Lithuania and the United Kingdom) to participate in these briefings[[103]](#footnote-103).

Various European countries provide economic incentives for parties to resort to mediation by reducing costs, providing legal aid or imposing sanctions when they unreasonably refuse to consider mediation. These incentives demonstrate that mediation resolves disputes quickly and reasonably with advantage, using procedures suitable to the requirements of the parties. In this sense, most of the states have procedures for the certification of intermediaries and arbitrators, and National Registries are also used[[104]](#footnote-104). Though, the European Parliament indicated that it is difficult to obtain complete statistics on mediation without a consistent database and thus it is challenging to continue to promote mediation and upsurge communal confidence in its usefulness[[105]](#footnote-105).

Therefore, the EU Parliament stresses that the EU should establish a common out-of-court dispute settlement system, which includes specific existing provisions on confidentiality, legality and time restrictions for mediators of legal measures in mediation endeavors[[106]](#footnote-106).

## 4.2 Identifying the benefits of Mediation in conflicts of International contracts

With regard to civil procedure and mediation law in England, it has been established that the limited powers of the parties to the mediator cannot provide a solution to the dispute, but must be imposed on the dispute. The most distinctive feature of this ADR is therefore that the subject of the dispute is the subject that ultimately determines the solution to the problem[[107]](#footnote-107). However, there is no doubt that in the field of international contracting, not only can potential relations be maintained, but that the parties will always have control over possible decisions that in case of England will ultimately be taken[[108]](#footnote-108).

Therefore, it is possible to define some form of economic enticement in the form of exception from fees or free procedures. There are eight countries in total: the Czech Republic, France, Poland, Hungary, Slovenia, Malta, Italy and Portugal. It was established that less than 30% of alliance states provide some economic incentive to seek mediation, while some of the countries offering mediation are very weak. As far as procedural incentives are concerned, the obligation to use mediation is, at least, disappointing because only 6 states have chosen this pathway. These countries are Slovenia, Germany, Spain, Italy, France and Malta[[109]](#footnote-109).

However, the proportion of coalition states does not reach 23%, which is relatively effective to some extent, aside from simple proposals, although they are often further away; they encourage the parties to mediate. In addition, he can confirm that although there is no Member State (with the exception of Italy, which became a mandatory Member State during the mandatory creation period), the distribution of mediation on the European map is uneven. For example, it was found that in some cases the government provides very little incentive. Mediation must be subsidized in some way to incentivize its expansion to reduce costs and to provide grants or bonuses in some form[[110]](#footnote-110).

It has been recommended to gather some specific ideas from appropriate individuals in the mediator community. Conferring to the General Council members for the Judiciary (Spain, CGPJ), education in the field of a culture of peace is important[[111]](#footnote-111). On the contrary, it has been indicated that jurisdiction is very costly, which is a complete waste of capitals. In Spain, 40 years of dictatorship suppressed prevalent contribution and introduced democracy, and the whole thing ruined. They began to promote council mediation and realized that judges can be the driving force behind the development of mediation, because judges are basically the same in countries, which are widespread. Despite this, the Council continues to sign an agreement with the Autonomous Region on the exchange of data and experience, while officially confirming the commitment of the two sides to work together on training and resource provision[[112]](#footnote-112).

According to Javier Garbayo, chairman of the State Notary Fund for Alternative Conflict Resolution and spokesperson for the Agency for Mediation and Communications (IDM), the public is not aware of the benefits and advantages of mediation, which guarantees that IDM will try to pressurize the administrative authority to accelerate the mediation process because, unfortunately, it could not convince the political class that this income implied an extension of the mediation. He also noted that a communication campaign should be launched and incentives created to encourage the use of mediation prior to the trial[[113]](#footnote-113).

Luis Martin, judge of the 73rd Madrid Court of First Instance, stressed that success will lie in encouraging pre-trial mediation because once it starts the situation becomes more complex and communication becomes more challenging. Additionally, the Spanish political class is believed to have made efforts to spread mediation because, in addition to the usual benefits, people are very happy when they reach a peaceful settlement[[114]](#footnote-114). As for mediation and voluntary coercion, they are not incompatible terms as mediation is necessary to understand the benefits of mediation.

Therefore, the European Council must work hard to expand mediation, not only because it brings many benefits to the parties, but also because it brings economic benefits to countries and these benefits are specific and reduce disputes. Streamline these litigation procedures, reducing administrative costs for the court[[115]](#footnote-115).

## 4.3 Estimating the mediation of different matters within the European countries

It is measured that jurisdiction handovers the case only to those mediation providers approved by the mediation center. In other words, it can be stated that conferring to the figures of the Centre of Effective Dispute Resolution (CEDR) in 2009, the center solved 6,000 commercial problems through mediation[[116]](#footnote-116).

As in in England and Wales as well as in France, mediation can be subsidized if it is fragment of a litigation procedure, or else the parties recompense for the mediation process. Moreover, in England and Wales, contribution in mediation is controlled and is used for disputes resolution with respect to the national law. The government is of the belief that mediation can simply be effective if both parties settle with the decision. The government emboldens its use in definite situations[[117]](#footnote-117).

In many areas, mediation is becoming an increasingly important means of conflict prevention and resolution. Mediation is more economically viable than war and can bring a better situation for both parties. This fact allows the use of mediation to reduce conflict. That is why the EU is increasingly focusing on mediation and the European Union is one of the main supranational institutions involved in this work[[118]](#footnote-118).

It is an alternative conflict resolution process; through dialogue, the parties involved willingly and secretly come across an unbiased mediator who will support them reaching an agreement which is mutually valuable. In short, mediation helps communication. Even if this point is clear, the implementation methods differ among the different organizations involved in this work[[119]](#footnote-119). In such circumstances, the European Union uses its legal requirements and flexibility to resolve conflicts that could cause uncertainty at its external boundaries by means of contracts, mostly of a monetary environment.

It is also significant that more than 10,000 mediation was carried out in just four countries (ie Germany, Italy, Netherlands and UK), which make up 14% of the territory. Aside from the rarity and success of the directive, a huge amount of data has also attracted attention, showing that each of the countries (although the directive was drafted) applied the directive when it came out, or at least it appeared like their desired aim to apply mediation and take advantage of it[[120]](#footnote-120). Ultimately, one of the key difficulties to the expansion of mediation, both nationally and internationally, is the absence of oversight of the implementation mechanism, which gives the parties confidence in the effective compliance with the arbitration process[[121]](#footnote-121).

Since the law constituting the contract, the mediation agreement is the right of the parties (Article 1545 of the Civil Code). Consequently, it enables the parties wishing to enforce it to demand compliance or settlement. In any case, compensation is required[[122]](#footnote-122). Conversely, the proposed clarification is not true. In contrast, it denies the real persistence of mediation and the objectives of the parties to mediation, thus avoiding judicial and unusual methods. Thus, most civil and commercial mediation legal systems prefer to attribute administrative value to agreements in more or less form, whether adopted before or at trial, again implying the commitment of France[[123]](#footnote-123).

Commercial mediation is thus a novelty that is taking effect in comparative law. Therefore, considering the parties to the conflict rather than referring them to ordinary courts or arbitration, but directly represent the assets in the conflict as financial losses, then this inner reality can be described even in the worst case scenario. Thus, instead of acquiescing them to the arbitration process or ordinary court prefer to balance them, throw every opportunity to support them a priori, or eventually redistribute or reorganize them using automatic mediation composition. Mediation is a phenomenon that affects the entire national economy. The state can avoid or avoid macroeconomic losses by regulating and supervising the brokerage system. In addition to providing solutions to maintain and develop business relationships between parties, the mediation system enables courts to resolve conflicts. At the same time, we solve problems that cannot be solved[[124]](#footnote-124).

# CHAPTER 5: CONCLUSION

## 5.1 Conclusion

In short, it has become apparent that mediation has gradually gained a market share in international commercial disputes, which indicates that mediation can replace arbitration. Therefore, the committee is considering the possibility of introducing clear conditions for cross-border contribution, which would overturn the objectives of the Directive and hinder the normal working of the internal marketplace. Consequently, the Directive should relate to the overall sovereign circumstances involving cross-border factors during mediation or dispute procedures. The European Union and its recommendations have played an important role in defining the concept of mediation.

Therefore, Decree No. 12/1986 proposes measures to prevent and reduce overloading of ships through alternative means of dispute resolution, arbitration and mediation. The consumer sector has joined the household sector, which includes resolutions R 2001/310 and R 98/257 on structures and out-of-court decisions; two directives on market-based electronic commerce: D 2003/31 (June 2000 8) and D Marco 2002/21 (7 March 2002), as well as the Green Paper on disputes in cross-border civil disputes; that of financial facilities with the re FINNET Reconstruction Extrajudicial agreement of May 7, 2001. The report also includes a report by the Brussels European Council (December 2001) on the prominence of precluding and determining internal, social and transnational conflicts by means of voluntary mediation mechanisms.

However, in the criminal ground, mediation was encouraged by Law R.99 / 19 on mediation in criminal difficulties besides the Framework Decision of the Council of the European Union on the status of victims of 15 March 2001 (2001/220 / JHA). In criminal proceedings: the European directive acceded to the EU directive on 22 October 2004, which highlights the key features of the new communal mediation: guaranteeing healthier access to justice while creating a dynamic connection amongst mediation and civil events, expedite the usage of mediation, ensure the organisation's affiliation with judicial systems, and assess the influence of mediation schemes.

At the international level, cross-border trade affairs have given rise to certain problems in the global economy and legal processes. When the parties cannot agree on how to resolve the conflict, they should therefore be seen as a last resort. International trade practice shows that mediation is one of the alternative approaches of conflict resolution, particularly appropriate for the inference of civil and commercial contracts, because while mediation cannot guarantee an agreement to end the dispute, it has been possible. They appeared not only to uphold or reinforce business relations, but also to better fulfil the agreements made. With respect to the above, it should be distinguished that in conflicts instigated by international employment, the mediation system can be attractive to the parties for numerous reasons and the capability to use telematics can link the gap among the parties. Conflicts amongst different legal structures, the ability to maintain the confidentiality of the program for image reasons, reduce costs and resolve conflicts, especially in terms of determining the content of the agreement, the resolution may be more concrete and illegitimate.

Confronted with the development of mediation in USA and other countries, this establishment in the field of contracts in our country is still in its infancy. This is his last statement, which requires more understanding and information about economic issues, opportunities and further development of carriers. The emerging intermediary agencies should fulfill this function and encourage their use in international contracts and even ensure protection and management of transnational procedures, and their reputation is sufficient to become an international benchmark.

While mediation can take place without signing a contract and agreement before the dispute arises, it seems reasonable that, as a commitment to a peaceful settlement, both parties to the contract have the right to seek mediation. To be clear, the legal system also drafted this regulation. This will apply to him. Even choosing a mediation agency can facilitate this procedure. Taking into account the extent to which the parties have not reached agreement through mediation, the former proposes that an agreement on international arbitration should be reached in stages, under appropriate circumstances. Agents involved in commercial transactions will become agents who will celebrate brokerage guidelines and the speed of development of the international recruiting field. They will see betting or non-fake transactions as a practical method and suitable for resolving conflicts. Let them do business with each other.

As a common factor in all disputes, the parties did not initially intend to reach an agreement. In this case, the parties do not want to complete the proceedings with an arbitration award or award, provided they know they can reach an agreement. Offer better solutions through agreements. Thus, the basis of this question is to determine the conditions most favourable to the mediation of the parties, and in this sense it is necessary to some extent to predict the outcome and costs of choosing a procedure. Mediation can reduce the uncertainty associated with arbitration and courts, which cannot be ignored. This means that it is impossible to reasonably predict the direction of the arbitration prior to arbitration or litigation, as the parties can judge the difference in the agreement. Opportunities and direction they will go in the negotiation process.

As mediation is used in some jurisdictions as a commercial dispute resolution tool and recognized as a commercially recognized tool, it is necessary to conduct mediation in many countries / regions where mediation is rarely known or used. However, right marketing is required to implement its reliable implementation and comprehensive practice, reflecting the benefits and benefits. Another problem that arises in mediation is the position of many attorneys who believe that mediation will deprive them of the income they hope to receive through dispute resolution or in court. However, the best lawyer is not the one with the most votes. On the contrary, it helps clients get the best results regardless of their income, mainly through a voluntary and friendly agreement between the two parties. This will be necessary in the future to maintain business relationships. Maintain a commercial relationship between them.

It is noted that even if the parties' lawyers are not familiar with and do not support this method of dispute resolution, the parties will still make a final decision on whether or not to apply this procedure. Therefore, it is recommended that interested parties accept the law of the other party. A representative offers mediation directly to another party or through an intermediary agency. Ultimately, note that the identity of the mediator cannot replace the identity of the lawyer, as in international civil and commercial mediation it is recommended that the parties involved assist their lawyers during the mediation process, so that the client is aware of the nature of the process from the beginning to understand the content and effect, as well as convenience under the right circumstances. In the mediation process, lawyers will play a constructive and cooperative role, advice on the limitations of legal proceedings and, based on the interests of the client and the relevant laws. However, the consequences, determine possible solutions to resolve disputes and meet requirements to protect rights. Finally, in the event that the mediation process ends with an agreement, the parties' attorneys prepare a draft agreement for the parties and the mediator to sign. Ensure applicability and compliance with the agreement.

Of all conflict resolution methods, mediation is the institution that most benefits all parties to a conflict. Today, however, it is undoubtedly an underdeveloped institution among people and commerce. The innovations offered by these systems have caught the attention of many companies and courts. These companies and individuals want to own systems other than courts, but their actual growth is not relevant internationally as they also need to verify their true validity as intermediaries. The professional quality of the employees enables them to position themselves clearly.

The practice of mediation is correct in several EU countries, but in terms of its degree of application and implementation, it should be realistic and far from becoming a model. Resolve conflicts in our culture. The next concrete step to be taken is to formulate a development clause and adopt a decree to address issues that are still widespread, such as the formation of mediators. While many initiatives have been taken around this issue, it is imperative to unite on a global scale immediately conceivable to attain standards of ethics, professionalism and transparency so that mediation can be trusted in every country. In this regard, it is necessary to call the university, which is jointly responsible for the future practical application of the institute. Until now, the institution has focused its training on the technical examination of trials won, largely disregarding the related issues. Competency negotiations and conflict resolution methods are very important in certain countries / regions that are really affected by conflict, be it negotiation or mediation, which are important in terms of training. The success of mediation lies in its use and validation to resolve initial doubts and concerns by assessing its benefits.

While large European businesses are often found in international arbitration law court, it is also essential to have a good understanding and application at the national level to confirm that SMEs integrate mediation as an appropriate and appropriate alternative dispute resolution system. This is necessary in their organization. The improper growth of the arbitration commandment led to IBEX 35 leaving the arbitration courts of other states, such as the UK, Switzerland or France, and other corporations have not even considered using this technique.

Even though mediation is used to measure one-third of the effectiveness of conflict negotiations, in practice it should not be used in the same way as mediation in family and employment relationships, because employment mediation must have clear implications and international characteristics. However, certain agency advantages, such as speed, confidentiality and economy, do not constantly apply in the field of international civil contracts, where they are partially offset by the lack of companionship and commercialism. In this sense, in some cases people feel that the commercial sector is more accessible than the civil sector.

On the contrary, in order to evade mediation being used for purposes other than the ones suggested, as the breach may be in conflict, it does not intend to actually fulfil its financial obligations, but uses good faith negotiation and mediation procedures In order to delay the fulfilment of his obligations and to achieve free self-financing, the mediator must proceed with caution based on the feelings of the parties. Likewise, the information society and new technologies must attract attention. They have become decisive factors for the development, implementation and improvement of mediation on an international level. These expertise disrupt any measured model of time and space, so the application of these advancements is critical to the globalization of mediation or the decision to rely on continuous improvement to increase success rates.

This is a great opportunity to change the pre-conflict trading system, but it is necessary to take coordinated, flexible action and long-term thinking in order to be united and professional and raise awareness around the world because this has not happened. This offers such opportunities for the coming years. Sometimes it can be difficult to change social habits, and if you act erratically, it is difficult to convince or raise awareness in the near future.

## 5.2 Implications

In general, the EU's commitment to mediation is reflected in individual measures, as well as in this hybrid organization of organizations seeking alternative dispute resolution. The many efforts in this direction reflect the concerns of a society increasingly committed to formulating a peace policy, and those who oppose war must plunge humanity into violence, poverty, insecurity and fear.

• Any initiative must have the necessary political determination to make it sustainable, because without international initiatives no progress can be made.

• In particular, the human resources of government and non-governmental organizations need to be developed to develop intermediaries at mid-level.

• A balance needs to be struck between funding for peacekeeping operations and brokerage initiatives.

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