

As part of its preparations of a proposal for a directive, the Directorate-General for Justice and Home Affairs is inviting all interested parties to submit their comments on the attached preliminary draft text. The text has been prepared by the Directorate-General for Justice and Home Affairs as a basis for collecting comments only and does not prejudge the final form of the proposal to be decided by the Commission.

**Preliminary draft proposal for a directive on
certain aspects of mediation in civil and commercial matters**

Article 1 – Objective and scope

1. The objective of this directive is to facilitate access to justice by promoting the use of mediation in civil and commercial matters and to ensure a sound articulation between mediation and judicial proceedings.
2. This directive shall apply in civil and commercial matters with the exception of
 - (a) disputes which are not suitable for out-of-court settlements in accordance with the law applicable to the dispute in question, and
 - (b) collective bargaining disputes related to employment contracts.

Article 2 – Definitions

1. “Mediation” shall mean any procedure, however named or referred to, where two or more parties to a dispute are assisted by a third party to reach an agreement on the settlement of the dispute, and regardless of whether the procedure is initiated by the parties, ordered by a court or prescribed by the national law of a Member State.

It shall not include attempts made by the judge or the sitting court to settle a dispute within the course of judicial proceedings concerning that dispute.
2. “Third-party” shall mean any person conducting a mediation, regardless of the denomination or profession of that third party in the Member State concerned and of the way the third party has been appointed or requested to conduct the mediation.

Article 3 – Referral to mediation

1. A court before which an action is brought shall, when appropriate and having regard to all circumstances of the case, invite the parties to use mediation in order to settle the dispute. The court shall in any event have the right to require the parties to attend an information session on the use of mediation.
2. This directive is without prejudice to national legislation making the use of mediation compulsory or subject to incentives or sanctions, whether before or after judicial proceedings have started, provided that such legislation does not impede on the right of access to the judicial system, in particular in situations where one of the parties is resident in a Member State other than that of the court.

Article 4 – Ensuring the quality of mediation

1. Member States shall promote effective quality control mechanisms concerning the provision of mediation services.
2. Member States shall promote and support the training of third parties in order to allow parties in dispute to choose a third party who will be able to effectively conduct a mediation in the manner expected by the parties.
3. In order to contribute to the implementation of paragraph 1 of this Article the Commission and the Member States shall promote and facilitate the development of and adherence to voluntary codes of conduct by third parties and providers of mediation services, at Community as well as at national level.

Article 5 – Enforcement of agreements

1. Member States shall ensure that, upon request of the parties, a settlement agreement reached as a result of a mediation can be confirmed in a judgment, decision, authentic instrument or any other form that renders the agreement enforceable under national law, provided that the agreement is considered as a binding contract in accordance with the applicable law to the agreement.
2. Member States shall designate one or more courts or public authorities competent for receiving a request in accordance with paragraph 1 and communicate that information to the Commission.

Article 6 – Confidentiality of mediation

1. Third parties, as well as any other third person involved in the administration of mediation services, shall not in judicial proceedings give testimony or evidence regarding any of the following, unless otherwise agreed by the parties:
 - (a) An invitation by a party to engage in mediation or the fact that a party was willing to participate in mediation;
 - (b) Views expressed or suggestions made by a party in a mediation in respect of a possible settlement of the dispute;
 - (c) Statements or admissions made by a party in the course of the mediation;
 - (d) Proposals made by the third party;
 - (e) The fact that a party had indicated its willingness to accept a proposal for a settlement made by the third party;
 - (f) A document prepared solely for purposes of the mediation.
2. Paragraph 1 of this Article applies irrespective of the form of the information or evidence referred to therein.
3. The disclosure of the information referred to in paragraph 1 of this Article shall not be ordered by a court or other judicial authority and, if such information is offered as evidence in contravention of paragraph 1 of this Article, that evidence shall be treated as inadmissible. Nevertheless, such information may be disclosed or admitted in evidence to

the extent required for the purposes of implementation or enforcement of an agreement reached as a direct result of the mediation.

4. The provisions of paragraphs 1, 2 and 3 of this Article apply whether or not the judicial proceedings relate to the dispute that is or was the subject matter of the mediation.
5. Subject to the limitations of paragraph 1 of this Article, evidence that is otherwise admissible in judicial proceedings does not become inadmissible as a consequence of having been used in a mediation.

Article 7 – Suspension of limitation periods

1. The running of the limitation period regarding the claim that is the subject matter of the mediation shall be suspended or interrupted as of when, after the dispute has arisen, the parties agree to use mediation, the use of mediation is ordered by a court, or an obligation to use mediation arises under the national law of a Member State.
2. Where the mediation has ended without a settlement agreement, the limitation period resumes running from the time the mediation ended without a settlement agreement, counting from the date of a declaration of one or both of the parties or of the third party that the mediation is terminated.

Article 8 – Implementing provisions

The Commission shall make public the information related to the competent courts and authorities designated by the Member States pursuant to Article 5(2).