

European models of a pre-court mediation and motivation mechanisms

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Pre-court mediation models

➤ Voluntary basis

- Legal effects of agreements to use mediation
- Promotion of mediation clauses
- Maintaining sufficient awareness (*with focus on users and lawyers*)

➤ Mandatory basis

- As a precondition to escalate disputes to court
- Referrals by judges

Main vectors of a pre-court mediation system development

- **Education and R&D**
- **Inclusion** of main stakeholders (judiciary, lawyers, associations of users, education institutions etc.)
- Ensuring **availability** and **accessibility** of mediation
- Establishment of mediation **friendly legal framework**
- Fostering **culture** of amicable resolution

Monetary incentives

- **Decreasing price for users** (public co-financing of mediation services, *pro bono* work etc.)
- Reduction of **state fees** and **taxes**
- Availability of **legal aid**
- Monetary **sanctions**

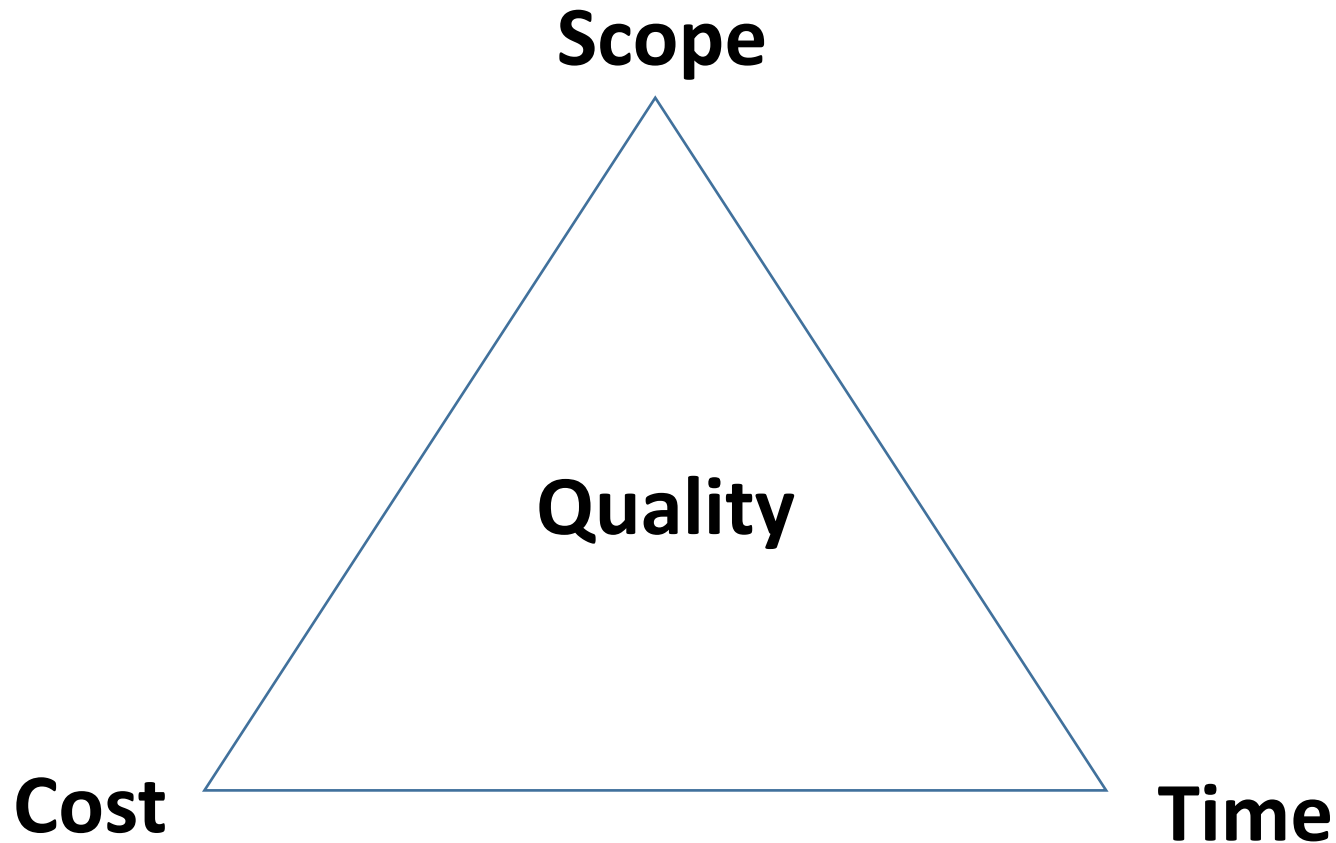
Pre-trial mediation *and* a right of access to court

CJEU judgements of 18 March 2010 in cases C-317/08 to C-320/08 *Alassini and Others* and of 14 June 2017 in case C-75/16 *Menini and Rampanelli v. Banco Popolare Società Cooperativa*

- ***no binding decision***
- ***no substantial delay*** for the purposes of bringing legal proceedings
- ***suspension*** of periods for the ***time-barring of claims***
- ***low or no costs*** for the parties
- ***not only electronic*** access
- ***interim measures*** are allowed

- ***no prevention*** of the parties from exercising their right of access to the judicial system
- ***no obligation*** for the ***consumers*** to be ***assisted by a lawyer***
- a right to ***easy withdrawal***

Triple constraint: how to achieve a reasonable balance?



Thank you!

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