What amicably means in a dispute resolution clause?

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Constantin-Adi Gavrila (Craiova Mediation Center Association)

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A model dispute resolution clause that can often be found in domestic commercial contracts reads "*(1) The parties have agreed that all disagreements regarding this agreement be settled amicably by their representatives.; (2) If it is not possible to resolve disputes amicably, the parties will address the competent courts of law.*". The language of the contracts is open for interpretation when it comes about implementing the model dispute resolution clause above. While the meaning of the word "amicably" is clear – friendly, sociable, peaceful – the possibilities of taking peaceful actions in attempting to settle disagreements are many.

The efforts made by the parties to settle are proportional with their interests to settle. These efforts are consultations that can vary from minimum communication to structured dialogue processes, in which the contract partners involve their own legal and technical experts. At times, the parties mandate mediators or facilitators to help them design the dialogue processes and to manage them as neutrals with impartiality.

The question here is how effective the language of the clause cited above is helping the parties to settle their differences. This is because amicably can mean any effort, regardless of how useful that effort actually is, for a meaningful and healthy consultation process. According to Paul Kendall, "good healthy communication is impossible without openness, honesty, and vulnerability.". But sometimes, one may say, is not healthy to be very open, as vulnerabilities shared in support of a possible settlement can be used against us in case the attempt is

not successful.

Therefore, another question here is if, how and when the dispute resolution clause should be more prescriptive in order to create a stronger platform for settlement, avoiding unnecessary future costs, while ensuring enough safety for the parties that this platform will not harm them in any way.

While theory and signals clearly state that there are many good reasons for the involvement of mediators in some cases in order to maximize chances to settle domestic commercial disputes, another question is to what extent are actually both the private and public sectors using this opportunity?

While this opportunity is basically inexistent in Romania, even though the Government is committed to improve the legal framework and is affirming to support the development of mediation to decrease the backlog in the courts of law, and to improve the access to justice, the Government is not using mediation services, unless pushed by the law. The same goes for the private sector that, with or without the lawyers' advice, is also not an active user of mediation services, to say the least.

Finally, are the questions above even relevant? Is the enabling domestic legislation not only useful but also absolutely critical for the existence of a real practice of mediation? The answer can come from Italy where mediators, lawyers, citizens, and both public and private sectors are active parts of hundreds of thousands of mediations. *Italy's "Required Initial Mediation Session"* (*see* Leonardo D'Urso, https://onlinelibrary.wiley.com/doi/pdf/10.1002/alt.21731) is not only an experiment, but a solution proven by statistics that is creating a reasonable push-pull balance, a bridge over the gap between mandatory and voluntary mediation. Given this existing model, in Italy, all the questions above are certainly relevant.