

Public consultation on the application of Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters

Fields marked with * are mandatory.

Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters (hereafter the "Mediation Directive") has as its objective to facilitate access to alternative dispute resolution and to promote the amicable settlement of disputes, by encouraging the use of mediation and by encouraging a balanced relationship between mediation and judicial proceedings. It applies in cross-border disputes to civil and commercial matters.

The Mediation Directive seeks to ensure the quality of mediation through codes of conduct, training of mediators and other quality standards, facilitate the recourse to mediation, ensure the enforceability of agreements resulting from mediation, preserve the confidentiality of information concerning a mediation process, ensure that limitation or prescription periods do not expire during the mediation process, ensure the availability to the general public of information on how to contact mediators.

Article 11 of the Mediation Directive foresees that the Commission will submit a report on the application of the Directive. In preparing its report, the Commission considers it appropriate to consult the public. This questionnaire is addressed to the broadest public possible, as it is important for the European Commission to obtain views and input from all interested individuals, mediators, legal practitioners, academics, organisations, courts, national authorities and Member States. This approach is in line with the Better Regulation principles of the Commission. Even if you are not an expert, feel free to answer as many questions as you consider appropriate.

You have the option to reply only to some of the questions. In order to best analyse the responses received, there is a need for a limited amount of background information about you as a respondent.

This questionnaire can be filled out online; you can also upload a separate document with your additional comments at the end of the questionnaire.

Responsible service: European Commission, DG Justice, Unit A1 – Civil Justice Policy

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All contributions will be published on the website of the European Commission, provided that respondents clearly identify themselves. Please read the specific privacy statement attached to this consultation for information on how your personal data and contribution will be dealt with.

BACKGROUND OF THE RESPONDENT

* Please indicate your role for the purposes of this consultation

- Mediator
- Judge
- Attorney
- Other legal practitioner
- Organisation
- Public authority
- Academic
- Member State
- Private individual
- Other

* Please indicate the Member State in which you are located.

- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Ireland
- Italy
- Latvia
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Poland
- Portugal
- Romania
- Slovakia
- Slovenia
- Spain
- Sweden
- United Kingdom
- Other

Please specify the country

Spain, Portugal, France, Norway, Sweden, Czech Republic

* Have you had practical experience with the application of the Directive?

- Yes
- No

* If yes, in which capacity?

- Mediator
- Judge
- Attorney
- Other legal practitioner
- Organisation
- Public authority
- Member State
- Private individual
- Other

* Please provide your contact information: Name, organisation, address, e-mail

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* Please indicate whether your answers refer to:

- Your Member State
- The EU as a whole

1. Objective

The objective of the Mediation Directive is to facilitate access to alternative dispute resolution and to promote the amicable settlement of disputes by encouraging the use of mediation and by ensuring a balanced relationship between mediation and judicial proceedings (Article 1(1) of the Directive).

* Q.1 Do you consider that the Directive has reached its objective?

- Yes
- No

* Please explain

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Eventhough it only concerns consumers, the 2013 ADR Directive promotes
and facilitates access to alternative dispute resolution.
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2. Mediators

The Mediation Directive defines a mediator in broad terms as any third person who is asked to conduct a mediation in an effective, impartial and competent way, regardless of the denomination or profession of that third person in the Member State concerned and of the way in which the third person has been appointed or requested to conduct the mediation.

* Q.2 Do you consider that this definition has been effectively implemented in your Member State/in the EU?

- Yes
 No

3. Quality of Mediation

a) Codes of Conduct

Member States shall encourage the development of and adherence to voluntary codes of conduct by mediators and organisations providing mediation services (Article 4(1) of the Directive).

Q.3 Do you consider that this encouragement has been effective in your Member State/in the EU?

- Yes
 No

b) Training of Mediators

Member States shall encourage the initial and further training of mediators in order to ensure that the mediation is conducted in an effective, impartial and competent way (Article 4(2) of the Directive).

Q.4 Do you consider that this encouragement has been effective in your Member State/in the EU?

- Yes
 No

c) Other Quality Standards

Member States shall encourage other effective quality control mechanisms concerning the provision of mediation services (Article 4(1) of the Directive).

Most Member States have introduced obligatory accreditation procedures for mediators and run registries for mediators. Currently, there are no European-wide quality standards.

Q.5 Do you consider that this encouragement has been effective in your Member State/in the EU?

- Yes
 No

Please explain

Q.6 Are you in favour of developing European-wide quality standards for the provision of mediation services?

- Yes
 No

Please explain

Each member state should define its own standards and adapt them to its particular national context. European Union should only promote and facilitate the share of good practices

4. Mediation and Courts

A court before which an action is brought may invite the parties to use mediation in order to settle the dispute. The court may also invite the parties to attend an information session on the use of mediation (Article 5(1) of the Directive).

Q.7 Do you consider practices in your Member State/in the EU in this regard as effective?

- Yes
 No

Please explain:

5. Compulsory Mediation, Incentives, Sanctions

National legislation can make the use of mediation compulsory or subject to incentives or sanctions, provided that such legislation does not prevent the parties from exercising their right of access to the judicial system (Article 5(2) of the Directive).

Many Member States have regulated the financial aspects of mediation in different ways, for instance by setting thresholds for fees or establishing financial incentives or sanctions. Some Member States (in particular Italy) have made mediation in some respects compulsory.

Q.8 Are you in favour of a more compulsory approach towards mediation? If so, please explain which means (compulsory mediation, incentives, sanctions) you consider most effective and in which cases/situations such means should apply.

- Yes
- No

6. Enforceability

Member States shall ensure that it is possible for the parties, or for one of them with the explicit consent of the others, to request that the content of a written agreement resulting from mediation be made enforceable (Article 6(1) of the Directive).

Q.9 Do you consider practices in your Member State/in the EU in this regard as effective?

- Yes
- No

7. Confidentiality

Given that mediation is intended to take place in a manner which respects confidentiality, Member States shall ensure that – in principle - neither mediators nor those involved in the administration of the mediation process are compelled to give evidence in judicial proceedings or arbitration regarding information concerning a mediation process (Article 7(1) of the Directive).

Q.10 Do you consider practices in your Member State/in the EU in this regard as effective?

- Yes
- No

8. Limitation and prescription periods

Member States shall ensure that parties who choose mediation in an attempt to settle a dispute are not subsequently prevented from initiating judicial proceedings or arbitration in relation to that dispute by the expiry of limitation or prescription periods during the mediation process (Article 8(1) of the Directive).

Q.11 Do you consider practices in your Member State/in the EU in this regard as effective?

- Yes
 No

Please explain

9. Information for the general public

Member States shall encourage the availability to the general public, in particular on the Internet, of information on how to contact mediators and organisations providing mediation services (Article 9 of the Directive).

Q.12 Do you consider that this encouragement has been effective in your Member State/in the EU? If so, please explain which mechanisms have proven to be most effective.

- Yes
 No

Please explain which mechanisms have proven to be most effective:

The use of internet webpages

10. Possible Improvements

Q.13 Are there any aspects of the Mediation Directive that could be improved?

Before any judicial case, a mediation procedure (as an structured amicable settlement process) could always be proposed. It would also be important to communicate about mediation and the different actors on the mediation scene with tribunals and courts.

Q.14 What steps could best be taken to improve the application of the Directive or its implementation?

11. General Context

Q.15 What steps could best be taken to improve a culture of mediation and its take-up?

Emphasize on mediation virtues compared to judicial settlement of disputes.
Make companies aware of their responsibility in their dispute settlement with stakeholders and encourage them to set internal mediation processes

Q.16 What role has mediation been given in the reform of the functioning of national systems (in your Member State/in the EU) in offering to citizens and businesses additional means of resolving disputes and thereby contributing to the overall effectiveness of the justice system?

Generalization of mediation not only helps judicial system being more efficient but also contributes to social, industrial, economical efficiency.
From EEMG experience, mediation contributes to companies progress to better satisfy their customers

Q.17 Could you provide data on the take-up and use of mediation, including, if available, the success-rate in resolving disputes, and on the average length of such proceedings. If possible, please also indicate the proportion of cross-border proceedings and subject matter to which the mediation relates (i.e. family and/or commercial disputes)?

If you wish to upload a file with your answers or comments:

THANK YOU VERY MUCH FOR YOUR PARTICIPATION!

Contact

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