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Conclusion and Future Perspectives

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- 3 main points:
- What are we talking about?
- Where do we stand?
- Where are we going?

1. What are we talking about?

A European Dream: a miracle cure to disputes?

Miracle (R. Pardolesi); "Wonder drug" (P. Sirena).

=> "Market-oriented" approach of the EU legislature.

Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters

- Recital 6:
- “Mediation can provide a **cost-effective** and **quick** extra-judicial resolution of disputes in civil and commercial matters through **processes tailored to the needs of the parties**. Agreements resulting from mediation are more likely to be complied with voluntarily and are more likely to preserve an amicable and sustainable relationship between the parties. These benefits become even more pronounced in situations displaying cross-border elements.”

Directive 2013/11 on ADR for Consumers Disputes

- Recital 4:
- “Ensuring access to **simple, efficient, fast and low-cost** ways of resolving domestic and cross-border disputes which arise from sales or service contracts should benefit consumers and therefore boost their confidence in the market.”
- Recital 5:
- “Alternative dispute resolution (ADR) offers a **simple, fast and low-cost** out-of-court solution to disputes between consumers and traders.”

European Parliament Resolutions of 2010 on delivering a single market to consumers and citizens and of 21 October 2011 on ADR in civil, commercial and family matters

- “Any **holistic approach to the single market** which delivers results for its citizens should as a priority develop simple, affordable, expedient and accessible system of redress.”

EU legislation (directives, regulations & recommendations).

- No reference to social justice:
 - Classical European picture, smooth functioning of the market coming first,
 - Consumer protection is however part of the picture.
- Reference to access to justice:
 - What does “justice” mean?

So what are we talking about?

- A instrument for the growth and the confidence of the market (general approach of ADR) laying in a “**grey zone**” (F. Carpi) tra il “*ius dicere*” e il “*ius non dicere*” (do we really know what we are talking about, at least we try - R. Lener, M.-C. Paglietti, P. Sirena).
- No precise common definition (multiple contexts, R. Pardolesi, Ch. Hodges).
- So?: An alternative way to solve disputes in an out of a court context. “Function is the essence of ADR” (R. Pardolesi).

- **In the field of banking and financial dispute resolution:**
 - Important role in a sector not trusted by many citizens.
- If disputes are solved in a quick, costless and satisfactory way, clients could eventually feel sympathy (confidence) for the devil...
- Meaning of “satisfactory way”?

- But ... 50 shades of grey:

Approximation of the EU approach: a complex legal system. 2 Directives (minimum harmonization), 1 regulation.

Different scopes of application that interact (see *Menini* case C-75/16).

- Therefore many national contexts and statistics : mandatory / not mandatory process; one single entity, different entities etc.

2. Where do we stand (in the banking and financial field)?

- **What we do know:**

- transdisciplinary nature of ADR entities;
- Success of ADR entities
- Fast
- Low-cost

- **What is still to be known:**

- Simple ? Single window approach required at the national level (ODR model).
- Quality? => the big issue...

Quo vadis ADR?

- **The way forward better regulation & protection:**
- More standardization? A unique European approach on B2C mediation? Italian model (why not but still to be improved, M.-C. Paglietti, P. Sirena).
- Necessity of training (mediators skills – legal skills: collaboration between academia and ADR entities).
- Necessity of networks (Fin-net).
- Necessity of offering procedural and maybe substantial (due to the mandatory nature of many consumer law provisions) guarantees.
- Necessity of monitoring at both national and European level through control but also collaboration (customers/investors/consumers associations, legal clinics - collaboration between academia and ADR entities) and to avoid “a new kind of Justice” (same old story, same old problems?). How to find a balance?
- Necessity of empirical research, data collection: analysis of the means used for dispute resolutions – legal or extra legal (a relative lack of courts interpretation of legislation should not lead to a stagnation of the law (collaboration between academia and ADR entities)).