

# Transforming Conflicts Online in Cross-border Disputes

## Transformación online de conflictos en casos de disputas transfronterizas

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Artículo escrito originalmente en inglés.

Para citar: Conforti, O. D. F. (2020). Transforming Conflicts Online in Cross-border Disputes. *Revista de Mediación*, 13 (1), e7.

**Manuscrito recibido: 02/07/2019**

**Manuscrito aceptado: 27/08/2019**

**Abstract:** One of the fields in which conflict resolution is developing is the Internet where it will, no doubt, become one more tool used to transform conflicts in cases of cross-border disputes and also to achieve the execution of a cross-border agreement within the EU, regardless of the nature of the dispute, whether internet related or not. This article reviews the state of on-line mediation and further defines, according to the legal framework in Spain, what is meant by electronic mediation; also, this paper intends to become a significant resource for legal counsel, institutions, Online Dispute Resolution service providers, governments as well as those with a more academic interest. Undoubtedly, for those who work in the field of peace building and value technology as a tool of it, online dispute resolution is actually an indispensable resource.

**Resumen:** Internet es un ámbito en el que se está desarrollando la resolución de conflictos, convirtiéndose en una herramienta más para transformar los conflictos transfronterizos y conseguir la ejecución de un acuerdo transfronterizo dentro de la Unión Europea (UE), independientemente de la naturaleza del conflicto, esté o no relacionado con Internet. El artículo revisa el estado de la mediación en línea y se define con más detalle, de acuerdo con el marco legal español, qué se entiende por mediación electrónica; el artículo pretende ser un recurso importante para el asesoramiento jurídico, las instituciones, los proveedores de servicios de Resolución de Conflictos en Línea, los gobiernos, así como para quienes tengan interés académico. No cabe duda de que para quienes trabajan en el campo de la construcción de la paz y valoran la tecnología como una herramienta de la misma, la resolución de conflictos en línea es en realidad un recurso indispensable.

**Keywords:** conflict transformation, cross-border disputes, electronic mediation, on-line dispute resolution, on-line mediation in Spain.

**Palabras Clave:** transformación del conflicto, conflictos internacionales, mediación electrónica, resolución de disputas online, mediación electrónica en España.

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Creator of Mediar On-Line (<http://www.mediaronline.com> — [www.mediacion.online](http://www.mediacion.online)), which is a software to resolve disputes through the use of information technology, which means to mediate online. First web in the Spanish language to offers mediation services online since 2008. This service was initially developed in collaboration with the Family Mediation Centre of Catalonia Justice Department of the Generalitat de Catalonia.

Published in 2013 the book «Pequeño Manual de Mediación Electrónica» it was foreword by the Assistant Director-General of Legislative Policy of Justice Ministry of Spain, it was translated to English Language and published in 2014 under the title Electronic Mediation Handbook it was foreword by Professor Ethan Katsh regarded as a creator of the online dispute resolution (ODR) field.

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## Introduction

The Directive 2008/52/EC of the European Parliament and of the Council, on certain aspects of mediation in civil and commercial matters (EU, 2008), intended to encourage amicable dispute resolution through mediation and highly recommends this process to resolve cross-border disputes in civil and commercial matters. This Directive was the first step taken by the European Union (EU) to promote on-line mediation.

A legal framework in Spain was established under Law 5/2012 on Mediation in Civil and Commercial Matters (the 'Mediation Act'), published in the Official Gazette of the Spanish State on July 7, 2012. This Act entered into effect on July 27, 2012 (Spain, 2012). The Mediation Act was followed by Royal Decree 980/2013, of December 13, which expanded on certain aspects of Law 5/2012, of July 6, regarding mediation in civil and commercial matters (the 'Regulation Act') (Spain, 2013).

As we know, the EU is dealing with two different legal systems existing within its member states, 'Common Law' and 'Continental or Civil Law'. The objective of EU Directives is to harmonise the domestic law of each member state. This is a huge challenge which, in fact, has not yet been achieved.

Therefore in this paper I will examine and compare the concept of mediation as used in each text, keeping in mind certain 'philosophical' differences under the two legal traditions.

Under Common Law, the 'idea of justice', involves processes intended to provide each party the opportunity to prevail in a dispute. There is, generally, one decisional level in court, its judgment usually becoming definitive unless appealed before a higher court.

Under Continental Law, the State, rather than the parties themselves, assumes control of the investigation into a case. It is a multilevel decisional system, in which parties can obtain a range of different decisions or verdicts.

A Common Law system is an egalitarian system developed in a horizontal level, in which 'mediation' as a conflict resolution methodology works in perfect harmony (or at least without conflict) within the legal system. Continental Law, however, provides a vertical system where court decisions can change the outcome of litigation at each jurisdictional level; here 'mediation' will encounter greater challenges to its introduction and development due, above all, to motions requesting judicial review (Conforti, 2014b).

As we shall see, these functional or philosophical differences between the two systems will be relevant when we examine the nature of on-line mediation in greater detail.

### What On-Line Mediation means in the EU and in Spain

The origins of on-line dispute resolution can be found in the development and subsequent boom in on-line commerce.

The growth of retail websites such as e-bay, Amazon, etc., gave rise to the need to develop new ways to deal with inevitable disputes. On-line purchases, returns and complaints all required new ways of resolution. Katsh, Rifkin and Gaitenby (2000) has made a deeper analysis of these developments.

On-line dispute resolution is young; we can say that it was identified as a new field of traditional alternative dispute resolution when defined as such by Ethan Katsh and Janet Rifkin in the above-referenced paper. ODR facilitates dispute resolution thanks to the transforming power of technology. In fact, technology has become a fourth party within the traditional three-party model (the two parties and a neutral) of alternative dispute resolution (Katsh & Rifkin, 2001).

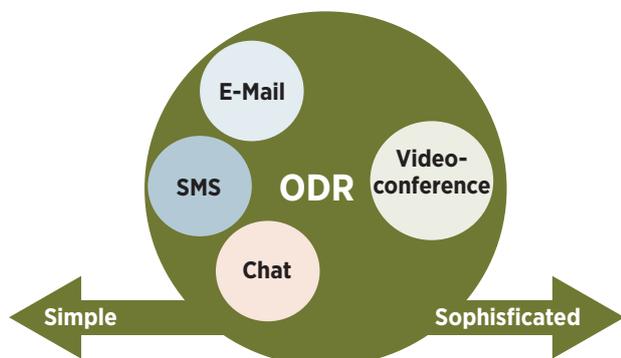
The European Commission followed with a report in 2002 titled 'Green Paper on alternative dispute resolution in civil and commercial law' (EC, 2002). The Commission focused on trade and commerce and the natural areas of disputes arising from them: collections, claims, contract compliance, etc. The aim of this paper was to identify legal issues arising out of the new methods or alternatives available to member states in the field of civil and commercial law as applied to alternative dispute resolution.

In the European context, this report laid the groundwork for the development and use of ODR methods and technologies. European legislators understood that future legislation regarding conflict resolution arising out of EU commerce should include and encourage the use of new internet technologies. Having concluded that ODR could and should be of use in commercial disputes, the Green Paper (EC, 2002) ended questioning how member states would incorporate this new method within their traditional, established legal systems. The report asked in question No. 3: 'whatever initiatives must be taken, should they treat differently the methods of on-line dispute resolution (ODR) – a raising sector characterised by innovation and a fast evolution of new technologies, with all the particularities it entails – and traditional methods?, or should they refer to both methods without discrimination instead?'

Subsequent EU directives would go on to make explicit reference to on-line dispute resolution (ODR) methods. We do not find a clearly expressed preference for any particular method. They do, however, make clear that mediation is not applicable to consumer matters (Directive 2008, art. 11).

Following the same criterion, the Spanish Mediation Law does not allow 'mediation' in consumer disputes (Law 5/2012, art. 2). However, the Law in Spain went further than the Directive establishing the 'on-line mediation process' as a specific method (arts. 5, 24 and final provisions 4 and 7 of the Law 5/2012 and arts. 30 to 38 of the Regulation Act 980/2013). This indicates that Spanish legislators recognised

Fig. 1 General presentation of Genus and Species



Source: Conforti, 2014, p. 20.

intrinsic differences between ODR in general and On-Line Mediation as a specific method.

**Distinguishing between ODR and On-Line Mediation**

It is essential to make clear distinctions between these concepts given the legal responsibilities (both civil and criminal) of the mediator (Law 5/2012, arts. 9 and 14). These legal issues will be examined in greater detail further on.

We first need to examine the components of ODR to then understand the issues relating to on-line mediation. If we move from ODR as a general concept to on-line mediation as a more specific method, a natural paradigm for this study is that of ‘genus’ and ‘species’.

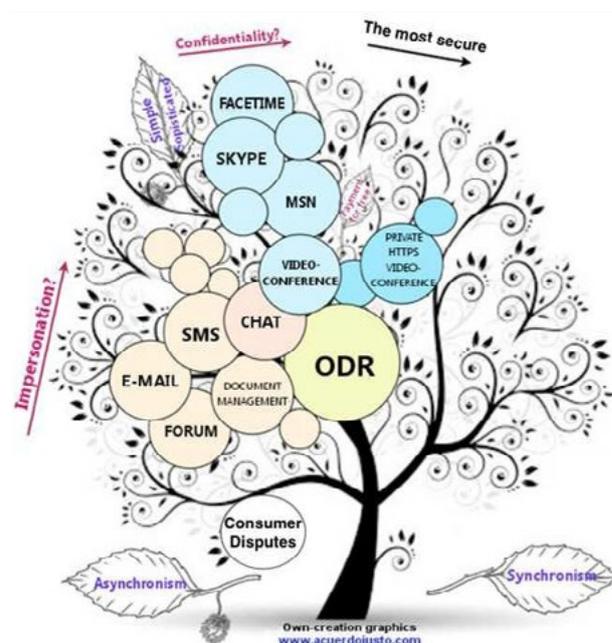
The main group, which we have labeled ‘genus’ contains many elements, which are only limited by the technology on offer. They include: e-mails, text messages, chats, fora, video messages, videoconferences, etc. Looking at these technical elements we can form groups based on the complexity of each tool. Therefore, we can consider e-mails, chats and SMS to be ‘simple’ when used by parties, while a videoconference falls in the category of ‘sophisticated’. The graph illustrates this concept.

If we build upon this rather basic scheme and introduce other elements, we must include asynchronism and synchronism as means of communication between parties and the mediator.

The following graph shows the increasing number of elements in the ODR process providing an indication of possible concerns arising out of confidentiality and security issues. In this graph, called the ‘ODR tree’, the tree as «genus» would naturally include various species such as On-Line Mediation, but here the emphasis is on the technical components.

There are four leaves. The two fallen leaves on the left and right side of the tree correspond to asynchronous and synchronous modalities respectively. The large leaf on the tree at the top marks a division between simple and sophisticated

Fig. 2 ODR Tree



Source: Conforti, 2014, p. 21.

ODR. The smaller leaf (in the middle of the tree) separates public videoconference from private videoconference.

The different technical elements identified in the circles have been grouped by colours according to their proximity to either asynchronous or synchronous criteria. In the asynchronous group on the left, (e-mail, sms, fora, sms and document management) the element ‘chat’ is placed higher and closer to the tree trunk because it can be used either asynchronously or synchronously.

The more sophisticated technical elements, such as videoconferences in their different forms appear on the right side of the tree. In a stronger color tone, ‘private https videoconference’ is the furthest to the right side, because it is the only tool which provides the mediator greater certainty in meeting the security requirements of a mediation process.

The outer arrows around the tree indicate the problems or difficulties that each group of elements or species faces.

For example, the simple ODR group has serious difficulties avoiding identity impersonation. On the other hand, the group of more sophisticated ODR tools requires making a distinction between (i) public videoconference providers, like Skype<sup>1</sup>, having similar problems in terms of confidentiality and secrecy as the simple ODR group; and (ii) private videoconference providers, suppliers operating under the ‘https’ protocol, which today is considered the most secure way to carry out an on-line mediation (Conforti, 2014).

As mentioned before, everything related to ‘consumer’ disputes takes a different direction, since it is prohibited in

the Directive 2008/52/EC number 11 (EU, 2008). As a consequence, the term ODR is used in the Proposal for a Regulation of the European Parliament and of the Council on on-line dispute resolution for consumer disputes (Legislative Resolution of the European Parliament, March 12, 2013), but it is excluded at the national level as per Art. 2.d) Law 5/2012. That's why it has been placed in a small circle on the branch below.

Ethan Katsh has said,

As Professor Conforti understands, the phrase online dispute resolution (ODR) is an umbrella for many different approaches to resolving disputes. All ODR processes share some common goals in that the communications systems employed need to be trusted and accessible. All ODR systems also share some challenges such as when choices need to be made between synchronous and asynchronous forms of communication. There are, however, also differences in that there are laws that apply to particular forms of dispute resolution and not to other forms. This book provides clear guidance about the legal context for e-mediation. (Katsh, 2014, p. 5).

Having established a distinction between the 'genus' and the 'species' regarding On-Line Mediation, we now need to further examine On-Line Mediation.

Because e-mediators will have to go beyond theories and models in each on-line mediation they handle, we can expect that they will draw upon a variety of techniques, tools, approaches and knowledge. But while e-mediators become effective in applying many different techniques and technologies in the mediation process, two factors will remain paramount: (i) law and regulation acts governing mediations, and (ii) principles of mediation.

In accordance with Spanish Law 5/2012 and Royal Decree 980/2013, mediation processes must be developed according to the following legal rules:

- Voluntary and free disposition to participate (art. 6);
- Equality of the parties and impartiality of the mediator (art.7);
- Neutrality of the mediator (art. 8);
- Confidentiality (art.9);
- Good faith, respect, and cooperation (art.10);
- Safeguarding the identity of the participants (art. 24.1).
- In addition, the e-mediator must be sensitive to specific characteristics of the on-line mediation process:
- Interaction means «action exerted reciprocally» (Bohm, 1997), meaning (i) dialogue between each party and the

e-mediator in a preliminary session, or (ii) between the parties and the e-mediator which must be synchronous to be considered interaction, at least in accordance with mediation principles;

- The e-mediator must apply all mediation techniques at his disposal to deal effectively with emotions and empowerment, to recognise the key to transformation in conflict, to focus, reframe, summarise-review, to allow narratives and talk about feelings, responsibility, to ask appropriate questions to identify unmet needs behind 'no', to give homework for the next session, to help the parties visualise and reach their own boundaries, to calm high emotions by respecting and validating them, to redirect the dialogue, etc;
- The e-Mediator must observe the parties closely. Visual contact with them will allow him to read body language such as reactions, predisposition to cooperate, low or high interest, etc. Above all, the e-mediator is the person who can verify the identities of the parties through visual contact.

In conclusion, On-Line Mediation is a process which can be accomplished wholly or partly by electronic means in a more or less simple way, in which the identity of the parties must always be protected and verified, and which must be conducted in accordance with the principles and characteristics of the mediation process as provided by Law, and which will always be conducted by an e-mediator, a trained neutral third party able to help parties reach an agreement by themselves (Conforti, 2014, 2017).

#### Legal and non legal difficulties in On-Line Mediation, and their solutions

ODR processes must therefore evolve so as to provide more legal certainty. The consequences of this on the development of ODR can be expected to be threefold (Kaufmann-Kohler and Schultz, 2004, p. 82).

There are four major challenges or difficulties; two of them are legal in nature, while the other two are of a more procedural nature.

Regarding legal issues there are possible criminal offences that could arise out of on-line mediation. These are found in articles 197.5 and 199 of the Criminal Spanish Code (Spain, 1995) regarding confidentiality (secrets disclosure) and article 401 of the same Law regarding identity impersonation (civil status usurpation) and they are:

- Confidentiality (art. 9 of Law 5/2012);

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<sup>1</sup> Skype is an application to do free videoconferences for public use through the Internet. It is trademarked with © of Skype SL.

- Guarantee of the participants' identities (art. 24.1 of Law 5/2012).

Regarding procedural issues, we must bear in mind that if the following aspects of an on-line mediation are not satisfied, the endeavour may, in fact, take on the characteristics of something else, called negotiation, counselling, etc., but not on-line mediation:

- Interaction (the mediation process is synchronous);
- Mediation Techniques and Skills (deal with emotions).

The process must include interaction to allow the e-mediator to apply techniques used in a standard mediation.

We will examine each of these four challenges to on-line mediation in greater detail.

According to Spanish law, the mediator is responsible for maintaining 'confidentiality' and the 'guarantee of the parties identities'. How will mediators ensure that these aspects are complied with? Challenges regarding confidentiality have much to do with the technology employed, specifically with 'cloud computing systems'.

Many 'cloud systems' are management and/or electronic document processing systems that allow users to access information kept in the provider system as if it were Skydrive, Dropbox, etc. This means that any document (opening statement, commitment to further mediation sessions, and/or final agreement) has to go through an intermediary, meaning the company providing the service to be stored or saved in a 'place in the cloud.'

At the start, before any choice is made, the mediator must explain to the parties how this works and what it entails. Once understood and agreed to by the parties, the e-mediator can transfer information to the Internet cloud system provider; otherwise, the process must stop there.

The mediator may require that parties sign an agreement authorising him to upload and manage information. This agreement will be valid under the law. However, there are two points to bear in mind: How will this practice affect the mediation and the level of trust necessary to further the mediation process? Secondly, does the validity of the agreement mean that the mediator is not liable for any violation of confidentiality, even in a criminal matter?

These concerns can be easily overcome when the e-mediator uses 'desktop software'. These are resident programs or applications which are previously installed in the computer of the mediator, or mediation centre. The mediator manages all information, documents, and sessions with the parties as if the parties themselves were an office package such as Microsoft Office, iWork, Open Office, etc.

The mediator will be the only person with full access to the program or application; this means that the e-mediator will collect, handle, and keep all information, thereby ensuring that no mistakes are made. The e-mediator has to become an expert at using software in order to perform this process properly. In this way, mediators can avoid typical setbacks such as when the company server 'does not respond' or shows 'error' messages.

The second legal challenge concerns protecting and guaranteeing the parties' identities.

Is an Electronic ID a possible solution? First, while the European Union has been working on this matter (EU, 2008), a unique electronic identity certification has not yet materialised for all member states. The technology is available, but unified standards have not yet been achieved (Conforti, 2014, p. 43).

Second, the mere fact of having an electronic ID attached to an individual does not prevent its unauthorised use by another. In this respect, an electronic ID is not unlike a credit or cash card. In the end, mediation on-line requires visual contact: we need to see the person. Visual confirmation of identity is the only way to avoid this problem.

Do we then conclude that the use of videoconference is the simple solution? The answer is yes, but not with free videoconference providers in an open environment such as Skype. This service does not guarantee the privacy or confidentiality of communications<sup>2</sup> In fact, open videoconferencing providers expressly exclude any and all responsibility regarding the privacy of the service they provide<sup>3</sup>. A further complication is added in that the Law requires that mediation sessions be registered or recorded by the e-mediator for possible future audits (Spain, 2012, arts. 2.5 and 24).

The remaining non-legal challenges to on-line mediation previously identified included the need for interaction between parties and mediator, and the employment of the necessary mediation techniques and skills by the mediator (Conforti, 2018a, 2018b).

With regard to 'interaction' we can conclude that mediation must be a 'face-to-face' meeting between the parties. The technical ability to provide the vital element of synchronised communication exists, so why would it not be carried out in this manner, thereby guaranteeing the necessary degree of interaction?

As for mediator skills, it is possible to conclude that with the appropriate platform within which to conduct an on-line

<sup>2</sup> Also I must call readers attention to the fact that all the communications through United States Servers are scanned by different agencies of the US government. The US government has acknowledged access to Google, Facebook and Skype (among others) (Paterson, October 30th, 2013; MacAskill & Dance, November 1st, 2013). <sup>3</sup> See clause 12 on terms of use or contracts conditions of his free services (Skype, 2014).

mediation, mediators are able to use and apply all of their techniques. In other words, mediators will be able to deal with emotions, read body language, ask questions and elicit responses while allowing for reframing or paraphrasing.

As Professor Ethan Katsh said:

Much of the writing on ODR from the United States neglects these topics; both offline and online mediation in the U.S. are informal and less subject to data protection and other types of European-based directives (Katsh, 2014, p. 6).

### How an On-Line Mediation process in Spain works

There are two phases to an on-line mediation in Spain. The first consists of necessary documentation including, but not limited to, an application or invitation letter to mediate, caucus session reports, an initial joint mediation session report, and a final joint mediation session report. These documents, or 'paperwork', will now be filed electronically and will be maintained by the mediator in his computer. At this stage, the mediator will use desktop software to handle, manage and store files, thereby guaranteeing privacy and confidentiality.

The second phase involves actual mediation sessions with parties. This phase becomes more complicated because the technology used must address the issues that we have already identified as essential to the process: privacy, confidentiality, identity security, and the ability of mediators to use and apply mediation techniques.

We will now explain in greater detail these components of the process that have been broadly outlined.

Applications to mediate may be submitted in person or in an on-line form, collected in a web-form with or without certification of digital identity, may be submitted by mutual agreement by both parties to the conflict, or simply submitted unilaterally by one of them.

Upon receipt of the application, the mediation centre or e-mediator may contact the moving party to either obtain additional information (in the case of application by one of the parties), or to hold a preliminary hearing in which he would inform the applicant of the on-line mediation process. Once the e-mediator has all relevant information, he is able to initiate contact by any means (letter, fax, phone, e-mail, etc.), including inviting the other party (required) to participate in the on-line mediation process.

Informative and/or preliminary sessions in the form of videoconference may be held with one or both parties, jointly or separately, depending on the circumstances of each case as the e-mediator deems necessary. These hearings will address many procedural issues, covering the nuts and bolts of the process. During this preliminary hearing, the mediator will disclose to the parties any circumstance likely to raise doubts regarding independence and impartiality. The nature and

characteristics of mediation will be explained along with fees and expenses. The procedural system to identify the parties, including electronic signature technology, will be established. The mediator will also establish deadlines, explain the extent and purpose of record-keeping, and explain the possible legal consequences arising from a mediated agreement. At this time, the parties are offered with a opportunity to ask questions and discuss any concerns they may have.

The opening joint hearing consists of interactive videoconferencing which shall include the identification of the parties and the mediator, system accreditation and identification, and the authentication and validation of the parties' digital signature agreement. The objectives of the mediation process will be defined, along with an estimate regarding the duration of the mediation, costs and form of payment. A declaration of voluntary submission to mediation by the parties, location and language to be used will be confirmed. At this point video recording starts with live, real time, interaction between the parties and the mediator.

There are two informative sessions (one for each one of the parties) and two or three joint sessions, as well as a private session should one or both parties wish to discuss their agreement with their lawyers before signing it.

In conclusion, the on-line mediation process relies on technology that is easy to use providing necessary privacy and security. The e-mediator will rely on appropriate desktop software to maintain the electronic record of the proceedings, together with a videoconference system that follows 'https' protocols.

Professor Katsh said «Building trust in an ODR process should be a key concern in the design of the Web site.» (Katsh & Rifkin, 2001, p. 88).

### Execution of cross-border agreements in conflict mediation within the EU

The European Union actively promotes the use of alternative methods for conflict resolution (ADR), and, in particular, mediation. The primary aim is to promote the use of mediation in member states to help alleviate an overburdened court system. By encouraging the use of mediation to make conflict resolution easier, it is hoped that this alternative will be generally accepted, thereby diminishing the waste of time and money associated with traditional litigation, while at the same time ensuring that citizens are able to pursue their rights effectively.

It is well that:

In ODR, the correct use of information technology contributes significantly to the resolution of the conflict. The fifth party has to make decisions regarding what type of technology should be offered. Basically, technology in ODR can

be applied for the following purposes: (1) supporting the Communications; (2) supporting the Exchange of documents and information; (3) supporting decision-making; (4) making decision. (Lodder and Zeleznikow, 2010, p. 84).

To this end, the legal instrument that the European Union has adopted is found in the Directive 2008/52/EC on Mediation (EU, 2008), which should have been implemented by the Member States by May 2011. This Directive regulates mediation in commercial and civil matters.

The Mediation Directive is to be used in cross-border lawsuits in commercial and civil matters. It applies to disputes where at least one of the parties is domiciled in a member state different from the other parties when agreeing to mediate, or on the date a court orders mediation.

To achieve the above mentioned objectives, the Directive established five independent rules:

- It mandates that Member States promote the training of mediators to ensure quality and expertise in mediation;
- It empowers judges (if they consider it appropriate in a particular case) to invite parties to a dispute to consider mediation;
- It stipulates that, if the parties so request, the agreement(s) resulting from mediation become binding instruments. This can be achieved, for example, through the approval of the agreement by a court or its certification by a public notary;
- It guarantees confidentiality in the mediation process, stipulating that mediators cannot be forced to testify in court about what transpired during mediation in a future conflict between the same parties;
- It guarantees that the parties do not waive their right to a trial while they attempt to resolve their dispute through mediation, since statutory deadlines for filing a lawsuit are suspended during the process of mediation.

We will need Global resolution tools, but:

Some service provider hold themselves out as global practitioner, not limiting themselves to any one region. Others while not explicitly limiting the scope of their operations, do so implicitly by including comments on their website referencing particular areas, organizations and legal issues, by the language/s services are offered in, by a country specific domain name or by the language in which the website itself is in. Still other service providers limit themselves explicitly to specific countries or areas. (Ebner, 2012, p. 360).

The following regulations must be considered and taken into account in order to obtain the execution of agreements in Europe:

- Council Regulation (EC) No. 44/2001 of 22 December 2000, on Jurisdiction, Recognition and Enforcement of Judgments in Civil and Commercial Matters ('Brussels I'): the decisions adopted in a Member State of the European Union (EU) will be recognised in all Member States without resorting to any proceedings, except in case of opposition.
- Council Regulation (EC) No. 2201/2003 of November 2003 on Competency, Recognition and Enforcement of Judgments in Matrimonial Matters and of Parental Responsibility, Regulation (EC) No. 1347/2000 ('Brussels II'): automatic recognition of decisions concerning visitation rights.

The number of conflicts brought to courts is increasing everywhere, leading both to lengthening waiting periods to obtain a court judgment, and to increasing trial costs to the point where in many cases costs are not proportional to the economic value of the dispute<sup>4</sup>.

On-Line Mediation is a reality despite current differences in the European Union between mediation methods and matters subject to mediation. However, this method of conflict resolution is becoming more attractive as an alternative to litigation.

On-Line Mediation is a challenge for those who work in the field of legal technology and conflict management. To deny its existence and importance means ignoring the future.

## Conclusion

- Legal systems have functional or philosophical differences which are relevant for the on-line mediation.
- The Law in Spain went further than the Directive establishing the 'on-line mediation process' as a specific method (arts. 5, 24 and final provisions 4 and 7 of the Law 5/2012 and arts. 30 to 38 of the Regulation Act 980/2013).
- Spanish legislators recognised intrinsic differences between ODR in general and On-Line Mediation as a specific method.
- On-Line Mediation is a process which can be accomplished wholly or partly by electronic means in a more or less simple way, in which the identity of the parties must always be protected and verified, and which must be conducted in accordance with the principles and characteristics of the mediation process as provided by Law, and which will always be conducted by an e-mediator, a trained neutral third party able to help parties reach an agreement by themselves.

<sup>4</sup> In a recent judgment a court in Barcelona imposed a fine to one of the parties because they had not tried an alternative dispute resolution method, such as mediation, before going to trial. In this judgment the value of the judicial process was fixed at 2.600€ in 2012, so we can suppose this amount is higher nowadays. See more at Vigil (March 23rd, 2015).

- With the appropriate platform within which to conduct an on-line mediation, mediators are able to use and apply all of their techniques.
- The on-line mediation process relies on technology that is easy to use providing necessary privacy and security. The e-mediator will rely on appropriate desktop software to maintain the electronic record of the proceedings, together with a videoconference system that follows 'https' protocols.
- On-Line Mediation is a reality in the European Union despite current differences regarding mediation methods and matters subject to mediation. Even in case of execution of cross-border agreements within the EU. However, this method of conflict resolution is becoming more attractive as an alternative to litigation.

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