

ACHIEVING A BALANCED RELATIONSHIP BETWEEN MEDIATION AND JUDICIAL PROCEEDINGS: THE ITALIAN EXPERIENCE

ATHENS – 20 MARCH 2017

ART. 1

The objective... is to facilitate access to alternative dispute resolution and to promote the amicable settlement of disputes by encouraging the use of mediation and by ensuring a balanced relationship between mediation and judicial proceedings.

ART. 4
Ensuring the quality of mediation

ART. 5
Referral to mediation

ART. 6
Enforceability of agreements resulting from mediation

ART. 7
Confidentiality of mediation

HOW TO MEASURE A BALANCED RELATIONSHIP?



DIRECTORATE-GENERAL FOR INTERNAL POLICIES
POLICY DEPARTMENT
CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS **C**



The Implementation of
the Mediation Directive
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Achieving a Balanced Relationship between Mediation and Judicial Proceedings

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IN-DEPTH ANALYSIS

Abstract

The 2008 EU Directive on Mediation has been a key milestone for all Member States in introducing various national legislation on mediation in civil and commercial matters. However, the goals stated in Article 1 of the Directive, towards encouraging the use of mediation and especially achieving a "balanced relationship between mediation and judicial proceedings" have clearly not been realized. This paper, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs upon request by the JURI Committee, examines this issue in detail. Despite the lack of homogeneous statistics, in almost all of the Member States mediation is used in less than 1% of the cases in court: for 1 mediation, 100 cases go to court. The only exception is the result of the Required Initial Mediation Session model currently used in Italy in a small portion of civil cases which is emerging as a best practice. The EU legislator should consider revising Article 5.2 of the Directive, requiring parties, in certain disputes, to participate at least in an initial mediation session with a trained mediator. This mediation attempt should be fast and inexpensive. As an alternative, the EU should require the Member States to use the current version of Article 5.2 to a fuller extent, taking into consideration the type of dispute.

FOUR MEDIATION MODELS USED IN IMPLEMENTING THE DIRECTIVE



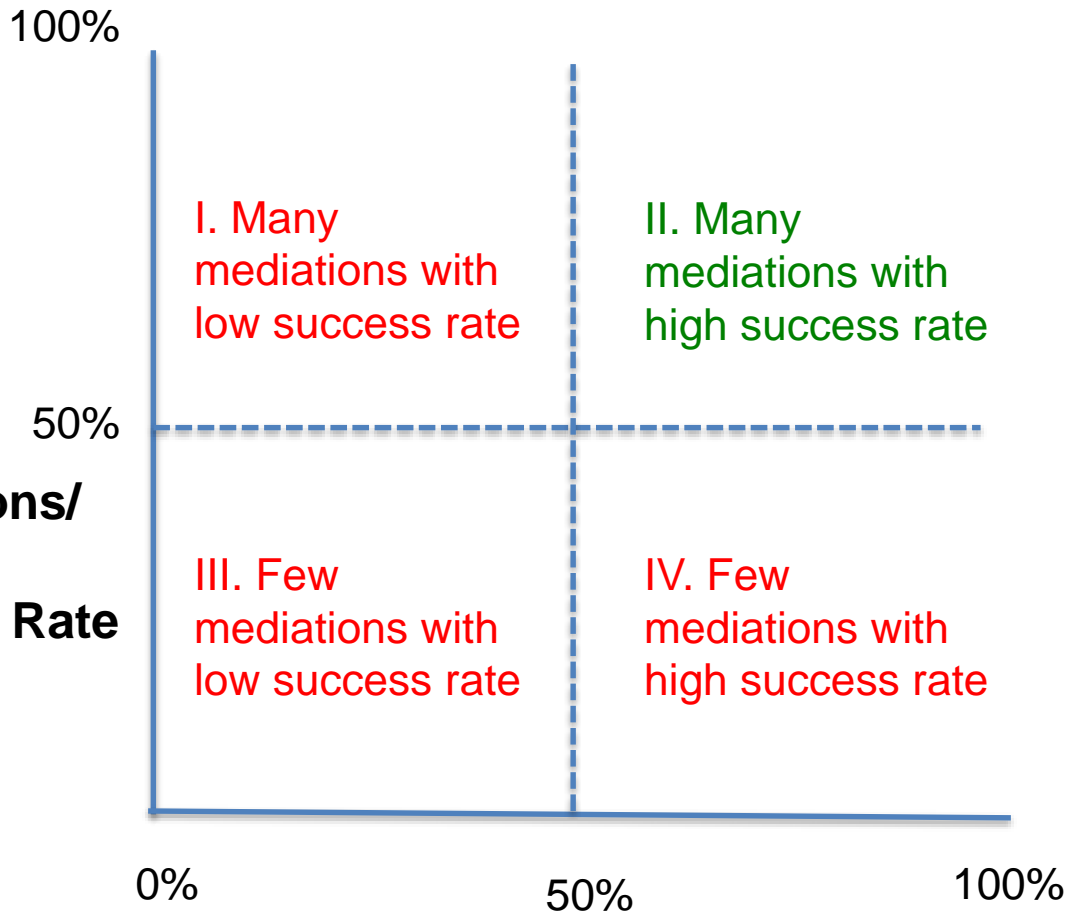
- ➔ **1. Full Voluntary Mediation:** the parties can engage a mediator to facilitate the resolution of any dispute that they have not been able to settle by themselves. In this case, a mediation legal framework is not even required.
- ➔ **2. Voluntary Mediation with Incentives and Sanctions:** the parties are encouraged to have recourse to mediation, thus fostering the practice. This model requires a mediation law in place.
- ➔ **3. Required Initial Mediation Session:** the parties are required to attend an initial meeting with a mediator, free or at a moderate fee, to establish the suitability of mediation. This model, too, requires a mediation legal framework.
- ➔ **4. Full Mandatory Mediation:** the parties must attend and pay for a full mediation procedure as a prerequisite to going to court.

HOW TO MEASURE AND VISUALIZE THE EFFECTIVENESS OF A MEDIATION MODEL

1 Ratio of Nr. of Mediations to Nr. of Cases in Court

2 Mediation Success Rate

**Mediations/
Cases
in Court Rate**



Mediation Success Rate

BALANCE RELATIONSHIP MATRIX IN GREECE



Balance Relationship Index

Nr. of Mediations

_____ x 100 % = _____ x100%=

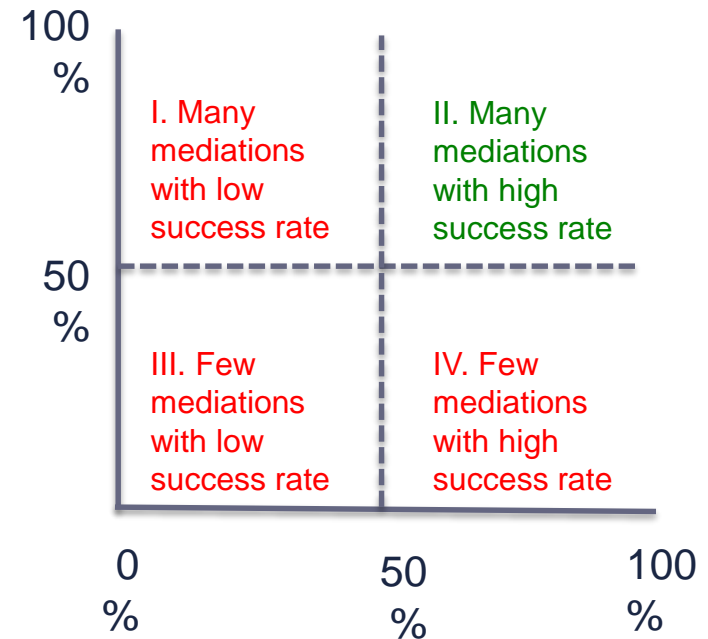
Nr. of Case in Court

Success Mediation Index

Nr. of Settlements

_____ x 100 % = _____ x100%=

Nr. of Mediations



ONLY 0.05%

of civil cases
mediated

20 MILLION

civil cases filed
in trial courts

NO BALANCED RELATIONSHIP

*between mediation and judicial proceedings
(required by art. 1 of Mediation Directive)*

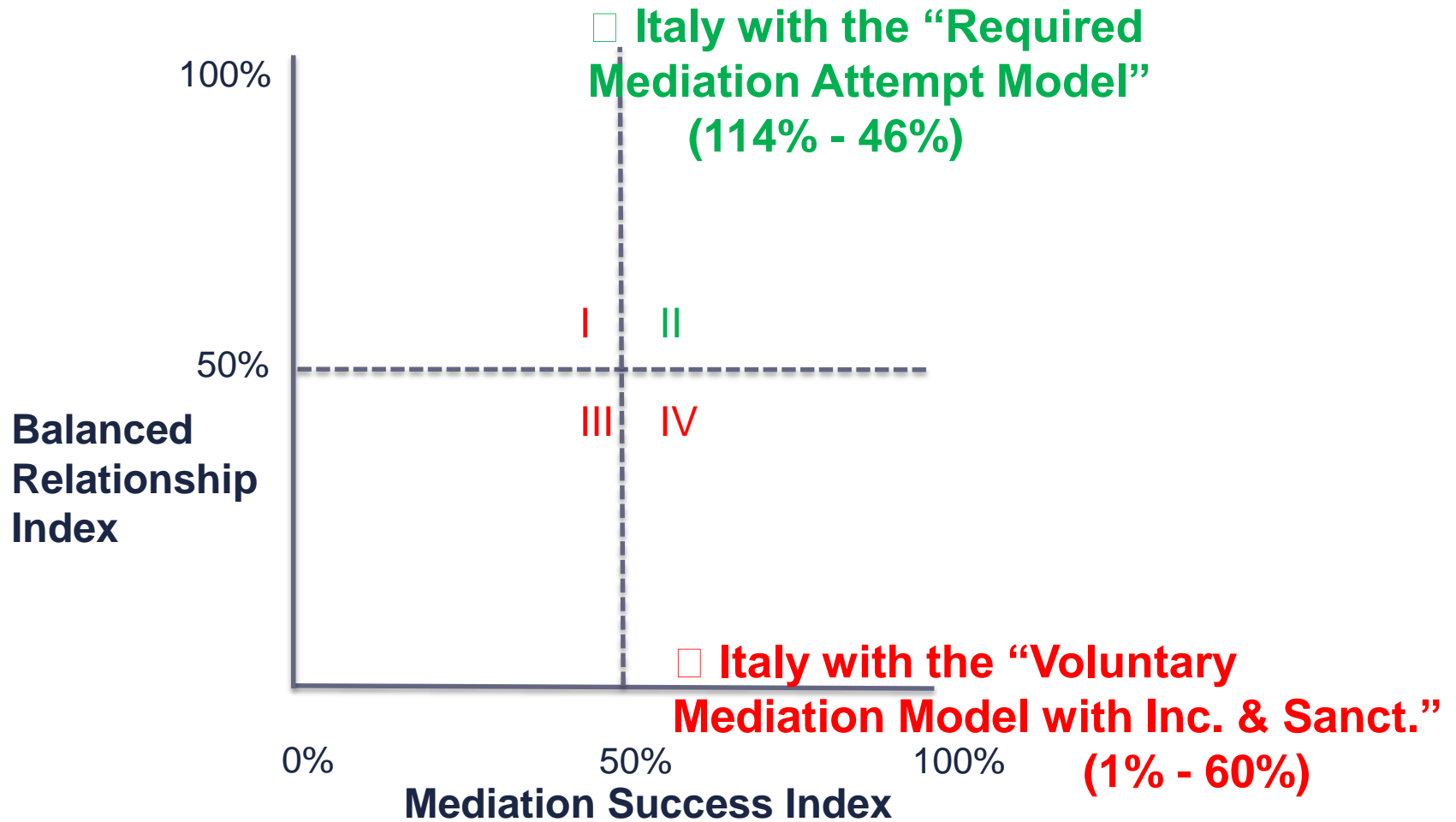


**Massive
economic loss**

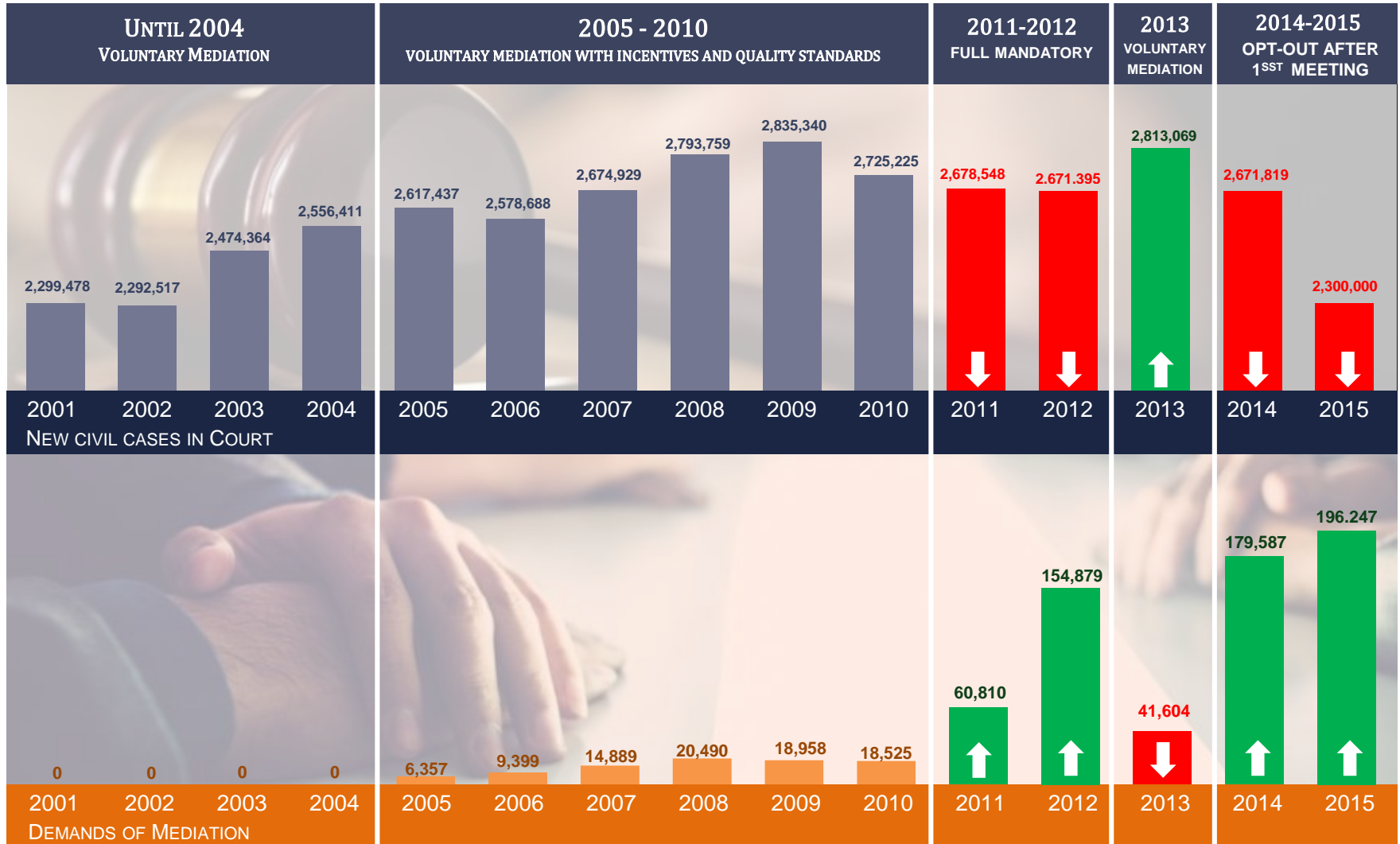
BILLIONS WOULD BE SAVED

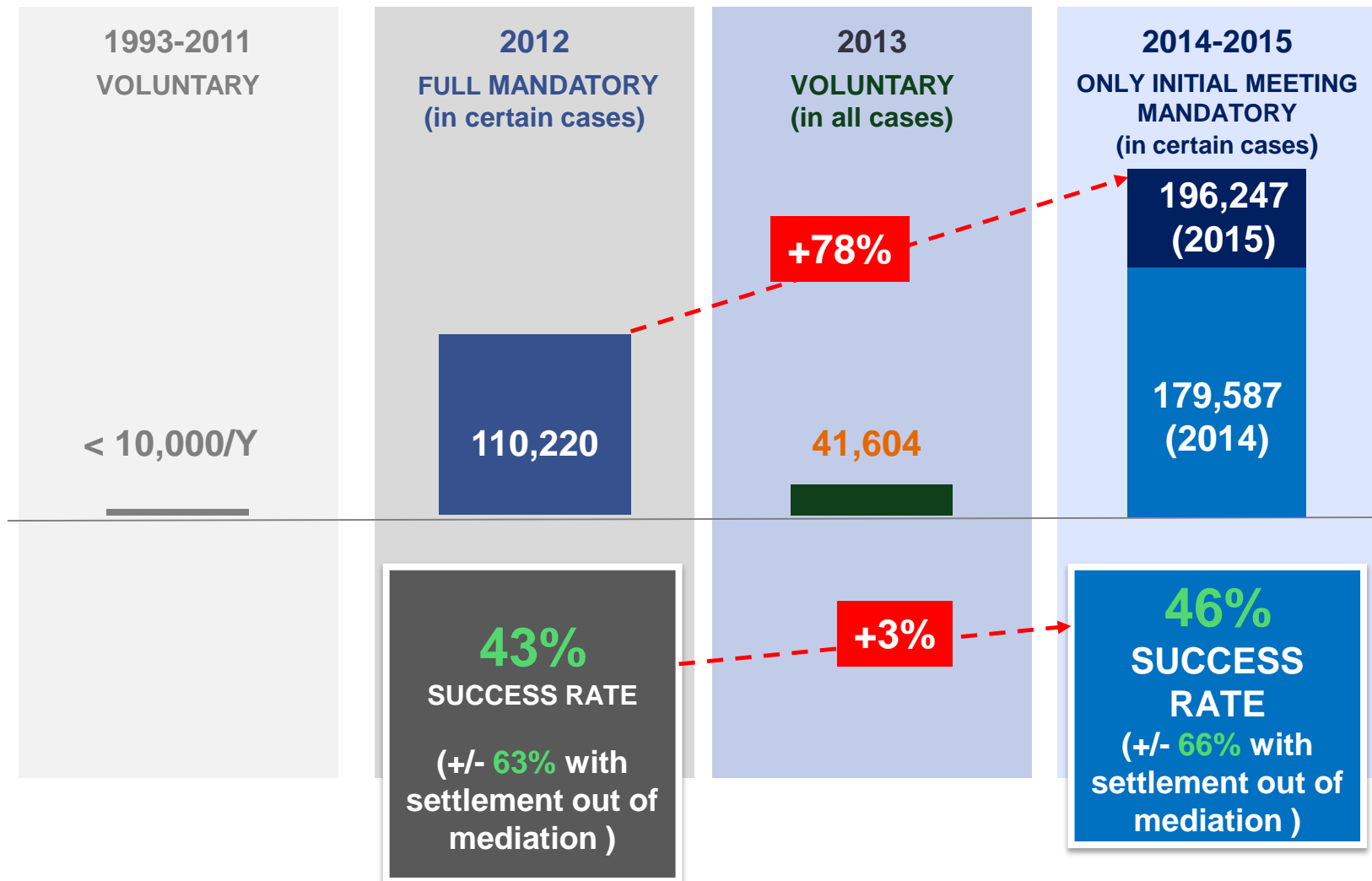
*even if only 50% of mediations end with an
agreement*

BALANCE RELATIONSHIP MATRIX IN ITALY



THE ITALIAN MEDIATION LABORATORY (1998-2015)





Source: Department of Statistics – Italian Ministry of Justice, 2015

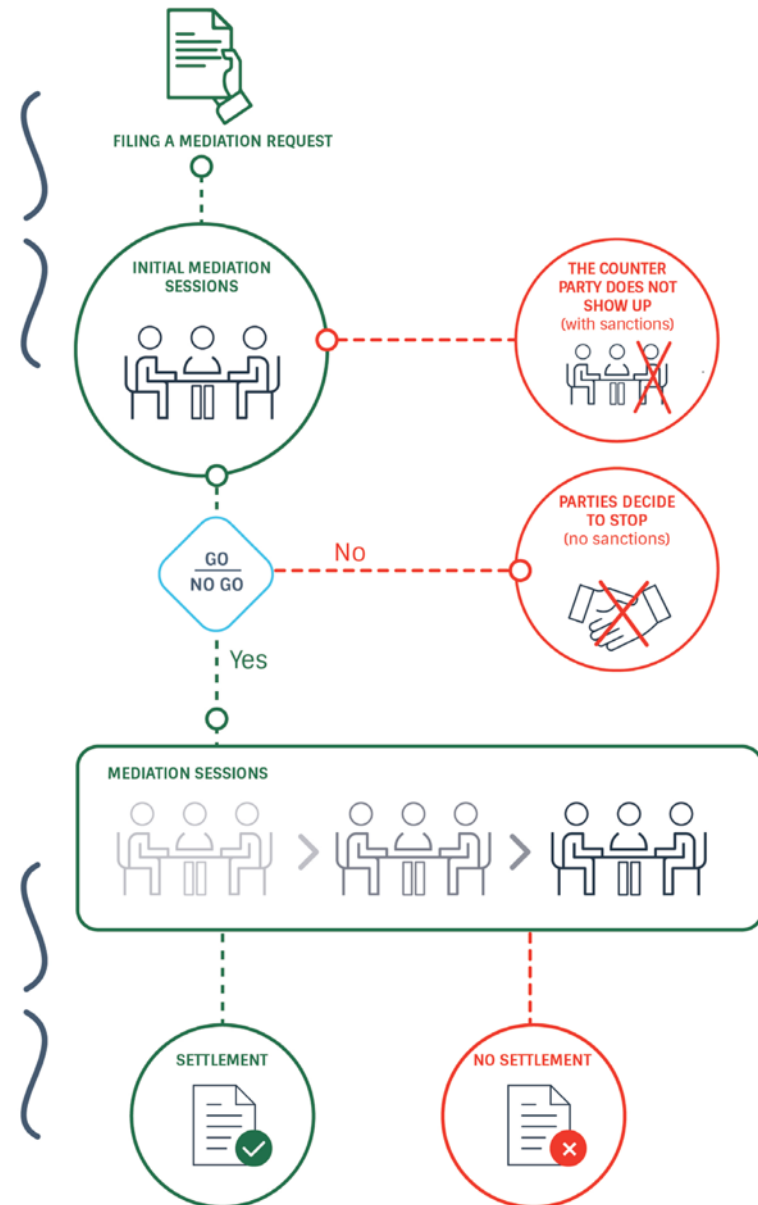
Required Initial Mediation Session

The initial meeting, with the parties and their lawyers before a mediator, is held within 30 days of the date of the filing with the payment of a filing fee of € 40 or € 80.

During the initial meeting the parties decide to enter in the full procedure or to stop.

Mediation Sessions

Parties hold one or more mediation sessions within 60 days and pay the mediation fees agreed upon during the initial meeting.



EUROPEAN COURT OF JUSTICE ON THE “ALASSINI” CASE ON MANDATORY MEDIATION

THE “ALASSINI” CASE OF 2010 (SEC. 65)

“No less restrictive alternative to the implementation of a mandatory procedure exists, since the introduction of an out-of-court settlement procedure which is merely optional is not as efficient ... ”

MEDIATION... (SEC. 67)

- Should not be binding on the parties
- Should not cause a substantial delay
- Should suspend the period for the time-barring of claims ...
- Should be free or very low cost.

LESSONS LEARNT IN THE PAST 10 YEARS IN THE EU TO INCREASE THE EFFICIENCY OF CIVIL JUSTICE THROUGH MEDIATION

1

Ratio of Nr. of Mediations to Nr. of Cases in Court

1. Statistics demonstrates that the “Required Initial Mediation Session” is the **only effective and proven model** that generate mediations in a short period of time.

2

Mediation Success Rate

2. The difference in the success rate (about +/- 25%) depends on:

(a) competence and skills of the mediator through continuing training: basic course of 50/60 hours + advanced training 18 hours yearly by “experience mediation organizations”;

(b) efficiency of the administration of the mediation provider.



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Thank you

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