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Mediation in EU countries

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Portugal

Portugal



Mediation is one of the alternative dispute resolution (ADR) mechanisms in Portugal, together with arbitration and the small claims courts (*juílgados de paz* - justices of the peace). Law No^o 29/2013 of 19 April 2013 (the 'Mediation Law') establishes the national framework for mediation as one of the ADR mechanisms. The Law sets out the general principles applicable to mediation in Portugal – irrespective of the nature of the dispute that is the subject of mediation – and the legal rules on civil and commercial mediation, mediators and public mediation. The Mediation Law contains the following definitions:

- 'Mediation' is a form of alternative dispute resolution carried out by public or private entities by which two or more parties in a dispute try voluntarily to reach agreement with the help of a mediator;
- 'Mediator' is an impartial and independent third party, with no power to impose a course of action on the parties receiving mediation, who helps them reach a final agreement on the disputed matter.

Nature of mediation and mediation agreements

Recourse to mediation is entirely voluntary. The mediation procedure is confidential. This confidentiality may be waived only on the grounds of public policy – in particular to protect the best interests of a child – or where the physical or psychological integrity of a person is at stake, or where it is necessary in order to apply or enforce the agreement obtained through mediation, and only to the extent that is necessary in practice to protect the interested parties. The content of mediation sessions may not be used as evidence by a court.

The agreement obtained through mediation is enforceable provided that:

1. it relates to a dispute that can be the subject of mediation, and the law does not require ratification by a court;
2. the parties have the capacity to conclude such an agreement;
3. it was obtained through mediation carried out under the terms laid down by law;
4. its content does not infringe public policy;
5. it involved the participation of a mediator enrolled on the list of mediators kept by the Ministry of Justice. This list can be consulted [here](#).

A mediation agreement obtained through mediation in another EU Member State which complies with paragraphs a) and d) above is enforceable if it is also enforceable under that country's legal system.

Areas in which recourse to mediation is admissible and most common

Mediation is admissible in civil, commercial, family, employment and criminal matters. In these last three areas, there is a system of public mediation, with each area having its own specific rules.

The *juílgados de paz* have a mediation service that is competent to mediate in any disputes that can be the subject of mediation even if they fall outside the jurisdiction of the *juílgados de paz*.

Status of mediators

The Mediation Law contains a dedicated chapter laying down the rights and obligations of mediators (Articles 23 to 29). Mediators must also act in accordance with the [European Code of Conduct for Mediators](#).

There is no public body responsible for training mediators; they are trained by private bodies which are certified by the Directorate-General for Justice Policy (*Direção-Geral da Política de Justiça*) under Ministerial Implementing Order (*Portaria*) No 345/2013 of 27 November 2013.

Cost of mediation

To use the public family mediation service each party involved in the case is charged EUR 50, except in the following situations:

- where legal aid has been granted;
- where the case has been referred for mediation by decision of a judicial authority under Article 24 of the legal framework of the civil guardianship procedure (*Regime Geral do Processo Tutelar Cível*);
- where, at the parties' request, or with their consent, they have been referred for mediation by a decision of a judicial authority or by the commission for the protection of children and young people as part of pending child protection proceedings.

Use of the public criminal mediation service is free of charge.

To use the public employment mediation service, each party involved in the case must pay a fee of EUR 50, without prejudice to the granting of legal aid.

On top of these fees for using public mediation services, the mediators registered to provide those services also charge fees; the amounts are fixed but depend on whether or not an agreement is reached and what measures were taken to reach the agreement.

In the case of mediation in the *juizados de paz*, if an agreement is reached, each party is charged EUR 25.

The costs of private mediation are determined by the mediator chosen by the parties.

Other useful information

The government body responsible for regulating public mediation is the Directorate-General for Justice Policy (DGPJ), through its Alternative Dispute Resolution Office (*Gabinete de Resolução Alternativa de Litígios - GRAL*). [Directorate-General for Justice Policy](#). The DGPJ does not provide information on how to find a mediator, but it keeps [lists of mediators in the public mediation services](#). Under the legislation on public mediation, once the decision has been taken to go to mediation, a mediator is selected automatically.

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