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Family mediation

 Belgium

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(in civil and commercial
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Mediation is governed by the law of 21 February 2005. Family mediation, like any other mediation, can be carried out in the context of legal proceedings (legal mediation) or without legal proceedings (voluntary mediation).

A mediation process initiated at the request of one of the parties or proposed by the judge requires the agreement of the parties.

The parties agree on the appointment of a mediator (Article 1734, first subparagraph of the '*Code judiciaire*,' Judicial Code) who can be approved by the Federal Commission of Mediation. Either party can terminate the mediation at any time (Article 1729 Judicial Code). The mediation can be about all or part of the dispute (Article 1735(2) Judicial Code).

For all issues relating to the family court, at the time an application is made, the court clerk informs the parties of the possibility of resorting to mediation and gives them all the relevant information (Article 1253ter/1 Judicial Code). In divorce for irremediable breakdown, the judge can order the suspension of the procedure for period of not more than a month so that the parties can obtain information about mediation (Article 1255(6), second subparagraph, Judicial Code). However, the family court amicable settlement divisions are founded on the concept of reconciliation (Article 731 Judicial Code): the judges aim to reconcile the parties even if they do not make the final judgment in the case. Judges are not authorised under the judicial code to be mediators.

Mediation is carried out in complete confidentiality and the mediator is bound by professional secrecy (Article 1728(1) Judicial Code).

The mediation process has three phases:

- the appointment of the mediator by the judge
- the deferral of the case to a later date by the judge, who specifies the advance payment.
- the outcome of the mediation: if it is successful, the terms of the agreement are confirmed in writing by the parties (mediation agreement) and can be approved by the judge. If the mediation is unsuccessful, the parties can start (or continue) the court proceedings or jointly request the appointment of another mediator.

The amount of the fees and expenses and the terms of payment are agreed in advance by the parties and the mediator.

Link to a national website for a list of family mediators: <http://www.fbc-cfm.be/fr/trouver-un-mediateur>

Link to a national website providing information on family mediation or on general mediation: <http://www.fbc-cfm.be/fr/mediation>

Link to the national legislation on family mediation: <http://www.fbc-cfm.be/fr/content/national-0>

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