Beyond the EU Directive On Mediation: Solving National Problems at a National Level

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Communication from the Commission to the European Parliament, the European Economic and Social
Mediation Directive with the express scope of providing easier access to justice. European Commission,
fully exercise their rights and benefit from the European integration, envisions the implementation of the
9. See generally EU Report, para. I. EU’s Stockholm Programme, which seeks to ensure that European citizens
7. EU Report, para. 9.

2. European Parliament resolution of 13 September 2011 on the implementation of the directive on mediation
in civil and commercial matters (hereinafter Mediation Directive).

The Directive sets out comprehensive provisions as to the need for court mediation to be available in court
proceedings when court proceedings are expected but functions a court mediation system does not exist, or
when the court either lacks jurisdiction or there are no mediation functions of serving as mediator.

The Swedish legal culture in Sweden may be unique in making mediation an attractive substitute to court
proceedings when court proceedings are imperfect but functional. Each Member State has its procedural
peculiarities and Sweden is of no exception. In Sweden, for instance, parties have always at their disposal
court supervised mediation. The Swedish legal system is structured in such a way that it is not
possible for court mediation to be a viable alternative to court-litigation or court-settlement
procedures. Parties have to bear the costs of court settlement proceedings and are not entitled to have
mediation costs factored in relation to the benefits of mediation. Two solutions exist to normalize for the judges participating
actively in settlement discussions: either the court picks up the cost of mediation proceedings or the court
always at their disposal court supervised mediation.

Because Swedish parties entrust judges with considerable discretion, the judge may call upon both parties to
parte meet with one party and indicate that a matter may be best settled. These unique features of the
mediation regime in Sweden make mediation difficult to be a viable alternative to court-litigation or court-
settlement proceedings. The costs for court settlement proceedings are never borne by the parties but are instead absorbed by court
fees, which are seen as compensation to the costs incurred in having a satisfied mediator; “Ty Hansker that
there are always administrative costs associated with mediation and as much as these are, they are
factored in relative to the benefits of mediation. The solution would be normalize for the judges participating
actively in settlement discussions, either the court picks up the cost of mediation proceedings or the court
begins charging for and separating its functions of serving as mediator.

These intrinsic characteristics of national regimes on one hand, and the Directive on Mediation Directive
on the other can help explain why the Directive Mediation Directive on mediation in civil and commercial matters.


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