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MEDIATION AND SUSTAINABILITY: THE ROLE OF DECISIVE ACTIONS IN PROMOTING SUSTAINABLE DISPUTE RESOLUTION – LESSONS FROM THE ITALIAN 'CARTABIA REFORM'

Abstract

There is an undeniable need for decisive actions to advance mediation as a sustainable method within Poland's dispute resolution framework. Italy's recent approach serves as a noteworthy example, with the 'Cartabia Reform', enacted through Legislative Decree No 149 on 10 October 2022, and supplemented by additional decrees, offering actionable insights into the effective promotion of sustainable dispute resolution practices. The Italian experience, marked by financial incentives and clear regulatory frameworks, suggests a pathway for Poland to integrate mediation more deeply into its legal system, presenting it as a cost-effective and socially beneficial alternative to traditional litigation. Enacted in late 2022, the reform significantly strengthens mediation to improve access to justice and reduce court congestion, aligning with broader EU goals for Alternative Dispute Resolution (ADR).

A core element of the reform is the implementation of robust fiscal incentives. By expanding tax relief – such as exemptions from stamp and registration duties on mediation documents and agreements – the reform provides a significant financial advantage over traditional litigation. This alleviates financial barriers, encouraging broader adoption among individuals and businesses, especially in high-value disputes, promoting mediation as a pragmatic, cost-effective choice.

Beyond financial benefits, the reform introduces key procedural updates. These include extending mediation duration, enabling remote participation for greater accessibility, and granting judges the power to refer disputes to mediation even during appeal proceedings. These measures frame mediation as a sustainable process that fosters dialogue and social integration while easing the strain on the judicial system.

Italy's systematic approach, leveraging regulatory improvements and targeted incentives, positions it as a leading EU example. By adopting insights from the Cartabia Reform, Poland can strengthen its legal framework around mediation, achieving both economic efficiency for parties and broader societal benefits in conflict resolution.

KEYWORDS

mediation, sustainability, sustainable dispute resolution, Cartabia Reform

SŁOWA KLUCZOWE

mediacja, zrównoważony rozwój, zrównoważone rozwiązywanie sporów, reforma Cartabii

I. INTRODUCTION

In an era defined by sustainability across multiple dimensions – governance, economy and law – the need for effective and forward-looking dispute resolution mechanisms has become more urgent than ever. While societies commit to achieving the objectives set out in the United Nations Sustainable Development Goals (SDGs), in particular Goal 16 – which promotes peace, justice and strong institutions – the legal world is called upon to rethink traditional methods of conflict management.[1] In this context, mediation emerges not only as an alter-

[1] United Nations General Assembly (2015), *Transforming our world: The 2030 Agenda for Sustainable Development* (Resolution A/RES/70/1), adopted 25 September 2015, <https://sdgs.un.org/publications/transforming-our-world-2030-agenda-sustainable-development-17981> accessed 13 December 2025.

native to litigation but as a fully-fledged sustainable legal process: a method that prioritises dialogue, alleviates the burden on the courts, and promotes cooperative rather than adversarial solutions.

The concept of sustainability in dispute resolution calls for a shift beyond efficiency or cost reduction. It also includes the environmental, economic and social implications of legal proceedings. Therefore, sustainable methods must be accessible, inclusive and capable of delivering outcomes that are not only legally sound but also socially constructive. Mediation, in this broad sense, contributes to institutional resilience, relieving pressure on the judiciary and allowing the parties to retain control over the resolution of their own conflicts. It also promotes a culture of accountability, participation and trust – fundamental values for democracy and the rule of law.

The European Union has long recognised the value of mediation as a tool for sustainable justice, as demonstrated by Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters.[2] The Directive stresses the importance of promoting amicable dispute resolution and improving access to justice in order to strengthen the internal market.

In line with this vision, Member States are encouraged to introduce regulatory frameworks that facilitate mediation, support its voluntary and mandatory use, and ensure the enforceability of agreements.

However, the practical implementation of mediation varies greatly between legal systems. In Poland, despite a growing body of legislation and academic interest, mediation still faces cultural and systemic obstacles. Its voluntary adoption remains limited, and the procedural framework has not yet fully embedded it within the dispute resolution system. This requires decisive action – legislative, institutional and fiscal – to make mediation a credible and attractive choice.

Mandatory mediation was introduced in Italy in 2010. Previously, there were various forms of conciliation, both judicial and extrajudicial (conciliator, then repealed, justice of the peace, conciliation in labour disputes, bank ombudsman, etc.). Initially, during its first years, mandatory mediation worked poorly because almost all mediations did not go beyond the first meeting, at which the other party often did not appear or stated that there were no grounds for continuing mediation (and thus the condition of admissibility had been fulfilled and the case could be started).

[2] 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. OJ L 136 on 24 May 2008, 3–8, available at: <https://eur-lex.europa.eu/eli/dir/2008/52/oj> accessed 13 December 2025.

In the commercial field, arbitration was more common than mediation, especially in international disputes, as is still largely the case today. However, with the new rules introduced in Italy on 'civil and commercial mediation', commercial mediation (whose rules are the same as those for mediation in civil cases, for which Italian law refers without distinction to 'mediation in civil and commercial matters') has become more cost-effective and sustainable.

It is only with the introduction of the 'Cartabia Reform' in 2022 and, now, with its 'Cartabia Corrective' of 2024, which entered into force in January 2025, that mediation is undergoing a growing phase of development. The reform is named after the Minister for Justice at the time when it was launched, Marta Cartabia. The 'Cartabia Reform' – as it is well known – covers not only civil and commercial mediation, but also different areas of civil proceedings, including judicial debt recovery actions and criminal trials. However, the Cartabia Reform has focused significantly on mediation, broadening its scope with a view to making the economy more efficient and resolving civil and commercial disputes.

In this context, Italy offers an instructive example. The Cartabia Reform – named after then Minister of Justice Marta Cartabia – introduced a comprehensive set of measures to consolidate the role of mediation in the Italian legal system. Of particular interest are the tax incentives introduced by the reform, which make mediation not only legally viable but also economically advantageous. Italy's legislative choices, therefore, provide a tangible example of how mediation can be promoted through a systemic design, becoming a cornerstone of sustainable legal development.

The following analysis draws on the Italian experience as a point of reference for a broader reflection. By examining the approach taken by the Cartabia Reform, with a focus on tax and regulatory aspects, this article aims to identify actionable insights for the development of a sustainable dispute settlement culture in Poland and across the European Union.

II. THE ITALIAN MEDIATION SYSTEM: EXPERIENCE BECOMES LAW

In order to make it more effective and increase participation the mediation procedure has recently been reformed by Ministerial Decree (*D.M.*) 24 October 2023, No 150, as a result of the so-called 'Cartabia Reform', which amended and sometimes almost completely rewrote many articles of the previous Legislative

Decree (*D.Lgs.*) No 28/2010,[3] also repealing the previous *D.M.* No 180/2010.[4] It entered into force on 15 November 2023 and also reformed the criteria for training and continuing education for mediators and the requirements for performing the relevant mediation training activities, as well as setting out the content of the training courses.

The previous 'Cartabia Reform' (*D.Lgs.* No 149 of 10 October 2022)[5] is a legislative measure aimed at making the Italian justice system more efficient. This reform addresses both procedural rules and the enhancement of the digitalisation process. In Italian law, this was a real breakthrough in the affirmation of mediation, which was originally introduced as a means of reducing the burden on the judicial process.[6]

The extension of the areas in which mediation is mandatory before access to ordinary justice has increased by the *D.Lgs.* No 149/2022 and other new regulations have been introduced through *D.Lgs.* No 164 of 31 October 2024 ('Correctivo Cartabia'), which amended some procedural rules. Subsequently, other regulations on the matter followed through by *D.Lgs.* No 216 of 27 December 2024, entered into force on 25 January 2025.

Both recent decrees have once again highlighted the legislature's determination to proceed expeditiously towards the de-jurisdictionalisation of civil and commercial disputes. This is clearly intended to deflate the heavy volume of court litigation and to reduce the time and cost of litigation for citizens and businesses.

The 'Cartabia Reform', in its part concerning civil and commercial mediation, was introduced with the aim of resolving the critical issues that had emerged in more than ten years preceding the application of civil[7] and commercial mediation

[3] *D.Lgs.* No 28 of 4 March 2010, *Implementation of Article 60 of Law No 69 of June 18, 2009, regarding mediation aimed at the conciliation of civil and commercial disputes*.

[4] *D.M.* No 180 of 18 October 2010, *Regulation establishing the criteria and procedures for registering and maintaining the register of mediation bodies and the list of mediation trainers, as well as approving the allowances payable to the bodies, pursuant to Article 16 of Legislative Decree No 28 of 4 March 2010.*

[5] Published in the Official Gazette (*Gazzetta Ufficiale*) of the Italian Republic on 17 October 2022.

[6] On this point, for a schematic analysis of these rules, M Domenegotti, J Cammarano, *The civil proceedings after the Cartabia Reform Corrective Decree* (Altalex, Wolters Kluwer, Milan, 21 February 2025) <https://www.altalex.com/documents/news/2025/02/21/processo-civile-dopo-decreto-correttivo-riforma-cartabia#p6> accessed 12 May 2025.

[7] A first reflection with interesting dogmatic insights into the capacity of the reform to have a real impact on reality was carried out by Federico Reggio, *The challenge of any reform: from paper rules to real rules* (*Mediares*, Primiceri Ed., Padua, Italy, 2023, No 1, 1), <https://www.mediaresrivista.it/articolo.php?annata=2023-1&numero=0> accessed 22 May 2025. Previously, a wide-ran-

in Italy and thus made important amendments to *D.Lgs.* No 28 of 4 March 2010, which introduced mandatory mediation of civil and commercial disputes in Italy, as a condition for the admissibility of legal proceedings (voluntary mediation is also possible on any subject of disposable rights).

Even after the entry into force of the Cartabia Reform, however, the possibility of further improvements emerged, now following a doctrinal reflection and an assessment of the problems of application that had emerged during implementation, both practical and interpretative: *D.Lgs.* No 216 of 27 December 2024 on civil and commercial mediation and assisted negotiation further amended Legislative Decree No 28/2010 and made it more efficient in terms of application than before, in line with the guidelines of the previous *D.Lgs.* No 164 of 31 October 2024. Other spaces still to be explored in Italy could be open to mediation in the future, also in the wake of international doctrinal debate.[8]

But what are the most recent developments in the last three years that will allow mediation to become a fast and sustainable way of resolving commercial disputes, as an alternative or complementary to judicial proceedings? And what are its benefits for commercial companies?

With regard to the regulatory framework of 2010, from 2022 onwards, the scope and subjects of compulsory mediation were extended.

Civil mediation in Italy can be, today: **(a)** Voluntary (with or without legal assistance); **(b)** Mandatory, with the necessary assistance of a lawyer, in the matters expressly indicated and, in such cases, it is a condition for the legal action to proceed; **(c)** Requested by the Judge (the so-called 'delegated', in Italian*: demandata*), in matters where mediation is not mandatory or was not mandatory at the start of the process: here, too, the assistance of a lawyer is necessary and it can also be ordered on appeal; **(d)** ordered by the judge if the mandatory mediation, prior to the start of the trial, has not been carried out.

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ging reflection, even dogmatic, on the different impact of the judicial process and the mediation of the conflict, referred to as the 'elective route for social cohesion and peace', had been carried out by Paola Lucarelli, 'Conflict Mediation: a generous push for change' (Giustizia consensuale, Editoriale Scientifica, Naples, 2021, No 1, 23).

[8] In order to give an example of the great potential of mediation, even on fronts that have not yet been applied in Italy, let us think of what has been described and analysed with regard to analysing the causes of university conflicts and alternative ways of resolving them, including mediation in academic disputes by Ewa Gmurzyńska, 'Analysis of the Causes of Conflicts at Universities and Alternative Methods of Resolving Them. Part I: Mediation in Academic Disputes' (2021) Studia Iuridica Lublinensia, Vol XXX, 1, 56–95, <https://journals.umcs.pl/sil/article/view/11476/pdf> accessed 9 June 2025.

Mediation is now compulsory ('condition of admissibility') for disputes concerning condominium cases, rights *in rem*, division, inheritance, family agreements, leases, commodatum, leasing of companies, claims for compensation for damage arising from medical and health liability and defamation by means of the press or other means of advertising, insurance, banking and financial contracts, joint ventures, consortia, franchising, manual or intellectual work contracts, network contracts, supply contracts, partnerships and subcontracting.

In the cases provided for in compulsory mediation and where mediation is requested by the court (see below), the parties must be assisted by their respective lawyers. In voluntary mediation, the presence of lawyers is not necessary, but it is advisable.

Each party shall, at the time of the submission of the request for mediation or upon its agreement to participate, pay to the mediation body an amount of compensation, including start-up and mediation costs for holding the first meeting.

When the mediation is concluded without an agreement already at the first meeting, the parties are no longer required to pay any further amounts. Otherwise, in the case of conciliation, the rules of procedure of the mediation body shall indicate the additional costs of mediation payable by the parties for the conclusion of the agreement and for the meetings following the first agreement which have not resulted in conciliation.

As regards the manner in which mediation is carried out, it is important to point out that at the first meeting, the mediator sets out the function and the manner in which the mediation is carried out, ensuring that the parties reach a conciliation agreement. It is important that the parties and the lawyers assisting them cooperate with each other in good faith, so as to make an effective comparison on the issues at stake.

A general principle of mediation has always been that the parties participate personally in the mediation procedure (although this is now mitigated by possible remote participation or through special powers of attorney and delegation to third parties). The first mediation meeting must take place no earlier than 20 days and no later than 40 days after the request.

If there are justified reasons, either party may delegate a representative with the necessary powers to settle the dispute. Entities other than natural persons (e.g., companies, consortia, etc.) participate in the mediation procedure through representatives or delegates who are acquainted with the facts. The delegation of powers to attend the meeting shall be given by a document signed with a non-authenticated signature.

In order to ascertain the technical aspects of the dispute, the mediator may have recourse to experts registered in the registers of technical advisers at the courts. At the time of the appointment of the expert, the parties may agree that his report should be produced in court.[9]

III. SUSTAINABLE DISPUTE RESOLUTION: A PRACTICAL PERSPECTIVE

In the Italian legal context, sustainability in dispute resolution is no longer an abstract ideal, but rather a concrete set of regulatory instruments, procedural measures and economic incentives, aimed at promoting a more efficient, accessible and participatory model of justice.[10] Civil and commercial mediation, in particular, plays a central role as a strategic legal instrument for the modernisation of the justice system, the reduction of litigation and the promotion of long-term consensual solutions.[11]

The constantly evolving Italian experience shows how sustainability can be integrated into justice through structured reforms, favourable tax policies, digitalisation and enhancement of the culture of dialogue.[12] The model set out in the 'Cartabia Reform' and the subsequent 'Corrective' Decree of 2024 is a concrete

[9] For a more detailed discussion of the principles and methods of conducting civil and commercial mediation in Italy, we refer to our Isodoro Barbagallo, *Civil and Commercial Mediation in Italy – Part One: Origins and Functioning for a Comparative View*, in Kinga A Gajda, Marta Pietras-Eichberger and Małgorzata Skawińska (eds), *Mediation as an Inclusive and Sustainable Method of Resolving Conflicts* (Peter Lang, Berlin, 2025, Chapter VII); for methodological profiles on mediation see Barbagallo, *The factors of success or failure of mediation (Mediares*, Primiceri (ed), Padua, Italy, 2024, No 2, 230), <https://www.mediaresrivista.it/articolo.php?annata=2024-2&numero=9> accessed 29 June 2025.

[10] Giovanni Matteucci, 'Mandatory Mediation, the Italian Experience, a Case Study – 2025', Beijing Law Review, 2025, Vol 16, 353–376, <https://doi.org/10.4236/blr.2025.161017> accessed 13 December 2025.

[11] See more in Skawińska, 'Mediation for Sustainable Resolution of Commercial Disputes within the Polish Legal Framework: A Path to Sustainable Development', in Gajda, Pietras-Eichberger and Skawińska (eds), *Mediation as an Inclusive and Sustainable Method of Resolving Conflicts* (Peter Lang, Berlin 2025, Chapter VI).

[12] See more in Giuseppe De Palo, Leonardo D'Urso, *Achieving a Balanced Relationship between Mediation and Judicial Proceedings,* 'In-Depth Analysis, The Implementation of the Mediation Directive' – Workshop 29 November 2016. Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, <https://www.europarl.europa.eu/RegData/etudes/IDAN/2016/571395/IPOL_IDA(2016)571395_EN.pdf> accessed 13 December 2025.

response to the needs of citizens, businesses and institutions, overcoming the idea of mediation as a mere alternative to the process to propose it as an ordinary and systemic method of dispute resolution.

Sustainability, in the context of Italian mediation, is manifested at several levels: procedural sustainability, through the reduction of the judicial burden and the shortening of proceedings; economic sustainability, by reducing access costs and forecasting tax credits and tax breaks; social sustainability, by promoting fairness in access to justice, the protection of relationships, the active participation of parties and the use of flexible arrangements such as remote encounters and legal aid.

This legislative development is consistent with the European Sustainable Justice Goals, in particular in the context of the United Nations 2030 Agenda and Sustainable Development Goal 16 (Peace, justice and strong institutions).

III.1. NEW RULES TOWARDS INCREASING SUSTAINABILITY FOR ENTREPRENEURSHIP

It is clear that expanding matters, also in light of the needs of businesses and business activities, over time will also benefit the national economy, speeding up the outcome of disputes and increasing the mutual satisfaction of the parties. Civil and commercial mediation is carried out in accordance with the 'win-win' approach and not in the typical judicial one, which involves a 'winner-loser' approach.

This is the great novelty of the institution of mediation, which, however, has not yet been able to fully enter into the mindset of legal practitioners, who often see it as a mere formality prior to legal action.

Herein lies much of its superior sustainability compared to ordinary proceedings and even arbitration: today's sustainability is enhanced not only by the deflationary effect on judicial proceedings, which is actually growing, but also, and above all, by its speed, by its significantly lower costs than ordinary litigation and arbitration, and by other factors set out below.

In addition to the above, there are considerable tax rewards, with the possibility of exemption, up to the threshold of EUR 100.000,00, from registration tax, and the granting of tax credits of variable amounts: the topic is discussed in greater detail in a later section of this text. Some tax credits have also been provided for mediation bodies.

If the new rules are correctly applied, it is very likely that mediation will, gradually over time, become established as a first choice or, in any event, as the main instrument in the resolution of commercial disputes, as it may now also be referred to by the court 'until it fixes the hearing to refer the case to a decision' (Article 5-quater of *D.Lgs.* No 28/2010), even in the course of proceedings in the second instance (appeal).

Mediation has become a condition for the admissibility of civil proceedings in several new areas, which have an impact on both the business and social worlds.

In these new areas, compulsory mediation encourages companies to resolve disputes faster and at lower cost than through litigation, with the added benefit of achieving a conciliation agreement that can be satisfactory to all parties, in the 'win-win' logic.

Mandatory mediation in cases of compensation for medical and health liability may also have a useful impact on the business community, especially in the healthcare sector, while mandatory mediation in cases of defamation with the press or other means of advertising is important for publishing companies, journalists and individual media professionals.

The timing of mediation also aligns with the efficiency that businesses demand, allowing disputes to be resolved promptly so that parties may proceed with their development programmes.

Now the mediation procedure has a maximum duration of six months,[13] but may be extended several times after it has been initiated and before its expiry. More restrictive provisions apply, where mediation is entrusted by the court under Article 5 (2) or the first paragraph of Article 5-quater: in those cases, the mediation period may be extended once only, by three additional months.

The initial period begins from the date on which the request for mediation is lodged and, in the case referred to in paragraph 2, from the date of lodging of the order by which the court adopts the measures provided for in Article 5 (2) or the first paragraph of Article 5-quarter, assigning the matter to a mediation body chosen by the parties.[14]

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[13] Previously, the initial period was four months.

[14] Despite the corrective measures introduced by the 'Cartabia Reform' to regulate this area, the future may reveal other opportunities for further improvement of the legislation, based on what doctrine and practice indicate, such as, among others, the suggestions made by Pierluigi Mazzamuto, 'La mediazione conciliativa secondo la Riforma Cartabia', GIURETA, Università di Palermo, Palermo (Italy), 2024, Vol XXII, 331–381, <https://www.giureta.unipa.it/2024/14_Mazzamuto_DirPriv_2024.pdf> accessed 8 December 2025; Maria Vittoria Occorsio, *La decadenza*

III. 2. INCENTIVES FOR COMPANIES CHOOSING MEDIATION

The 'Cartabia Reform' and the recent 'Cartabia Corrective Decree' have significantly increased incentives for companies choosing mediation or are obliged to do so as a condition of admissibility in the event of a dispute, including greater flexibility in the procedure compared to previous rules.

The possibility of remote participation also removes geographical barriers, thus making access to mediation more attractive. Lower costs, compared to ordinary litigation, are also factors encouraging companies to choose mediation, even where mediation is not mandatory.

In this respect, voluntary mediation can be very useful and flexible, including for cross-border disputes referred to in Article 2, Directive 2008/52/EC of the European Parliament and Council of 21 May 2008.[15] In such cases, the agreement annexed to the report shall be approved, at the request of a party, by decree of the President of the court of the place where the mediation body, with which the agreement was reached, has its seat, once it has been established that the rules of law and public policy have been complied with.

In all such cases, once approved, the agreement is enforceable for compulsory expropriation, enforcement in a specific form and registration of a judicial mortgage.

If, on the other hand, all the parties participating in the mediation are assisted by lawyers, the agreement which has been signed by the parties and by the lawyers themselves, including via electronic means, shall constitute an enforceable instrument for compulsory expropriation, enforcement by surrender and release, performance of obligations to act or refrain from acting, and registration of a judicial mortgage.

The agreement must be entered in full in the order for payment referred to in Article 480 (2) of the Code of Civil Procedure. The lawyer shall certify that the copy of the agreement sent electronically to the bailiff conforms to the original.

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nella procedura di mediazione dopo la Riforma Cartabia; Riflessioni a margine della sentenza del Tribunale di Napoli, sez. IV, n. 8555, del 20.9.2023 e dei successivi orientamenti giurisprudenziali, in n. 2, in *Mediares*, Primiceri Ed., Padova, Italy, 2024, n. 2, 244 and subsequent pages (accessed 14 December 2025).

[15] 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. OJ L 136 on 24 May 2008, 3–8, <https://eur-lex.europa.eu/eli/dir/2008/52/oj> accessed 13 December 2025.

Article 17 of *D.Lgs.* No 149 of 10 October 2022[16] also contains the rules on the tax system for mediation.[17] It provides that all acts, documents and measures relating to the mediation procedure are exempt from stamp duty and from all charges, taxes or fees of any kind or nature. The record to which the conciliation agreement is annexed is exempt from registration duty up to a value of one hundred thousand euros, otherwise the tax is payable only in respect of the excess amount.

Tax incentives are certainly among the most important for businesses. We have already written about the tax reward advantages, including the possibility of exempting registration tax up to the threshold of EUR 100.000,00, which is payable only on the excess over EUR 100.000,00 and with the granting of tax credits of a variable amount, both for mediation costs, including lawyers' fees, and for cases settled through court-ordered mediation.

In this regard, it should be pointed out that, in the Italian tax system, the acts of the judicial authorities are subject to indirect taxation, through the so-called 'registration duty'. The procedures for the assessment and collection of this duty – as well as its preconditions – are laid down in Article 37, Presidential Decree No 131/86, the so-called 'Consolidated Text of the Registration Tax', which provides that such acts are subject to registration duty, pursuant to the first paragraph of that article.

The taxable amount of a judicial act is determined on the basis of the effects it actually produces, as stated in Article 43 (4) of Presidential Decree No 131/86, which also lays down the criteria for calculating the tax and to which we refer for further information.

The *D.M.* of 1 August 2023, issued by the Minister for Justice in agreement with the Minister for Economic Affairs and Finance, amended *D.Lgs.* No 28/2010 with regard to tax incentives, both in the procedure and in the application process for recognition of the tax credit, as well as the determination, assessment and payment of the fee payable to the lawyer of the party admitted to legal aid. Tax credits shall be reduced by 50 % if the conciliation agreement is not reached.

[16] It concerns 'Implementation of Law No 206 of 26 November 2021, delegating powers to the Government to improve the efficiency of civil proceedings and revise the rules governing alternative dispute resolution instruments and urgent measures to streamline proceedings concerning the rights of individuals and families, as well as enforcement proceedings'.

[17] For further details, including with some academic statements, we refer to Valeria Botti, *Mediation of Civil Affairs in Italy – Second Part: Tax Benefits in the Fiscal Approach to Supporting Sustainability*, in Gajda, Pietras-Eichberger and Skawińska (eds), *Mediation as an Inclusive and Sustainable Method of Resolving Conflicts* (Peter Lang, Berlin, 2025, Chapter VIII).

Tax credits may be cumulated during the year for natural persons with a limit of EUR 600,00 per procedure and a total of EUR 2.400,00.

For legal persons – and this concerns the business community – the cumulative ceiling for one year is ten times higher and can reach up to EUR 24.000,00, offering significant savings by combining tax relief with faster procedures and lower participation costs.

Mediation bodies are also granted a tax credit, which corresponds to the fee due, but not payable by the party entitled to legal aid, up to a total annual maximum amount of EUR 24.000,00.

IV. THE FACTORS INCREASING INCLUSIVENESS OF MEDIATION IN ITALY

Mediation in Italy was designed not only in terms of greater sustainability in relation to judicial proceedings, with rules more flexible than they were before, but also with a more inclusive function, both for private citizens, first and foremost, and for businesses.

Its lower costs make civil and commercial mediation attractive and accessible even for matters not covered by the compulsory mediation procedure. They also allow those who do not have large economic resources – or those who want to save money and time – to gain access, while also benefiting from related tax benefits.

But inclusiveness is not a purely cost-dependent issue: the recent novelties introduced by the 'Correctivo Cartabia Decree' include the possibility of holding remote mediation meetings for the entire process: if one of the parties so requests, it is possible to participate in mediation through a remote audiovisual connection.

This provision significantly increases the inclusiveness of the procedure by allowing remote virtual 'presence' also to individuals and companies living or operating far from the mediator's premises, or who cannot easily participate due to disability, health, or even competing business obligations or other impediments. In such cases, digital signatures on documents are permitted.

Extending State-funded legal aid to foreign nationals further increases the inclusiveness of mediation in Italy for private citizens.

Legal aid in Italy, as elsewhere, is subject to specific income thresholds. In order to prove income earned abroad, non-EU nationals or stateless persons must

submit a certificate from the competent consular authority confirming its accuracy. If this certificate cannot be provided, a substitute declaration must be submitted, in accordance with the minimum form and content requirements set out in Article 47 of Presidential Decree No 445 of 28 December 2000.

All the factors contributing to the inclusiveness of the conciliation procedure clearly reflect the principles set out in Recital 5 of the preamble to Directive 2008/52/EC, of the European Parliament and the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters.

V. POSSIBILITY OF ADOPTING THE 'CARTABIA' MODEL IN OTHER EUROPEAN COUNTRIES

Please note, *incidentally*, as in the case of cross-border mediation as referred to in Article 2 of Directive 2008/52/EC, of the European Parliament and Council of 21 May 2008, as with voluntary mediation, if the parties are not all assisted by lawyers (and therefore not excluded from this provision), the agreement annexed to the minutes must be approved, at the request of the party, by a decree of the President of the court in the jurisdiction where the mediation body is located. The court's review, however, is limited to verifying formal legality and compliance with mandatory rules and public policy.

Beyond this international element common to both Italian and European procedure, a key question arises: 'To what extent is the Italian model exportable to other European countries, and, if so, what corrective measures may be needed to adapt it to the specific legal system of individual member states?'.

The principle of access to justice is a fundamental pillar of the rule of law. At its meeting in Tampere on 15 and 16 October 1999, the European Council called on the Member States to establish out-of-court and alternative procedures to improve and facilitate access to justice.

Subsequently, in April 2002, the European Commission published a 'Green Paper' on alternative dispute resolution (ADR) in civil and commercial matters. The paper launched a broad consultation with Member States and stakeholders to explore possible actions to promote mediation and assess the status of ADR implementation in EU legal systems.

Hence, through the appropriate steps, Directive 2008/52/EC, EP and Council, 21 May 2008, 'on certain aspects of mediation in civil and commercial matters', was adopted.

The Italian model introduced in 2010 is influenced by this European approach and therefore, in our view, can serve as an important reference for other European countries, especially in the light of recent developments. As we have seen, the Italian model – as it is currently designed and implemented – becomes truly valuable for other European countries, through the rules laid down in *D.Lgs.* No 28/2010, as amended by subsequent reforms.

The Italian civil and commercial mediation system is now providing targeted corrective measures drawn from fifteen years of national experience in the field. The problems that had emerged over time have been identified, and important reforms have been introduced to enhance the efficiency and flexibility of the system.

The only critical note that can be highlighted concerns the considerable and recent increase in mediation fees.[18] While this may discourage mediation in certain cases, it also encourages parties to take the process seriously and work towards a conciliation agreement, especially once an initial financial outlay has been made. Such a financial commitment can foster a greater sense of responsibility towards the mediation process.

VI. CONCLUSIONS

Parties, including companies, may voluntarily use civil mediation to resolve disputes that do not involve inalienable rights. In Italy, mediation is also mandatory in several legally defined cases. If parties fail to undertake mediation, the judge can raise this issue at the first hearing or ex officio. When required, the judge gives 15 days to initiate mediation through an authorised body and even during the proceedings, may refer the parties to a civil and commercial mediation.[19]

Mandatory mediation is a prerequisite for the admissibility of certain civil cases and may expand to cover more civil and commercial matters. *D.Lgs.* No 69/2013

[18] For some concerns raised in this regard in a judicial case, see Anna Ferrari Aggradi, Franca Visonà, *La Mediazione obbligatoria: un aumento di costi davvero insostenibile?*, Primiceri Ed., Padua, Italy, 2023, 2, 146.

[19] On this point, and also for comments on the Caratabia Reform, see, *ex multis*, Maurizio Maione, *Rapporti tra mediazione obbligatoria e processo civile alla luce della Riforma Cartabia*, in 'ildirittoprocessualecivile.it', 2023, 2, 458–463, <https://www.ildirittoprocessualecivile.it/wp-content/uploads/2023/05/2_2023_contributo-05.pdf> accessed 12 December 2025; Edoardo Borselli, *Mediazione e processo civile riformato: quando il giudice dispone l'invio?* in Giustizia consensuale, Editoriale Scientifica, Napoli (Italy), 2024, n. 2, 527–558.; G Matteucci *Mediazione civile e commerciale in Italia dopo la Riforma Cartabia*, Aracne Ed., Roma, 2024.

empowered judges to order mediation 'having assessed the nature of the case, the state of the investigation and the behavior of the parties', transforming what was once an invitation into a binding order. This power can be exercised up to the clarification of the conclusion of the case, both in the first and second instances.

What makes the Italian regulatory framework more current and interesting, also in terms of the sustainability and inclusiveness of the mediation tool for civil and commercial disputes, are the new rules, including those referred to in the *D.M.* No 150/2023.

Other important changes towards better efficiency, also thanks to telematics, have been recently approved by the so-called 'Correttivo Cartabia', the *D.Lgs.* No 164 of 31 October 2024 and, shortly after, *D.Lgs.* No 216 of 27 December 2024, which came into force in January 2025.

In this respect, the comparative study of the Italian ADR system, and of civil and commercial mediation in particular, is certainly of great interest to other national legal systems, including those in development (*de iura condita*): recent reforms are the result of past experience and the identification of issues and weaknesses in previous legislation, offering important corrective measures that are useful both in existing and developing legal systems (and thus both *de iure condita* and *de iure condendo*).

It is encouraging to observe how the statistics highlight a growing use of ADR also in Italy, as well as in other States.

Civil and commercial mediation, with its speed and flexibility – even superior to that of other ADR means — make the resolution of the dispute more sustainable, on the one hand generating balance in a judicial dispute which in order to be sustainable must be reduced in number, and on the other hand returning the solution directly to the parties, through an impartial third party, which is the mediator. Mediation is certainly an important tool for speeding up the time needed to resolve disputes and for reducing the judicial burden, which in Italy is very heavy: the number of civil trials pending as of 30 June 2022 was 2,881,886 units: almost one sentence out of two is reformed on appeal and many appeal sentences are then reformed in the Supreme Court.

The malfunctioning of the first instance courts (and the second instance courts are not much better) is one of the main causes of congestion in Italian courts: it causes significant damage to businesses and often discourages foreign investment in Italy.

The lower costs (but, as we have seen, they have risen in recent years) and greater tax breaks of civil and commercial mediation in Italy have also raised the level of concrete inclusiveness of mediation which today, after the 2022–2024 reforms, is

even more inclusive than before: this also taking into account how access to legal aid at state expense has been allowed even to the less well-off, both for mandatory mediation and for delegated mediation, through which the lawyer will be paid in the event of a positive outcome of the mediation, without starting a legal dispute.[20]

Mandatory mediation can provide citizens and businesses with an opportunity to bypass the slowness and ineffectiveness of traditional litigation by settling disputes through a 'win-win' approach that leaves everyone somewhat satisfied. This generates peace and social cohesion, while preserving business relations with the company involved in the mediation.

However, it is legal practitioners who must first believe in this option, encouraging their clients to consider it, whether they are private citizens or companies.

It is, in our view, essential to foster a new legal culture in which the lawyer is seen not only as a defender within the traditional judicial system, but also as a professional skilled in out-of-court dispute resolution. Universities, within the scope of their academic autonomy, must offer students training that reflects current developments and innovations – particularly in civil and commercial mediation and the broader use of ADR mechanisms.

By drawing on Italy's experience, Poland – along with other EU Member States – can strengthen its legal framework for mediation, promoting both economic efficiency and broader societal benefits in the resolution of disputes.

From a Polish perspective, several features of the Italian model are particularly valuable and potentially adaptable. These include the mandatory application of mediation across a wide range of civil and commercial cases, a system of tax incentives that encourages parties to pursue consensual solutions, and a well-developed institutional framework governing mediation bodies. Additionally, the structured approach to the training and accreditation of mediators offers a solid foundation for enhancing the quality and credibility of mediation practices.

Although a comprehensive exploration of these institutional and educational aspects falls outside the scope of this contribution, they provide a promising ground for reflection for future reforms. The adoption of these elements – in accordance with national legal traditions and procedural frameworks – could significantly enhance the credibility, accessibility and attractiveness of mediation in Poland and other EU jurisdictions.

[20] Italian Civil Court of Cassation, Section II, Ordinance of 25 March 2024, No 7974 (rv. 670573-01), in *CED Cassazione* (2024), accessed 6 June 2025.

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