

The phenomenon of Litigiousness in the regions of Emilia-Romagna, Aquitaine and in the Barcelona Province

2009-2010



*Projet européen ADR Plus: favoriser l'accès des citoyens à la justice en promouvant la médiation en matière civile et commerciale
(JLS/CJ/2007-1/24 – 30 – CE/02225620069)*

A comparative study between Emilia-Romagna, Catalonia and Aquitaine

A public opinion poll on the phenomenon of litigiousness has been carried out in the territories of the three Partner countries: the Emilia-Romagna region, the Province of Barcelona and the Aquitaine region. The Adrplus European project has allowed to carry out a study on the behaviours, perceptions and opinions of citizens on social conflict, confidence towards the traditional system, alternative dispute settlement solutions, the degree of knowledge and assessment of mediation. The survey has been carried out in the three target areas on a sample of 1200 residents, and CATI computer-assisted telephone interviews have been carried out on the basis of a shared interview pattern. This has allowed to carry out a comparative survey. It should nevertheless be observed that, in spite of similar questionnaires and methodologies, a few inevitable semantic differences remain: similar words can have different meanings in the different contexts, they might refer to different institutional and organizational systems in the three areas under study.

Therefore the comparative study between the three regions has a merely indicative meaning.

The three regions: a general overview

The areas under study have very different geo-morphological and social economic characters. Aquitaine is the largest but the least populated region, with a marked dualism between the metropolitan centre of Bordeaux (which is situated at the extreme periphery of the region) and the rather scattered and dotlike regional urban network. It historically belongs to the extreme Atlantic periphery of Europe, mainly a marginal area if compared to the main European development centres. On the other hand, Catalonia is a region whose urban density is mainly concentrated in a global metropolitan centre such as Barcelona (whose demographic size is twice as big as Bordeaux and almost four times as big as Bologna), playing a key role in the Southern European development. The Emilia-Romagna region is located at the crossroads of different European axes and is a highly developed region, with a dense and polycentric urban structure, characterized by the central role played by the Bologna area, whose strength is based more on qualitative rather than quantitative highlights. As a whole, the three regions are well integrated in the modern European society. The Emilia-Romagna region ranks first on the centre/periphery axis location, followed by Catalonia and finally by Aquitaine (which is an emblematic case of 'integrated periphery'). According to Eurostat data, due to size related reasons, the region with the highest gross domestic product is Catalonia (184,000 million Euro in 2006, as against 129,200 million Euro of the Emilia-Romagna region and 81,260 million Euro of Aquitaine). The Emilia-Romagna region ranks first in terms of per-capita GDP with 29,999 Euro; Catalonia ranks second with 29,000 Euro, then followed by Aquitaine with 23,500. Nevertheless, the prevailing trend is towards convergence. Over the past decade Catalonia has recorded the highest development rates, whereas the Emilia-Romagna region, which started from very high levels, has slowed down and has now reached a certain stagnation. The trend of Aquitaine is positioned at an intermediate level. The employment rates of the three regions are more or less aligned. The high-tech activity rate is also very similar (even though the Emilia-Romagna region records a certain advantage). The main differences refer to unemployment rates. A very high long-term unemployment rate (7.3% in 2008) has been recorded in Aquitaine; it is even higher in Catalonia (9%), whereas it is stable around physiological levels in Emilia-Romagna (3%). Catalonia features more advanced levels of higher education and greater access to the internet and to IT networks, as against the Emilia-Romagna region.

Social and demographic characteristics of the survey sample

The survey sample, which is equally represented by both men and women, features a few interesting differences between the three areas under study (table 1). As far as the interviewed population age is concerned, Aquitaine features the greatest variability in comparison with the two other regions, with a greater percentage of people belonging to the age group between 35 and 54 years (57%); whereas, the two other brackets – the youngest and the oldest ones - are much smaller in comparison with the Province of Barcelona (15%) and the Emilia-Romagna region (28%). 27% of interviewees in the Province of Barcelona have a university degree, a value that is much higher than the one recorded in Emilia-Romagna (14.2%) and Aquitaine (13.0%). In the Catalan province, the largest group of interviewees has a junior high school diploma (30.6%); the largest group of interviewees in Emilia-Romagna includes people with a high school diploma (34.7%), just like in Aquitaine (36%). As for the professional status, no relevant differences can be recorded, taking into account the fact that the employment rate is at the lowest level of 55.7% in Emilia-Romagna, 64.9% in the Province of Barcelona, and up to 68.7% in Aquitaine.

Table 1- social and demographic characteristics of the survey sample (percentages)

	Emilia-Romagna	Province of Barcelona	Aquitaine
Gender			
Women	50.8	51.1	53.0
Men	49.2	48.9	47.0
Age			
18-34 years	24.1	30.7	15.0
35-54 years	39.2	36.3	57.0
over 54 years	36.7	33.0	28.0
Family structure			
Single-parents	9.7	12.3	13.0
childless couples	23.1	20.9	16.0
couples with children	56.2	52.1	28.0
Lone-parents with children	5.7	8.0	20.3
Other family structures	1.1	2.5	3.7
Cohabitation with relatives	2.1	3.1	6.0
Other types of cohabitation	0.9	0.8	2.8
Non responders	1.2	0.3	10.2
Study title			
University degree	14.2	27.1	13.0
High school Diploma	34.7	19.1	36.0
Vocational school Diploma	9.4	17.5	7.0
Junior High school Diploma	26.1	30.6	28.0
Primary school Diploma	13.6	5.6	13.0
No title	1.3	0.0	0.0
Non responders	0.7	0.1	3.0
Professional status			
Self-employed	10.3	9.8	4.7
Employees	42.4	43.1	37.2

Employment rate	52.7	52.9	41.9
Unemployed	3.0	12.0	26.8
Employment rate	55.7	64.9	68.7
Students	6.8	7.5	11.7
Housewives	6.7	6.8	n.d.
Pensioners	28.4	19.9	17.8
Other conditions	2.4	0.9	0.0
Non responders	0.0	0.0	1.8

Social fabric and bonds

Based on further social indicators emerging from the survey, the following picture can be outlined:

- the participation rate in the social capital network is at around 42 % both in the Province of Barcelona and in the Emilia-Romagna region, even though in the Italian region the more economically structured forms prevail (trade unions and consumers' cooperatives), whereas in the Catalan province, NGO, sports, cultural and proximity associations prevail. In Aquitaine, more than 66 % of the population state that they belong to a well-defined social group, including the involvement in sports (18.16%), voluntary (8%), consumers' (6.83%) and proximity associations (6.75%).

Table 2- Social indicators (percentages)

	Emilia-Romagna	Province of Barcelona	Aquitaine
Participation in associations /groups/committees			
Trade unions	12.4	5.5	2.2
Parties	2.6	2.5	n.d.
Professional associations	1.9	3.7	4.2
Tenants/owners	0.2	11.2	4.1
Cultural associations	5.4	9.9	3.9
Religious associations	2.4	3.3	1.5
Sports associations	9.2	14.7	18.2
Leisure associations	1.6	2.9	4.5
Community Centres	1.7	3.4	2.4
Voluntary associations	8.4	7.3	8.0
Committees	0.9	0.3	6.7 ¹
Consumers' associations	9.9	1.2	6.8
Non governmental organisations	0.2	7.5	n.d
Others	0.8	1.1	3.7
Total "participants"	42.0	42.1	67.5

¹Neighbourhood committees

The economic well-being of households and social relations (friendship and neighbourhood relations): the survey points out a rather uniformly distributed well-being and a high social integration, as common features shared by the three regions. The poorest households account for about 21.0% in Emilia-Romagna, 25.0% in the Province of Barcelona and 22.0% in Aquitaine. Whereas good economic conditions (assessed as being on average or above the average by the interviewees) are reported in the 59% of cases in Aquitaine, with higher levels in Emilia-Romagna (77.7%) and in the municipalities of the Catalan province (73.1%).

Table 2.1- Social indicators (percentages)

	Emilia-Romagna	Province of Barcelona	Aquitaine
Family economic situation			
above the average	18.2	18.5	24.0
on average	59.5	54.6	35.0
poor	21.4	25.7	22.0
do not know/ non responders	0.9	1.2	19.0
Total	100.0	100.0	100.0

The opinion polls point out good social relations: there are very few loneliness conditions (they range between 4.6% in Catalonia and 8.6% in France, related to the percentage of people who state that have no friendship relations). As for the neighbourhood relations, the percentage is very low in Aquitaine (19.0%), whereas more than 60.0% of Emilia-Romagna and Catalonia people can count on neighbours for help.

Table 2.2- Social indicators (percentages)

	Emilia-Romagna	Province of Barcelona	Aquitaine
Friendship relations			
With many people	61.4	60.9	58.8
With few people	33.2	34.1	27.2
With nobody	5.2	4.6	8.6
Non responders	0.2	0.4	5.4
Neighbourhood relations			
They always help	61.4	62.1	19.6
Sometimes/it depends	18.7	19.5	18.6
Rarely	6.2	7.4	21.3
Never	9.8	7.7	17.4
They do not know/non responders	3.9	3.3	23.1

- trust and self-esteem: functional differences emerge between the various regions in relation to it: more than 60.0% state that they generally trust other people (with a peak of two 67.3% in Emilia-Romagna).

Table 2.3- Social indicators (percentages)

	Emilia-Romagna	Province of Barcelona	Aquitaine
You regard yourself as:			
Mainly a confident person	67.3	63.3	62.6
Mainly a discouraged person	17.3	18.6	21.0
Neither one	13.8	17.7	11.6
they do not know/non responders	1.6	0.6	4.8

Disputes

Interviewees have been asked to report the types of litigations/disputes that have occurred to them over the past four or five years. Data (table 3) shows that the level of conflict is much higher in Catalonia than in the two other areas: 62 out of 100 people in the Province of Barcelona, as against 49 in the Emilia-Romagna region and about 26 out of 100 people in Aquitaine.

Table 3 – Disputes over the past years (percentages)

	Emilia-Romagna	Province of Barcelona	Aquitaine
At least one dispute over the past 4/5 years	49.1	61.6	25.6

At this point it is important to make a distinction. If any litigation is also a dispute, not necessarily every dispute turns into a litigation or lawsuit. In this regard it is appropriate to distinguish between a 'litigation' and 'dispute'.

People (or groups) involved in a litigations are opposed on an equal footing. Both parties claim to be recognized as having a personal 'reason'. In a litigation the individual and personal aspect of a conflict is crucial, which entails the psychological involvement of parties with almost always long lasting consequences. It generates resentment, spirit of revenge, frustration. Unless the extra-sensory nature of 'forgiveness' enters into play, conflict solution - especially if it is achieved by legal means, including out-of-court settlement - does not put an end to the psychic tension. The 'injured party' (in which both litigants are identified) will still remain as such, if not even more burdened with a surplus of frustration, exactly because of the inherent and incommensurable impersonality of legal mechanisms. The wound will be replaced by a scar, namely an indelible mark of one's biographical identity.

Instead, in the case of a dispute one goes up a notch, to a higher scale, with a cancellation or mitigation of personalised intra-psychic aspects. Strongly asymmetrical parties come into play: individuals (groups) on the one hand, and organizations (almost always significant) on the other hand, namely, persons acting as customers, users, consumers, workers, manufacturers and other impersonal entities, such as institutions, companies, large organizations in general. While litigants, i.e. people involved in a row, claim to be recognized as having equal rights, although antithetical, but always on an 'equal footing', in the case of dispute, a power imbalance comes into play. Generally, the cause of the conflict lies in the fact that the weaker party (the individual) claims compliance with relevant agreements in their role as customers, users, consumers or workers. Although both cases belong to the sphere of civil law, the litigations remains an intimately private

fact, while the 'dispute' is always held on a public-social scale, where the rights that are at stake transcend the individual: at a social, consumer or citizenship level.

With reference to the case series under question, property lawsuits (i.e. inheritance, succession, etc..) and civil actions (divorces, separations, etc..), condominium, neighborhood and public space use conflicts and disagreements between members of associations and organizations can be regarded as relevant to the litigation sphere. All the other types of disputes pertaining to work (individuals and manufactures) school, healthcare, social and taxation (fines, permits, fines etc..) related issues are relevant to the sphere of socio-functional disputes. In addition to it, the wide range of issues that arise in the relationship between customers-users and businesses, in the delivery of public services (gas, water, electricity, etc..), insurance, financial and telecommunications sectors, and finally individuals involved in litigations in their capacity as consumers: commercial products, tourist, professional services, and so on.

How often are these procedures used? Looking at the nature of disputes (Table 4) there is a substantial similarity between Emilia-Romagna and the province of Barcelona as to the incidence of 'litigations' and 'disputes', while in Aquitaine the level of litigations (57%) is much higher. In the province of Barcelona litigations focus on neighborhood questions and public space use conflicts (aspects typical of a very lively, highly socialized society, thus characterised by a higher 'friction'), while in Emilia-Romagna condominium litigations prevail. Aquitaine features a larger number of neighbourhood and civil litigations; whereas social service as well as trade disputes are recorded in the framework of 'disputes'.

Table 4- Characteristics of the most recent disputes (percentages)

	Emilia-Romagna	Province of Barcelona	Aquitaine
Condominium	9.2	2.4	n.d.
Neighbourhood	8.5	11.6	17.0
Property	3.9	1.6	8.0
Civil	4.6	3.2	26.0 ²
Public space	3.7	7.3	n.d.
Between association members	1.2	0.7	n.d.
co-ownership	n.d.	n.d.	6.0
Total litigations	31.1	26.8	57.0
Work	10.7	9.5	8.0
School	3.2	2.7	n.d.
Public services	8.3	4.6	n.d.
Fines/taxes etc.	7.6	7.8	n.d.
Healthcare	4.4	7.2	4.0
Social services	1.0	1.8	13.0
Banking/insurance services	4.7	4.9	6.0
Tourism	1.5	1.1	n.d.
Telecommunications	17.6	21.5	n.d.
Professional & business services	1.7	1.5	2.0
Product purchases	5.3	6.4	5.0
Product sales	0.2	0.5	n.d.

² within the family environment

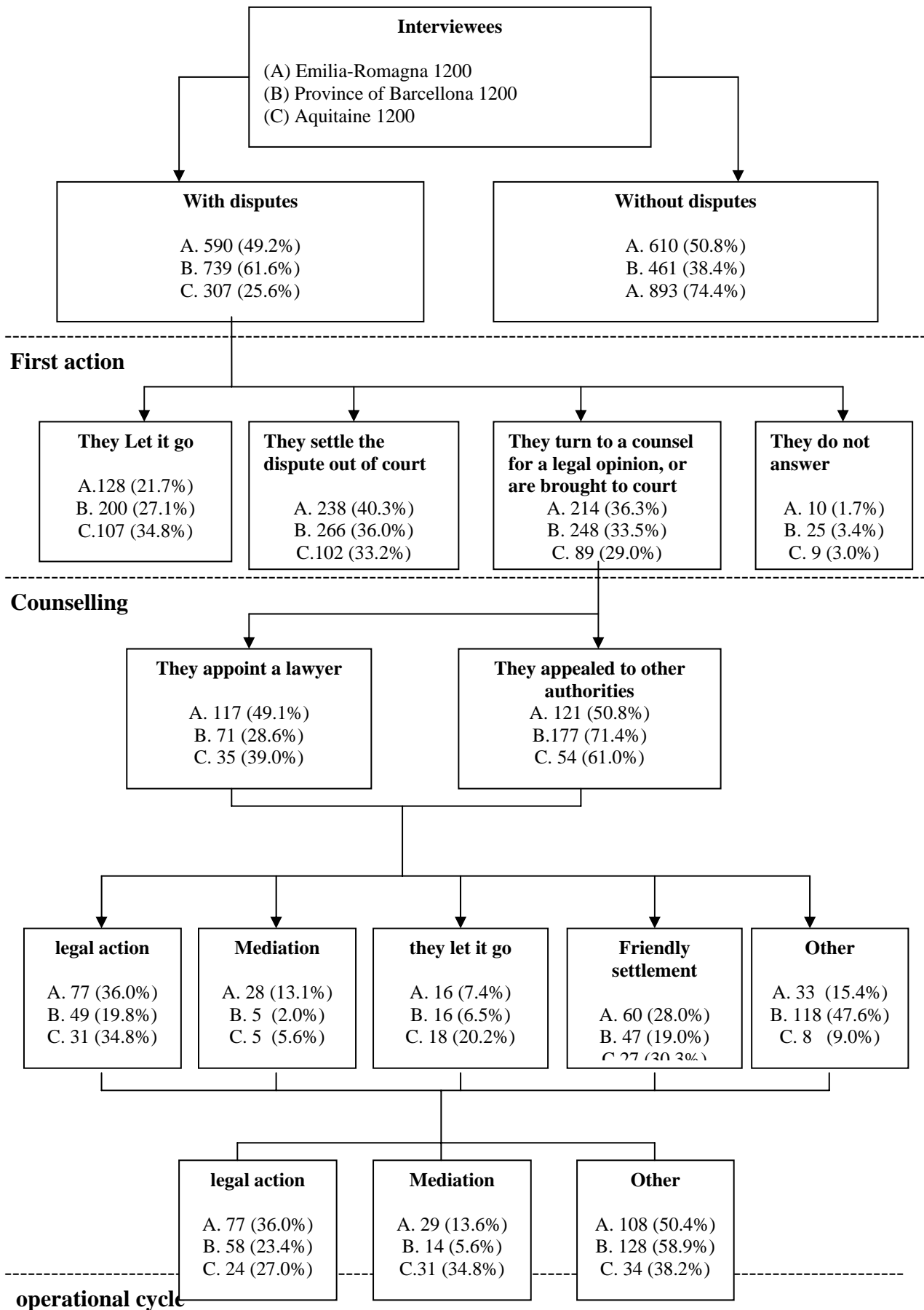
Real state purchase and sale	0.5	1.2	n.d.
Public administration in general	n.d.	n.d.	5.0
Others/non responders	2.2	0.5	n.d.
Total disputes	68.9	71.2	43.0

After having investigated the social phenomenology of micro-conflicts, a special attention should be paid to the solutions that are applied on a case by case basis. The *Iter poenitentialis* - or maybe better the way of the cross - should be chosen, since it is the time when individuals seek to remedy and find some solution to the problems they are affected by, by investing time, money and psychic energy.

In this respect, the framework of the questionnaire has been broken down into three consequential steps:

1. the first approach to the problem, namely the critical reaction and first impact action;
2. the consultation and guidance phase, namely the period of rational exploration, meditation and deliberation relevant to the possible routes to be taken (the so-called 'strategic planning' phase);
3. the action itself, namely the definition of indemnification practices;

The diagram below gives an account of this succession of filters that regulate the formal/informal litigation process and scope of action in each phase.



A few brief facts and figures:

Phase 1. First approach.

Emilia-Romagna: out of 100 individuals involved in disputes, almost 22 give up, 40 find a solution to the question by themselves, 36 file a lawsuit or are dragged into it (no available news for 2 of them). Therefore 62% of cases are settled at an early stage, when the problem arises, people come to an agreement, without resorting to any alternative dispute resolution or legal or para legal / institutional court-related solution.

Province of Barcelona: 27% of people, when faced with a dispute, do not file any lawsuit; whereas 33.5% of people address the issue at stake by asking for an expert opinion. 36% of the population come to an agreement in case of disputes.

Aquitaine: the picture looks different in this region. Almost 35% of people involved in disputes decide to give up (+13% compared to the Italian region and +12% compared to the Province of Barcelona). In comparison with the other regions that have been taken into account, a low percentage of individuals (33.2%) decide to come to an agreement to smooth things over; and even lower percentage of people resort to an expert advice to the guided tour the best action (29% of again 33.5% of the Catalan province and 36% of the Emilia-Romagna region).

The reasons why people decide to let it go are easily understandable: mainly the fear of wasting their time, lack of confidence in an effective / efficient solution, fear of finding themselves in front of a dead end and finally the fear of wasting their money.

Table 5 - Types of behaviours in case of Disputes: the approach (percentage and total absolute results)

	Emilia-Romagna	Province of Barcelona	Aquitaine
First approach			
Let it go	21.7	27.1	34.8
Friendly settlement	40.3	36.0	33.2
Bringing a counsellor in /going to court	36.3	33.5	29.0
non responders	1.7	3.4	3.0
Total	100.0 (v.a. 590)	100.0 (v.a. 739)	100.0 (v.a. 307)

Phase 2. Entry-level guidance, i.e. counselors hired by individuals for a pre-emptive advice and further guidance, namely recommended guidance.

Emilia-Romagna: about half (more precisely 49%) of people who are determined to ‘go forward’ turn to a lawyer. The remainder (51%) turn to other counselors for advice, especially to public offices, justice of the peace, property managers, police, trade unions, consumers and trade association. As for recommended guidance, in 36% of cases, people are advised to take legal action and in 13% - hence about half (more precisely 49%) of cases, to resort to mediation, namely to a formalised alternative dispute resolution procedure. The remaining half is for a friendly settlement (28%) or to simply opt out, namely to drop the case (7.4%), while the remaining 15% of counselling remains at an early stage, in a stand-by condition.

Province of Barcelona : in the province of Barcelona, fewer people turn to a legal expert and more precisely to a lawyer, in comparison with Emilia-Romagna. Out of 100 citizens of the Catalan province only 28.6% are referred to an attorney. There is a large percentage (71.4%) of people who turn for advice to other parties, such as consumer groups (12.1%), law enforcement (12.9%), municipal offices (7.3) (Table 6). Mediation has been suggested only in very few cases (2%), while a much higher percentage of people have been advised to seek a friendly settlement to their disputes (19%). Nearly 20 out of a 100 people were advised to take legal action. This trend is most probably due to the lack of information and knowledge by professionals involved about the process of mediation as a conflict management tool.

Aquitaine : in comparison with the other two regions the percentage of people who bring a counsel in is fairly limited (14.5%). Clearly, the institutional network, the level of service provided to citizens and the mediation system in France is much more structured, efficient and equipped for conflict management counselling. The municipality is the first contact point, providing mediation services (18.8%) as well as other authorities, such as the Juge de proximité or Conciliateur de Justice (13%), or other social mediation services (8.7%), the Médiateur de la République (7.2%). The recommended guidance approach, however, does not seem to refer people towards mediation (5.6%) but rather to an amicable agreement (30.3%) or even more towards a legal action (34.8%).

Table 6 - Types of behaviours in case of: guidance (percentages)

Interviewees	Emilia-Romagna	Province of Barcelona	Aquitaine
The lawyer	54.7	28.6	14.5
Chartered accountant	0.5	0.4	n.d.
Property manager	6.5	2.8	n.d.
Police/law enforcement agents	5.6	12.9	8.2
Justice of the peace (Juge de proximité. Conciliateur de Justice)	7.5	1.2	13.0
Ombudsman (Médiateur de la République)	0.5	0.8	7.2
Municipal and similar offices (Mairie)	9.3	7.3	18.8
Conciliation services Chambers of commerce	0.5	n.d.	n.d.
Neighbourhood social mediation (Service de médiation sociale et autres)	0.5	n.d.	8.7
Conciliation services Corecom	0.9	n.d.	n.d.
Trade unions	4.2	2	5.3
Court for the Rights of Sick People	0.9	0.4	n.d.
Consumers' Associations	4.7	12.1	6.8
Guarantor Authority	0.5	n.d.	n.d.

Trade associations (Mediateur Bancaire)	2.8	n.d.	n.d.
Insurance consultants/ industrial injuries and occupational diseases firm	3.3	6.9	n.d.
Friends and relatives and others	1.9	2.8	n.d.
Trustworthy person	1.9	n.d.	n.d.
Service providers		4.8	n.d.
Other subjects	2.8	11.3	n.d.
Nobody/non- responders	1.9	12.1	4.3

Phase 3. Action.

Emilia-Romagna: Upon counselling, 36% of all the 'people taken into account' (equivalent to 214 out of 590 people registered at the start) take legal action, 13.6% start an ADR procedure, while the remainder includes 13 people who decide to 'let go', 8 will be still willing to reach a friendly agreement, and 30% who are still stuck on foreplay (sending letters, notices, phone calls or still undecided about what to do). In this regard, it is interesting to observe, at a first glance, the substantial quantitative matching between advice and action taken by the parties concerned. On the one hand this indicates the obvious closeness between the consultation and active phase, but on the other hand it might suggest that counselors tend to push consulted parties into their arms. This allegedly happens when lawyers are involved. This allegation, however, is at least partly unfounded. In fact, only slightly more than half of those who asked their lawyers for an advice then decided to actually undertake a legal action and to hire the same attorneys. Among lawyers, by contrast, there are those (as far as about 10%) who suggest their clients to opt for an alternative dispute resolution, whereas in more than 20% of consultations they advise their clients to reach an amicable agreement. If one considers that almost half of ADR procedures are recommended by lawyers, it must be concluded that no radical antagonism sits between the two practices (and the subjects who embody them).

Province of Barcelona: Upon counselling, only 23% of residents in the Catalan province decide to take legal action. This percentage is much lower than that recorded in Emilia-Romagna (36%) and in the French region (27%). There are many cases, about 52% of people who, after receiving the advice, take a completely different decision than filing a lawsuit or ADR procedure. Most probably, these individuals decide to dismiss the case or to find a friendly solution to it by themselves.

Aquitaine: in the French region a more systematic use of ADR procedures is recorded (34.8%). These major differences are due to a different articulation and efficiency of legal settlement systems and in particular of ADR services.

They reflect, in theory, certain regional anthropological features: Catalonia is more expressive, more prone to conflicts, but also more capable of spontaneous self-regulation; Aquitaine is more divided and less socializing, but also equipped with a capillary ADR structure; Emilia-Romagna features good self-regulating capabilities, but also a greater tendency to resort to lawyers and courts. These differences also reflect the different articulation and efficiency of legal regulation systems. As previously mentioned, Aquitaine excels for its strategic and efficient ADR services; in Catalonia these services are almost unknown (although potentially valued) and they are present to a much more limited extent in Emilia-Romagna.

Table 7 - Types of behaviours in case of Disputes: action (percentages)

type of action	Emilia-Romagna	Province of Barcelona	Aquitaine
Legal action	36.0	23.4	27.0
Mediation /conciliation	13.6	5.6	34.8
Out-of-court settlement	7.9	n.d.	n.d.
They let it go	12.6	n.d.	n.d.
Sending letters through professionals	15.9	12.1	22.5
Waiting to decide	3.3	n.d.	n.d.
Others	7.9	51.6	n.d.
Non responders	2.8	7.3	15.7