



## **MEDIATION IN THE DIFFERENT COUNTRIES WITH BAR ASSOCIATIONS THAT BELONG TO THE EUROPEAN BARS FEDERATION (FBE)**

### **I.- BACKGROUND**

The intervention of the lawyer in conflict resolution in any of its forms is the lawyer's job. The lawyer's job does not limit itself to advising and filing lawsuits but also to far broader activities, which, of course, include the study of all possible solutions to resolve any conflict in the most beneficial way for his/her client, without ruling any of them out. And this includes to evaluate, propose and, where applicable, carry out a mediation process as the best solution to the conflict.

The European Union, aware of this, through Directive 2008/52/CE, requires member states to align their legislations and include mediation in it.

This was embraced by almost all countries whose bar associations are members of the FBE. However, alignment with their internal regulations has led to different legislations in which, as we will detail below, converge



in some aspects and diverge in others. Therefore, where possible, we will try to extract common points that allow mediators to carry out cross-border activities in their jobs within countries whose bar associations are members of the FBE.

For this reason, the different European bar associations, the different positive mediation laws and the difference between voluntary and mandatory mediation between the different EU states and the FBE open up a wide range of possibilities that allow us, for the next two years, to carry out actions so that our lawyers, both when they act as mediators or as lawyer of one of the parties, without mattering which country they are from, can know who the mediators of each country are, their specialities, the access requirements to be a mediator and the requirements to access mediation.



## II.- SITUATION OF MEDIATION IN THE COUNTRIES OF FBE-AFFILIATED BAR ASSOCIATIONS.

The countries which have FBE-affiliated bar associations are: Andorra, Austria, Belgium, Bulgaria, Czech. Republic, Germany, Spain, France, Greece, Hungary, Italy, Luxembourg, the Netherlands, Poland, Portugal, United Kingdom (England and Wales), Romania, Kosovo, Serbia, Switzerland and Turkey.

In relation to each of the FBE-member countries, we will study the following extremes on mediation:

- 1.- Legislation on mediation.
- 2.-Required training for mediators.
- 3.- Determination on whether mediation is mandatory prior to the judicial process.
- 4.- Judicial recognition given to mediation.
- 5.- Mediation action fields
- 6.- Requirements to obtain the condition of mediator
- 7.- Bar associations from each country and, where applicable, mediation centres or services that they have.



## In relation to GERMANY

### ○ LEGISLATION

It is governed by the law on mediation of 26 July 2012 (*Gesetz zur Förderung der Mediation und anderer Verfahren der außergerichtlichen Konfliktbeilegung*). Thus, the European Directive on Mediation (Directive 2008/52/CE of the European Parliament and of the Council, of 21 May 2008, on certain aspects of mediation in civil and commercial matters). The scope of the Law on German mediation goes beyond the requirements of the European Directive; it only considers commercial litigation and civil cross-border litigations, while the German regulation covers all kinds of mediation, regardless of the type of litigation or the place of residence of the parties. This regulation is completed with the 15th EGZPO, by Law of 15 December 1999, allowing *mandatory pre-trial* meditation in certain civil conflicts, and also coexists with standards set out in the ZPO and the BGB.

### ○ TRAINING

A “certified mediator” requires at least 120 hours of intensive training. Concerning the mediator initial and regular further training (to become a certified mediator): The mediator himself shall be responsible for ensuring that by virtue of appropriate initial training and regular further training, he possesses the theoretical knowledge and practical experience to enable



him to guide the parties through mediation in a competent manner. The initial training shall comprise:

- Knowledge about the fundamentals of mediation as well as the process and framework conditions therefore.
- Negotiation and communication techniques,
- Conflict competence.
- Knowledge about the law governing mediation.
- Include practical exercises, role play and supervision.

Certified mediators shall undergo further training in accordance with the requirements of the Federal Ministry of Justice.

#### ○ **ENFORCEABILITY**

According to the law, the mediation is a confidential and structured process in which the parties strive, on a voluntary basis and autonomously, to achieve an amicable resolution of their conflict with the assistance of one or more mediators. The parties can terminate mediation at any time.

#### ○ **JUDICIAL RECOGNITION**

The law encourages resolving disputes through the mutual consent of the parties involved. It includes several incentives in the procedural codes (eg in the Code of Civil Procedure, Zivilprozessordnung). Thus, when the



parties initiate a civil proceeding, they shall indicate whether they have already attempted to resolve the matter out of court, eg through a mediation procedure, and if there are specific reasons discouraging this kind of procedure. The court may also suggest that the parties attempt to resolve the dispute through mediation or through another out-of-court modality; if the parties decide to pursue this option, the court will order the suspension of proceedings. By the time the granting of legal aid for mediation is not contemplated.

In principle, the agreements reached through mediation, can be executed with the help of a lawyer or public notary (Article 796, letters a-c, and article 794, section 1, number 5, of the Code of Civil Procedure).

During the mediation procedure, the limitation periods are suspended.

#### ○ **ACTION AREAS**

In general, mediation is always admitted when legislation do not formally prescribe the judicial resolution of a certain thee of disputes or matters. Mediation is more frequent in the following areas: Family law, Probate law and Commercial law.

Examples of mediation areas of application in Germany:

Family matters, particularly in relation to separation or divorce.

International cases, such as cases of custody and access rights.



Disputes related to inheritance.

Economy.

Civil law (neighbourhood, leasing, consumer rights)

Construction rights.

Public administration (focused on environmental mediation).

Labour law.

Conflicts between doctor and patient.

Criminal law, on victim/offender mediation.

Schools (school mediation).

Political conflicts

#### ○ **MEDIATOR REQUIREMENTS**

There is no legal standard defining the professional profile of mediators. Nor restrictions for accessing to the profession. The mediators themselves are the responsible for ensuring that they have the needed experience and knowledge (through adequate training and professional development courses) to precisely guide the parties during the mediation process. The German law establishes the general knowledge, skills and procedures that should include the ideal previous training. Anyone meeting these criteria can act as mediator. There is no minimum age, and neither is necessary that the mediator has followed a basic training accredited with a university diploma.



The Federal Ministry of Justice is competent to make regulations to establish additional criteria for training and further training for mediators. In this case, people who have successfully completed training modalities corresponding to the prerequisites established under such provisions shall be entitled to use the professional title of "certified mediator" (zertifizierter Mediator).

For now no formal initiative is considered.

Currently, several individuals, associations, organizations, universities and companies offer training courses for mediators.

#### ○ **BAR ASSOCIATIONS ROLE**

The German Bar Associations members of FBE are: Berlin, Braunschweig, Celle, Dresden, Frankfurt Am Main, Freiburg, Hamm, Kassel, Köln, Ürnberg, Tübingen

#### ○ **MEDIATION CENTERS of the Bar Associations**

Many organizations provide mediation services. A non-exhaustive list of the larger ones follows

- Federal Association of Family Mediation (Bundes-Arbeitsgemeinschaft für Familien-Mediation e.V., BAFM)  
Rosenthaler Straße 32, 10778 Berlin, Germany





- Federal Mediation Association (Bundesverband Mediation e.V., BM), Kirchweg 80, 34119 Kassel, Germany
- Federal Mediation Association in the Commercial and Labour disputes (Bundesverband Mediation in Wirtschaft und Arbeitswelt e.V., BMWA), Prinzregentenstr 1 86150 Augsburg, Germany)
- Mediation Center (Centrale für Mediation GmbH & Co. KG, CfM) Gustav-Heinemann-Ufer 58, 50968 Cologne, Germany
- Bar Association of Germany (Arbeitsgemeinschaft im Deutschen Mediation Anwaltverein, Littenstraße 11 10179 Berlin, Germany)

### **In relation to ANDORRA**

Andorra has no Mediation law nor legislative provision to implement it.

### **In relation to AUSTRIA**

#### **○ LEGISLATION**

Civil Mediation Law Gazette No. 29/2003 (Zivilrechts-Mediations-Gesetz - ZivMediatG, BGBl. I Nr. 29/2003). This standard is completed with the Zivilrechts-Mediations-Ausbildungsverordnung of 2004. Also the transposition of the 2008 Directive is completed with the EU-Mediationsgesetz of 2011 and through the introduction of a precept, the 433, in the Zivilprozessordnung of 1950.



## ○ **TRAINING**

Training takes place in registered training organizations including universities.

Article 29 of the Act: The Federal Minister of Justice has established the training modalities for mediators after consultation with the Advisory Council for mediation.

The theoretical part of the training, divided into different courses, including from 200 to 300 training units, the application-oriented part with 100 to 200 training units. It will include, in particular:

### 1. The theoretical part:

- a) An introduction to the history, problems and development of mediation, including assumptions and models;
- b) Procedure, methods and phases of mediation with special consideration for negotiation and solution-based approaches;
- c) Principles of communication, questioning techniques and negotiation and facilitation with particular consideration to the conflict situations;
- d) Conflict analysis;
- e) Mediation areas of application;
- f) Theories of personality and types of psychosocial intervention;
- g) Ethical issues in mediation, in particular, the mediator's stance;



h) legal, in particular civil, issues of mediation and conflict-related legal matters that are particularly eligible for mediation;

2. The application-oriented part:

a) Self-awareness and practical seminars on mediation techniques, using role-playing exercises, simulation and reflection;

b) Group work

c) Case studies and participation in supervised practice in mediation.

The required time for professional training and practice considered as appropriate.

A 50-hour continuous training accredited by the Federal Minister of Justice is expected in 5 years.

### ○ **3. ENFORCEABILITY**

In civil law matters, mediation can be useful to settle disputes whose resolution corresponds to the ordinary courts. Participation in mediation is voluntary and allows the parties in conflict reach their own solution.

In certain cases of conflict with neighbours before initiating legal proceedings, it is compulsory to resolve the matter out of court, conciliation procedures have to be initiated before the matter can be referred to a court (procedure known as *prätorischer Vergleich*) or through mediation.



## ○ JUDICIAL RECOGNITION

Directive 2008/52/CE allows enforcement of agreements resulting from mediation. The member states communicate which courts or other authorities are competent to receive the aforementioned requests.

In Austria the content of an agreement resulting from mediation is enforceable only if the agreement takes the form of a settlement (Vergleich) before a court or a notarial act before a notary.

## ○ ACTION AREAS

Mediation is expected in the area of civil law (especially in family matters)

## ○ MEDIATOR REQUIREMENTS

There are no specific rules for mediators and there is no code of conduct. Mediators are not registered as specialising in a given area, such as family, medical or building disputes, but details of the areas in which a registered mediator works can be entered separately.

Anyone who has completed the specific training and who meets the requirements can be listed as a “registered mediator” according to the



regulation. There are no legal restrictions on who can use the professional title of 'mediator'.

Prerequisites to registration (Article 9 of the Law):

- Candidates must submit a written request to the Federal Ministry of Justice
- Minimum age of at least 28 years of age
- Professional qualifications
- Criminal record Certificate not older than three months, stating that there are no criminal records.
- Have signed a liability insurance (under Austrian law), with a minimum coverage of 400,000 Euro (Article 19 of Law 29/2003).
- Indication of where mediation is exercised

A mediator can be considered technically qualified when (Article 9 of the Law):

- Has received an appropriate training.
- Has knowledge and mediation skills.
- Is familiar with legal and psychosocial issues.

Knowledge and skills of certain profession members, especially psychotherapists, clinical psychologists and health psychologists, lawyers,



public notaries, judges, prosecutors, public accountants, civil engineers, social counsellors, social workers, university advisors or teachers will be considered when assessing the technical qualification.

- **BAR ASSOCIATIONS ROLE**

Bar associations in Austria that are part of the FBE: Innsbruck, St. Pölten, Vienna.

- **MEDIATION CENTRES.**

El Ministerio Federal de Justicia mantiene una lista de mediadores registrados. Only certified mediators after having received appropriate training may be included.

There is no competent body at the Central Administration in charge of mediation services.

There are profit and non-profit associations providing mediation services as well as non-governmental organizations providing support to mediators.

## **In relation to BELGIUM**

- **LEGISLATION**



Despite that the general regulations are located in the articles 1724-1737 of the Code Judiciaire, of 10th of October 1967, since 2005 there are also a few specific regulations, such as the law referring to the continuity of companies, of 31st of January 2009; the law referring to patients' rights, of 22nd of August 2002; articles 1675-2 et seq. of the CCP (médiation de dette — schuldbemiddeling); as well as the regulations introduced in the latest modification of the CCP in 2011, referring to the need to inform the parties of potential mediation in divorce cases.

#### ○ **TRAINING**

Decision from 1st of February 2007, the provisions of which establish the accreditation conditions and procedures for training centres and centres for the training of accredited mediators.

Training centres for mediators accredited by the Federal Mediation Commission.

Decision from 18th of December 2008, the provisions of which define the obligations of the accredited mediators in continuous training and the accreditation criteria for the programmes in this field.

#### ○ **3. ENFORCEABILITY**



The resource of mediation is a voluntary option from the parties and is not subject to sanctions in the event that no agreement is reached.

In accordance with the recent family-law provisions, the judge must inform the parties about the existence of mediation and the options that it offers.

#### ○ **JUDICIAL RECOGNITION**

In accordance with the directive 2008/52/CE, the option of requesting enforceability to a written agreement that has resulted from mediation must be guaranteed. The member states communicate which courts or other authorities are competent to receive the aforementioned requests. Belgium has yet to communicate this information.

Notwithstanding, in accordance with articles 1733 and 1736 of the Judicial Procedure Code, a judge may homologate the agreement that has resulted from mediation, thus giving the aforementioned agreement authenticity and enforceability. In regards to the form, the agreement becomes a sentence.

There is an alternative to the homologation. It is possible to transfer the agreement that has resulted from mediation to a notary act before a notary. This way, the agreement has authenticity and enforceability





without the need to resort to a judge. This option is only applicable if all parties are in agreement.

- **ACTION AREAS:** Mediation is admissible in the following areas:

- Civil law, including family law suits.

- Commercial law

- Labour law.

There is also criminal mediation, although this area is outside of the jurisdiction of the Federal Mediation Commission.

The most frequent mediation area is civil law, especially in family-related matters.

- **MEDIATOR REQUIREMENTS.**

The mediator is an expert on the subject of conflict: he/she may be a lawyer, a notary, a certified public accountant, an engineer, an architect or any other specialised expert.

- **BAR ASSOCIATIONS ROLE**

Bar associations in Belgium that are part of the FBE: Brugge, Brussel, Brussels, Dendermonde, Kortrijk, Gent, Hasselt, Ieper, Liege, Leuven, Mechelen, Oudenaarde, Tongeren, Turnhout, Beveren-aan-de-Ijzer



- **MEDIATION CENTRES**

The Liege Bar Association has a mediation centre and other associations, such as Dendermonde, are organising their own mediation centre.

## **In relation to BULGARY**

- **LEGISLATION.**

These activities are regulated by the Mediation Act 2004, completed and modified in 2007 and 2011. There are also a few specific regulations that may be interesting for mediation, such as articles 140 (3), 321 and 374 (2) of the Code of Civil Procedure of 2008; article 123 (2) of the Family Code of 2009; article 40 of the Copyright and Related Rights Act of 1993; articles 182 et seq. of the Consumer Protection Act of 2005, or articles 128 et seq. of the Payment Services and Payment Systems Act of 2009.

- **TRAINING.**



The Bulgarian Justice Ministry is the competent authority for the registration of mediators and the one who establishes the training requirements for registration.

- **ENFORCEABILITY.**

Mediation is entirely voluntary. Although mediation provides an alternative means of resolving a dispute without going to court, it is not a prerequisite when initiating court proceedings.

Article 5 of the Mediation Law establishes that “The parties shall have equal opportunities to participate in a mediation process. They shall participate in the process of their own free will and may withdraw at any time.”

There is no specific code of conduct for mediators. However, provisions on ethical standards are contained in the Law of Mediation and Regulation No. 2 of 15th March 2007, which sets out the conditions and process of approving organisations that provide mediation.

- **JUDICIAL RECOGNITION.**

According to Directive 2008/52/CE, which aims to encourage and facilitate mediation as an alternative form of resolution of cross-border disputes in the



EU, it must be possible to request that the content of a written agreement resulting from mediation be made enforceable.

Member states shall communicate this to the courts and other authorities competent to receive such requests.

Article 18 establishes that the agreement concerning a dispute within the meaning of article 1 of this act reached in a mediation process shall be subject to approval by regional courts in the country.

The court shall approve the agreement, once acknowledged by the parties, if it does not contradict the law or the principles of morality.

- **ACTION AREAS.**

Article 3 of the law establishes that the subject of mediation may be civil, commercial, labour, family and administrative disputes related to consumer rights.

Article 4 of the law establishes that mediation shall be implemented by natural persons. Such persons may associate for the purpose of implementing of the activity. No persons performing functions of administration of justice in the judiciary system may operate in the mediation.



#### ○ **MEDIATOR REQUIREMENTS**

1. Has not been convicted for criminal offences
2. Has successfully undergone his training
3. Has not been deprived of the right to exercise a profession or conduct an activity
4. Has a permit for long-term or permanent residence in the Republic of Bulgaria, in the event the person is a foreign national
5. Has been entered in the Uniform Register of Mediators with the Minister of Justice.

The Minister of Justice shall approve by issuing an order the organizations which deliver training to mediators.

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#### ○ **BAR ASSOCIATIONS ROLE.**

Bar Association in Bulgaria members of the FBE are: Kardjali, Sofia, Vidin



## ○ **MEDIATION CENTRES.**

There are no mediation centres registered to the Bar associations despite the Ministry of Justice being the one who manages the registration of mediators.

### **In relation to SPAIN**

## ○ **LEGISLATION**

Mediation is regulated by Law 5/2012, of July 6th, of mediation in civil and commercial matters, applicable in Autonomous Communities without their own law that acts in a subsidiary manner for all issues not regulated by autonomous legislation.

Under Royal Decree 980/2013, of 13 December, developing certain aspects of the Civil and Commercial Mediation Act 5/2012, of 6 July.

The autonomous laws that regulate mediation are:

- Act 1/2009 of 27.2.2009 governing family mediation in the Autonomous Community of Andalusia.
- Act 9/2011 of 24.3.2011 governing family mediation in the Autonomous Community of Andalusia.



- Act 3/2007 of 23.3.2007 of the Principality of Asturias, covering family mediation.
- Act 14/2010 of 9.12.2010 concerning family mediation in the Balearic Islands.
- Act 15/2003 of 8.4.2003 concerning family mediation in the Canary Islands, amended by Act 3/2005.
- Act 1/2011 of 28.3.2011 of Cantabria, concerning family mediation in the Autonomous Community of Cantabria.
- Act 4/2005 of 24.5.2005 concerning the specialised family mediation social service in Castile-La Mancha.
- Act 1/2006 of 6.4.2006 concerning family mediation in Castile and Leon.
- Act 15/2009 of 22.6.2009 concerning mediation in private law in Catalonia.
- Act nº 12716 of 31.5.2001 of the Parliament of Galicia governing family mediation.
- Act 1/2007, of 21.2.2007, concerning family mediation in the Madrid region.
- Act 3/2011 of 17.3, in Navarre, concerning the custody of children if their parents separate.
- Act 1/2008 of 8.2.2008 concerning family mediation in the Basque Country.
- Family Mediation Act of Valencia of 29.11.2001.



## ○ **TRAINING**

A university degree or professional higher education is required along with specific training to carry out mediation by taking one or more specific courses offered by duly accredited institutions (Act 5/2012).

In articles 3 to 7, Royal Decree 980/2013 develops the provisions of Act 5/2012 concerning training and establishes firstly that a mediator must have specific training to carry out mediation activity.

The minimum duration of the specific mediator training will be 100 hours of actual teaching. Training received with foreign institutions will be valid provided it is properly accredited in the respective country. It will be taken into account for completing the required minimum duration, as appropriate.

Royal Decree 980/2013 governs the continuing training of mediators. Mediators must carry out one or more entirely practical continuous training activities concerning mediation, lasting a minimum of 20 hours, at least every five years. Carrying out specialisation courses in a particular area of mediation will meet the continuing training requirement for mediators.





The Register of Mediators and Mediation Institutions, supervised by the Ministry of Justice, is governed by Royal Decree 980/2013, articles 8 to 25. However, it is voluntary except concerning insolvency. This Register coexists with the Register of Mediators in each autonomous community.

#### ○ **ENFORCEABILITY**

Mediation is a voluntary process and there is no obligation to take part in it or to reach an agreement.

The system contained in the Act is based on flexibility and respect for the independent will of the parties. Their will, expressed in the agreement putting an end to the dispute, can be considered as an enforcement order, if the parties so wish and it is made a public document.

#### ○ **JUDICIAL RECOGNITION**

Act 5/2012 governs the effects of mediation on the expiry or limitation periods. Thus, an application to begin mediation will suspend the expiry or limitation of actions from the date of receipt of the application by the mediator or when it is lodged before a mediation institution, as appropriate.



If, within fifteen calendar days counted from receipt of an application to begin mediation, the minutes of the constitutive sitting are not signed, the calculation of periods will begin once again.

Suspension will continue until the date of the signing of the mediation agreement or, failing this, the signing of the final act, or when the mediation is ended for any of the reasons established in this Act.

Concerning the mediation agreement, Act 5/2012 establishes that the mediator will inform the parties of the binding nature of the agreement reached and that they may request it to be made a public document in order to establish the agreement as an enforcement order.

Against the terms of a mediation agreement only a nullity action may be undertaken on the grounds that invalidate contracts.

Concerning the enforcement of mediation agreements, the parties may make the agreement reached following a mediation procedure into a public document. The mediation agreement will be presented by the parties before a notary public, accompanied by a copy of the minutes of the constitutive and final session of the proceedings.

It is not necessary for the mediator to be present. To make the mediation agreement a public document, the notary public will confirm compliance with the requirements of this Act and ensure its content does not contravene any law.



When the mediation agreement must be enforced in another country, as well as being made a public document, some requirements will need to be met. These may be demanded by the international agreements to which Spain is party or by European Union regulations.

When the agreement has been reached in mediation carried out after the beginning of judicial proceedings, the parties may ask the court to approve it, in accordance with the provisions of the Civil Proceedings Act.

The enforcement of agreements resulting from mediation begin while proceedings are under way will be applied for before the court that approved the agreement. In the case of agreements concluded after a mediation process, the Court of First Instance of the place where the mediation agreement has been signed will be have enforcement powers.

In relation to the enforcement of cross-border mediation agreements, without prejudice to the provisions of European Union regulations and the applicable international agreements in Spain, recognition and enforcement of a mediation agreement will occur in the form established in the International Civil Law Cooperation Act. A mediation agreement that has not been declared enforceable by a foreign authority may only be enforced in Spain if it has first been made a public document by a Spanish notary public at the request of the parties, or of one of them with the



express consent of the others. The foreign document may not be enforced when it is contrary to Spanish public order.

#### ○ **ACTION AREAS**

Act 5/2012 indicates that this Act applies to mediations on civil or commercial matters, including cross-border disputes, provided they do not affect rights and obligations not available to the parties under the applicable legislation. If matters are not expressly or tacitly subject to this Act, it will continue to apply if at least one of the parties has its official address in Spain and mediation is carried out on Spanish territory.

In all cases, the following are excluded from the sphere of application of this Act: a) Criminal mediation. b) Mediation with public authorities. c) Employment mediation. d) Consumer mediation.

#### ○ **MEDIATOR REQUIREMENTS**

Individuals holding full civil rights may be mediators provided they are not prevented from doing so by the legislation they may be subject to in the exercise of their profession. Organisations dedicated to mediation, whether they are professional associations or any others established by the legal system, must appoint an individual who meets the requirements established in this Act in order to carry it out. The mediator must hold an



official university or professional higher education qualification and have specific training for carrying out mediation, which will be acquired by taking one or more specific courses offered by duly accredited institutions valid for carrying out mediation activity anywhere on Spanish territory. The mediator must take out insurance or an equivalent guarantee covering the civil liability deriving from his/her action in the disputes in which he/she is involved.

#### ○ **BAR ASSOCIATIONS ROLE**

The Official Lawyers' Associations of Alicante, Barcelona, Madrid, Malaga, Palma de Mallorca, Santiago de Compostela and Valencia have their own mediation centres.

They also boost mediation through the creation of registers, training courses, mediation programmes and the creation of commissions or sections in the field of mediation.

#### ○ **MEDIATION CENTRES**

Mediation centres at each of the official lawyers' associations in Spain belonging to the FBE:



- ALICANTE: IMICALI: Mediation Institute of the Official Lawyers' Association of Alicante.
- BARCELONA: CEMICAB: Mediation Centre of the Official Lawyers' Association of Barcelona.
- BILBAO: Being established. Approved by the assembly at the beginning of February.
- CEUTA: No mediation centre.
- DONOSTIA (SAN SEBASTIÁN): No mediation centre.
- MADRID: mediaICAM
- MÁLAGA: CMICAMALAGA: Mediation Centre of the Official Lawyers' Association of Malaga.
- PALMA DE MALLORCA Mediation Institute of the Balearic Islands (IMIB)
- SANTIAGO DE COMPOSTELA: ICAS MEDIATION SERVICE
- VALENCIA: CEMICAV Mediation Centre of the Official Lawyers' Association of Valencia.

## **In relation to SPAIN**

### **○ LEGISLATION**

Family mediation in France was implemented and developed after the 1980s, more specifically in 1986, using the experience from Québec (Canada), after a team of marriage counsellors and therapists were



trained in mediation by part of the Montréal Family Mediation Institute. It began as private practice within associations that were concerned about family affairs, just like in the United Kingdom. In France, mediation was legally recognised in 1995 by Law 125/1995, of February 8th, related to the organisation of the jurisdictions and civil, criminal and administrative procedure (more specifically, article 21). This law was developed in 1996 with Decree 96-652, of July 22nd, related to conciliation and judicial mediation. This regulation does not refer solely to family mediation nor does it include it in its entirety, since it leaves out extrajudicial mediation; but both texts have great relevance insofar as they indicate to the judge that he may intervene in a different way to the resolution of the case with a decision issued from his authority, and despite them emerging from the prior consensus from the parties, they give enormous importance to the judge. On March 5th, 2002, the "Law on parental authority" came into force, introducing the following precept into the French Civil Code (art. 373.2.10): "in the event of a disagreement, the judge will try to reconcile the parties. In order to facilitate the search of a consensual exercise of parental authority by the parents, the judge may propose a mediated solution and, after having obtained their consent, will designate a family mediator for this purpose. Additionally, he may order them to go to a family mediator to obtain information on this subject and the development of this measure". This is the first legal text that expressly references family mediation, a major step in order to achieve a regulation



like the one being proposed by the EU, which will be later analysed. In addition, since December 2nd, 2003, there is a "State Diploma for family mediation" in France, which attributes the necessary competences to whomever obtains it in order to intervene as a mediator in situations of marital crisis with the purpose of favouring the reconstruction of the family environment. It began as private practice within associations that were concerned about family affairs, just like in the United Kingdom. In France, mediation was legally recognised in 1995 by Law 125/1995, of February 8th, related to the organisation of the jurisdictions and civil, criminal and administrative procedure (more specifically, article 21).

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There is also an «ethics code» of mediators on a national scale.

The Paris Chamber of Commerce and Industry has elaborated a code of conduct and is in charge of its regulation.

In the area of family affairs, whether it is by personal adhesion or adhesion to their employers, family mediators are guided by the **ethics code or letter** by the two member associations of the family-mediation bodies, the **Family Mediation Association (APMF)** and the **National Federation of Mediation Centres (FENAMEF)**. These codes or letters gather the «ethical rules of family mediation» adopted on April 22nd 2003 by the CNCMF. And so, as indicated on their website, «the APMF promulgates the ethics code of the



profession, which establishes the ethical regulations of professional practice and the conditions of exercising family mediation in France. The Code is binding for all professionals».

The FNCM, (**National Federation of Mediation Centres** ) adopted an «ethics code» based on the «European Code of Conduct for Mediators».

#### ○ **TRAINING**

French positive law does not demand any kind of special training to exercise mediation, except for family mediation. In fact, a **family mediation diploma** was created for this field by decree on December 2nd 2003 and Bylaw on February 12th 2004.

In regards to family mediation, training by authorised centres and a diploma issued by the regional prefect or successfully passing certification tests of the acquired skills are required. The training must be carried out at centres authorised by the **Regional Health and Social Affairs Board**, the DRASS. In these centres, student training consists in 560 classroom hours



distributed over three years, with an internship of at least 70 hours, at the end of which they must pass an exam

- **ENFORCEABILITY:**

The mediation resource is subject to **prior agreement of the parties..**

However, when a court lawsuit is filed, «the judge aware of this issue, upon receiving the agreement from the parties, may designate a third-party to listen to and compare their points of view so they can find a solution to the dispute» (article 131-1 of the Civil Procedure Code).

The judge may also order the parties, only in the context of determining the exercise of parental authority or provisional measures on the subject of divorce, to attend a meeting to learn about mediation, free for all parties and which cannot be subject to any individual sanction (articles 255 and 373-2-10 of the Civil Code).

Ordinance 2011-1540, of November 16th 2011, incorporate Directive 2008/52/CE to French law, establishing a framework intended to incite parties to find, with help by third-parties, a mediator, a friendly solution to the disputes on going between them, extending their application not just to cross-border mediations but also to internal mediations, except in the case of disputes that have emerged in a context of a labour contract and real administrative law.



The Ordinance of November 16th 2011 modified the aforementioned Law of February 1995, with the purpose of establishing a general framework for mediation. The Ordinance offers a definition of the concept of mediation, specifies the skills that the mediator must have and recalls the confidentiality principle of mediation, essential for its own success.

- **JUDICIAL RECOGNITION**

In the case of extrajudicial mediation, article 1565 of the Civil Procedure Code states that with the purpose of conferring executive power to the agreement reached by the parties, it may be subjected to homologation by the competent judge to learn about the type of lawsuit in question.

When mediation is carried out within the framework of a judicial process, article 131-12 of the Civil Procedure Code states that, at the parties' request, the judge of the lawsuit will homologate the agreement submitted to him by the parties.

Article L. 111-3 1 of the Civil Execution Procedures Code states that the agreements reached by judicial or extrajudicial mediation to which the civil jurisdictional or administrative bodies confer enforceability, shall be enforceable.

- **ACTION AREAS**



In French Law, parties may resort to mediation in all legal areas as long as mediation does not act against the so-called «**public order management**». For example, mediation cannot take place to elude the imperative regulations of matrimony or divorce.

Mediation is exercised especially in **family affairs** (competent judge in family affairs through a family mediator) and in **minor lawsuits** (procedures before a local magistrate or a court of first instance and instruction, by mediation of the mediator).

#### ○ **MEDIATOR REQUIREMENTS**

As previously indicated, there is no single regulation for all the different possibilities of practice in the field of mediation in France, except for family mediation.

#### ○ **BAR ASSOCIATIONS ROLE**



Bar Association in France members of the FBE are: Aix-en-Provence, Ales, Amiens, Angers, Privas, Foix, Blois, Bordeaux, Bourgoin-jallieu, Caen, Carpentras, Draguignan, Clermont-Ferrand, Epinal, Evry, Grasse, Grenoble, Nanterre Cedex, La Rochelle, Rock -on-yon, Cahors, Libourne, Lille cedex, Lyon cedex 03, Marseille, Meaux, Montpellier, Moulins, Mulhouse, Nancy, Nantes cedex 2, Paris, Rennes, Rouen, Saaint-brieuc, Bobigny, Strasbourg, Toulouse, Tarascon, Créteil, Pontoise, Vannes, Versailles

- **MEDIATION CENTRES:**

There is no central or governmental authority that is responsible of regulating the mediator profession and, for now, there are no plans to create one.

There are some non-governmental organisations who carry out their activities in the field of family affairs.

- The APMF (Family Mediation Association) with 700 members in 2012, most of them family mediators. APMF has elaborated a mediator annual by region which is easy to look up.

- The FENAMEF (National Federation of Family Mediation Associations) with more than 480 family-mediation centres in 2012. FENAMEF offers a list of mediation services.



- The CMAP (Paris Mediation and Arbitration Centre), specialised in lawsuits between (large) companies.
- The IEAM (Institute for Expertise, Arbitration and Mediation) who in 2012 had more than 100 experts in friendly or judicial expertise in different fields: economy and finances, law, tax law, medicine, civil engineering and construction, industry, raw materials and transport.
- The FMCML (Federation of Liberal Mediators and Advisors) who gathers approximately 100 experts in different fields (construction, real-estate property, industry, commercial services, social and fiscal affairs, I.T., environmental issues, medicine and alternatives medicines), and whose mediation activity completes their surveying work in different fields.
- The FNCM (National Federation of Mediation Centres) who, in 2012, gathered 79 mediation centres of the bar associations distributed by regions. Made up mostly by lawyers, the FNCM has the support of the National Bar Association Council (CNB) and numerous contacts in the legal world. Its website includes an annual.
- The ANM (National Mediator Association) founded in 1993 and with approximately 20 associations and 300 members spread over eleven regional offices by 2012. The ANM has elaborated a national mediator ethics code.

## **In relation to GREECE**



### ○ **LEGISLATION**

Mediation as a new institution joined Greek legislation under Law 3898/2010 (Government Gazette No. 211, 16.12.2010) "Civil and Commercial Mediation", which considers private legal disputes may be subject to mediation, either before or during the procedure.

### ○ **TRAINING:**

Under article 4 of the Law 3898/2010 "a mediator must be a lawyer, accredited as a mediator in accordance with article 7. First of all, only lawyers may act as mediators in Greece. Thus, other professional groups, such psychologists, economists and sociologists, are excluded from the exercise of mediation in civil and commercial matters.

Also, it seems that mediation in Greece will be oriented to lawyers with several years of experience, not to law students, who may not consider their study but after serving the necessary 18 months of practice and once they have passed the examinations required to be able to register as lawyers in the Bar Association of the country.

However, according to the same article 4, the prerequisite of being a lawyer is not necessary in the case of a cross - border dispute. It makes an exception to the general rule requirement to be a lawyer to mediate, approaching this way the Greek regulation to the provisions of Directive





2008/52/EC, which defines the mediator "regardless of their denomination or profession in the Member State concerned" (article 3.b).

#### ○ **ENFORCEABILITY:**

Mediation is possible if:

- a) The parties agree to mediation, once the dispute arises, before or after legal proceedings.
- b) An invitation is sent to the parties to use mediation.
- c) A court in another Member State orders mediation.
- d) Mediation is required by law.

Recourse to mediation excludes temporarily, and until its finalisation, the proceedings before courts.

The judicial body, where the case is pending, if appropriate and taking account of all aspects of the case, may propose to the parties to use mediation to resolve the dispute at each stage of the trial. Provided that the parties are agreed, the court will suspend obligatorily the case, fixing a new date between three and six months.

#### ○ **JUDICIAL RECOGNITION**

After mediation, a mediation record is signed by the mediator, the parties and their lawyers. At the request of at least one of the parties, the mediator ensures that the original record is deposited with the secretariat of the single-member court of first instance of the region where the



mediation took place. This requires payment of a fee, the base and adjusted amount of which have been established by a joint decision of the Minister for Finance and the Minister for Justice, Transparency and Human Rights. If mediation fails, the mediation record may be signed by the mediator alone.

Once deposited with the secretariat of the single-member court of first instance, the mediation record is an enforcement order as provided for in Article 904(2)(c) of the Code of Civil Procedure if it includes an agreement between the parties on an enforceable demand.

A legally mediation process suspends the time-barring period and the limitation period for demands until complete. Subject to Article 261 ff. of the Civil Code, suspended time-barring and limitation periods resume once a record of failed mediation is drawn up or one of the parties serves the other party and the mediator with a notice or other act ending the mediation process.

Under Article 10 of Directive 2008/52/EC, requests should be submitted to the secretariat of the single-member court of first instance of the region where mediation took place, which is competent authority (as provided for in Article 6(1) and (2) of the Directive).

- **ACTION AREAS:**

Disputes submitted to mediation:

- Civil and commercial law.



- Protection of consumer's rights.
- Labour law.
- In cases with victims of domestic violence (Law 3500/2006).
- For certain offences as provided for in Law 3094/2010.

#### ○ **MEDIATOR REQUIREMENTS.**

In accordance with Law 3898/2010 (Official Bulletin, Series A, number 211, from December 16th 2010), which incorporates Directive 2008/52/CE into the Spanish Legal System, the mediator must be a lawyer who has obtained a certificate as such. The Mediator Certification Commission (Επιτροπή Πιστοποίησης Διαμεσολαβητών), created by the Law itself, works under the supervision of the Ministry of Justice, Transparency and Human Rights and, among other things, is in charge of the certification of mediators. This certification is issued at the end of an exam process before an examining board which is made up by two members of the Mediator Certification Commission and one judicial officer. The department of lawyers and attorneys of the Justice Administration General Management at the Ministry of Justice, Transparency and Human Rights is responsible for certifying mediators and adopting the necessary administrative tools to this effect. The Department itself is in charge of elaborating the lists of authorised entities to train mediators and distribute them to the courts.



## ○ **BAR ASSOCIATIONS ROLE**

Bar Association in Greece members of the FBE are: Larissa gr, Veroia and Xania

## ○ **MEDIATION CENTRES**

There are no mediation centres registered at the bar associations, since it is the Ministry of Justice who is in charge of the registration of mediators.

## **In relation to HUNGARY**

### ○ **LEGISLATION**

Act LV of 2002 on Mediation (*a közvetítői tevékenységről szóló 2002. évi LV. törvény*). Korm in child protection matters (*Korm rendelet a gyámhatóságokról, valamint a gyermekvédelmi és gyámügyi eljárásról, Magyar Közlöny 1997/78*)

There is no national code of conduct for mediators, but the majority of mediation associations follow the European Code of Conduct for Mediators (közvetítők európai magatartási kódexe).



There is a specific code of conduct for employment law disputes, which was prepared by the Service of Conciliation and Mediation in Employment Cases (Munkaügyi Közvetítői és Döntőbírói Szolgálat).

- **TRAINING**

A university degree and professional specialization is required for at least 5 years.

In practice, usually sociologists, psychologists and lawyers occupy these functions.

- **3. ENFORCEABILITY**

The law as it stands does not make it compulsory for parties to use alternative dispute resolution mechanisms to settle disputes.

Recourse to mediation is voluntary, but has certain advantages in relation to the Act on Duties (az illetékekről szóló törvény) and the Code of Civil Procedure (polgári perrendtartás).

If the parties participate in mediation after the first hearing and the agreement reached is ratified by the presiding judge only half of the applicable duties are payable. Even the fee payable to the mediator + VAT (HÉA) (but not more than 50.000 forints) may be deducted from this



already reduced amount. The only restriction is that the final amount of duty may not be less than 30% of the original amount. The reduction does not apply if in a certain case mediation is not permitted by the law.

If the parties participate in mediation before civil proceedings, then the amount of court duty payable is reduced by the mediator's fee + VAT, but by not more than HUF 50 000, provided that the court duty paid is not less than 50% of the original amount. The reduction does not apply if mediation is not permitted by law in the particular case or if the parties go to court in spite of the settlement reached through mediation (except to give effect to the settlement in the absence of voluntary compliance).

Certain courts make mediation available to parties free of charge for on-going proceedings. Detailed rules and a list of courts is available on the central website of the Hungarian courts.

#### ○ JUDICIAL RECOGNITION

Pursuant to Directive 2008/52/EC, applicants may request that the content of the written agreement concluded as a result of mediation be made enforceable. Member States shall inform the Commission of the courts or other authorities responsible for handling those requests.



Parties may have the content of the agreement they have arrived at through mediation declared enforceable. They can request the court or a notary public to incorporate the agreement into a settlement approved by the court or into an authentic document, which can be enforced afterwards.

The start of a mediation process interrupts the limitation period.

#### ○ **ACTION AREAS**

Under Act LV of 2002 on Mediation, the parties (natural persons, legal persons, business entities without legal personality, other organisations) to a civil dispute connected with their personal and pecuniary rights may, if they so agree and if the law does not limit their right of disposition, use a mediation procedure to seek resolution. The law excludes mediation in libel proceedings, administrative proceedings, guardianship proceedings, proceedings on the termination of parental responsibility, enforcement proceedings, procedures establishing paternity or ancestry, and constitutional appeals.

#### ○ **MEDIATOR REQUIREMENTS**



The Ministry of Justice maintains a register of mediators, also containing the names of legal persons and unincorporated business associations employing mediators.

To be admitted to the register the applicant must:

- a) have a degree in higher education and at least five years experience in the respective field,
- b) have no prior criminal record,
- c) not be under guardianship or conservatorship or be otherwise incapacitated.

Upon admission of a mediator in the register, the Ministry shall issue a license to certify that the person in question is authorized to act as a mediator.

There is no requirement to complete mediation training according to the 2002 Act on Mediation.

Relevant regulations allow, in addition to intermediaries in contacts with other EEA countries established in Member States (ie those living in the European Economic Area) that a mediator can act on a current case in Hungary. However, this requires that foreign mediators announce their intention to provide such services to the Ministry; giving this authority for one year.





- **BAR ASSOCIATIONS ROLE**

The Bar Associations part of the FBE is Budapest

- **MEDIATION CENTRES.**

The Ministry of Public Administration and Justice (Közigazgatási és Igazságügyi Minisztérium) is responsible for the registration of mediators and of legal persons employing mediators.

A register of mediators and legal entities employing mediators can be found on the website of the Ministry of Public Administration and Justice.

The website provides users with general information and it is possible to search the register of mediators by name, area of expertise, language skills and county in which their office is located. For legal entities, searches are based on name, county and abbreviated name.

Registration forms for mediators and legal entities employing mediators can also be found on the same website.

Among the non-governmental organisations active in the area of mediation are:

- The National Mediation Association (Országos Mediációs Egyesület);  
and



- the Mediation and Legal Coordination Department of the Budapest Chamber of Commerce (Budapesti Kereskedelmi és Iparkamara Mediációs és Jogi Koordinációs Osztálya).

## **In relation to ITALY**

### **○ LEGISLATION**

Currently, civil and commercial mediation is governed under the Legislative Decree 28/2010 and the Ministerial Decree 180/2010.

### **○ TRAINING**

To be mediator you must meet the requirements set out in Article 4 paragraph 3 letter b) of the Ministerial Decree 180/2010, namely hold a diploma equivalent to three-year studies or university diploma, alternatively, be enrolled in a professional association; possess specialized and continuous training at least every two years - acquired in training bodies accredited by the Ministry of Justice; participate in the biannual revision of at least twenty cases of assisted mediation regime practices.

Training bodies, issuing the certificate of the training of mediators, public or private subjects are recognized by the Ministry of Justice, after verification of compliance with certain requirements.



- **3. ENFORCEABILITY**

Since 20 March 2010, in Italy it is compulsory to make an attempt at mediation before taking the matter to a civil court. The main reason for this newness is the willingness to lighten the load of the judicial machinery, which requires too many years to reach a final judgement. In fact, the excessive length of proceedings frustrates civil justice, so the European Union has scheduled a specific provision that has conditioned the European legal area. The need to shorten processing times has produced a paradoxical result that probably has not yet been studied in depth (Carrara, 2011: 145). In fact, the idea of mandatory mediation is not always convincing. While it makes sense to mediate between people who want to reach an agreement, you can not force someone to agree with his/her opponent. Especially if rights that we are hardly willing to give up without a fight, are at stake.

- **ACTION AREAS:**

You can use mediation agencies for out-of-court resolution of all civil and commercial matters related to available rights.

- **JUDICIAL RECOGNITION**



According to Article 12 of the Legislative Decree 28/2010, the record of the agreement, provided that its content is in accordance with public order and mandatory legislation, must be approved at the request of a party, by the president of the court in the agency mediation constituency. In cross-border disputes referred in Article 2 of the 2008/52/EC Directive of the European Parliament or the Council, the record must be approved by the president of the court in the agency mediation constituency.

The approved agreement record constitutes an enforceable document for the purposes of expropriation, specific execution and registration of legal mortgage title.

#### ○ **MEDIATOR REQUIREMENTS**

To be mediator you must meet the requirements set out in Article 4 paragraph 3 letter b) of the Ministerial Decree 180/2010, namely hold a diploma equivalent to three-year studies or university diploma, alternatively, be enrolled in a professional association; possess specialized and continuous training at least every two years - acquired in training bodies accredited by the Ministry of Justice; participate in the biannual revision of at least twenty cases of assisted mediation regime practices.

Training bodies, issuing the certificate of the training of mediators, public or private subjects are recognized by the Ministry of Justice.



## **BAR ASSOCIATIONS ROLE**

Bar Association in Italy members of the FBE are: Ravenna, Tivoli, Rome, Castrovillari, Isernia, Latina, Rovigo, Cagliari, Acqui terme, Bari. Bologna, Brindisi, Caltanissetta, Campobasso, Catania, Fermo, Forli, Lecce, Locri, Lucca, Messina, Milan, Napoli, Palermo, Ragusa, Reggio Calabria, Reggio Emilia, Rome, Sanremo, Santa Maria Capua Vetere, Syracuse, Torino, Trani, Velletri, Venezia, Verona, Vibo Valentia, Arezzo, Torre Annunziata, Savona, Alessandria, Ancona, Barcellona Pozzo di Gotto, Bassano del grappa, Civitavecchia, like Florence, Foggia, Frosinone, Grosseto, Lucera, inferiore Nocera, Nola, Oristano, Parma, Potenza, Prato, Salerno, Sciacca, Taranto, Trieste, Vigevano, Gorizia, Padova, Rome, Catania, Napoli, Venezia.

### **○ MEDIATION CENTRES**

The Italian bar associations that have mediation-service centres are:

Consiglio Ordine Avvocati, who has its own mediation centre; Ordine degli Avvocati Bari has Forense at l'Ordine Forense di Bari: Ordine degli Avvocati di Bologna has had its own mediation centre since 2011, Ordine Avvocati di Forlì Cesena has the Organismo di Conciliazione at the Tribunale di Forlì,



Istituto dal Consiglio dell'Ordine degli Avvocati di Forlì Cesena; Ordine Avvocati di Lucca, created a mediation body due to Law 28/2010; Ordine Avvocati di Milano, with a mediation and settlement body; Ordine Avvocati di Napoli has the Organismo di Mediazione del Consiglio dell'Ordine degli Avvocati di Napoli; Ordine Avvocati di Palermo - the Palermo Bar Council established forensic mediation, recorded at number 196 in the register of the Ministry of Justice on March 26th 2011, with registered office in Palermo; Ordine Avvocati di Ragusa created a Department of Forensic Mediation, Ordine Avvocati di Torino has a mediation centre, Ordine Avvocati di Trani, with a Forensic Mediation Body (OMT) created in 2011 and recorded at number 181 in the Mediation Body Register of the Ministry of Justice; Ordine degli Avvocati di Firenze, with Ordine dei Dottori Commercialisti e degli Esperti Contabili di Firenze and the Consiglio Notarile dei Distretti Riuniti di Firenze Pistoia e Prato, who constituted the association OCF - Organismo di Conciliazione di Firenze; Ordine degli Avvocati di Foggia has an internal mediation body of the chamber of commerce, Ordine degli Avvocati di Taranto has Taranto Mediation, The Annual General Meeting of the European Young Bar Association has had a forensic mediation body since 2011. In Rome, Organismo Unitario dell'Avvocatura Italiana has Organismo di Mediazione Forense.



## **In relation to LUXEMBOURG**

### **○ LEGISLATION**

Mediation is governed under the New Code of Civil Procedure through the Act on mediation in civil and criminal matters of 24 February 2012. This Act is supplemented by the of 25 June 2012.

### **○ TRAINING**

Mediators come from all sectors of economic activity (business leaders, jurists, lawyers, accountants, auditors, engineers ...).

They must have specific training in mediation in the form of:

- a Master's degree in mediation awarded by the University of Luxembourg or a university, a higher education institution or another establishment offering the same level of training, designated in accordance with the laws, regulations or administrative provisions of a Member State of the European Union; or
- three years' professional experience supplemented by specific training in mediation



- training in mediation recognised by a Member State of the European Union.

The "specific training in mediation", includes at least 150 hours of theoretical and practical program.

The theoretical program with at least 40 hours, includes the following: 1. mediation: definition and description of mediation; 2. Legal aspects of mediation (the Luxembourg law on mediation, ethics of mediation as determined by the Code of Conduct for Mediators in the European Union); 3. mediation tools (EA techniques, analysis, negotiation, listening); 4. the mediation process.

The practical program, with at least 50 hours, is in the form of practices and / or role playing exercises.

#### ○ **ENFORCEABILITY**

Recourse to mediation is entirely voluntary.

Mediation in administrative matters, mediation in criminal cases, and mediation in particular sectors are all governed by specific legislation.

Civil and commercial mediation is a consensual and confidential process conducted by an independent, impartial and competent mediator. It may relate to the whole dispute or just part of it. It comprises both mediation





by agreement and court-referred mediation, and family mediation plays an important role.

In mediation by agreement either party may suggest to the other that they take the matter to mediation, at any stage of the legal proceedings, independently of any court or arbitration procedure, as long as the pleadings have not ended.

In court-referred mediation a civil, commercial or family dispute has already been brought before a court; the court may at any point refer the case to mediation, as long as pleadings have not ended. This does not apply to cases before the Court of Cassation or proceedings for interim measures. The court may ask the parties to enter mediation on its own initiative, or at the joint request of the parties themselves. Either way, the consent of the parties is required. In a limited number of clearly defined cases which raise a question of family law, the court may propose a mediation measure to the parties. It will then organise an information session free of charge, to explain the principles, procedure and effects of mediation.

In criminal cases the State Prosecutor may, on certain conditions and before deciding whether to bring a prosecution, decide to use mediation if it is likely:

- to provide reparation to the victim;



- to resolve the difficulties arising from the offence; or
- to contribute to the rehabilitation of the offender.

The use of mediation does not rule out a subsequent decision to bring a prosecution, for example if the terms of mediation are breached.

#### ○ **JUDICIAL RECOGNITION**

Agreements arising from civil and commercial mediation have the same probative value as a court decision. Regardless of whether such mediation agreements were reached in Luxembourg or in another European Union Member State, they are enforceable within the European Union under Directive 2008/52/EC. The approval of all or part of the agreement by the competent court confers enforceability.

The Directive is transposed by the Act of 24 February 2012, which places mediation on the same footing as existing judicial procedures.

#### ○ **ACTION AREAS**

Mediation is admissible mainly in:

- Administrative cases,
- Criminal cases,



- Family cases,
- Commercial cases,
- Disputes between neighbours.

#### ○ **MEDIATOR REQUIREMENTS**

Mediator in criminal matters.

The Act of 6 May 1999 and the Grand-Ducal Regulation of 31 May 1999 introduced the system of mediation in criminal matters.

Anyone wishing to be approved as a mediator in criminal matters may apply to the Minister of Justice, who will decide on approval after consulting the General State Prosecutor.

Mediator in civil and commercial matters.

Governed under the Act of 24 February 2012 which incorporated mediation in civil and commercial matters into the New Code of Civil Procedure. The Act transposes Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters. It takes up the principles laid down in the Directive for cross-border disputes and applies them to national disputes too. The Law is complemented with the Grand-Ducal Regulation of 25 June 2012 laying down the approval procedure for mediators for the purposes of court-referred and family mediation, the



programme of specific training in mediation and the holding of an information session free of charge.

A mediator providing court-referred and family mediation services may be approved or unapproved. An approved mediator is a natural person accredited for this role by the Minister of Justice.

In mediation by agreement and in cross-border disputes the parties may use a mediator who has not been approved.

As for mediators approval:

The Minister of Justice is responsible for approving mediators. In civil and commercial matters mediators do not require approval to provide mediation by agreement.

Any natural person may apply for approval if he or she fulfils the conditions (1) laid down by the Act of 24 February 2012 which incorporated mediation in civil and commercial matters into the New Code of Civil Procedure and set out in the Grand-Ducal Regulation of 25 June 2012 laying down the approval procedure for mediators for the purposes of court-referred and family mediation, the programme of specific training in mediation and the holding of an information session free of charge.

Under Directive 2008/52/EC, referred to above, and Article 1251-1 (1) subparagraph 3 of the Act of 24 February 2012 on mediation, providers of



mediation services who meet equivalent or essentially comparable requirements in another Member State of the European Union are exempt from approval in the Grand Duchy of Luxembourg.

Approval is granted for an indefinite period.

Article 1251-3(2) of the New Code of Civil Procedure and the Grand-Ducal Regulation of 25 June 2012 referred to above set out the conditions which must all be met by natural persons wishing to obtain approval:

- they must provide guarantees of good repute, competence, training, independence and impartiality;
- they must produce an extract from the Luxembourg police records or a similar document issued by the competent authorities in the country of residence where they have resided for the past five years;
- they must enjoy civil rights and be entitled to exercise political rights; and
- They must have specific training in mediation in the form of:
  - o a Master's degree in mediation awarded by the University of Luxembourg or a university, a higher education institution or another establishment offering the same level of training, designated in accordance with the laws, regulations or



administrative provisions of a Member State of the European Union; or

- three years' professional experience supplemented by specific training in mediation, as laid down in Article 2 of the Grand-Ducal Regulation of 25 June 2012 aforementioned; or
- training in mediation recognised by a Member State of the European Union.

- **BAR ASSOCIATIONS ROLE**

Bar associations that are part of the FBE: Luxembourg

The Bar Association has a Mediation Centre. CMBL

- **MEDIATION CENTRES**

There is no central body responsible for the regulation of mediators.

In addition to mediation in specific sectors (banking, insurance, etc.), and apart from the Ombudsman responsible for mediation in administrative matters and the Ombudskomitee fir t'Rechter vun de Kanner (Ombudsman Committee for the Rights of the Child), the following legal associations are engaged in mediation:



- Luxembourg Association of Mediation and Approved Mediators (ALMA asbl);
- The Centre for Mediation of the Luxembourg Bar (CMBL asbl);
- The Mediation Centre (asbl);
- Family Welfare Mediation Centre (run by the Pro Familia foundation);

## **In relation to THE NETHERLANDS**

### **○ LEGISLATION**

Mediation in civil and commercial matters is governed by a Law from 15th November 2012, although it applies only to cross-border disputes. This law is completed with a few specific regulations, such as articles 900-906 of the Civil Code, where provisions on settlement agreements (vaststellingsovereenkomst) are embodied in Book 7, Title 15, and Procedural Code, articles 815 to 818, regarding divorce proceedings, and 1013-1018, on mass claims.

### **○ TRAINING**

The NMI (**Dutch Mediation Institute**) manages a national register of mediators which includes only qualified mediators. These mediators will have



completed a basic mediation training recognised by the NMI and then passed a theory exam and an assessment. NMI registered mediators are required to keep their knowledge and skills up to date, and this will be verified by the NMI.

Mediators wishing to be included in the NMI register must fulfil two basic requirements:

- - Successful completion of the mediation training accredited by the NMI
- - Passing an assessment of relevant knowledge

The NMI has accredited several mediation training institutes. Their training programmes vary from a six-day (plus a few afternoons) basic course to courses lasting 20 days or more. Successful completion of one of these training courses is one of the two basic conditions for admission to the NMI Register of Mediators. The second basic condition for admission is to pass the test of relevant knowledge. Once registered they shall have the specific training and qualifications to act as mediators.

### ○ 3. **ENFORCEABILITY**

Art 5 of the NMI Mediation Rules: Mediation is based on the continuing voluntary consent of all parties. Each party, as well as the mediator, can terminate mediation at any time. The parties are not obliged by the





positions adopted or proposals made either by them or the mediator, during mediation. The parties shall be obliged only by the provisions under the agreement, after having been signed by both parties.

#### ○ JUDICIAL RECOGNITION

The NMI offers information about mediation and mediators in the Netherlands, based on criteria adapted to the interests and preferences of the person and according to his/her needs. For example, a person can search for a mediator specialized in a particular area.

In the Netherlands a judicial mediation initiative has been launched, the Mediation naast rechtspraak. The district court or court of appeal aware of the issue shall notify to the parties the mediation procedure option. This can be communicated in writing, in which case the parties would receive a letter with an informative leaflet, the auto evaluation for the mediation and a response form. Or at the hearing the judge can indicate the possibility of submitting the issue to mediation, proposing this option to both parties.

The party can also go to the mediation functionary on its own initiative. Each district court and court of appeal have a mediation functionary ready to answer any questions, present the mediation proposal to the other



party, help the parties find a suitable mediator and set up the first meeting.

The Law from 15th November 2012 foresees in article 6 that the start of the mediation means the interruption of the limitation of the action, applying to cross-border litigations.

- **ACTION AREAS**

Mediation is always allowed and is most frequently used in civil law and public law.

- **MEDIATOR REQUIREMENTS**

Mediators can register at the NMI, and must then adhere to the code of conduct for mediators. Registration is voluntary (as is adherence to the code of conduct), but mediators wishing to work within the Dutch system of subsidised legal aid or referral by the courts must register with the NMI and also obtain accreditation and undergo an assessment.

- **BAR ASSOCIATIONS ROLE**

Bar associations in the Netherlands that are part of the FBE: Amsterdam, two in The Hague, 's-Hertogenbosch and Rotterdam

- **MEDIATION CENTRES**

The Netherlands Mediation Institute (Nederlands Mediation Instituut – NMI) is an independent institute which aims to raise awareness of mediation in the Netherlands and improve the



standard of the services available. The NMI has developed various models and rules for this purpose.

### **In relation to POLLAND:**

- **LEGISLATION**

The Act of 10 September 2015 (Journal of Laws of 13.10.2015) amending the Act of 17 of November 1964 of the Code of Civil Procedure.

- **TRAINING:** Requested training to become a mediator:

The mediator certification is obtained as a result of a theoretical and practical training of at least 40 hours with the corresponding certificate of completion.

Mediation training include the following aspects:

1. Basic rules and elements of mediation proceedings
2. Psychological mechanism for creation and resolution of a conflict.
3. Training on practical skills in mediation
4. Knowledge of legal and organizational aspects of mediation proceedings

Standards for Mediators' Training:

1. Mediation proceedings



Rules of mediation -- voluntary character of mediation, impartiality and neutrality of mediator, confidentiality.

3. Roles of a mediator, mediator's duties and rights.
4. Application of mediation, indications and contraindications.
5. Issues concerning the ethics of the mediator profession.
6. Standards for conducting mediation and the conduct of a mediator.

Psychological mechanism for creation, escalation and resolution of a conflict:

1. Basic background of psychological knowledge in regard to the mechanism of escalation and conflict resolution.
2. Procedures for conflict resolution (negotiation, mediation, arbitration, court procedures) – similarities
3. Elements of negotiation theory, basic definitions in negotiation (such as issues, positions, and interests).

Training on practical skills in mediation

1. Conducting introductory meetings with the parties, which includes a mediator's opening statements and mediation ground rules.
2. Skills for conducting a mediation session according to mediation rules and application of the proper techniques. Mediation techniques
3. Skills in effective communication, particularly:
  - active listening



- asking questions
  - using neutral language (orally and in written form)
4. Skills in proper analysis and diagnosis of a conflict under mediation, particularly:
- evaluation, whether mediation should be applied in the particular case
  - identification of positions and interests of the parties to a conflict
  - differentiation between position, needs and interests and transition from position to interests
5. Support of the parties in creating different solutions, particularly:
- in seeking for creative solutions.
  - in identification of rules and criteria for making a decision
6. Preparation of a final agreement
7. Cooperation and exchanging experiences with other mediators.
8. Cooperation with specialists in different fields.

Knowledge of legal and organizational aspects of mediation proceedings

1. Legal basis for applying mediation, including amendments in the codes.
2. Practical issues connected to the organization of mediation proceedings.
3. Principles of cooperation with the judicial system institutions.
4. Maintaining of registries



5. National and international standards for conducting mediation.
6. Application of mediation procedures in Poland and internationally in criminal, civil (family and commercial), neighborhood, local government conflicts and collective bargaining.

Requirements concerning individuals and institutions who conduct mediation trainings.

1. Requirements for individuals conducting training on practical mediation skills:

- a) University Diploma
- b) minimum 2 years of mediation practice experience
- c) certified training or didactic experience in teaching and in conflict resolution training.
- d) knowledge and acceptance of ethical rules in regard to profession of mediators.
- e) knowledge of current binding laws and regulations concerning mediation,
- f) knowledge of and acceptance of the standards for conducting mediation and the conduct of mediation.

2. Requirements for organizing the training for mediators

- a) preparation of a detailed training program (minimum of 40 hours) together with costs of training and the amount of the participation fee



b) providing the tests which cover topics discussed during mediation training, as well as recording participants attendance

#### ○ **ENFORCEABILITY**

Mediation is a voluntary way of resolving disputes and conflicts and is conducted on the basis of:

- a mediation agreement
- a decision of the court for referral to mediation

#### ○ **JUDICIAL RECOGNITION**

In civil matters, if the parties have reached a settlement it is attached to the minutes. The mediator informs the parties that by signing the settlement they agree to submit it to the court for approval. The mediator forwards the minutes with the settlement to the court and sends a copy of the minutes to the parties. The court promptly conducts proceedings to approve or give a declaration of enforceability of the mediation settlement. The court will refuse to approve the settlement or declare its enforceability, in whole or in part, if the settlement is contrary to the law, contra bonos mores, intended to circumvent the law, confusing or contains contradictions contrary to the legitimate interests of the employee. A mediation settlement which has been approved by the court



and declared enforceable has the legal validity of a court settlement and may be enforced.

In **family matters** covered by a settlement may relate to reconciliation of spouses, laying down conditions for separation, parental authority matters, contact with children, meeting family needs, maintenance and child support, and property and housing issues. After separation of parents or spouses, matters such as the issue of a passport, choice of the child's education, contacts with other family members and management of the child's property may also be agreed upon.

In civil matters the commencement of mediation proceedings interrupts the limitation period.

In **criminal matters and matters involving minors**, a **settlement reached during mediation does not replace a court judgment and is not binding on the court, however** the court should honour the content of the decision at the close of the proceedings. The terms of the settlement may cover the following: formal apology, compensation for material and non-material damage, community service, obligations to the party suffering loss, obligations to society as a whole and so on.





#### ○ **ACTION AREAS:**

Disputes can be resolved through mediation in a number of areas Under Polish law, mediation can be used in respect of the following matters:

- Civil
- Commercial
- Labour Law
- Family law
- Minors
- Criminal
- Judicial-administrative

Mediation is most widely used today in criminal and civil matters. In 2011-2012, family and commercial areas saw the most rapid growth in mediation.

#### ○ **MEDIATOR REQUIREMENTS:**

- 1) Mediation knowledge and skills
- 2) At least 26 years old
- 3) Polish speaker
- 4) Not to have been convicted by an intentional crime or a tax offense.

#### ○ **BAR ASSOCIATIONS ROLE:**



Professional bodies carry on institutionalised activities for the promotion of mediation.

There is a mediation centre in the POLISH BAR COUNCIL The other Bar Associations belong to that center.

- **MEDIATION CENTRES:**

- The Supreme Bar Council Mediation Centre (he Supreme Bar Council Mediation Centre).
- The National Association of Lawyers Commercial Mediation Center (Center of Commercial mediation of the Chamber of legal advisors).
- Mediation centres of some Regional Associations of Lawyers.
- Mediation centres of some Regional Councils of Notaries.

Non-governmental organisations, within the scope of their statutory duties, and universities may have lists of permanent mediators (stały mediator). Information about the lists and centres are provided by the Presidents of district courts. Information about the lists and centres are provided by the Presidents of district courts. Lists of mediators in criminal matters and cases involving minors are provided by the Presidents of district courts.

## **In relation to PORTUGAL**

- **LEGISLATION**



At present, mediation is regulated by Law 29/2013, of April 19, related to the general principles of mediation carried out in Portugal, as well as the judicial framework for civil and commercial mediation and public mediation.

Ordinance Nº 344/2013, de 27 de novembre 344/2013, of 27 November - Establishes the body responsible for organising the list of conflict mediators as well as the registering requirements and the form of access, information and disclosure.

Ordinance 344/2013, of 27 November - Regulates the rules for the certification of the training providers of conflict mediation courses.

There is no national code of conduct for mediators, who act in accordance to the European Code of Conduct for Mediators. The European Code of Conduct tlists a series of principles that must be respected both by mediators individually and by those who provide mediation services.

There is a specific legislation for family, labour and criminal mediation.

#### ○ **TRAINING**

University degree required.



There is no national mediator-training service, carried out instead by private entities. The Ministry of Justice certifies that such institutions are in conditions to teach mediation courses without the need to certify the course itself. The idea is to give certain flexibility to the institutions during the planning of the course and, at the same time, guarantee that the courses are adequate for mediation activity. Thus, it guarantees that they possess the professional capacity and suitability to resolve family, labour, criminal and civil conflicts through mediation.

### ○ **3. ENFORCEABILITY**

Article 4 of Law 29/2013, of 19 April, regulated the principle of wilfulness, thus making the mediation procedure voluntary, making it necessary to obtain consent from both parties to carry out mediation, for which they shall be responsible for the decisions made throughout the procedure. During the mediation procedure, the parties may, at any time and jointly or unilaterally, revoke their consent to participate in this procedure. Refusal from the parties to initiate or continue the mediation procedure shall not constitute a violation of the obligation to cooperate in accordance with the provisions of the Portuguese Civil Procedure Code.

### ○ **JUDICIAL RECOGNITION**



The mediation that takes place outside the courts is binding. However, judicial authorisation is necessary for the agreements obtained in mediation prior to the trial.

Article 9 of Law 29/2013 refers to mediation's enforceable character, making the mediation agreement enforceable without needing judicial homologation in the following cases:

- a) That it refers to a controversy that may be submitted to mediation and for which the law does not call for judicial homologation.
- b) That the parties have the capacity to reach an agreement on it;
- c) Obtained by mediation in the terms stipulated by the law.
- d) The content of which does not breach public order; and
- e) Which had the participation of a mediator who is registered on the mediator list organised by the Portuguese Ministry of Justice.

The provisions in point e) are not applicable in mediations carried out in the scope of a public-mediation system.

A mediation agreement carried out in another EU-member state who respects the provisions of points a) and d) shall also be enforceable, subject to the agreement also being enforceable in their own state.

Within the third chapter of Law 29/2013, related to civil and commercial mediation, article 12 refers to the mediation agreement and establishes that the court before which an action that is subject of a mediation



agreement is filed, at the defendant's request when submitting their first declaration on the substance of the dispute, shall suspend the procedure and submit the case to mediation.

The second section refers to pre-judicial mediation and, article 13, related to period suspension, establishes that mediation suspends expiry and prescription periods from the date of the mediation agreement's signing or, in the case of mediation carried out in public mediation systems, in all cases in which parties have agreed to carry out mediation. The expiry and prescription periods are restarted with the termination of the mediation procedure resulting from the refusal from one of the parties to continue it, due to the completion of the maximum period established for the duration of the procedure, or when the mediator determines the end of the procedure. The actions that determine the expiry and prescription of the scheduled period are certified by the mediator or, in the event that the mediation is carried out in public-mediation systems, by the managing entity, who shall have to issue, when requested, proof of the suspension of the periods, which shall include the following elements: statement of the identity of the party who submitted the request and that of the counterpart; the indication of the matter which is under mediation; the date of the mediation agreement signing, or, if the mediation case is carried out in public-mediation systems, the date in which all parties agreed to act as a mediator; the reason of the mediation procedure



termination, in the event that it occurred; and the termination date of the mediation procedure, in the event that it occurred.

Article 14, related to the homologation of the agreement obtained through mediation, establishes that, in those cases in which the law does not determine its obligation, parties have the option to request judicial homologation for the agreement obtained through pre-judicial mediation. The aforementioned request is submitted jointly by the parties, preferably via an electronic channel, in any state court that is competent on this subject.

Judicial homologation for an agreement obtained via pre-judicial mediation is used to verify whether the agreement is referring to a controversy that may be subject to mediation, the parties' capacity, whether it respects the general principles of law and good faith, whether it constitutes an abuse of rights or not and whether its content breaches public order. The aforementioned request is an urgent one. In the event that the homologation is rejected, the agreement shall be null and void and the parties shall be able to submit a new agreement for homologation within 10 days.

Article 15 establishes that the provisions related to pre-judicial mediation are applicable, with the necessary adaptations, to the mediation



procedures carried out in other EU-member states, subject to them respecting this state's principles and rules of law.

Article 34 of the law refers to the start of the mediation procedure in public systems. This way, it can be requested by the parties, the court, the prosecutor and the Civil Register, notwithstanding the reference of mediation requests of managing entities by other public or private bodies.

#### ○ **ACTION AREAS**

Mediation is admissible in different fields. Civil and commercial mediation (distinguished by general provisions and pre-judicial mediation), and, subsequently, public-mediation systems, are regulated by Law 29/2013. Mediation in family, labour and criminal affairs (special public systems) has its own structures and its own specialised mediators.

#### ○ **MEDIATOR REQUIREMENTS**

Article 3 of Ordinance 344/2013, of November 27, regulates the registration requirements for the list of conflict mediators, resulting in the mediator needing to meet the following requirements:

a) Being in full possession of their civil and political rights;





- b) Having carried out a conflict-mediation course taught by a training entity that is authorised under Portuguese regulations.
- c) Having knowledge of the Portuguese language.

The request established in paragraph b) also considers to be conflict mediators those who:

- a) Are nationals of European Union or European Economic Area states, or have obtained their qualifications outside of Portugal, recognised by the DGPJ pursuant to Law 9/2009, of March 4, modified by Law 41/2012, of August 28.
- b) Are nationals of other countries who, after submitting requests before the DGPJ, have been conceded a status of equivalence and recognition for their qualifications obtained outside of Portugal, according to the reciprocity principle in their country of origin.

Article 4 establishes that the registration in the mediator list is carried out through a request that must be accompanied by the following elements:

- a) Conflict-mediator identification, which is indicated by the civil-identification number;
- b) Tax-identification number;
- c) Copy of the conflict-mediation course certificate;
- d) Sworn declaration in which the conflict mediator states to be in full possession of his civil and political rights and to respect to the conflict-mediator regulations, enshrined in Law 29/2013, of April 19, while exercising his duties.



In the aforementioned request, the conflict mediator must also indicate his company name, business address, telephone number and business e-mail address.

Article 39 of Law 29/2013: The necessary requirements to carry out the duties of mediator in each of the public-mediation systems are defined in their respective constituent acts.

#### ○ **BAR ASSOCIATIONS ROLE**

There are three Bar Associations in Portugal that are part of the FME, two of which are based in Lisbon (“Conselho Distrital de Lisboa” and “Ordem dos Advogados de Portugal”), and the other in Porto (“Conselho Distrital do Porto”).

There is no mediation centre

#### ○ **MEDIATION CENTRES**

Portugal has a centralised administrative centre in charge of regulating public-mediation activities: the Directorate-General for Justice Policy (DGPJ), which is part of the Ministry of Justice.



## **UNITED KINGDOM: ENGLAND AND WALES**

### **○ LEGISLATION**

The Directive of 2008 was incorporated to the legislation through the so-called Cross-Border Mediation (EU Directive) Regulations 2011 (SI 2011/1133), in England and Wales.

### **○ TRAINING**

There is no national training body for civil mediator individuals in England and Wales. They obtain their training from the private sector, whose service is not regulated.

Family mediators come from different origins, among which are legal, therapeutic and social services, with no legal requirement that obliges them to receive specialised training. In any case, the different affiliation/accreditation organisations maintain their own professional training regulations, which include different requirements regarding this matter.

### **○ 3. ENFORCEABILITY**

#### **Mediation procedure in civil affairs**

Civil mediation is not regulated by law nor does it constitute a prior requirement to initiate a judicial process. Notwithstanding, the parties in



civil affairs are obliged to consider it carefully before resorting to the courts.

The civil procedure rules (CPR) govern the practice and procedure that must be followed in the civil courts of the Court of Appeal, the High Court and the county courts. The CPR include a procedural code, whose main objective is to support the courts that are actively managing these matters. Such work includes encouraging the parties to use alternate procedures for resolving disputes if the court involved considered this option appropriate and enables its use.

Despite mediation being completely voluntary, the civil procedure rules exhibit the factors that must be taken into account when deciding the total of fees. The court must take into account the efforts carried out, where appropriate, before and after the procedure in order to try to resolve the dispute. Consequently, if the trial's winning party has previously rejected a reasonable mediation offer, the judge may determine that the losing party shall not be liable to pay the fees.

### Mediation procedure in family affairs

Family mediation is currently an entirely voluntary procedure. When spouses and civil partners divorce or separate, they resort to the courts in order to obtain a decree in regards to the goods and finances (a financial



decree that is commonly known as a «resolution of financial disputes». However, this is not considered family mediation, since it is part of the judicial process. In this stage, a judge (exercising his non-judicial competence), facilitates negotiations between the parties but does not intervene in the result. If the negotiations fail, the judge will not participate in subsequent disputes of this particular case.

Like in civil-procedure rules, family-procedure rules (an exhaustive set of rules regarding the judicial process) promote the use of alternative methods of conflict-resolution. On the other hand, the rules of public funding demand that parties in family disputes that seek public funding first attend a meeting to consider family mediation as an alternative before taking the matter to court. In this sense, family mediation may constitute an indirect prior requirement in some cases.

#### ○ JUDICIAL RECOGNITION

Directive 2008/52/CE allows those involved in a dispute to request enforceability for the written agreement resulting from mediation.

The parties in family disputes who have reached an agreement, whether it is through lawyers or mediation, may request the court to convert this agreement in a judicial "conformity" decree that is legally binding, subject to the court being convinced of the equity of this agreement.



In accordance to the Cross-Border Mediation (EU Directive) Regulations 2011 (SI 2011/1133), there is an expiry to matters subjected to mediation in the case of cross-border disputes.

- **ACTION AREAS**

The main areas are the civil and commercial area, the family area, the labour area and community mediation.

- **MEDIATOR REQUIREMENTS**

There is no specific code of conduct for mediators that is specific to England and Wales. However, to be accredited by the CMC, the civil mediation service provider must comply with a code of conduct (the EU Code of Conduct is used as an example). All FMC founding members are obliged to guarantee that their members comply with the FMC Code of Ethics.

Requirements to register at the CMC: accredited mediation training, observation of experienced mediators, ONGOING mediation practice, CPD (Continuous Professional Development), professional indemnity insurance.

- **BAR ASSOCIATIONS ROLE**



Bar associations in the United Kingdom that are part of the FBE: Exeter, London and Monmouthshire.

There is no centre in the Law Society. However, it is re-launching an accreditation system for civil and commercial mediators. The Law Society is represented in the Civil Mediation Council and the Family Mediation Council.

- **MEDIATION CENTRES.**

The Ministry of Justice is responsible for mediation policies, including its promotion.

In order to guarantee the quality of mediation proposed by the courts in civil disputes (excluding family ones in England and Wales), authorities have collaborated with the Civil Mediation Council (CMC) in adopting an accreditation system. The CMC is a body that represents those that provide civil and commercial mediation services. The courts refer certain cases only to CMC-approved mediation-service providers.

In regards to family disputes, different organisations intervene, as well as bodies that are affiliated to the mediators. These institutions have converged to constitute the Family Mediation Council (FMC), with the purpose of coordinating the rules of family mediation. Another role of the FMC is representing its organisations,



founding members and family mediators in general in regards of the job's dealings with the Administration.

The most important organisations are:

- ADR Group;
- Family Mediation Association
- National Family Mediation
- UK College of Family Mediators;
- Resolution;
- Solicitors' Regulation Authority's Family Mediation Accreditation Scheme, previously «Law Society Family Mediation Accreditation Panel».

Today, the Administration does not foresee the constitution of a governing body.

For more information on family mediation or to find a family mediator in England and Wales, you can access the Family Mediation Helpline. a body which offers general information on family mediation and helps interested parties to contact mediators in their area.

**In relation to THE NETHERLANDS**





## ○ **LEGISLATION**

Mediation is now governed both by Act No 202/2012 on mediation and, in the area of criminal proceedings, by Act No 257/2000 on the Probation and Mediation Service of the Czech Republic. It is completed with the Civil Procedure Code (CPC of 1963)

## ○ **TRAINING**

The Act 202/2012 establishes that in order to act as a mediator it is required to have a Bachelor's Degree in Education or Master in the Czech Republic or acquired abroad through similar education.

A registered mediator acting in accordance with Act No 202/2012 must successfully complete a professional examination before a commission appointed by the Ministry of Justice. A mediator acting within the remit of the Probation and Mediation Service in accordance with Act No 257/2000 must successfully complete a qualifying examination.

The content of the tests is intended to verify the knowledge and needed professional skills to act as mediator and other forms of alternative dispute resolution.

Training in the area of non-criminal mediation is offered by a range of bodies and educational institutions.



### ○ **ENFORCEABILITY**

According to the Code of Civil Procedure, the presiding judge may, if practical and appropriate, order the parties to proceedings to hold an initial three-hour meeting with a mediator. In such cases, proceedings may be suspended for up to three months.

The Act of 202/2012 establishes a new legal regime for mediation in civil matters. Among its most important features are the following:

The mandatory nature of the first mediation session (lasting more than three hours), if ordered by a court (Section 100 (3) of the Code of Civil Procedure, as amended); then the court may stay the proceedings for up to three months

### ○ **JUDICIAL RECOGNITION**

Directive 2008/52/EC allows those involved in a dispute to request that a written agreement arising from mediation be made enforceable. An agreement between the parties to the mediation in a civil case may be submitted to the court for approval in the context of further proceedings.



The results of mediation provided in the context of criminal proceedings by the Probation and Mediation Service may be taken into account by the public prosecutor and the court in their decision in a given case.

- **ACTION AREAS**

Mediation is admissible in every area of law, except where it is excluded by legislation. This includes family law, commercial law and criminal law.

- **MEDIATOR REQUIREMENTS**

Requirements for certified “mediators” are set (the registry shall be maintained by the Ministry of Justice).

According to Article 16 of the Act 202/2012 on mediation conditions to register as a mediator are:

- a) is competent to perform legal acts,
- b) has no criminal record,
- c) has a university education in the Czech Republic or has a similar international university education recognised by an international treaty or law.
- d) has passed a Mediator’s examination by the Ministry of Justice or by the Czech Bar Association.



E) has not been struck off the Register in the manner according to Section 22 (4) in the last 5 years prior to filling an application (concerning expiration of authorisation).

- **BAR ASSOCIATIONS ROLE**

Bar Associations part of the FBE: Prague

The Czech Bar Association has its own ADR Section and a board counselling body

- **MEDIATION CENTRES**

The Probation and Mediation Service of the Czech Republic is the centralised body responsible for mediation as a means of dealing with the consequences of a criminal offence between the offender and the victim in criminal proceedings. The Ministry of Justice has responsibility for this service.

For mediation in civil law matters, you can contact one of the mediators offering that service. Contacts for mediators working in the Czech Republic may be found on various websites by entering the search term 'mediation'.

A list of mediators may be found, for example, on the websites of the Czech Mediators Association, the Czech Bar Association and the Union for



Arbitration and Mediation Procedures of the Czech Republic. Contacts for the Probation and Mediation Service of the Czech Republic, acting within the remit of the relevant district courts, may be found on the Service's website. A list of mediators registered in accordance with Act No 202/2012 on mediation, held by the Ministry of Justice, is to be published shortly.

A number of other non-governmental organisations (NGOs) and entities work in the area of mediation.

## **In relation to ROMANIA**

### **○ LEGISLATION**

The mediation and mediator profession is governed under the Act 192/2006 of 22 May 2006, and amended by the Act 370/2009 and Governmental Order 12/2010 on transposition of the Services Directive as well as the Act 115/2012 of 4 July 2012 (No. 462 of 9 July 2012) and the emergency Order 90/2012.

Also to be considered: provisions for public legal assistance in civil matters (Government Emergency Ordinance 51/2008); amendments to the Romanian Civil Procedure Code by the Act 202/2010, as well as the rules



established by the Superior Council of Magistracy 504/2011, which alter the internal regulation of the activity of the Romanian courts of justice.

#### ○ **TRAINING**

Training on mediation is provided only by the private sector, but the Mediation Council is responsible for authorising training courses providers in order to ensure that all courses offer trainings of the same standards.

A list of training programme providers is also included in the Mediation Council's official website.

Training courses are run on a regular basis. One training programme which counts for mediators' initial training course (80 hours) is currently in place. The programme sets learning objectives, skills to have developed by the end of the programme and the evaluation methods. The 8 providers authorised by the Mediation Council are responsible for developing support material and exercises following the frame set by the national training programme.

#### ○ **ENFORCEABILITY**



The parties involved in a dispute must necessarily undergo the procedure of mediation before going to court. The new law 115/2012 thus aims to streamline the dispute resolution to decongest the courts.

The law applies to both individuals and corporations for all types of litigation, regardless of their nature, except in cases where there is specific legislation on that. The parties will come at a preliminary stage to the mediator to conduct an information session where they will explain the benefits of mediation. At the end of the session, the mediator will issue a report which reflects the decisions of the parties with respect to attempt mediation or go to courts.

Once the case is brought to court the document issued during the briefing preliminary to prove that mediation was attempted previously will be requested. Since January 2013 no person may go to court without this document. For those who refuse to participate at this preliminary informational session the law provides penalties ranging from 100 to 1000 leu.

For instance in cases of divorce before applying at court both spouses must attend to a first mediation session. Each party may choose a mediator and one of them will be selected to deal with mediation or both parties may jointly agree on a mediator.



- **JUDICIAL RECOGNITION.**

The Directive 2008/52/CE allows enforcement of agreements resulting from mediation. Member States shall inform the Commission of the courts or other authorities competent to receive requests. Romania has not yet communicated this information.

- **ÁMBITOS DE ACTUACIÓN.**

Disputes submitted to mediation:

**-Consumer protection** When the consumer complaint damage as a result of the acquisition of a defective product or service. When the agreed contractual terms or warranties, if any abusive clauses in contracts between the consumer and the service provider, violation of other rights regulated by national and European legislation on consumer protection are not respected.

**-Cases Related to family law:** Divorce, division of property, exercise of parental authority and guardianship of minors, determining children housing after parental separation (divorce or separation), food and contributions to growth pensions, children education and professional training, any dispute of rights recognized by law that can occur between spouses.





- Disputes related to: property rights (rights of possession, demarcation of plots, boundaries and other issues related to neighborhood disputes).

- In case of professional responsibility: especially cases involving malpractice unless there are special laws that establish another procedure.

Labor law cases: signing, execution or dissolution of individual employment contracts.

- **Civil cases whose value does not exceed 50,000 lei:** except in those disputes in which an enforceable opening of insolvency proceedings sentencing, actions concerning the Register of Commerce and cases in which the parties prefer to go to the foreseen procedures under articles 999 -108 of the Romanian Code of Civil Procedure..

**In the case of offences where criminal proceedings are initiated by a previous complaint by the injured person:** Once made the complaint if the perpetrator of the acts is known or identified and the victim consents to participate in a mediation session with the aggressor, and in the event there is reconciliation between both parties, criminal liability will be eliminated.

## ○ **MEDIATOR REQUIREMENTS**



The mediator register of the Ministry of Justice is in charge of registering the mediators who meet the requirements set **Rule 2** of the Ministry of Justice, of **March 15th**, , which requires 60 hours of specialised training, 30 hours of practice and taking a training exam.

- **BAR ASSOCIATIONS ROLE.**

Bar Association in Rumania members of the FBE are: Bucuresti, Arad, Cluj-Napoca, Miercurea-ciuc, Oradea, Sibiu, Dolj, Tulcea.

- **MEDIATION CENTRES:**

We are not aware of any mediation centres registered at the Bar Associations.

## **In relation to SERBIA**

- **LEGISLATION**

The new Mediation Act came into force on 31 May 2014 applying from 1 January 2015. The aforementioned law substituted the previous Mediation Law, 18/2005.

- **TRAINING**



The mediator must be highly qualified, specialized in different areas of mediation and able to work under difficult circumstances.

Judges, lawyers and other leading experts in different specialisation fields may act as a mediator according to the type of controversy that must be put to mediation.

The mediator-training programme is determined by the Ministry of Justice.

- **ENFORCEABILITY**

It is a voluntary process carried out only when both parties agree.

- **JUDICIAL RECOGNITION**

The judicial efficiency of the agreement reached in the mediation procedure has the same legal validity as the court decision and the agreement is enforceable through the enforcement procedures, as stated in the new mediation law.

- **ACTION AREAS**



- Civil mediation, property disputes
- Criminal matters (Restorative Justice)
- Labour issues
- Mobbing
- Family matters
- Communal mediation
- Administrative disputes
- Commercial disputes
- Mediation among equals (peer mediation)
- Peace negotiations
- Discrimination

#### ○ **MEDIATOR REQUIREMENTS**

Mediator must meet the following requirements:

1. a) University Diploma;
2. Experience minimum of five years work;
3. Training program for mediators;
4. To be registered on the list of mediators of the Ministry of Justice;
5. Not to have criminal records;
6. To have integrity in carrying out the role of mediation.



Exceptionally, a mediator may also be a person who does not meet all established requirements if he/she has the experience and special skills required in the field of the mediation.

In disputes or conflicts with a foreign element, a mediator may be a foreign citizen, provided that is authorized to carry out international mediation, with the consent of the parties.

- **BAR ASSOCIATIONS ROLE**

FBE associations members: Belgrade

- **MEDIATION CENTRES**

The Ministry of Justice is responsible for licensing to mediators and in general for supervising their work. He/she must also agree to the Mediator Ethics Code.

Serbian National Association of Mediators (NUMS), non - governmental association.

**In relation to SWITZERLAND**



## ○ **LEGISLATION**

In Geneva, the Civil and Commercial Mediation Law entered into force on 1 January 2005.

## ○ **TRAINING**

The training required to become a mediator is:

- training of at least 200 hours
- own a university diploma
- observe the ethical standards
- attend in a regular basis to continuing education courses and share the experiences with the other mediators.
- being disciplined
- hold a good curriculum vitae

## ○ **ENFORCEABILITY**

The resource of mediation is a **voluntary option from the parties** and is not subject to sanctions in the event that no agreement is reached.



In accordance with the recent family-law provisions, the judge must inform the parties about the existence of mediation and the options that it offers.

#### ○ **JUDICIAL RECOGNITION**

In accordance with the directive 2008/52/CE, the option of requesting enforceability to a written agreement that has resulted from mediation must be guaranteed. The member states communicate which courts or other authorities are competent to receive the aforementioned requests. Belgium has yet to communicate this information.

Notwithstanding, in accordance with articles 1733 and 1736 of the Judicial Procedure Code, a judge may homologate the agreement that has resulted from mediation, thus giving the aforementioned agreement authenticity and enforceability. In regards to the form, the agreement becomes a sentence.

There is an alternative to the homologation. It is possible to transfer the agreement that has resulted from mediation to a notary act before a notary. This way, the agreement has authenticity and enforceability without the need to resort to a judge. This option is only applicable if all parties are in agreement.

#### ○ **ACTION AREAS**



Mediation is admissible in the following areas:

- Civil law, including family law suits.
- Commercial law
- Labour law.

○ **MEDIATOR REQUIREMENTS**

- Be over 37 years of age
- Have a successful experience in mediation
- Sufficient experience or knowledge about his mediation activity area
- Hold specific qualifications and skills on mediation

No criminal records of any intentional crime against honour and integrity.

○ **BAR ASSOCIATIONS ROLE.**

Bar Association in Switzerland members of the FBE are: Basel, Bern, Burgdorf, Fribourg, Chiasso, Geneva, Neuchatel, Lausanne, Sion 2 Nord, Zürich

○ **MEDIATION CENTRES.**

There is the Ticinese Association for Mediation and the Zurich Bar Association Governing Body, which has a mediation group directed by Peter Ruggle, SAV Mediator (Ruggle Partner).





## **In relation to TURKEY**

### **○ LEGISLATION**

Turkish Mediation Act in legal disputes was approved on 7 June 2012 and came into force on 23 June 2013.

### **○ TRAINING**

A law degree and a minimum of five years of legal practice is required, as well as finalising the education program in mediation (48 hours) and passing the exams organized by the Ministry of Justice.

### **○ ENFORCEABILITY**

Mediation is defined in the Act as a "voluntary method of conflict resolution", which allows a communication process between the parties for the purpose of negotiating, reach an understanding and creating their own agreement, through an impartial process and an independent third person who has knowledge and specialized training.



## ○ JUDICIAL RECOGNITION

At the end of the mediation process a protocol with the outcome will be drawn up. The mediator will inform about this protocol the General Management of Legal Affairs of the Ministry of Justice.

If the parties reach an agreement, they may request the relevant court an annotation on the applicability of this agreement. This annotation will give the agreement the effect of a court ruling.

The period between the starting and ending of the mediation process is not taken into account in the calculation of the limitation period of the legal proceedings so that the parties are not affected subsequently, when starting a judicial proceeding related with the dispute, by the expiry of the limitation period during mediation.

If during the litigation parties declare their intention to go to mediation, the trial may be suspended up to three months. This period may be extended for another three months in case of joint request of the parties.

## ○ ACTION AREAS



The scope of application of the Law has been limited to civil conflicts, including those with a foreign element, except for matters that are not available to the parties. Mediation is not applicable in disputes arising from accusations of domestic violence. There is also the reconciliation of criminal litigation.

- **MEDIATOR REQUIREMENTS**

Mediators must be registered in the Registry of mediators of the Ministry of Justice. Registration requirements include Turkish nationality, a law degree and a minimum of five years of legal practice, as well as finalising the education program in mediation (48 hours) and passing the exams organized by the Ministry of Justice.

- **BAR ASSOCIATIONS ROLE**

The Istanbul Bar Association does not have a mediation centre.

- **MEDIATION CENTRES**

The Ministry of Justice has a Department of Mediation.

### **III.- PROPOSAL AND CONCLUSIONS**



From the information obtained directly from the bar associations' websites, from the publication of information on the pages of the respective ministries of justice and from the European Union mediation page, we have managed to detect common elements in regards to mediation within the space of the FBE member states. Despite being aware of the limitations of the proposals and conclusions, given that internal legislation must be complied, in order to align, where possible, both the information to provide to citizens as well as those elements that allow mediators to perform cross-border activities with guarantees to those who apply for mediation, we propose:

Mediation voluntariness as the common element in all countries (excepting some cases in Italy), the existence of bar associations with important mediation services and others that lack registers (but not mediators) who are managed by the Ministry of Justice and the different demands to obtain the condition of mediator in each of the detailed countries, shall not be an impediment for the FBE to establish mechanisms and guarantees so that mediators can carry out their mediation activity outside their own territory.

We have discarded the option of standardising training methods due to the broad and varied offer and training requirements of different



countries. However, formulas have been proposed which allow mediation activity to be exercised in different countries without the need of licensing.

We propose:

**FIRST.-** The creation of a mediator register within the FBE in which all mediators who gather the conditions to perform as such in their countries can register.

**SECOND.-** That the inscription is conditioned by whether the mediator certifies his or her inscription in his professional bar association as well as the existence of a civil liability policy that covers his activity as a mediator.

**THIRD.-** That mediators who are members of a bar association that belongs to the FBE carry out the training required by the bar association or country in which they want to carry out their mediation activity in, without needing to previously register in the destination's bar association.



**FOURTH.-** That all mediators, when registering, accept the code of conduct approved by the FBE's Mediation Commission.

**FIFTH.-** The mediator's fees shall be free and subject to the tax regulations of the country in which the mediation activity has taken place.

**SIXTH.-** That all mediators, in order to register solely in their country of origin, must do so complying with its mandatory requirements by means of a certificate issued by the bar association they are registered in.

**SEVENTH.-** The FBE will manage the mediator register, verify the compliance of all access requirements and choose whether to concede the register, which will be updated every three months and published on its website for citizens and professionals to access.

Silvia Giménez-Salinas Colomer

President of the FBE Mediation Committee Action Plan

Barcelona, 05 September 2016