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German

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Mediation in EU countries

Germany

Rather than going to court, why not try to solve 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. The government and justice practitioners of Germany are aware of the advantages of mediation.

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Who 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), Rosenthaler Straße 32, 10178 Berlin, Germany)

Federal Association for Mediation (Bundesverband Mediation e.V. (BM), Kirchweg 80, 34119 Kassel, Germany)

Federal Association for Economic and Professional Mediation (Bundesverband Mediation in Wirtschaft und Arbeitswelt e.V. (BMWVA), Prinzregentenstr. 1, 86150 Augsburg, Germany)

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

German Lawyers' Association (Arbeitsgemeinschaft Mediation im Deutschen Anwaltverein, Littenstraße 11, 10179 Berlin, Germany)

These associations will support parties wishing to use a 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?

On 26 July 2012, 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, published: *Bundesgesetzblatt I*, p. 1577, entered into force in Germany. 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, published: 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.

The Federal Government is legally required to report back to the Bundestag (lower house of parliament) on the impact of the Act five years after its implementation. It must also determine whether further legislative measures need to be introduced regarding the training and professional development of mediators.

Information and training

General information is available on the website of the **Federal Ministry of Justice** (*Bundesministeriums 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.

The Federal Ministry of Justice is empowered to make regulations introducing additional training and further development criteria for the profession. In such an instance, persons having successfully completed a form of training corresponding to the prerequisites of that legislation would henceforth be entitled to use the professional title 'certified mediator' (*zertifizierter Mediator*).

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 enforced with the assistance of a lawyer or notary (cf. sections 796a to 796c and section 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 Lawyers' Association](#)

Last update: 14/05/2021

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