Mediation in EU countries

Germany

Rather than going to court, why not try to settle your dispute through mediation? This is an alternative dispute resolution (ADR) measure whereby a mediator assists those involved in a dispute to reach an agreement.

Whom to contact?

Numerous organisations provide mediation services. Please see below for a non-exhaustive list of some of the larger associations:

Federal Association for Family Mediation (*Bundes-Arbeitsgemeinschaft für Familien-Mediation e.V.* (BAFM): Fritschestraße 22, 10585 Berlin, Germany)

Federal Association for Mediation (*Bundesverband Mediation e.V.* (BM): Wittestraße 30K, 13509 Berlin, Germany)

Federal Association for Economic and Professional Mediation (*Bundesverband Mediation in Wirtschaft und Arbeitswelt e.V.* (BMWA): Prinzregentenstraße 1, 86150 Augsburg, Germany)

Centre for Mediation (*Centrale für Mediation GmbH & Co.KG* (CfM): Gustav-Heinemann-Ufer 58, 50968 Cologne, Germany)

German Bar Association (Mediation working group at the German Bar Association (*Arbeitsgemeinschaft Mediation im Deutschen Anwaltverein*), Littenstraße 11, 10179 Berlin, Germany)

German Association for Mediation (*Deutsche Gesellschaft für Mediation* (DGM), Friedrich-Ebert-Straße 10, 59425 Unna, Germany)

German Forum for Mediation (*Deutsches Forum für Mediation* (DFfM), Hohe Straße 11, 04107 Leipzig, Germany)

International Mediation Centre for Family Conflict and Child Abduction (*Internationales Mediationszentrum für Familienkonflikte und Kindesentführung e.V.* (MiKK), Fasanenstraße 12, 10623 Berlin, Germany)

These associations will support parties wishing to use a mediator in finding a suitable mediator.

In which areas is recourse to mediation admissible and/or particularly common?

Generally speaking, when there is no formal legal requirement that a particular kind of dispute or matter must be dealt with in court, mediation is always permitted. The most common areas for mediation are family law, inheritance law and commercial law.

Are there specific rules to follow?

The Mediation Act (*Mediationsgesetz*) (Article 1 of the Act to promote mediation and other procedures for out-of-court dispute settlement of 21 July 2012, Federal Law Gazette I *(Bundesgesetzblatt I)*, p. 1577), entered into force in Germany on 26 July 2012. This was the first piece of legislation to formally regulate mediation services in Germany. The Act also transposes the European Mediation Directive into German law (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, OJ L 136, 24.5.2008, p. 3). The scope of the German Mediation Act exceeds the requirements of the European Directive; while the Directive provides only for cross-border civil and commercial disputes, the German Mediation Act covers all forms of mediation in Germany, irrespective of the form of dispute or the place of residence of the parties concerned.

The German Mediation Act only establishes general guidelines, as mediators and parties concerned need significant scope for manoeuvre during the mediation process. The Act initially defines the terms ‘mediation’ and ‘mediator’, to differentiate mediation from other forms of dispute settlement. According to the Act, mediation is a structured process whereby the implicated parties voluntarily and autonomously seek a form of mutual dispute settlement with the help of one or more mediators. Mediators are independent and impartial persons, without decision-making power, who guide the parties concerned through the mediation procedure. The Act deliberately avoids establishing a precise code of conduct for the mediation procedure. However, it does set out a number of disclosure obligations and restrictions on activity, to protect the independence and impartiality of the mediator profession. Moreover, legislation formally obliges mediators to maintain strict client confidentiality.

The Act promotes mutual dispute settlement by including a number of different incentives in the official procedural codes (e.g. the Code of Civil Procedure, *Zivilprozessordnung*). Henceforth, for example, when parties bring an action in a civil court, they will have to say whether they have already sought to resolve the issue via out-of-court measures, such as mediation, and whether there are specific reasons for not considering this course of action. The court may furthermore suggest that the parties try to settle the conflict via mediation, or another form of out-of-court settlement; if the parties refuse to apply this option, the Court may choose to suspend the proceedings. Legal aid for mediation is not envisaged for the time being. Under § 278(5) of the Code of Civil Procedure, the court may, for the purpose of the conciliation procedure and for further attempts at amicable settlement, refer the parties to a conciliation judge (*Güterichter*) who is designated specifically for that purpose and does not have decision-making powers. The conciliation judge may use all methods of dispute settlement, including mediation.

The Federal Government complied with its legal obligation to report back to the Bundestag (lower house of parliament) on the impact of the Act five years after its implementation by means of its report of 20 July 2017. The report can be found here. It shows that mediation as an alternative tool for dispute settlement in Germany is not yet used to the extent desirable. According to the report, there is no immediate need to adopt any legislative measures. On the basis of the findings in the report, the Federal Government will nonetheless examine how to better achieve the objective of promoting mediation pursued by the Mediation Act.

Information and training

General information is available on the website of the Federal Ministry of Justice (*Bundesministerium der Justiz*).

There is no legislation defining the professional profile of a mediator. Similarly, access to the profession is not restricted. Mediators are themselves responsible for ensuring that they have the necessary knowledge and experience (through suitable training and further development courses) to reliably guide parties through the mediation process. German law establishes the general knowledge, competencies and procedures that should be covered by suitable prior training. Any persons meeting these criteria may work as a mediator. There is no set minimum age, and no requirement for example that a mediator must have followed a university-level course of study.

If the parties would like to obtain guarantee that their mediator possesses qualified training and sufficient experience in the field, they are free to choose a certified mediator ('*zertifizierten' Mediator*). To this end, the Federal Ministry of Justice made use of its power to issue a statutory instrument and adopted the ‘Regulation on the training and further development of certified mediators’ (*Verordnung über die Aus- und Fortbildung von zertifizierten Mediatoren*), thus establishing more specific conditions for training to become a certified mediator and for further development courses for certified mediators, as well as requirements for training and further development establishments.

No formal initiative is envisaged for the time being.

Mediator training is currently offered by associations, organisations, universities, companies and individuals.

How much does mediation cost?

Mediation is not free of charge; payment is subject to agreement between the private mediator and the parties concerned.

There is no legislation governing fees for mediation, nor are there statistics on the costs. It is realistic to assume that hourly fees may range approximately from EUR 80 to EUR 250.

Is it possible to enforce a mediation agreement?

In principle, a mediation agreement can be declared enforceable with the assistance of a lawyer (as a lawyers' settlement) or a notary (as a public notarial act pursuant to §§ 796a to 796c and 794(1)(5) of the Code of Civil Procedure).

Related links

Federal Association for Family Mediation

Federal Association for Mediation

Federal Association for Economic and Professional Mediation

Centre for Mediation

German Bar Association

Last update: 16/05/2023

The national language version of this page is maintained by the respective Member State. The translations have been done by the European Commission service. Possible changes introduced in the original by the competent national authority may not be yet reflected in the translations. The European Commission accepts no responsibility or liability whatsoever with regard to any information or data contained or referred to in this document. Please refer to the legal notice to see copyright rules for the Member State responsible for this page.