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The Cost of Non ADR – Surveying and Showing the Actual Costs of Intra-Community Commercial Litigation

SURVEY DATA REPORT

A Project implemented by:

ADR CENTER | member of JAMS INTERNATIONAL

(Rome, ITALY)

In cooperation with:

***European Association of Craft, Small and Medium-Sized Enterprises - UEAPME** (Brussels, BELGIUM)*

***European Company Lawyers Association - ECLA** (Brussels, BELGIUM)*

ADR Center would like to acknowledge and thank the European Commission for both its dedication to alternative dispute resolution processes and its support for ADR Center's efforts to expand the scope, impact and availability of ADR practice.

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1. Lowering the Stakes: The Primacy of ADR in Cross-Border Commercial Transactions - Background

What is the cost of *not* using Alternative Dispute Resolution (ADR) and mediation in the intra-community commercial sector? As cross-border commercial transactions increase, companies can find themselves embroiled in transnational litigation that renders the price of doing business prohibitively high.

The present Survey Data Report compiles the final results of a study implemented by ADR Center, in collaboration with the European Company Lawyers Association (ECLA) and the European Association of Craft, Small and Medium-Sized Enterprises (UEAPME), in the context of the European Commission funded project *The Cost of Non ADR – Surveying and Showing the Actual Costs of Intra-Community Commercial Litigation* (reference number: JLS/CJ/2007-1/18 – 30-CE-022337900-43). It is the third project awarded to ADR Center in the Framework of the EU funded "Specific Programme Civil Justice 2007- 2013." Additional information on the ADR Center projects within the Civil Justice Programme is available at www.adrcenter. com/civil-justice.

This study surveyed companies, lawyers, and legal researchers (representatives answering on behalf of their home country) in 26 EU Member States, excluding Denmark, to ascertain the true cost of relying upon traditional adjudicative processes. The results will illuminate the usefulness and impact of mediation in the commercial setting and thus give impetus to large and small enterprises to adopt ADR processes on a transnational level as well as help policy makers apply the newly approved mediation directive on a national level—the ultimate goal being to ensure the growth of commercial transactions within the European Union.

Mediation, quite simply, saves money and ought to be utilized consonant with the new directive, *Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspect of mediation in civil and commercial matters.* As one of the lawyer respondents affirmed, 'It is certainly a dispute resolution method that should be used more than is the case today'. In light of the following data, companies, on average, are not aware of the specifics and advantages of utilizing ADR and mediation to solve cross-border commercial disputes. No doubt, this lack of information hinders the ability of transnational corporations to settle disputes in a timely, cost-efficient manner. In aiding the efforts of the European Commission, this study thus stands as an integral step toward enhancing intra-community companies' understanding of and willingness to engage alternative dispute resolution processes.

ADR Center, with the help of ECLA and UEAPME, designed two different surveys: one for EU companies and the other for EU lawyers. A third survey was disseminated by ADR Center and given to very skilled and experienced ADR experts from each of the 26 participating EU Member States. The data resulted in an accurate, inclusive composite sketch of the status of intra-community ADR practices.

2. Methodology

The touchstone motivating the methodology was to provide accurate data on the costly effects incurred by commercial businesses as a result of their underdeveloped ADR capacity.

To begin with, ADR Center designed a series of questions aimed at both eliciting participant response and ensuring data collection accuracy. In so doing, ADR Center devised a series of questions that would not be overly burdensome and thus not discourage participation as a result of the survey's length

The final set of questions disseminated in **the surveys given to EU companies and lawyers** (available at http://www.adrcenter.com/international/civil-justice-the-cost-of-a-non-ADR.html) concerned the following topics:

- the number of commercial and civil legal disputes participants had pending;
- the number of EU cross-border commercial and civil legal disputes participants had pending;
- past EU cross-border commercial and civil legal disputes;
- legal and court expenses participants incurred in relation to EU cross-border disputes;

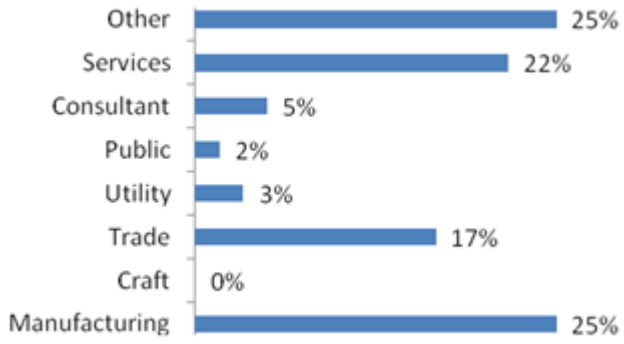
- estimated average annual business costs (time spent by office staff, "opportunity costs", loss of goods, etc.) participants incurred in relation to EU cross-border disputes;
- estimated spending during the course of a litigated case;
- the minimum perceived value of a dispute to make it worth initiating litigation in a foreign EU Court;
- risk aversion and contracting with cross-border counterparts;
- participants' perceptions of the average success rate of a mediation;
- participants' perceptions of the average duration of a mediation session for a single dispute;
- participants' perceptions of the time lapse between the initial request for mediation and the end of the mediation;
- participants' perceptions of the specifics of mediation theory and praxis;
- whether or not participants had an ADR or Mediation Corporate Policy requiring parties to go to an ADR/Mediation provider first and leave litigation only as a last resort;
- whether or not participants subscribed to a legal expenses insurance policy that covers mediation and arbitration costs in the event of a domestic or cross-border commercial dispute;

- whether or not participants thought it would be useful to call an intra-organizational meeting to evaluate the insertion of a contract provision requiring parties, in the event of litigation, to go to an independent ADR/Mediation provider before going to Court;
- participants' perceptions of the importance of having as a consultant a lawyer trained in Mediation Advocacy and specializing in ADR;
- participants' preferences on expanding the purview of the new EU directive on mediation to give judges the authority to invite parties to use mediation in domestic disputes;
- participant feedback concerning the enacting of a domestic law that requires litigants in civil and commercial disputes to attend a mediation session before going to court.

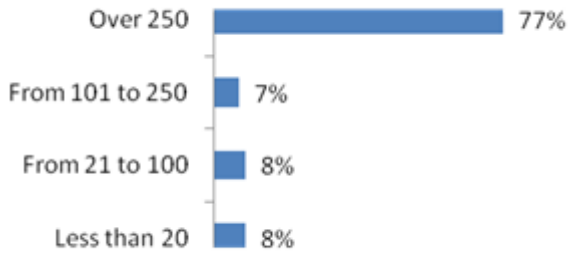
Samples/forms of the two surveys are available at: http://www.adrcenter.com/international/civil-justice-the-cost-of-a-non-ADR.html.

In analyzing the results, it may be useful to keep in mind the compositions of the respondent companies, which are depicted in the below graphs.

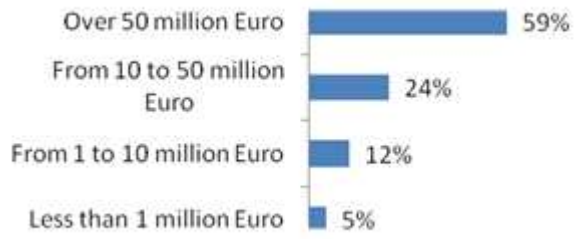
I. The pool of companies surveyed can be categorized as follows:



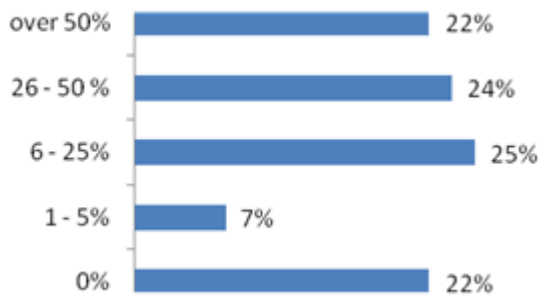
II. The number of employees within the companies can be categorized as follows:



III. The companies reported their annual turnover as (in Euro):



IV. The companies categorized their exports to EU countries as a percentage of last year's turnover as:



The **country legal researchers survey** was disseminated to ADR experts representing their respective Member State. Each expert was asked to work for approximately three days to fill out the survey by collecting data in each jurisdiction. The reason behind inviting experts from each country to fill out the survey was the complex nature of the questionnaire; doing so tracked a proven methodology adopted by the World Bank in its 'Doing Business' series. The final set of questions concerned a number of topics. Principally, the survey aimed at ascertaining:

- the duration, cost, and costs incurred over time for:
    - domestic disputes in local courts
    - EU cross-border disputes
    - domestic disputes in arbitration
    - EU cross-border disputes in arbitration

- domestic disputes in mediation
- EU cross-border disputes in mediation

- conditions of the Member State's legal market, such as:
  - conditions for hiring external representation in place of in-house counsel
  - the methodology for calculating legal fees for trial activity
  - the methodology for calculating legal fees for non-trial activity.

Lastly, each legal researcher was asked to complete a 'country index' measuring the degree of the use of mediation and arbitration compared with litigation.

The three surveys, including their respective core list of questions, were then distributed to businesses (both large and small), lawyers, and legal researchers throughout the EU. The list of participant Member States included: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom.

In promoting the survey, ADR Center partnered with the European Company Lawyers Association (ECLA) and the European Association of Craft, Small and

Medium-Sized Enterprises (UEAPME) who were charged with supporting the collection and analysis of the data received. ADR Center's inclusion of these organizations offered an additional benefit, as the target range of respondents was indeed increased due to ECLA and UEAPME's numerous clients and associates. In order to ensure integrity in the process and accuracy and candor in the data retrieved, moreover, ADR Center maintained that the specifics of survey respondents remained confidential.

A monthly breakdown of the ultimate timetable for the project, commenced in December of 2008 and culminated in April of 2010, was as follows:

- The survey instrument was developed in December of 2008.
- The survey instrument was tested in January and February of 2009.
- Leadership roles were delegated in March of 2009:
  - Project headquarters and collection of data was centralized in Rome, Italy, at ADR Center. ADR Center was principally responsible for creating the survey and analyzing the results for the project;
  - ECLA was the primary contact with the large businesses completing the survey;
  - UEAPME was the primary contact with the small enterprises completing the survey:

- Organizational meetings with project partners were conducted in April of 2009.
- The creation of a website for data collection took place from April to July of 2009.
- Dissemination of the survey occurred principally from May to September of 2009.

o Promotional activities included on-line emails, webpage announcements, and paper dissemination during a number of events organized by ADR Center:

- Data collection began in approximately August of 2009 and culminated in February of 2010.

o ADR Center expanded the base pool of data respondents by retrieving survey information in the context of the numerous training and conference events organized within the Civil Justice Programme projects implemented by ADR Center

- Results were retrieved from November of 2009 to February of 2010.
- Results were organized in February and March of 2010.
- Publication of the present Survey Data Report occurred in March of 2010.

Outputs of the survey results represented in this finalized report included postings of the results on the internet so as to facilitate international exposure. Publishing the results online through various websites, including, but not limited to, the ADR Center website (available at www.adrcenter.com/international/civil-justice-the-cost-of-a-non-ADR.html) provides business people and members of the legal community with easy access to the information. One of the overarching goals of the project was to educate not only business and legal professionals but the public at large. Ease of access to the information, in turn, educates more people on the uses and benefits of ADR.

3. Findings - EU Lawyers and Companies

I. The Status of EU Cross-Border Disputes

We would like to estimate the percentage of businesses involved in a dispute and the number of pending EU cross-border disputes as compared to the national ones.

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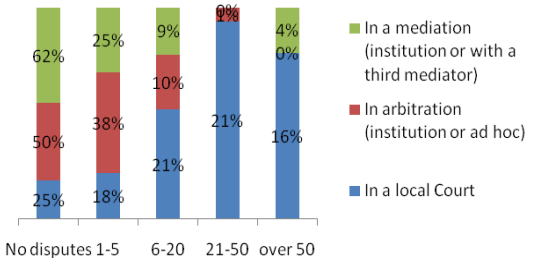
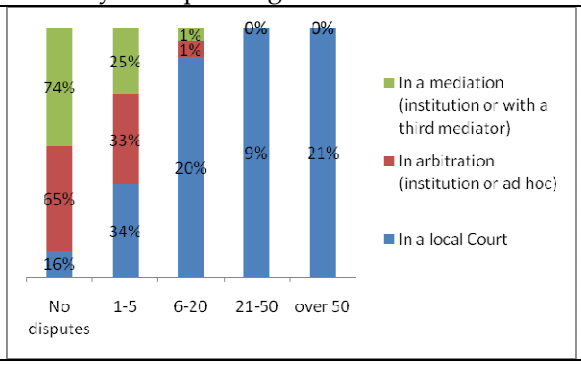
1. Lawyers - How many domestic commercial and civil legal disputes are you currently working at?	1. Corporations - How many domestic commercial and civil legal disputes does your organization currently have pending?
	

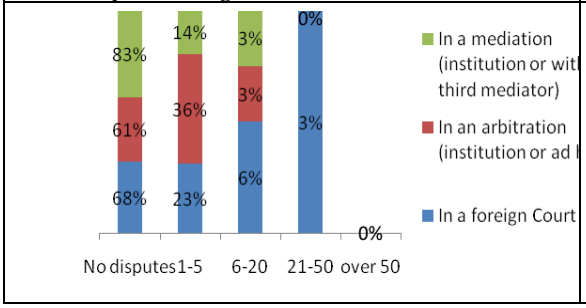
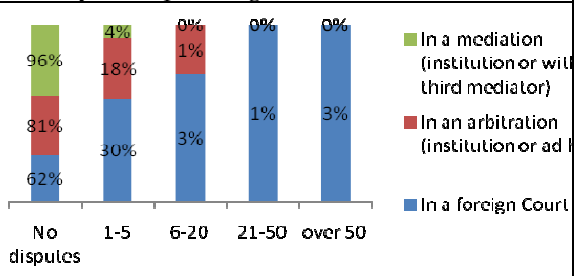
Key Findings

The data retrieved from both EU lawyers and EU corporations was nearly identical in regards to the number of current domestic commercial and civil legal disputes:

- Per respondent, both reported having on average nearly 6-20 cases pending in local court.
- Both groups reported having approximately 1-5 cases pending in arbitration and 1-5 cases pending in mediation.

Comments

In analyzing the data, it becomes apparent that alternative dispute resolution processes, whether mediation or arbitration, are not utilized as much as traditional adjudicative processes within the European business and legal communities. Accordingly, the level and demand for mediation and arbitration needs to be increased.

2. Lawyers - How many EU cross-border commercial and civil legal disputes are you currently working at?	2. How many EU cross-border commercial and civil legal disputes does your organization currently have pending?
	

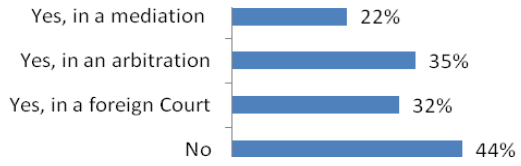
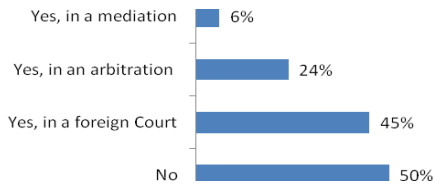
Key Findings

The data retrieved from both EU lawyers and EU corporations again revealed correlations in the respective number of each group's pending disputes. As applied to cross-border disputes:

- Per respondent, each group reported having an average of between 1-5 cases pending in a foreign court.
- Each group reported having approximately 1-5 cases pending in arbitration.
- In regards to mediation, on the one hand, EU corporations on average reported no cross-border disputes pending in mediation. On the other, although not reflecting a significant increase in the raw rating score, EU lawyers reported an average of approximately 1-5 mediations per respondent.

Comments

Again, the data verifies a need to utilize alternative dispute resolution processes in resolving disputes. Especially in the cross-border arena, which represents the ambit of the mediation directive, parties have remained reluctant to step outside traditional adjudicative processes. In fact, the data confirms that EU corporations, on average, have failed to engage mediation in cross-border disputes. As such, their continued reliance on litigation is likely increasing costs, decreasing revenues, and stalling growth.

3. Lawyers - Have you handled any EU cross-border commercial and civil legal disputes in the past?	3. Have your company had in the past any EU cross-border commercial and civil legal dispute?
	

Key Findings

Whereas more than half of the EU corporations (50.5%) reported not having been involved in past EU cross-border commercial and civil legal disputes, only 44.4% of EU lawyers reported the same.

- The reported numbers of EU corporations and lawyers having been involved in past cross-border commercial and civil legal disputes were:
  - 44.8% of corporations reported having been involved in past cases in foreign courts; 31.9% of lawyers reported the same.
  - 24.1% of corporations reported having been involved in past cases in arbitration; 34.7% of lawyers reported the same.
  - 5.7% of corporations reported having been involved in past cases in mediation; 22.2% of lawyers reported the same.

Comments

Given the occurrences of cross-border disputes for EU corporations and EU lawyers stands at nearly 50%, there is much ground to be gained through the implementation of the mediation directive. Judicial invitations to mediate and the consequent enhanced likelihood that such cross-border disputes will be settled amicably can reduce the costs associated with protracted litigation.

4. Lawyers – Participants were asked to please comment on their experience with EU cross-border litigation, if applicable. The most relevant responses were:

- Quick, efficient, cheap.
- Agreement stipulated that jurisdiction over case is the choice of the plaintiff, so there were disputes on this issue, as both of parties brought an action in local arbitration court. We did not find any regulation regarding this.
- I am regularly working on large international commercial arbitrations but mainly East-West trade rather than EU cross border.
- It is very lengthy process.
- No litigation experience. Only arbitration and mediation.
- Problems when instructing a foreign lawyer or receiving instructions from a foreign lawyer include typically: understanding the different procedures abroad, different rules of evidence, collecting efficient evidence, expert witness, costs of travelling abroad (with or without client), connecting local experts with foreign experts.
- Not litigation. But in arbitration, where in a common law seat, the discovery process has got way out of hand and is being used as an instrument of harassment, delay and increases costs exponentially.
- There is a greater need to prime and prepare counsel and the parties so that they have a mutual understanding of the process and their respective roles going into that process. There is also a need to help them think through possible consequences of cross-border enforcement.
- Limited.

- Interesting experience regarding bodily injury and insurance warranties (local and master programme).
- It was faster and based on very simple rules. The decision was issued in few months.

4. Corporations – Participants were asked to please comment on their experience with EU cross-border litigation, if applicable. The most relevant responses were:

- It is very time consuming and a real cost for the SMEs.
- I was not personally involved. We used services of external lawyers.
- EU cross border litigation is all the time big risk for both parties. Everybody is professional in his/her jurisdiction, but once we are out in foreign jurisdiction, we have to take care of a lot of different issues.
- Therefore, we prefer arbitration/mediation if possible.
- No problems with foreign courts.
- Both god and bad experiences with foreign arbitration.
- No issues - you file suit and the case progresses. Some countries have very lengthy trial periods.
- In cross-border litigation the need for blind trusting advice about the foreign juridical system creates an uncertainty, because the outcome is mostly negative and a very expensive experience.
- With approximately 50 companies world wide, hereof 30 in EU we are used to legal cases with our organisation. We prefer to agree on arbitration in all contracts. Lately we have inserted provision about mediation, but so far we have not tried it. Our experience with court cases, both in court or in arbitration, is that it is slow and costly.
- The case - in Belgium - is still in preparation. It seems efficient that the Court approx. 9 months in advance has fixed the date for the oral hearing. The language barrier is present.
- It is hard to give an unanimous comment about EU cross-border litigations, since each country has its specific approach to such cross-border litigation.
- We have no experience.

- No experience.
- In Slovakia the legal process on intellectual property before civil court takes more than 5 years and there is no trial decision until now even from the first instance (we are the Czech company).
- As for overdue payments Germany, the court work quickly with no problem.
- Expensive, challenging, takes a lot of time.
- No experience.
- The interpretation of the Rome Convention can be tricky.
- My perception is that French courts (first instance) tend to accept jurisdiction and favor local companies.
- Often a contentious arise on the jurisdiction or applicable law.
- Our cross border litigations are handled by our mother company in France.
- Dramatic. A claim in Spain takes for ever in court.
- No experience.
- Very helpful external specialist lawyers guide well, but you're left to following their instructions, can't be very proactive.
- In my previous job as a lawyer with a big law firm I have been involved in EU cross-border litigation. In my current position as a commercial lawyer I have not yet experienced cross-border litigation.
- In a company the size of the Philips Group it is not exceptional at all.
- There is always the same problem being the differences between the manner of litigation and the (civil) laws.
- For the EU a European civil code is absolutely desirable.
- The most difficult issue to manage is time. Foreign litigation is often a long story and safeguarding measures are difficult to realise as well. Further, the opinion of local Courts differ strongly from country to country (in particular in IP related issues).
- I was not involved directly.
- I don't have any experience in that.
- None for my present company.

II. The Costs of EU Disputes to Businesses

We would like to explore how the costs and the associated risks of EU disputes affect the growth of business.

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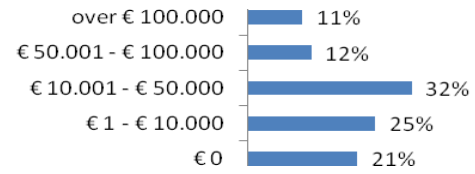
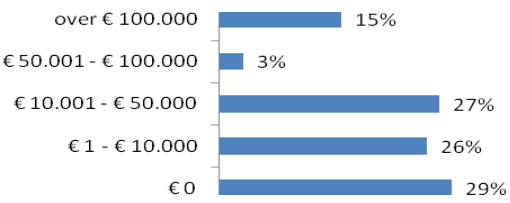
5. Lawyers - Estimated average annual legal costs (legal and court expenses) that your average client organization spends in relation to EU cross-border disputes.	5. Estimated average annual legal costs (legal and court expenses) that your organization spends in relation to EU cross-border disputes.
	

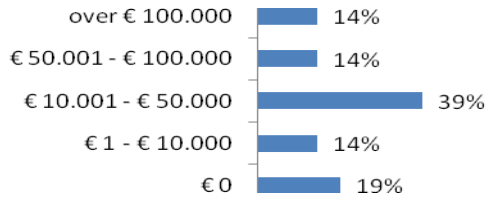
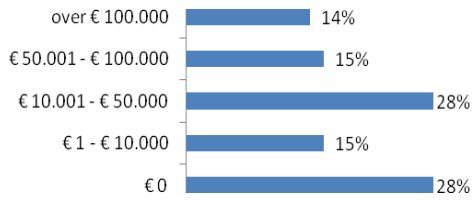
Key Findings

According to the data, over two-thirds of the responding EU corporations reported allocating an appreciable portion of their budget to annual legal costs incurred as a result of EU cross-border disputes, with 71% reporting some level of expense incurred.
Of the EU lawyer respondents, over three-quarters reported that their average client allocates an appreciable portion of their budget to annual legal costs incurred as a result of EU cross-border disputes, with 79% reporting some level of expense incurred.

Comments

The lower cost of alternative dispute resolution processes indeed can ameliorate the costs—incurred both in legal and court expenses—associated with intra-community commercial litigation. Per the data, over two-thirds of the

responding corporations would thus stand to gain substantive growth through the positive effects of non-litigation-based resolution processes.

6. Lawyers - Estimated average annual business cost (time spent by office staff, "opportunity costs", loss of goods, failed or incomplete payments, damage to commercial reputation) that your average client organization incurs in relation to EU cross-border disputes.	6. Estimated average annual business cost (time spent by office staff, "opportunity costs", loss of goods, failed or incomplete payments, damage to commercial reputation) that your organization incurs in relation to EU cross-border disputes.
	

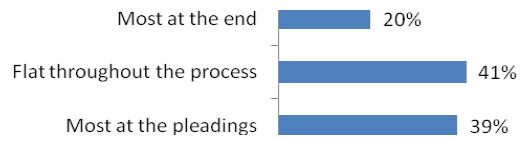
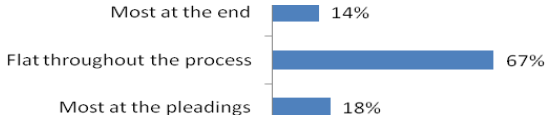
Key Findings

As reflected in the data, over two-thirds of the responding corporations again reported allocating an appreciable portion of their budget to annual business costs in relation to EU cross-border disputes. In fact, 72% of the respondent corporations reported some level of expense incurred.
Of the EU lawyer respondents, over four-fifths reported that their average client allocates an appreciable portion of their budget to annual business costs in relation to EU cross-border disputes. 81% of the respondent lawyers reported some level of expense incurred by their clients on behalf of cross-border business costs.

Comments

Nearly 2 out of every 3 responding corporation and 4 out of every 5 lawyers speaking on behalf of their clients estimated significant costs incurred—both in capital and resources—as a result of handling cross-border disputes. What is more, as these companies expend resources, they may be simultaneously

exposing themselves to further underlying costs and inefficiencies attributed to managing cross-border litigation.

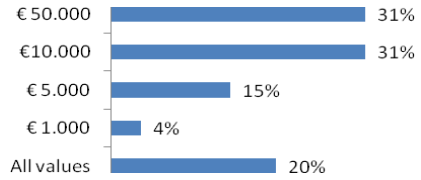
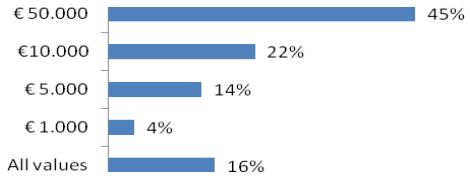
7. Lawyers - Estimated spending during the course of a litigated case.	7. Estimated spending during the course of a litigated case.
	

Key Findings

Approximately 2 out of 5 (39.3%) of the lawyers polled reported spending most of their time in the pleading stages of a litigated case.
Almost 7 out of 10 (66.6%) of the corporate respondents estimated devoting equal amounts of time to each stage of the litigation process.

Comments

Both groups affirmed that the pleading stage of the litigation process consumes significant time. Employing alternative dispute resolution processes eliminates the need to devote substantive efforts pleading a case. Further, engaging in mediation allows the parties to re-evaluate the merits both of their case and the opposing side's case. Hence, even if parties ultimately resort to litigation, mediation nevertheless saves costs that would otherwise have been incurred due to prolonged discovery and pleadings.

8. Lawyers - In your experience, in pure monetary terms, what is the minimum value of a dispute to make it worth initiating litigation in a foreign EU Court?	8. In your experience, in pure monetary terms, what is the minimum value of a dispute to make it worth initiating litigation in a foreign EU Court?
	

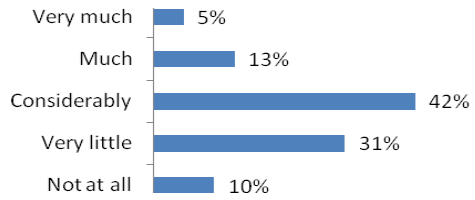
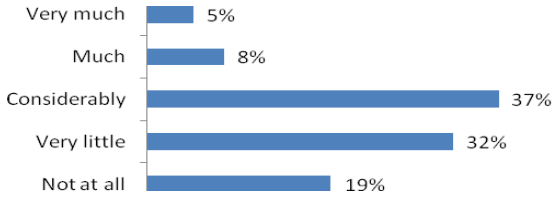
Key Findings

The vast majority of corporate respondents estimated that litigation in a foreign EU Court is not worth pursuing for cases where the value of the dispute falls below € 50.000.

- Approximately two-thirds of the lawyer respondents estimated the minimum value to be between € 10.000 and € 50.000.

Comments

Mediation and ADR practices can have a dual positive effect on the above figures. For one, participating in mediation is almost always cheaper than participating in litigation and thus can save the parties money. Second, the cost effectiveness of mediation can empower parties to pursue cases, the resolution of which may otherwise be cost prohibitive. In so doing, mediation invites the parties to resolve their differences and thus preserve a profitable relationship.

9. Lawyers - How much does the risk of an international dispute in a foreign EU Court influence your clients' decision to sign a contract with a counterpart?	9. How much does the risk of an international dispute in a foreign EU Court influence your decision to sign a contract with a counterpart?
	

Key Findings

The data retrieved from both EU lawyers and EU companies was nearly identical in regards to the quantification of risk aversion related to contracting within traditional cross-border conflict resolution processes.

- On average, EU corporations estimated their risk aversion to fall in the middle of the continuum.
- EU lawyers estimated their aversion to be closer to "considerably" in terms of the affect the risk of international dispute in foreign courts influences their decision to contract with a counterpart.

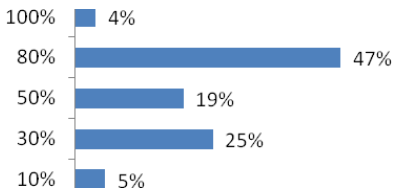
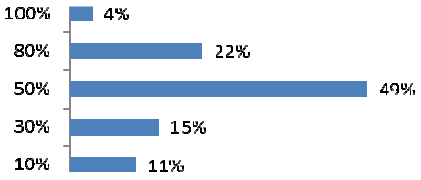
Comments

It is disconcerting to the prospects of sustainable cross-border business relations that intra-community companies and lawyers associate a decision to sign a contract with a counterpart as unduly risky. The option of mediation in itself alleviates the specter of cross-border litigation and thus opens avenues for commercial transactions.

III. Individual Assessment of ADR and Mediation Awareness

In light of the new EU Directive on mediation that the Member States must adopt by 2011, we would like to survey individuals' awareness of ADR and mediation in the business and legal community.

In a mediation process administrated by an experienced mediation organization and conducted by a trained mediator, what is your estimate of:

10. Lawyers - The average success rate of a mediation.	10. Corporations - The average success rate of a mediation.
	

Key Findings

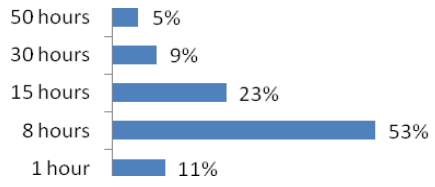
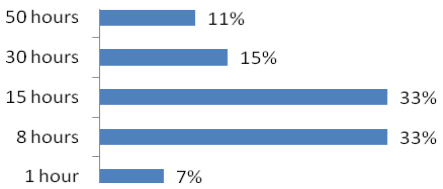
The data reflects a misconception on the part of EU corporations, nearly half of respondents estimated that only 50% of mediations result in successful resolution.

- Nearly half of the EU lawyers, however, correctly estimated that mediation yields an 80% success rate.

Comments

As the data suggests, EU corporations are misinformed as to the specific practices and benefits of mediation. Without adequate knowledge of alternative dispute resolution processes, corporations may not be incentivized nor motivated to partake in their benefits. Consequently, the resorting to and

reliance upon litigation may obscure the utility of alternative dispute resolution options.

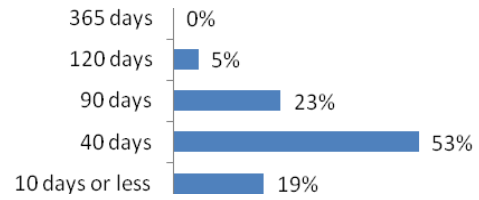
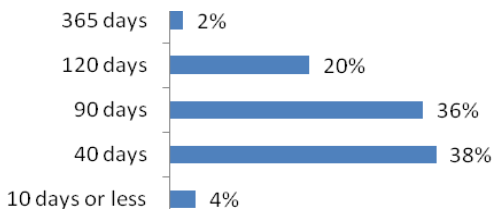
11. Lawyers - The average duration of a mediation session for a single dispute.	11. Corporations - The average duration of a mediation session for a single dispute.
	

Key Findings

Two-thirds of the corporate respondents incorrectly estimated the average duration of a mediation session for a single dispute.
In contrast, over half of the lawyer respondents correctly estimated single-dispute mediation sessions to last 8 hours.

Comments

Although lawyers correctly estimated the average length of mediations, the fact that two-thirds of the corporate respondents were incorrect in their estimate stands as further proof that EU corporations are unfamiliar with mediation and alternative dispute resolution processes.

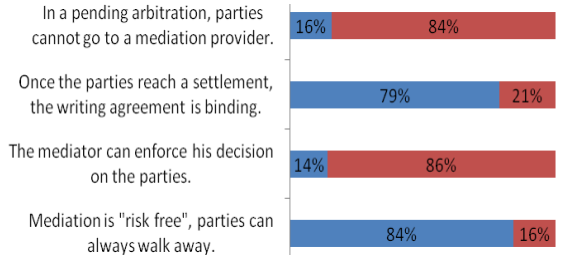
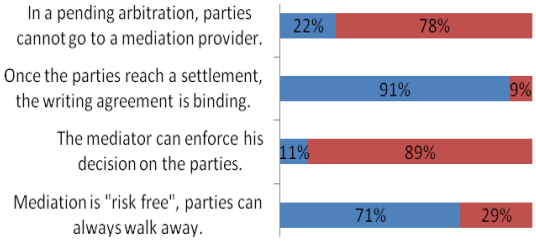
12. Lawyers - The time lapse between the initial request for mediation and the end of the mediation.	12. Corporations - The time lapse between the initial request for mediation and the end of the mediation.
	

Key Findings

More than half of the lawyers who responded estimated the time lapse between the initial request for mediation and the end of the mediation to be 40 days.
Of the EU corporations that responded, only an approximate 40% believed the time lapse to be 40 days.

Comments

Before EU lawyers and corporations consistently consider mediation as a viable option, they first need to be educated as to what it entails. Moreover, without adequate knowledge of mediation's benefits, members of the intra-community cannot properly frame the costs associated with litigation.

13. Lawyers - Are the following statements about mediation true or false?	13. Corporations - Are the following statements about mediation true or false?
	

Key Findings

The data retrieved from both EU lawyers and EU companies reflects a correlation in their respective perceptions about mediation. On average:

- Both reported a belief that mediation is generally "risk free".
- Neither believed mediators can impose his or her decisions on the parties.
- Both concluded that once parties reach a settlement, a subsequent written agreement is binding.
- Lastly, neither concluded that parties cannot go to a mediation provider pending arbitration.

Comments

If we combine the above results, EU lawyers and EU companies generally believe that mediation is a "risk-free" process, involving a neutral third party, that may result in a binding settlement.

IV. Corporate Assessment of ADR and Mediation Awareness

In light of the new EU Directive on mediation that the Member States must adopt by 2011, we would like to survey the lawyer's awareness of ADR and Mediation.

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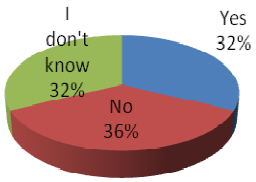
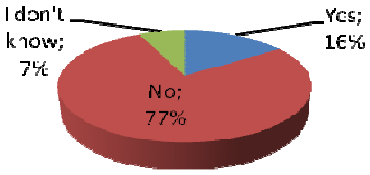
14. Lawyers - In order to control the cost and the results of litigation, do your client organizations tend to have an ADR or Mediation Corporate Policy that requires parties to go to an ADR/Mediation provider first and leave litigation only as a last resort?



14. In order to control the cost and the results of litigation, does your organization have an ADR or Mediation Corporate Policy that requires parties to go to an ADR/Mediation provider first and leave litigation only as a last resort?



Key Findings

The data retrieved from both EU lawyers and EU companies reflects a vast disparity in the percentage of institutionalized alternative dispute resolution policies within EU organizations.

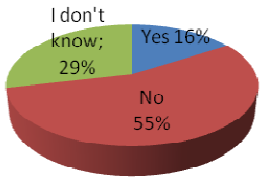
- On average, lawyer respondents were nearly split evenly concerning the tendency of their client organizations to implement a corporate ADR policy.
- In stark contrast, an overwhelming majority of corporate responses affirmed that their organizations *have not* instituted ADR policy.

Comments

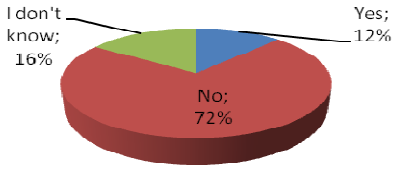
With only nine corporate respondents affirming they have instituted an ADR policy within their company, the majority of EU corporations, in light of the

above results, do not have an in-house ADR policy and thus are exposing themselves to unnecessary costs associated with managing and pursuing litigation.

15. Lawyers - Do your client companies tend to subscribe to a legal expenses insurance policy that covers mediation and arbitration costs (fees, administration costs, legal expenses, etc.) in the event of a domestic or cross-border commercial dispute?



15. Does your company subscribe to a legal expenses insurance policy that covers mediation and arbitration costs (fees, administration costs, legal expenses, etc.) in the event of a domestic or cross-border commercial dispute?

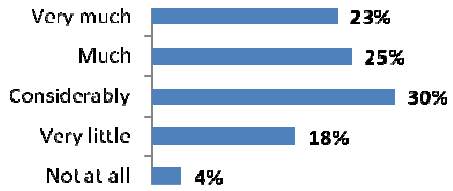
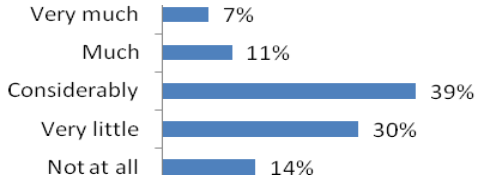


Key Findings

Whether EU companies or lawyers responding on behalf of their client organizations, according to the data, neither group, on average, affirmed subscribing to a legal expenses insurance policy that covers mediation and arbitration costs in domestic or cross-border commercial disputes.
Indeed only a small percentage, 12% of EU corporations and 16% of EU lawyers speaking on behalf of their client organizations, reported subscribing to an insurance policy pertaining to mediation and arbitration.

Comments

As corporations begin to grasp the *actual* costs of intra-community commercial litigation, hopefully more and more companies will be encouraged to resort to more effective means of managing domestic and cross-border commercial disputes. And, in doing so, they will subscribe to insurance policies that cover the costs of mediation and arbitration.

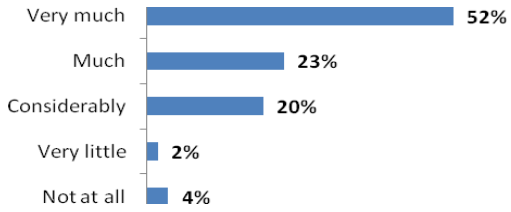
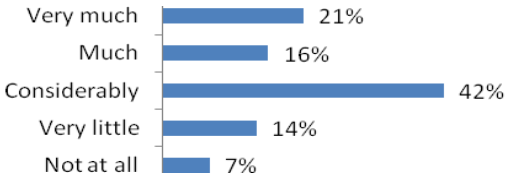
16. Lawyers - How useful do you think it would be to call a meeting with your clients to evaluate the insertion of a clause in all their contracts that requires, in the event of litigation, to go to an independent Mediation provider before going to Court?	16. How useful do you think it would be to call a meeting within your organization to evaluate the insertion of a clause that requires, in the event of litigation, to go to an independent ADR/Mediation provider before going to Court?
	

Key Findings

On average, EU lawyers affirmed that meeting with their clients to evaluate the merits of a mandatory mediation clause in all contracts to be between 'considerably' and 'much' value.
The raw rating score for EU lawyers was 3.5 out of 5.
Nearly a whole point lower, EU corporations, on average, held that an intra-organizational meeting assessing the value of a mandatory mediation clause would be somewhere between 'very little' and 'considerably' in quantified value.
The raw rating score for EU corporations was 2.7 out of 5.

Comments

As evidenced by the above data, there is a split in the perceived efficacy of incorporating mandatory mediation clauses in business contracts. It is generally clear, however, that level of demand of mediation and arbitration services is increasing and will continue to do so as Member States implement the mediation directive.

17. Lawyers - In improving your skills in resolving disputes outside the Courts, how would you rate the importance of attending a training in Mediation Advocacy?	17. In resolving disputes outside the Courts, how would you rate the importance of having as a consultant a lawyer trained in Mediation Advocacy and specializing in ADR?
	

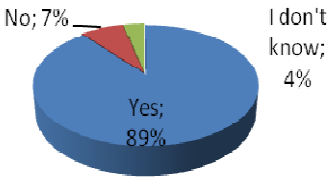
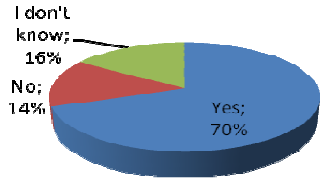
Key Findings

According to the data, EU lawyers attach significant importance to attending a training in mediation advocacy.
On average, respondents considered such a training event to be between 'much' and 'very much' in importance.
EU corporations, according to the data, believed it important to have as a consultant a lawyer trained in mediation advocacy and ADR.
On average, respondents quantified the value of retaining such a specialist to be between 'considerably' and 'much' in importance.

Comments

The value of retaining a legal expert trained in alternative dispute resolution processes cannot be overstated. As such, both EU corporations and EU lawyers affirmed their belief in the importance of ADR training.

V. Poll on EU ADR Policy

18. Lawyers - Together with various initiatives to promote mediation, the new EU Directive on mediation gives judges the authority to invite the parties to use mediation only in cross-border civil and commercial disputes. Would you prefer that these measures also be adopted for domestic disputes within your country?	18. Together with various initiatives to promote mediation, the new EU directive on mediation gives judges the authority to invite the parties to use mediation only in cross-border civil and commercial disputes. Would you prefer that these measures also be adopted for domestic disputes within your country?
	

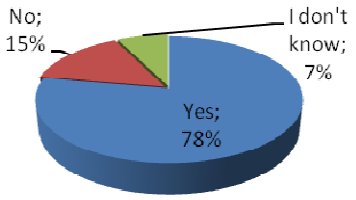
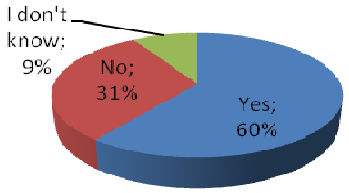
Key Findings

The data reflects a substantial desire on the part of both EU lawyers and EU corporations to expand the purview of the EU directive on mediation to include domestic disputes as well.

- All but six of the lawyers who responded would like to see an expansion of the directive.
- Over two-thirds of the corporate respondents wished the directive were expanded.

Comments

As the data indicates, both EU lawyers and EU corporations would welcome invitations to mediate domestic civil and commercial disputes. Accordingly, there is a base of support among intra-community members of law and commerce for the promotion of mediation and ADR advocacy.

19. Lawyers - Would you agree with a domestic law that requires litigants in civil and commercial disputes to attend a mediation session (with no obligation to settle if they do not like the agreement) before going to Court?	19. Would you agree with a domestic law that requires litigants in civil and commercial disputes to attend a mediation session (with no obligation to settle if they do not like the agreement) before going to Court?
	

Key Findings

A significant majority of respondent EU corporations and EU lawyers favored the implementation of a domestic law that requires litigants to attend a pre-trial mediation session.

- Of the EU lawyer respondents, nearly 80% favored enacting such a law.
- Of the EU corporate respondents, well over 50% favored enacting such a law.

Comments

In an evident effort to improve intra-community business endeavors and partnerships, EU corporations and EU lawyers overwhelmingly support enacting a domestic law requiring pre-trial mediations. As reinforced by this study's key findings, subscribing to mediation over litigation would likely expand the quantity, range, and efficiency of intra-community commercial transactions and development.

VI. General Comments

At the end of each questionnaire, the respondents were asked to please comment on the use of ADR and Mediation in solving legal disputes. The most relevant responses which came from the **Lawyers** were:

- Lawyers are the threat to ADR because they loose in legal fees.
- Quite often there would be no use of attending a mediation session as debtor simply is not fulfilling his obligations or is avoiding the creditor. But such opportunity to try to reach a settlement in mediation session is supportable. Only what is needed, is prestigious mediation institution.
- It is certainly a dispute resolution method that should be used more than is the case today.
- In our country we are waiting for the fist court session after the filing the petition for 1 - 1,5 year. It is too much, that's why we need mediation to resolve disputes fast.
- Arbitration and Mediation is not very common in Lithuania. Disputes are generally handled through court proceedings.
- Mediation is very welcome in civil disputes, because most frequently resolution lies with the parties, which are just too proud to recognize it initially.
- ADR/Mediation is useful if the positions of the parties are not too far apart.
- I think that the impact of ADR is likely overestimated, professional parts involve their lawyer just when they have already decided to litigate and excluded other options.
- Very positive comment, the writer is a qualified mediator as well as coordinator of a mediation centre set up by the local Bar.
- Mediation is an efficient and cost effective tool to manage and possibly settle business disputes.

- For various reasons, cost in particular, it is always worth a try. Nothing is lost and very often is successful.
- I'm quite favorable to mediation which I use frequently. However it works because it's not a mandatory process, and parties enter willingly into the process. I'm not sure it will remain the case when mandatory.
- ADR is the way forward in keeping the eyes on the price - the price being cost and conflict efficiency.
- Essential to ensure access to expeditious civil justice.
- Italy already has a law that provides for information to the client on mediation, compulsory try out of mediation for certain controversies.
- The EU Directive is a political compromise. There is no clear strategy. Emphasis should be on party autonomy and choice, which pre-supposes education and understanding that are missing in most EU law schools and trainings for lawyers & judges. Evaluative ADR processes (e.g. conciliation) are confused with non-evaluative processes (e.g. mediation).
- We recommend ADR to all our clients and at least provide information about it. All lawyers are required to attend the Course "Lawyers and Mediation: Why and When to recommend mediation to your client. Selecting cases for mediation and preparing the client." from the www.mediarcom.com/uk.
- Mediation is very useful tool for solution of the disputes.
- I am for it. It gives parties a tool to solve conflict down.
- ADR saves time, energy, sources for the first task of business - work, gives work to employees, makes profit.
- ADR is very useful and clients have to be informed about possibilities to try to solve their disputes by their lawyers.
- It is very important. It saves money, time and nerves of all involved. Parties have bigger influence on the result than in the court.
- "Free mediation" gives more opportunity to solve litigations.
- It is a different chance to resolve the problems. Why not?
- Highly beneficial for the parties, ADR allows the parties to avoid time and cost consuming litigation in court and shortens considerably the time spent in dispute solving.

- I appreciate very much the initiative to promote the mediation since I think that the mediation is a real alternative of the litigation.

The most relevant responses which came from the **Corporations** were:

- I am very much active in promotion of ADR and Mediation in solving legal disputes
- It is a suitable mean.
- ADR and Mediation can be good and bad (depending on the parties and the Arbitrators and Mediators involved), but it is ALWAYS expensive.
- The best thing would be for the ordinary courts to be well staffed and equipped so as to be able to handle all needs for speedy, impartial and competent justice.
- It may work but generally speaking all commercial parties do their utmost to avoid going to court as it generally could be considered like a war - very costly and the control of the outcome is not very big
- Even though I have not tried a formal ADR/Mediation solution I definitely see the advantage of this way of solving legal disputes. The fastness is of great importance, as we often see that even court cases or arbitration awards settle a dispute, as it take two parties to have an agreement but only one to break it!
- It should still be voluntary.
- We do not have any problems with the courts in relation to solving legal disputes.
- It is important to advertise the successes in ADR and mediation.
- In some disputes however (eg. non payment of not protested invoices) mediation is not to be foreseen.
- My experience is that parties try to settle before going to court; no much added value in the use of ADR. Arbitration is not the solution compared to traditional court proceedings and neither will be ADR/Mediation. I am more pragmatic.
- It should be left to the parties to decide upon using ADR or not
- The only way for speedy results in most cases except clear cut defaults

- Very useful, however, very expensive also and it can take a long time.
- ADR and Mediation are good to very good instruments, considering of course the given conflict and parties therein. Personally I'm very much aware of the possible monetary gain of these instruments.
- Honestly, the company I work for is not involved in many disputes. The relationships with our customers and suppliers usually are managed well and any problems are normally solved amicable.
- It can be very useful but only if the it is more time and cost effective than common legal proceedings.
- It is now common practice in many States in the US to have compulsory mediation before going to court in order to reduce the workload of the courts. I would be very much in favor if we move in the same direction in the EU.
- I have serious doubts on the use of ADR and/or mediation. I prefer the court.
- In my opinion it can only be useful in disputes between equal sized parties where the certainty about payment after becoming a solution is about 100 %. Not in disputes with parties where you know almost nothing about their credibility, because then it becomes another type of delay used for not paying.
- ADR/Mediation cannot solve all. Case-by-case/field of business, branch and local culture can require a different approach.
- Why do people still hesitate to use it, why does is still seen as 'soft' in the commercial world?
- I think it can be very effective.

4. Findings - Country Legal Researchers Survey

The main goal of the research, directed at legal experts in the 26 EU Member States, was to answer the following question: *What is the cost of not using a two-step procedure "mediation then court in Europe?".* Putting it in another way, we wanted to explore the impact litigation has on time and on cost of the transposition of the European directive on mediation in each Member State by May 2011. Another important goal of this research was to set an initial standard for yearly research in the field. Given the importance of the data gathered, it is our objective to continue to refine the results of the research each year.

I. Introduction

Despite the increasingly well-documented economic and social value of using ADR, almost all over the world the demand for ADR services as yet represents a small niche within the larger "market" of disputing in general and litigation in particular. ADR is far from being solidly established in European countries, for instance, or in any of the world's growing economies. For example, in Italy, where mediation organizations were established more than 10 years ago, and where significant resources have been invested, about 4,000 civil mediation cases are now administered annually by ADR providers and professional mediators. But those numbers are not as encouraging when compared to the five million

civil cases pending in Italian courts at any given time. If we analyze the number of mediations, mediators, and mediation providers compared with the citizenry as a whole (number of citizens per mediator, etc.), or with the scale of the public justice system (using ratios of mediators to judges, mediation providers to courts, mediation cases to cases pending in court, etc.), the picture remains similar across Europe.

Across many jurisdictions, the data reveals an apparent paradox that can be summarized in two numbers, 75% and 0,5%:

a) The great success of mediation procedures in specific cases, at least when administered by well-qualified and well-trained mediators through specialized ADR providers, is documented. There is a range of settlement rates for programs as a whole, from about 70%, typical for "mandatory mediation" where a judge or court system orders the parties to attempt mediation, up to as high as 80% for "voluntary" mediation programs. (Individual mediators show a much larger range, but we are concerned here with patterns that affect thousands of cases.)

b) There is very limited systematic use of ADR by litigants and lawyers, in most jurisdictions. One source of data is simply the ratio of the total number of mediations held, divided by the cases filed in court, or

pending. In most countries, this ratio is less than one-half of one per cent, even today.

In addition to the advantages of ADR at the individual level, the weight of opinion is that broad usage of ADR has a positive impact on the public as a whole. It follows that adoption of ADR should be considered good "public interest" policy at a macro level, in the same way as improvements to public health, transportation, etc. As it is, there is something wrong with the perception that the start-up phase of the field actually works this way. The aggregate data shows that over years, in each of the European countries, millions of Euros have been spent by the main stakeholders -- public entities, users, donors, and ADR providers themselves -- to promote ADR procedures, without a corresponding return on the macro level (in which we postulate not thousands, but hundreds of thousands of mediations per year). The same is true in too many states in the US. But it is not true, as already noted, in *all* states. Therein lies a clue as to how to improve the system.

We have been unable to find any data, let alone empirical research, that demonstrates a single significant success in "introducing ADR" in a jurisdiction only via promotion and training of the stakeholders (lawyers, businesses, judges, etc.). We now believe that awareness and training are clearly useful in

developing an ADR market that is well established, but that at the launch phase, and by themselves, they are insufficient.

The implication is that the ADR field has given far less attention to public policy as a means of establishing ADR than is necessary. The need for people to wear seat belts in cars, for example, and the need for public companies to be audited regularly, were obvious for many years, but with little "compliance" to show for it -- until specific governmental requirements were introduced. As with the need to wear seat belts or the need for auditing public companies, we have come to believe that the use of ADR should be considered as sound "public policy" for the good of the overriding national and public interest, i.e. something that includes but also transcends market-based solutions.

The term "mandatory" has often caused resistance when applied to mediation, because it seems to contradict a central element of the process: the notion of voluntariness. We do not think it is necessary to go that far or trigger that objection; furthermore, there are always some cases that are inappropriate for mediation, and are accordingly recognized as such by the judge. But those cases are less common than most people suppose. For working purposes, we are defining that level of court involvement as *court-encouraged* or *law-encouraged* mediation. It includes the concept that the court would strongly encourage

lawyers to attempt mediation, without flatly requiring such an attempt in all cases.

Even when limited only to cross-border disputes, the "*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*" tracks the desired direction described above because it considers the use of mediation as a "public interest". The directive has been both a ground-breaking and a standard-setting benchmark in the field of mediation legislation. It is ground-breaking because it is the first broad European law on mediation. It is standard-setting because it is an example for many EU legislators on mediation. Many EU States, like Slovenia and Italy, not only have adopted the directive but also have applied many of its principles into the domestic dispute arena by making mediation mandatory in many civil disputes.

So far, no one has attempted to devise criteria through which to evaluate the benefits in time and cost of the EU directive both in domestic and cross-border litigations. That is the goal of this research.

II. Approach

In order to compare 26 different jurisdictions, we have used the same well-known methodology used by the World Bank in the Report "Doing Business" for the index "Enforcement Contract". We sent a lengthy questionnaire (see Annex

3) to 26 legal experts of the major law firms, based on a standardized case adapted by the World Bank. In some countries, legal experts forwarded the questionnaire to a wider group of lawyers and collected the answers. The litigation case entailed the following:

- Seller sells goods to Buyer. Buyer alleges that the goods are of inadequate quality and refuses to pay.
- Seller sues Buyer in the Court of the capital city to recover the amount under the contract for the sale of goods.
- Opinions are given on the quality of the goods (witness or independent experts).
- The judgment is 100% in favor of the Seller.
- Buyer does not appeal the judgment, which becomes final.
- Seller takes all required steps for prompt enforcement of the judgment. The money is collected successfully through a public sale of Buyer's moveable assets.

In varying our methodology from the World Bank report, we have set six different scenarios for the same case and asked the experts to estimate time and cost incurred in the following circumstances:

- Domestic Dispute in Court
- EU Cross-Border Dispute in Court
- Domestic Dispute in Arbitration

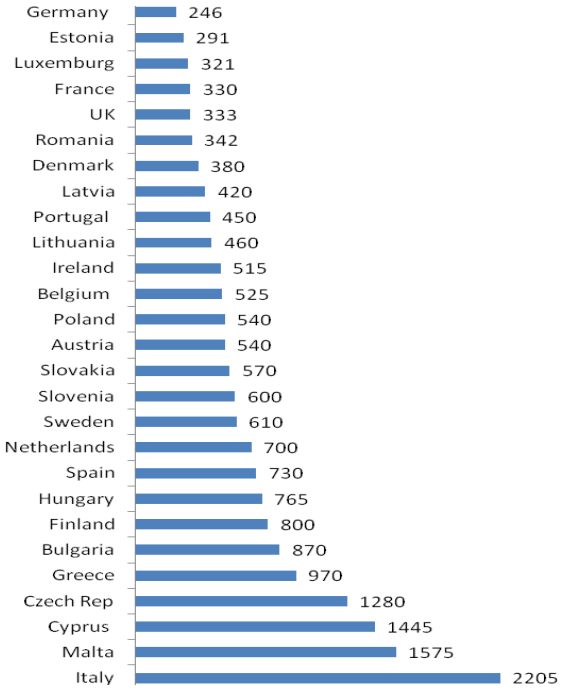
- EU Cross-Border Dispute in Arbitration
- Domestic Dispute in Mediation
- EU Cross-Border Dispute in Mediation

For each scenario, we have also set four different ranges of value of the case, distinguished the time and cost in each major phase of the dispute and enquired about the characteristics of the legal market. The responses in term of data gathered was overwhelming.

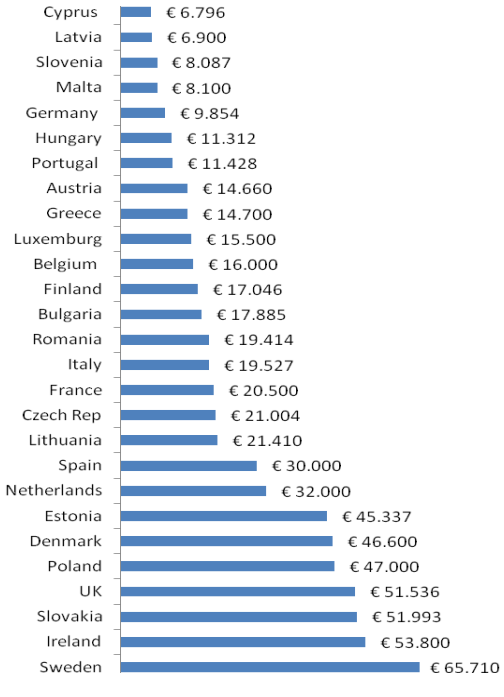
III. The Status Quo: A Single Step in Dispute Resolution

With a standard case as a reference point, the following tables represent the estimate of time in days and cost of a domestic litigation in the EU for a value of € 200,000:

Time (in days)



Cost of a domestic litigation



This data represents the results in a system where the litigants have only one choice of where to litigate: the court. On the contrary, the EU directive on mediation incentivizes the use of a multi-step approach: mediation then court (or arbitration).

The main goal of the research was to measure the reduction, if any, of such time and costs adopting the two-step approach (mediation then court) vs. the one-step approach (only court).

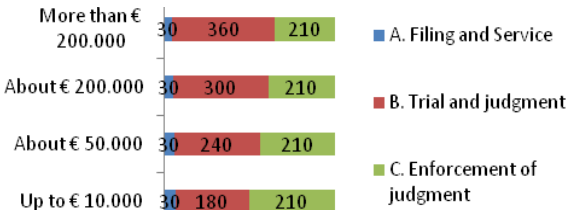
IV. Key Data

After having elaborated upon the data gathered and so as to facilitate analysis, this report captures only the key findings. As an example, the following table shows the estimate on time and cost in reference to the domestic scenario with the value of €200,000.

Value of the dispute € 200.000	Court Domestic dispute of € 200.000			Arbitration Domestic dispute of € 200.000			Mediation Domestic dispute of € 200.000		
	Time	**Cost in Euro**	**Cost as % on disp.**	**Time**	**Cost in Euro**	**Cost as % on disp.**	**Time**	**Cost in Euro**	**Cost as % on disp.**
Austria	540	€ 14.660	7,3%	540	€ 46.480	23,2%	90	€ 14.790	7,4%
Belgium	525	€ 16.000	8,0%	630	€ 19.500	9,8%	45	€ 7.000	3,5%
Bulgaria	870	€ 17.885	8,9%	480	€ 15.372	7,7%	14	€ 4.676	2,3%
Cyprus	1445	€ 6.796	3,4%	732	€ 8.300	4,2%	45	€ 7.000	3,5%
Czech Rep	1280	€ 21.004	10,5%	289	€ 20.950	10,5%	75	€ 7.667	3,8%
Denmark	380	€ 46.600	23,3%	250	€ 66.000	33,0%	45	€ 7.000	3,5%
Estonia	291	€ 45.337	22,7%	205	€ 51.149	25,6%	45	€ 7.000	3,5%
Finland	800	€ 17.046	8,5%	713	€ 30.546	15,3%	368	€ 17.000	8,5%
France	330	€ 20.500	10,3%	345	€ 28.000	14,0%	60	€ 10.000	5,0%
Germany	246	€ 9.854	4,9%	200	€ 21.788	10,9%	45	€ 7.000	3,5%
Greece	970	€ 14.700	7,4%	250	€ 19.600	9,8%	60	€ 4.275	2,1%
Hungary	765	€ 11.312	5,7%	540	€ 21.038	10,5%	90	€ 14.000	7,0%
Ireland	515	€ 53.800	26,9%	357	€ 66.661	33,3%	45	€ 7.000	3,5%
Italy	2205	€ 19.527	9,8%	2935	€ 65.400	32,7%	47	€ 17.000	8,5%
Latvia	420	€ 6.900	3,5%	260	€ 9.780	4,9%	75	€ 3.500	1,8%
Lithuania	460	€ 21.410	10,7%	150	€ 29.000	14,5%	90	€ 15.400	7,7%
Luxemburg	321	€ 15.500	7,8%	113	€ 25.500	12,8%	98	€ 13.900	7,0%
Malta	1575	€ 8.100	4,1%	665	€ 5.100	2,6%	300	€ 3.600	1,8%
Netherlands	700	€ 32.000	16,0%	600	€ 33.500	16,8%	40	€ 6.000	3,0%
Poland	540	€ 47.000	23,5%	352	€ 51.000	25,5%	42	€ 10.000	5,0%
Portugal	450	€ 11.428	5,7%	480	€ 20.161	10,1%	90	€ 3.050	1,5%
Romania	342	€ 19.414	9,7%	398	€ 17.347	8,7%	32	€ 3.010	1,5%
Slovakia	570	€ 51.993	26,0%	730	€ 57.761	28,9%	125	€ 8.603	4,3%
Slovenia	600	€ 8.087	4,0%	290	€ 15.190	7,6%	180	€ 6.015	3,0%
Spain	730	€ 30.000	15,0%	320	€ 21.632	10,8%	74	€ 7.667	3,8%
Sweden	610	€ 65.710	32,9%	405	€ 94.990	47,5%	45	€ 7.000	3,5%
UK	333	€ 51.536	25,8%	357	€ 66.661	33,3%	85	€ 37.011	18,5%
Average	***697***	***€ 25.337***	***13%***	***503***	***€ 34.385***	***17,2%***	***87***	***€ 9.488***	***4,7%***

Each value gathered is the sum of the breakdown of time and cost in the main phases of the dispute. For example, if we consider Austria:

Domestic Dispute in Court: Time (Austria)



Domestic Dispute in Court: Cost

(Austria)

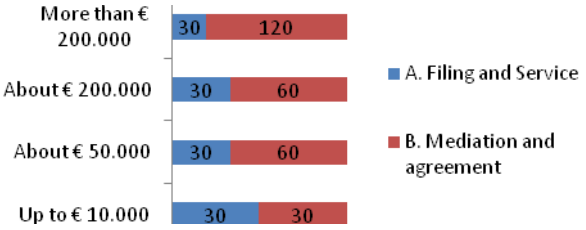
Domestic Dispute in Arbitration: Time

(Austria)

Domestic Dispute in Arbitration: Cost

(Austria)

Domestic Dispute in Mediation: Time (Austria)



Domestic Dispute in Mediation: Cost (Austria)

V. One-step vs. Two-step Approach

To evaluate the impact of mediation and arbitration, we need to compare the average time and costs of three different approaches. The first one is when litigants go directly to courts to solve a dispute (one-step). In the second, litigants need to go first to a mediator or a mediation organization and, only when mediation fails, then on to court (two-step). This approach can be required by the law, by a court program or by contract when, within the duration of the dispute, one party filed a "mediation request". The third approach entails the parties signing a contract clause that requires, in case of litigation, a first attempt at mediation and then arbitration.

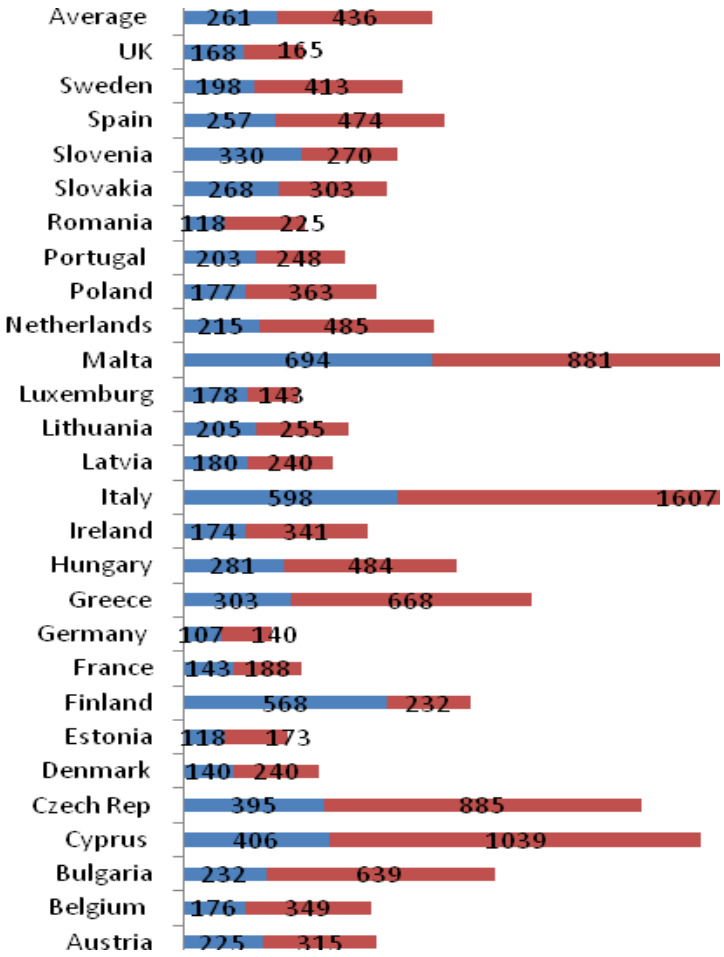
In calculating the average time and cost, it is extremely important to set the assumption of the mediation success rate. Statistics prove that the success rate of voluntary mediation administrated by professional mediators is over 80%; when the mediation is mandatory or court ordered, the success rate drops to around 70%. For example, with a 75% mediation success rate the average time of a dispute in a two-step approach is the weight average of 75% of the duration of a mediation (87 days as European average) and 25% of the duration of a mediation in addition to litigation in court (87+697). The weight average is 261 days while the average cost is € 11.599 (in this case we consider only one third of the cost in court of the 25% of mediation failure, due to the fact the lawyers will get paid

twice for the same case). If the success rate drop to a conservative 60%, the duration increases to 366 days and the cost to € 12.866.

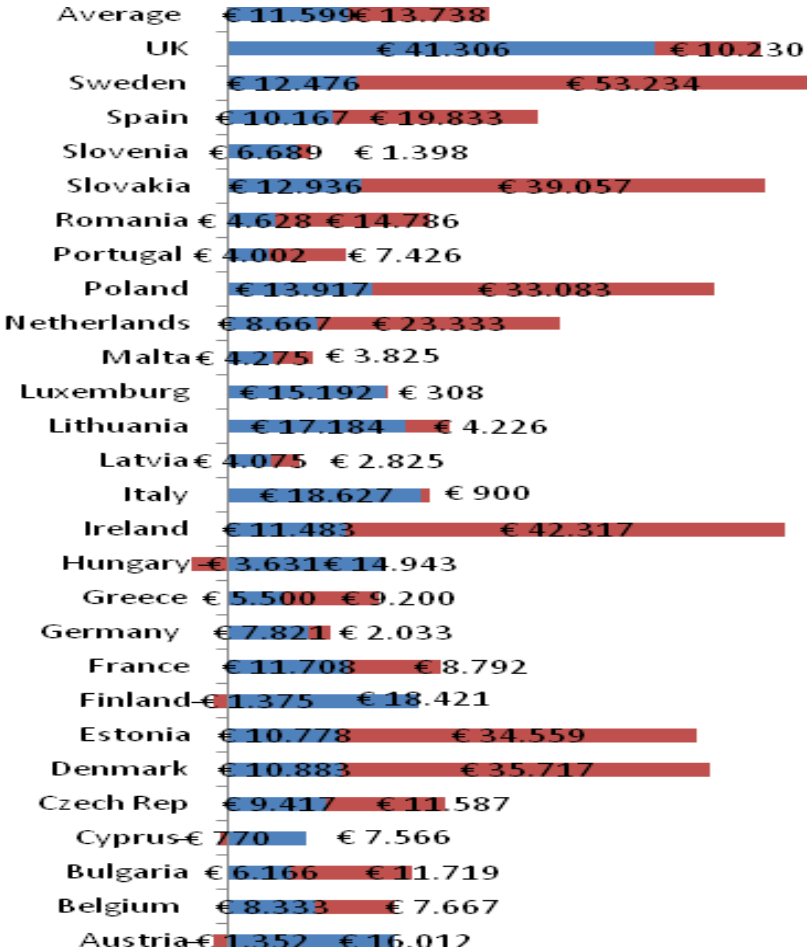
Average in Europe		*One-Step* Court	*Two-Step* Med then Court	*Two-Step* Med then Arb	*Cost of Non ADR*	*Cost of Non ADR*
Mediation	Time		87	87	Med then	Med then
	Costs		€ 9.488	€ 9.488	Court	Arb
Arbitration	Time			503		
	Costs			€ 34.385		
Court	Time	697	697			
	Costs	€ 25.337	€ 25.337			
Med. success rate %			**75%**	75%		
	Time	697	**261**	213	**436**	**484**
	Costs	€ 25.337	**€ 11.599**	€ 12.353	**€ 13.738**	**€ 12.984**
Med. success rate %			**60%**	60%		
	Time	697	**366**	288	**331**	**409**
	Costs	€ 25.337	**€ 12.866**	€ 14.072	**€ 12.471**	**€ 11.265**

Assuming a range of mediation success rate from 60% to 75%, we can evaluate from 331 days to 436 days the extra time wasted in average in Europe as a result of not using a two-step approach method of "mediation-then-court" with an extra legal cost from € 12.471 to € 13.738 per case. As expected, with the "mediation-then-arbitration" approach, the saving in terms of time is even more significant—from 409 days to 484 days while cost is less from € 11.265 to € 12.984 per case.

Given a success mediation rate of 75%, for each EU Member State the following table clearly illustrates the extra duration in days "wasted" of the red bar, compared with the blue bar depicting the "two-step" approach.



Given a mediation success rate of 75% for each EU Member State, the following table illustrates the extra cost "wasted" in the red bar, compared with the blue bar's "two-step" approach.



5. Concluding Comment

The results of the project present an updated framework detailing the scope of alternative dispute resolutions processes as they have been implemented in cross-border disputes. In light of the data, notwithstanding the EU mediation directive, EU companies continue to rely upon traditional adjudicative processes. In short, alternative dispute resolution—and mediation, in particular—has been underutilized and vastly misunderstood in the cross-border commercial context. Reassuringly, however, there is an evident willingness on the part of companies and legal representatives to embrace mediation theory and practice.

Indeed this study was foundational in its depth and scope. It presents an illustrative benchmark, a beginning point through which the true cost of litigation, as it adversely effects and stalls profitable transnational exchange within the intra-community commercial sector, can be understood. No doubt subsequent comparative studies, as more and more EU Member States implement the new directive, would be beneficial in providing direction on how to reduce and avoid the need for cross-border commercial litigation and thereby stimulate business-to-business transactions.

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