

Act to Promote Mediation and other Extra-Judicial Conflict Resolution Processes*

of 21 July 2012

The Bundestag has adopted the following Act:

Article 1 **Mediation Act** **(*MediationsG*)**

Section 1 **Definitions**

(1) Mediation is a confidential and structured process in which the parties strive, on a voluntary basis and autonomously, to achieve an amicable resolution of their conflict with the assistance of one or more mediators.

(2) A mediator is an independent and impartial person without any decision-making power who guides the parties through the mediation.

Section 2 **Process; tasks of the mediator**

(1) The mediator shall be selected by the parties.

(2) The mediator shall satisfy himself that the parties have understood the basic principles of the mediation process and the way in which it is conducted, and that they are participating in mediation voluntarily.

(3) The mediator's obligations shall be equal vis-à-vis all parties. He shall promote communication between the parties and shall ensure that the parties are integrated into the mediation process in an appropriate and fair manner. He can conduct separate discussions with the parties subject to agreement thereto by all the parties.

(4) Only with the consent of all parties can third parties become involved in mediation.

(5) The parties can terminate mediation at any time. The mediator can terminate the mediation, especially when he is of the opinion that autonomous communication or settlement between the parties is not to be anticipated.

* This Act serves to transpose 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 (Official Journal of the European Union L 136 of 24/5/2008, page 3).

(6) In the event that a settlement is reached by the parties, the mediator shall make efforts to ensure that they conclude the agreement in awareness of the underlying circumstances and that they understand the content of the agreement. He shall inform those parties participating in mediation without availing themselves of specialist advice of the possibility of having the agreement examined by external advisers if necessary. Subject to the parties' consent, the settlement reached can be recorded in the form of a final agreement.

Section 3

Disclosure obligations; limitations on practice

(1) The mediator shall disclose all circumstances to the parties which could impede his independence or impartiality. If such circumstances exist he shall be permitted to act as a mediator only if the parties explicitly agree thereto.

(2) A person who has acted in the same matter for one of the parties prior to the mediation shall not be permitted to act as a mediator. The mediator shall also not be permitted to act in the same matter for either of the parties either during or subsequent to mediation.

(3) A person shall not be permitted to act as mediator if another person who is part of the same professional cooperative or office-sharing arrangement has acted for one of the parties in the same matter before the mediation. Such a person shall also not be permitted to act for either of the parties in the matter either during or subsequent to mediation.

(4) The restrictions contained in subsection 3 shall not apply in individual cases where the parties involved, having been given comprehensive information, give their consent, and where this does not conflict with considerations relating to the administration of justice.

(5) The mediator shall be bound to provide the parties with information about his professional background, his training and his experience in the field of mediation if they so request.

Section 4

Duty of confidentiality

The mediator and the persons involved in conducting the mediation process shall be subject to a duty of confidentiality unless otherwise provided by law. This duty shall relate to all information of which they have become aware in the course of performing their activity. Notwithstanding other legal provisions regarding the duty of confidentiality, this duty shall not apply where

1. disclosure of the content of the agreement reached in the mediation process is necessary in order to implement or enforce that agreement,
2. disclosure is necessary for overriding considerations of public policy (*ordre public*), in particular when required to avert a risk posed to a child's well-being or to prevent serious harm to the physical or mental integrity of a person, or
3. facts are concerned that are common knowledge or that are not sufficiently significant to warrant confidential treatment.

The mediator shall inform the parties about the extent of his duty of confidentiality.

Section 5

Initial and further training of the mediator; certified mediator

(1) The mediator himself shall be responsible for ensuring that, by virtue of appropriate initial training and regular further training, he possesses the theoretical knowledge and practical experience to enable him to guide the parties through mediation in a competent manner. Suitable initial training shall impart the following in particular:

1. knowledge about the fundamentals of mediation as well as the process and framework conditions therefor,
2. negotiation and communication techniques,
3. conflict competence,
4. knowledge about the law governing mediation and the role of the law in mediation, and
5. include practical exercises, role play and supervision.

(2) A person shall be permitted to call himself a certified mediator if he has completed initial training as a mediator in fulfilment of the requirements of the statutory instrument pursuant to section 6.

(3) Certified mediators shall undergo further training in accordance with the requirements of the statutory instrument pursuant to section 6.

Section 6

Authorisation to issue statutory instruments

The Federal Ministry of Justice shall be authorised to enact by statutory instrument and without the approval of the Bundesrat more specific provisions on the initial training for certified mediators and on further training for certified mediators as well as on the standards applicable to initial and further training institutions. The statutory instrument pursuant to the first sentence can set out the following in particular:

1. more specific provisions on the content of initial training, within the framework of which the initial-training elements listed in section 5 subsection (1), second sentence, must be imparted, and on the practical experience required;
2. more specific provisions on the content of further training;
3. minimum learning hours for initial and further training;
4. intervals at which further training must be undergone;
5. requirements for teaching staff deployed in initial and further training institutions;
6. provisions stipulating that, and indicating how, an initial and further training institution shall certify participation in an initial and further training programme;
7. rules on the completion of initial training;
8. transitional provisions for persons who were already working as mediators prior to the entry into force of this Act.

Section 7

Academic research projects; financial support of mediation

(1) The Federation and the *Länder* can conclude agreements on academic research projects in order to ascertain the impact of financial support of mediation schemes for the *Länder*.

(2) Support can be granted within the framework of research projects upon application by a person seeking legal redress if, due to that person's personal and financial circumstances, the costs of mediation cannot, or can only partially, be paid, or can be paid only in instalments by that person, and the intended pursuit of legal action or legal defence does not appear to be vexatious. The court having jurisdiction for the proceedings shall decide on the application, subject to the proviso that a research project is being conducted at this court. The decision shall be incontestable. The details shall be governed by the agreements reached between the Federal Government and the *Länder* pursuant to subsection (1).

(3) The Federal Government shall, after completion of the academic research projects, inform the German Bundestag of the experience gathered and the findings arrived at.

Section 8

Evaluation

(1) The Federal Government shall report to the German Bundestag by 26 June 2017 on the impact of this Act and the development of mediation in Germany, and on the situation of

initial and further training for mediators, also taking into account the opening clauses for the *Länder* under the law governing costs. In particular, the report shall examine and appraise whether for reasons of quality assurance and consumer protection further legislative measures in the field of initial and further training for mediators are required.

(2) So far as the need for legislative measures becomes apparent from the report, the Federal Government shall propose such measures.

Section 9

Transitional provision

(1) Mediation in a civil matter, being offered at a court prior to 26 July 2012 and conducted during court proceedings by a judge with no decision-making power in the matter concerned, can continue to be conducted until 1 August 2013 with the designation (court mediator) used so far.

(2) Subsection (1) shall apply *mutatis mutandis* to mediation within the courts of administrative jurisdiction, of social jurisdiction, of fiscal jurisdiction and of labour jurisdiction.

Article 2

Amendment of the Code of Civil Procedure

The Code of Civil Procedure in the version published on 5 December 2005 (Federal Law Gazette I p. 3202; 2006 I p. 431; 2007 I p. 1781), last amended by Article 3 of the Act of 22 December 2011 (Federal Law Gazette I p. 3044), shall be amended as follows:

1. In the table of contents the following heading shall be added after the heading of section 278:

“Section 278a Mediation, extra-judicial conflict resolution”.

2. Section 41 shall be amended as follows:

- a) The full stop at the end of number 7 shall be replaced by a semicolon.
- b) The following number 8 shall be added:

“8. in matters in which he has been involved in a mediation process or another extra-judicial conflict resolution process.”

3. The following sentence shall be added to section 159 subsection (2):

“A protocol of a conciliation hearing or further attempts at conciliation before a conciliation judge pursuant to section 278 subsection (5) shall be kept only upon concurring applications made by both parties.”

4. Section 253 subsection (3) shall be worded as follows:

“(3) The statement of claim should also contain:

1. a declaration as to whether, prior to the filing of the action, mediation or another extra-judicial conflict resolution process took place, as well as a statement as to whether there are any grounds that represent a hindrance thereto;
2. a declaration of the value of the subject-matter in dispute if the jurisdiction of the court depends on this and the subject-matter of the dispute does not constitute a

specific sum of money;

3. a statement as to whether there are any reasons which might preclude adjudication of the matter by a judge sitting alone.”

5. Section 278 subsection (5) shall be worded as follows:

“(5) The court can refer the parties for the conciliation hearing and for further attempts at conciliation to a judge designated for that purpose and having no decision-making power in the matter (conciliation judge). The conciliation judge can apply all methods of conflict resolution including mediation.”

6. The following section 278a shall be inserted after section 278:

“Section 278a
Mediation, extra-judicial conflict resolution

(1) The court can invite the parties to pursue mediation or another extra-judicial conflict resolution process.

(2) If the parties decide to pursue mediation or another extra-judicial conflict resolution process, the court shall order a stay of the proceedings.”

Article 3

Amendment of the Act on Procedure in Family Matters and in Non-Contentious Matters

The Act on Procedure in Family Matters and in Non-Contentious Matters of 17 December 2008 (Federal Law Gazette I pp. 2586, 2587), last amended by [Article 4 of the Act of 15 March 2012](#) (Federal Law Gazette 2012 II p. 178), shall be amended as follows:

1. The table of contents shall be amended as follows:

a) The following heading shall be added after the heading of section 36:

“Section 36a Mediation, extra-judicial conflict resolution”.

b) In the heading of section 135, the term “dispute resolution” shall be replaced by the

term “conflict resolution”.

2. The following sentence shall be inserted after the second sentence of section 23 subsection (1):

“In appropriate cases, the application should contain a declaration as to whether, prior to the filing of the application, mediation or another extra-judicial conflict resolution process took place, as well as a statement as to whether there are any grounds that represent a hindrance thereto.”

3. The following sentence shall be inserted after the second sentence of section 28 subsection (4):

“The attempt at reaching an amicable agreement before a conciliation judge pursuant to section 36 subsection (5) shall only be recorded in a memorandum if all participants consent to this.”

4. The following subsection (5) shall be added to section 36:

“(5) The court can refer the participants for the attempt at reaching an amicable agreement to a judge designated for that purpose and having no decision-making power in the matter (conciliation judge). The conciliating judge can apply all methods of conflict resolution including mediation. Subsections (1) to (4) shall apply *mutatis mutandis* to proceedings before the conciliation judge.”

5. The following section 36a shall be inserted after section 36:

“Section 36a

Mediation, extra-judicial conflict resolution

(1) The court can invite individual or all parties to pursue mediation or another extra-judicial conflict resolution process. In matters concerning protection against violence, such concerns as merit protection of the person affected by violence shall be safeguarded.

(2) If the participants decide to pursue mediation or another extra-judicial conflict resolution process, the court shall suspend the proceedings.

(3) Reservations of the court regarding orders or authorisations shall remain

unaffected by the conduct of mediation or of another extra-judicial conflict resolution process.”

6. Section 81 subsection (2) no. 5 shall be worded as follows:

“5. the participant has failed to comply with a judicial order to participate in an information meeting, free of charge, with regard to mediation or another possibility of extra-judicial conflict resolution pursuant to section 156 subsection (1) third sentence, or with a judicial order to participate in a consultation pursuant to section 156 subsection (1) fourth sentence, where the party has not given sufficient grounds to excuse this.”

7. Section 135 shall be amended as follows:

- a) In the heading, the words “dispute resolution” shall be replaced by the words “conflict resolution”.
- b) Subsection (1) shall be amended as follows:
 - aa) The subsection designation “(1)” shall be deleted.
 - bb) In the first sentence, the words “dispute resolution” shall be replaced by the words “conflict resolution”.
- c) Subsection 2 shall be repealed.

8. In section 150 subsection (4) second sentence, the reference to “subsection (1)” shall be deleted following the reference to “section 135”.

9. The following subsection (4) shall be added to section 155:

“(4) If the court has suspended proceedings for the conduct of mediation or another extra-judicial conflict resolution process pursuant to subsection (1), it shall as a rule resume proceedings after three months if the participants do not reach an amicable resolution.”

10. Section 156 shall be amended as follows:

- a) Subsection (1) shall be amended as follows:
 - aa) The third sentence shall be worded as follows:

“The court can order that the parents participate, either individually or

together, in an information meeting, free of charge, with regard to mediation or another possibility of extra-judicial conflict resolution with a person or provider designated by the court and that they submit confirmation thereof."

- bb) In the fourth sentence, the word "also" shall be inserted after the word "can".
- cc) In the fifth sentence, the words "the order shall" shall be replaced by the words "the orders pursuant to the third and fourth sentences shall".
- b) In subsection (3), second sentence, a comma and the words "in an information meeting, free of charge, with regard to mediation or another possibility of extra-judicial conflict resolution" shall be inserted after the word "consultation".

Article 4

Amendment of the Labour Courts Act

The Labour Courts Act in the version published on 2 July 1979 (Federal Law Gazette I p. 853, 1036), last amended by Article 6 subsection (5) of the Act of 24 November 2011 (Federal Law Gazette I p. 2302), shall be amended as follows:

1. The following subsection (6) shall be added to section 54:

"(6) The court can refer the parties for the conciliation hearing and for the continuation thereof to a judge designated for that purpose and having no decision-making power in the matter (conciliation judge). The conciliation judge shall be able to apply all methods of conflict resolution including mediation."

2. The following section 54a shall be inserted after section 54:

"Section 54a

Mediation, extra-judicial conflict resolution

(1) The court can invite the parties to pursue mediation or another extra-judicial conflict resolution process.

(2) If the parties decide to pursue mediation or another extra-judicial conflict resolution process, the court shall order a stay of the proceedings. Upon application by one of the parties, a date is to be set down for the oral hearing. Otherwise, the court shall resume the proceedings after three months unless the parties set forth in agreement that the pursuit of mediation or an extra-judicial conflict resolution process is still ongoing."

3. Section 55 subsection (1) no. 8 shall be worded as follows:

“8. on the suspension and the order for a stay of proceedings;”.

4. In section 64 subsection (7) the words “of section 54 subsection (6), of section 54a,” shall be inserted after the words “of sections 52, 53, 55 subsection (1) nos. 1 to 9, subsections (2) and (4),” and the words “conciliation judge, mediation and extra-judicial conflict resolution,” shall be inserted after the words “honorary judges,”.
5. In section 80 subsection (2) first sentence, the words “mediation and extra-judicial conflict resolution,” shall be inserted after the words “honorary judges,”.
6. In section 83a subsection (1) the words “or the conciliation judge” shall be inserted after the words “or the presiding judge”.
7. In section 87 subsection (2) first sentence, the words “conciliation judges, mediation and extra-judicial conflict resolution,” shall be inserted after the words “honorary judges,”.

Article 5

Amendment of the Social Courts Act

In section 202, first sentence, of the Social Courts Act in the version published on 23 September 1975 (Federal Law Gazette I p. 2535), last amended by Article 8 of the Act of 22 December 2011 (Federal Law Gazette I p. 3057), the words “including section 278 subsection (5) and section 278a” shall be inserted after the words “Code of Civil Procedure”.

Article 6

Amendment of the Code of Administrative Court Procedure

In section 173, first sentence, of the Code of Administrative Court Procedure in the version published on 19 March 1991 (Federal Law Gazette I p. 686), last amended by Article 5, paragraph 2, of the Act of 24 February 2012 (Federal Law Gazette I p. 212), the words “including section 278 subsection (5) and section 278a” shall be inserted after the words “Code of Civil Procedure”.

Article 7

Amendment of the Court Costs Act

The Court Costs Act of 5 May 2004 (Federal Law Gazette I p. 718), last amended by Article 10 of the Act of 24 November 2011 (Federal Law Gazette I p. 2302), shall be amended as follows:

1. The following section 69b shall be inserted before section 70:

Section 69b

Authorisation to issue statutory instruments

The governments of the *Länder* shall be authorised to stipulate by statutory instrument that the procedural costs to be collected by the courts of the *Länder* shall be further reduced beyond the reductions stipulated in numbers 1211, 1411, 5111, 5113, 5211, 5221, 6111, 6211, 7111, 7113 and 8211 of the schedule of costs, or be waived, if the entire proceedings are brought to an end by withdrawal of the action or of the application subsequent to mediation or to another extra-judicial conflict resolution process and if it was set out in the statement of claim or application that mediation or another extra-judicial conflict resolution process is being pursued or is intended, or if the court has invited the parties to pursue mediation or another extra-judicial conflict resolution process. The first sentence shall apply *mutatis mutandis* to the procedural costs to be collected by the courts of the *Länder* for appellate remedies; the written pleading with which the appellate remedy is sought shall take the place of the statement of claim or application.

2. Under number 1640 of Annex 1 (schedule of costs), in the fee element column the words “section 148 subsections (1) and (2)” shall be replaced by the words “section 148 subsections (1) and (2) of the Share Capital Companies and Partnerships Act.

Article 7a

Amendment of the Act on Court Costs in Family Matters

In the Act on Court Costs in Family Matters of 17 December 2008 (Federal Law Gazette I pp. 2586, 2666), last amended by Article 10 of the Act of 23 May 2011 (Federal Law Gazette I p. 898), the following section 61a shall be inserted before section 62:

“Section 61a

Authorisation to issue statutory instruments

The governments of the *Länder* shall be authorised to stipulate by statutory instrument

that the procedural costs to be collected by the courts of the *Länder* in those proceedings that are instituted only upon application shall be further reduced beyond the reductions foreseen in the schedule of costs for cases where the application is withdrawn, or be waived, if the entire proceedings are, or, in the case of joint proceedings pursuant to section 44, an ancillary matter is brought to an end by withdrawal of the application subsequent to mediation or to another extra-judicial conflict resolution process and if it was set out in the application that mediation or another extra-judicial conflict resolution process is being pursued or is intended, or if the court has invited the parties to pursue mediation or another extra-judicial conflict resolution process. The first sentence shall apply *mutatis mutandis* to procedural costs to be collected by the Higher Regional Courts in complaint proceedings; the written pleading with which the complaint is lodged shall take the place of the application.”

Article 8

Amendment of the Code of Finance Court Procedure

In section 155, first sentence, of the Code of Finance Court Procedure in the version published on 28 May 2001 (Federal Law Gazette I pp. 442, 2262; 2002 I p. 679), last amended by Article 2, paragraph 35, of the Act of 22 December 2011 (Federal Law Gazette I p. 3044), the words “including section 278 subsection (5) and section 278a” shall be inserted after the words “Code of Civil Procedure”.

Article 9

Entry into Force

This Act shall enter into force on the day following its promulgation.