

Mediation in Member States - Luxembourg



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Rather than go 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 the Grand Duchy of Luxembourg are aware of the advantages of mediation.

Who should I contact?

There is no central body responsible for the regulation of mediators.

In addition to mediation in specific sectors (banking, insurance, etc.), and apart from the [Ombudsman](#) responsible for mediation in administrative matters and the [Ombudskomitee fir t'Rechter vun de Kanner](#) (Ombudsman Committee for the Rights of the Child), the following legal associations are engaged in mediation:

- [Luxembourg Association of Mediation and Approved Mediators](#) (*Association luxembourgeoise de la médiation et des médiateurs agréés* — ALMA asbl);
- [The Centre for Mediation of the Luxembourg Bar](#) (*Centre de médiation du Barreau de Luxembourg* — CMBL asbl);
- [The Mediation Centre](#) (*Centre de médiation*) (asbl);
- [Family Welfare Mediation Centre](#) (*Centre de médiation SocioFamiliale*, run by the Pro Familia foundation);

In which areas of law is mediation possible or most common?

Mediation is admissible mainly in:

- Administrative cases,
- Criminal cases,
- Family cases,
- Commercial cases,
- Disputes between neighbours.

Civil and commercial mediation is a consensual and confidential process conducted by an independent, impartial and competent mediator. It may relate to the whole dispute or just part of it. It comprises both mediation by agreement and court-referred mediation, and family mediation plays an important role.

In **mediation by agreement** (*médiation conventionnelle*) either party may suggest to the other that they take the matter to mediation, at any stage of the legal proceedings, independently of any court or arbitration procedure, as long as the pleadings have not ended.

In **court-referred mediation** (*médiation en justice* or *médiation judiciaire*) a civil, commercial or family dispute has already been brought before a court; the court may at any point refer the case to mediation, as long as pleadings have not ended. This does not apply to cases before the Court of Cassation or proceedings for interim measures. The court may ask the parties to enter mediation on its own initiative, or at the joint request of the parties themselves. Either way, the consent of the parties is required. In a limited number of clearly defined cases which raise a question of family law, the court may propose a mediation measure to the parties. It will then organise an information session free of charge, to explain the principles, procedure and effects of mediation.

In **criminal cases** the State Prosecutor may, on certain conditions and before deciding whether to bring a prosecution, decide to use mediation if it is likely:

- to provide reparation to the victim;
- to resolve the difficulties arising from the offence; or
- to contribute to the rehabilitation of the offender.

The use of mediation does not rule out a subsequent decision to bring a prosecution, for example if the terms of mediation are breached.

Are there specific rules to follow?

Recourse to mediation is entirely voluntary.

Mediation in administrative matters, mediation in criminal cases, and mediation in particular sectors are all governed by specific legislation.

Information and training

Mediator in criminal matters

The Act of 6 May 1999 and the Grand-Ducal Regulation of 31 May 1999 introduced the system of mediation in criminal matters. Before taking a decision on bringing a prosecution, the State Prosecutor may decide to use mediation if he or she considers that this is likely to provide reparation to the victim, resolve the difficulties arising from the offence or contribute to the rehabilitation of the offender. If the State Prosecutor decides to use mediation, he or she may appoint as mediator anyone approved for that purpose.

Approval:

Anyone wishing to be approved as a mediator in criminal matters may apply to the Minister of Justice, who will decide on approval after consulting the General State Prosecutor.

Mediator in civil and commercial matters

The Act of 24 February 2012 creates a national legislative framework for mediation in civil and criminal matters by adding a new title to the New Code of Civil Procedure. The Act transposes 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. It takes up the principles laid down in the Directive for cross-border disputes and applies them to national disputes too. This Act is supplemented by the Grand-Ducal Regulation of 25 June 2012 laying down the approval procedure for mediators for the purposes of court-referred and family mediation, the programme of specific training in mediation and the holding of an information session free of charge.

The mediator is a third party whose job is to interview the parties together, or if necessary separately, with the aim of resolving their dispute. The mediator does not impose a solution on the parties, but encourages them to agree on an amicable negotiated settlement.

A mediator providing court-referred and family mediation services may be approved or unapproved. An approved mediator is a natural person accredited for this role by the Minister of Justice.

In mediation by agreement and in cross-border disputes the parties may use a mediator who has not been approved.

Approval:

The Minister of Justice is responsible for approving mediators. In civil and commercial matters mediators do not require approval to provide mediation by agreement.

Any natural person may apply for approval if he or she fulfils the conditions (1) laid down by the Act of 24 February 2012 which incorporated mediation in civil and commercial matters into the New Code of Civil Procedure and (2) set out in the Grand-Ducal Regulation of 25 June 2012 laying down the approval procedure for mediators for the purposes of court-referred and family mediation, the programme of specific training in mediation and the holding of an information session free of charge.

Under Directive 2008/52/EC, referred to above, and Article 1251-1(1) subparagraph 3 of the Act of 24 February 2012 on mediation, providers of mediation services who meet equivalent or essentially comparable requirements in another Member State of the European Union are exempt from approval in the Grand Duchy of Luxembourg.

Approval is granted for an indefinite period.

Article 1251-3(2) of the New Code of Civil Procedure and the Grand-Ducal Regulation of 25 June 2012 referred to above set out the conditions which must all be met by natural persons wishing to obtain approval:

1. they must provide guarantees of good repute, competence, training, independence and impartiality;
2. they must produce an extract from the Luxembourg police records or a similar document issued by the competent authorities in the country of residence where they have resided for the past five years;
3. they must enjoy civil rights and be entitled to exercise political rights; and
4. they must have specific training in mediation in the form of:
 - a Master's degree in mediation awarded by the University of Luxembourg or a university, a higher education institution or another establishment offering the same level of training, designated in accordance with the laws, regulations or administrative provisions of a Member State of the European Union; or
 - three years' professional experience supplemented by specific training in mediation, as laid down in Article 2 of the Grand-Ducal Regulation of 25 June 2012; or
 - training in mediation recognised by a Member State of the European Union.

The University of Luxembourg offers a specific [training programme \(a Master's degree\) in mediation](#).

What is the cost of mediation?

Mediation is often free. If a fee is charged it will be clearly indicated.

In the case of **mediation by agreement**, mediators' fees are set freely. In such case the fees and costs are divided equally between the parties, unless they agree otherwise.

In the case of **court-referred mediation and family mediation**, the fees are set by Grand-Ducal regulation.

Is it possible to enforce an agreement resulting from mediation?

Agreements arising from **civil and commercial mediation** have the same probative value as a court decision. Regardless of whether such mediation agreements were reached in Luxembourg or in another European Union Member State, they are enforceable within the European Union under Directive 2008/52/EC. The approval of all or part of the agreement by the competent court confers enforceability.

The Directive is transposed by the Act of 24 February 2012, which places mediation on the same footing as existing judicial procedures.

Related links

[Ministry of Justice](#)

[Luxembourg Association of Mediation and Authorised Mediators \(ALMA asbl\)](#)

[The Centre for Mediation of the Luxembourg Bar \(CMBL\)](#)

[The Mediation Centre](#)

[The Family Welfare Mediation Centre](#)

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Last update: 20/12/2018