

European code of conduct for mediators*

INTRODUCTORY STATEMENT OF THE COMMISSION

A European code of conduct for mediators has been developed by a group of stakeholders with the assistance of the European Commission.

The code sets out a number of principles to which individual mediators can voluntarily decide to commit, under their own responsibility. It is intended to be applicable to all kinds of mediation in civil and commercial matters.

Organisations providing mediation services can also make such a commitment, by asking mediators acting under the auspices of their organisation to respect the code. Organisations have the opportunity to make available information on the measures they are taking to support the respect of the code by individual mediators through, for example, training, evaluation and monitoring.

For the purposes of the code mediation is defined as any process where two or more parties agree to the appointment of a third-party – hereinafter “the mediator” – to help the parties to solve a dispute by reaching an agreement without adjudication and regardless of how that process may be called or commonly referred to in each Member State.

Adherence to the code is without prejudice to national legislation or rules regulating individual professions.

Organisations providing mediation services may wish to develop more detailed codes adapted to their specific context or

the types of mediation services they offer, as well as with regard to specific areas such as family mediation or consumer mediation. A list will be published of organisations providing mediation services that have informed the Commission that they intend to commit to asking mediators acting under their auspices to respect the code.

[...]

Status of the code and disclaimer: The code of conduct does not represent the Commission's official position. Lists of mediators and/or organisations adhering to the code do not represent an endorsement of the Commission of these mediators or organisations in any way. The Commission is not carrying out any verification of whether the code is actually adhered to and does not accept any responsibility in this regard, nor for the services offered by these mediators or organisations.

Mediation in consumer disputes: Mediators and organisations carrying out consumer disputes may also wish to adhere to the code. However, it should be recalled that the Commission adopted in 2001 a formal recommendation on the specific issue of consumer mediation. The Commission recommends that any mediator or organisation falling within the scope of that recommendation respects the principles laid down by it. [...]

* Eine Übersetzung der Texte finden Sie im *mediations-report 8/2004*. Siehe ferner http://europa.eu.int/comm/justice_home/ejn/news/whatsnew_de.htm.

1. COMPETENCE AND APPOINTMENT OF MEDIATORS

1.1 Competence

Mediators shall be competent and knowledgeable in the process of mediation. Relevant factors shall include proper training and continuous updating of their education and practice in mediation skills, having regard to any relevant standards or accreditation schemes.

1.2 Appointment

The mediator will confer with the parties regarding suitable dates on which the mediation may take place. The mediator shall satisfy him/herself as to his/her background and competence to conduct the mediation before accepting the appointment and, upon request, disclose information concerning his/her background and experience to the parties.

1.3 Advertising/promotion of the mediator's services

Mediators may promote their practice, in a professional, truthful and dignified way.

2. INDEPENDENCE AND IMPARTIALITY

2.1 Independence and neutrality

The mediator must not act, or, having started to do so, continue to act, before having disclosed any circumstances that may, or may be seen to, affect his or her independence or conflict of interests. The duty to disclose is a continuing obligation throughout the process.

Such circumstances shall include

- any personal or business relationship with one of the parties,
- any financial or other interest, direct or indirect, in the outcome of the mediation, or
- the mediator, or a member of his or her firm, having acted in any capacity other than mediator for one of the parties.

In such cases the mediator may only accept or continue the mediation provided that he/she is certain of being able to carry out the mediation with full independence and neutrality in order to guarantee full impartiality and that the parties explicitly consent.

2.2 Impartiality

The mediator shall at all times act, and endeavour to be seen to act, with impartiality towards the parties and be committed to serve all parties equally with respect to the process of mediation.

3. THE MEDIATION AGREEMENT, PROCESS, SETTLEMENT AND FEES

3.1 Procedure

The mediator shall satisfy himself/herself that the parties to the mediation understand the characteristics of the mediation process and the role of the mediator and the parties in it.

The mediator shall in particular ensure that prior to commencement of the mediation the parties have understood and expressly agreed the terms and conditions of the mediation

agreement including in particular any applicable provisions relating to obligations of confidentiality on the mediator and on the parties.

The mediation agreement shall, upon request of the parties, be drawn up in writing.

The mediator shall conduct the proceedings in an appropriate manner, taking into account the circumstances of the case, including possible power imbalances and the role of law, any wishes the parties may express and the need for a prompt settlement of the dispute. The parties shall be free to agree with the mediator, by reference to a set of rules or otherwise, on the manner in which the mediation is to be conducted.

The mediator, if he/she deems it useful, may hear the parties separately.

3.2 Fairness of the process

The mediator shall ensure that all parties have adequate opportunities to be involved in the process.

The mediator if appropriate shall inform the parties, and may terminate the mediation, if:

- a settlement is being reached that for the mediator appears unenforceable or illegal, having regard to the circumstances of the case and the competence of the mediator for making such an assessment, or
- the mediator considers that continuing the mediation is unlikely to result in a settlement.

3.3 The end of the process

The mediator shall take all appropriate measures to ensure that any understanding is reached by all parties through knowing and informed consent, and that all parties understand the terms of the agreement.

The parties may withdraw from the mediation at any time without giving any justification.

The mediator may, upon request of the parties and within the limits of his or her competence, inform the parties as to how they may formalise the agreement and as to the possibilities for making the agreement enforceable.

3.4 Fees

Where not already provided, the mediator must always supply the parties with complete information on the mode of remuneration which he intends to apply. He/she shall not accept a mediation before the principles of his/her remuneration have been accepted by all parties concerned.

4. CONFIDENTIALITY

The mediator shall keep confidential all information, arising out of or in connection with the mediation, including the fact that the mediation is to take place or has taken place, unless compelled by law or public policy grounds. Any information disclosed in confidence to mediators by one of the parties shall not be disclosed to the other parties without permission or unless compelled by law.

Draft proposal for a directive on certain aspects of mediation in civil and commercial matters

Article 1 – Objective and scope

1. The objective of this directive is to facilitate access to justice by promoting the use of mediation in civil and commercial matters and to ensure a sound articulation between mediation and judicial proceedings.

2. This directive shall apply in civil and commercial matters with the exception of

- (a) disputes which are not suitable for out-of-court settlements in accordance with the law applicable to the dispute in question, and
- (b) collective bargaining disputes related to employment contracts.

Article 2 – Definitions

1. “Mediation” shall mean any procedure, however named or referred to, where two or more parties to a dispute are assisted by a third party to reach an agreement on the settlement of the dispute, and regardless of whether the procedure is initiated by the parties, ordered by a court or prescribed by the national law of a Member State. It shall not include attempts made by the judge or the sitting court to settle a dispute within the course of judicial proceedings concerning that dispute.

2. “Third-party” shall mean any person conducting a mediation, regardless of the denomination or profession of that third party in the Member State concerned and of the way the third party has been appointed or requested to conduct the mediation.

Article 3 – Referral to mediation

1. A court before which an action is brought shall, when appropriate and having regard to all circumstances of the case, invite the parties to use mediation in order to settle the dispute. The court shall in any event have the right to require the parties to attend an information session on the use of mediation.

2. This directive is without prejudice to national legislation making the use of mediation compulsory or subject to incentives or sanctions, whether before or after judicial proceedings have started, provided that such legislation does not impede on the right of access to the judicial system, in particular in situations where one of the parties is resident in a Member State other than that of the court.

As part of its preparations of a proposal for a directive, the Directorate-General for Justice and Home Affairs is inviting all interested parties to submit their comments on

the attached preliminary draft text. The text has been prepared by the Directorate-General for Justice and Home Affairs as a basis for collecting comments only and does not prejudice the final form of the proposal to be decided by the Commission.

Article 4 – Ensuring the quality of mediation

1. Member States shall promote effective quality control mechanisms concerning the provision of mediation services.
2. Member States shall promote and support the training of third parties in order to allow parties in dispute to choose a third party who will be able to effectively conduct a mediation in the manner expected by the parties.
3. In order to contribute to the implementation of paragraph 1 of this Article the Commission and the Member States shall promote and facilitate the development of and adherence to voluntary codes of conduct by third parties and providers of mediation services, at Community as well as at national level.

Article 5 – Enforcement of agreements

1. Member States shall ensure that, upon request of the parties, a settlement agreement reached as a result of a mediation can be confirmed in a judgment, decision, authentic instrument or any other form that renders the agreement enforceable under national law, provided that the agreement is considered as a binding contract in accordance with the applicable law to the agreement.
2. Member States shall designate one or more courts or public authorities competent for receiving a request in accordance with paragraph 1 and communicate that information to the Commission.

Article 6 – Confidentiality of mediation

1. Third parties, as well as any other third person involved in the administration of mediation services, shall not in judicial proceedings give testimony or evidence regarding any of the following, unless otherwise agreed by the parties:
 - (a) An invitation by a party to engage in mediation or the fact that a party was willing to participate in mediation;
 - (b) Views expressed or suggestions made by a party in a mediation in respect of a possible settlement of the dispute;

- (c) Statements or admissions made by a party in the course of the mediation;
 - (d) Proposals made by the third party;
 - (e) The fact that a party had indicated its willingness to accept a proposal for a settlement made by the third party;
 - (f) A document prepared solely for purposes of the mediation.
2. Paragraph 1 of this Article applies irrespective of the form of the information or evidence referred to therein.
 3. The disclosure of the information referred to in paragraph 1 of this Article shall not be ordered by a court or other judicial authority and, if such information is offered as evidence in contravention of paragraph 1 of this Article, that evidence shall be treated as inadmissible. Nevertheless, such information may be disclosed or admitted in evidence to the extent required for the purposes of implementation or enforcement of an agreement reached as a direct result of the mediation.
 4. The provisions of paragraphs 1, 2 and 3 of this Article apply whether or not the judicial proceedings relate to the dispute that is or was the subject matter of the mediation.
 5. Subject to the limitations of paragraph 1 of this Article, evidence that is otherwise admissible in judicial proceedings does not become inadmissible as a consequence of having been used in a mediation.

Article 7 – Suspension of limitation periods

1. The running of the limitation period regarding the claim that is the subject matter of the mediation shall be suspended or interrupted as of when, after the dispute has arisen, the parties agree to use mediation, the use of mediation is ordered by a court, or an obligation to use mediation arises under the national law of a Member State.
2. Where the mediation has ended without a settlement agreement, the limitation period resumes running from the time the mediation ended without a settlement agreement, counting from the date of a declaration of one or both of the parties or of the third party that the mediation is terminated.

Article 8 – Implementing provisions

The Commission shall make public the information related to the competent courts and authorities designated by the Member States pursuant to Article 5(2).