

Mediation

In 20 jurisdictions worldwide

Contributing editor

Renate Dendorfer-Ditges



2015

GETTING THE
DEAL THROUGH 

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Mediation 2015

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Renate Dendorfer-Ditges

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Austria

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Law and institutions

1 Treaties

Is your country a signatory to any treaties that refer to mediation? Is your domestic mediation law based on a treaty?

Austria has not adapted the UNICTRAL Model Law on International Commercial Conciliation and has also not ratified any treaties.

As a member state of the European Union, Austria implemented Directive 2008/52/EC by enacting the EU Mediation Act, which came into effect on 1 May 2011.

2 Domestic mediation law

What are the primary domestic sources of law relating to domestic and foreign mediation? Are there any differences for the mediation of international cases?

There are two primary sources of law relating to mediation.

The first source is the Civil Law Mediation Act, which came into force on 1 May 2004. This Act is applicable for mediation cases to settle conflicts that fall into the competences of the courts for civil matters.

The second source is the EU Mediation Act (see question 1). This Act is applicable for cross-border disputes of civil and commercial matters, except for matters regarding rights and obligations that are not at the parties' disposal under the relevant applicable law, as well as in regard to matters regarding the liability of the state for acts and omissions in the exercise of state authority (*acta iure imperii*).

These two acts provide the following main differences.

The Civil Law Mediation Act requires mediators to be registered in the 'List of Mediators', which is managed by the federal Minister of Justice, and also provides for strict professional requirements that must be fulfilled (the mediator must be at least 29 years of age, have a professional qualification, be trustworthy and have concluded a professional liability insurance) to be included in this list.

The EU Mediation Act does not contain any requirements that a mediator must fulfil.

Registered mediators under the Civil Law Mediation Act are subject to confidentiality and professional secrecy obligations with regard to information that was entrusted to the mediator or that was gained by the mediator in connection with the mediation procedure. This also applies to any documents received or drafted in connection with the mediation procedure.

Mediators subject to the EU Mediation Act have the right and obligation to refuse to testify in a court or arbitral proceeding of a civil or commercial matter, unless the parties to the mediation agree otherwise, or there are overriding considerations of public policy (especially to ensure the protection of the best interests of minors), or if the disclosure of the content of the agreement resulting from the mediation is necessary to implement or enforce the agreement.

Mediations under the Civil Law Mediation Act suspend the limitation periods, as well as any other time limits.

Mediations under the EU Mediation Act suspend the limitation periods for initiating judicial or arbitral proceedings with regard to the rights or entitlements subject to the mediation.

3 Mandatory provisions

Are there provisions of domestic mediation law that must be considered in mediation proceedings?

The Civil Law Mediation Act and the EU Mediation Act contain mandatory provisions (see question 2).

4 Obligation to mediate

Is mediation in your country obligatory? Can mediation be ordered by courts in your country?

Mediation is not obligatory in Austria. However, various areas of the law require that disputes are only brought before the courts if no consensus has been reached through prior mandatory conciliation and mediation procedures. Such areas include disputes between tenants and landlords, or the out-of-court settlement of minor crimes and offences in criminal law.

According to the Genetic Engineering Act, the owner of real estate that neighbours real estate on which genetically modified organisms (GMO) are used can only bring a claim in court against his or her neighbour who produces GMOs (eg, for damages) if no consensus has been reached through conciliation or mediation after three months.

Under the Federal Act regarding the Equal Treatment of Handicapped Persons, the Act regarding the Employment of Handicapped Persons, and the Equal Treatment Act any claims for discrimination can only be brought to court if the parties affected have tried to settle their dispute via conciliation at the Federal Office for Social Matters, whereby this office has to offer mediation as a form of settlement.

According to the Environmental Compatibility Act the authority can suspend the procedure for granting a public permit and can order mediation if there are large conflicts of interest and a party to the procedure requests it.

Also, the Amendment to the Civil Law Act 2004 allows mediation as a part of neighbour disputes, if both neighbours agree to it.

5 Court-annexed mediation

Does the law of your country provide for court-annexed mediation? If so, is court-annexed mediation mandatory?

In Austria there is no general court-annexed mediation scheme, with the exception of specific cases in family law, labour law or mediation in neighbour disputes (see question 4).

6 Mediation-arbitration and other forms of mediation-related ADR

Is mediation combined with arbitral proceedings? May a mediator act later in the same dispute as an arbitrator, conciliator or judge? Are arbitrators aware of mediation, and if yes, are they willing to transfer arbitration cases to mediation? Which other proceedings are available and used in your country that are related to mediation?

No, mediation is not combined with arbitral proceedings.

A mediator is not allowed to act later in the same dispute as an arbitrator, conciliator or judge. The Civil Law Mediation Act standardises explicitly the statutory prohibition for a mediator not to act as mediator to a dispute if he or she was a legal representative of a party, a decision-making

body or a consultant for a party. Additionally, a mediator may not act as a legal representative, consultant or decision-making body in the following legal proceedings of the same dispute.

As an alternative ADR-method collaborative law is offered (www.collaborativelaw.eu): Instead of the help of the mediator the parties work together with their lawyers and if suitable other experts, trying to find out of court solutions for the conflict. The only mandatory rule of the procedure is that lawyers and other experts involved in the procedure are not allowed to represent the parties in court or arbitration in case the collaborative law procedure is not successful. The effect of this mandatory rule simply is that there is nobody left with a personal interest in the court or arbitration proceeding and therefore the chances to find a negotiated solution are multiplied.

7 Online dispute resolution (ODR)

Have there been any developments regarding online dispute resolution in your country? Is your country participating in any international ODR project? Is online mediation available in your country?

In Austria the Federal Ministry of Labour, Social Affairs and Consumer Protection set up a conciliation board in May 2013 for disputes arising from consumer contracts for a test phase of nine months.

Consumers can call upon the conciliation board to sort out disputes arising from all consumer contracts, except contracts concerning health-care, the public education sector as well as leases of flats and houses and cross-border contracts. The procedure is handled via an online service. Complaints are filed online, but can also be filed by telephone or by mail.

8 Confidentiality and disclosure

Is mediation a confidential proceeding in your country? In which cases can disclosure of confidential information by the mediator or the parties be permitted or compelled? Are there any sanctions for breach of confidentiality?

Mediation is a confidential proceeding pursuant to the Civil Law Mediation Act and the EU Mediation Act (see question 2).

A mediator cannot testify as a witness or in any way disclose confidential information received during the mediation process, even if the parties agree to it, because he or she would violate the duty of secrecy and confidentiality. In the event of breach of confidentiality the mediator can be sentenced to imprisonment of up to six months or to a fine of up to 360 daily rates. There is no obligation to report to official institutions about the procedure, content or outcome of the mediation proceeding.

9 Limitation period

Does a mediation proceeding suspend the limitation period for a court claim?

The limitation period and preclusive periods are suspended if the mediation is held by a registered mediator.

10 Settlement

What is the legal character of the final (settlement) agreement? What are the legal requirements for the enforceability or the content of the agreement? Is it possible to revise, withdraw or challenge the final settlement agreement?

A successful mediation results in a final agreement, which constitutes the outcome of the mediation. The final agreement is a contract in terms of civil law, which can be mutually modified. However, it does not represent an execution title. According to Austrian law the parties are able to obtain a verdict on the written mediation agreement at a district court so that the final agreement becomes enforceable.

11 Mediation institutions

What are the most prominent mediation institutions in your country?

Three main associations exist in Austria: the Bar Association for Mediation and Cooperative Negotiations (AVM), the Commercial Mediation Association and the Austrian Federal Association for Mediators.

The AVM was founded in 1997 and mainly consists of lawyers, legal associations, partnerships and associations of mediators. All of the nine Austrian bar associations are members of the AVM. The AVM strongly cooperates with the Austrian Chamber of Lawyers and the Austrian Association for Psychotherapy. It has founded the Austrian Network of Mediation and has provided its expertise for amendments to the legislation. Moreover the AVM offers training and advanced training sessions for mediators, holds presentations and provides qualified mediators.

The Commercial Mediation Association was founded in 1997 and consists of qualified commercial mediators, who come from different professions such as lawyers, accountants, tax advisers, judges and managers. Only commercial mediators are members of the Association. The Association has working groups focusing on online mediation, mediation in the area of employment law, international comparative studies and so on. The Association offers mediators, teams of mediators and workshops.

The Austrian Federal Association for Mediators is the largest association for mediation in Austria and the European Union. The Federal Association focuses on the integration of mediation in every level of society and has representatives in every state of Austria.

Mediation procedure

12 Background

Describe the development of mediation in your country.

Mediation did not exist in Austria for a long time. Since gaining success in the United States, it has now become more prominent in Austria. In the 1980s psychologists and lawyers became aware of mediation and its success in Germany. The need for mediation developed out of the increasing number of divorces. The first workshop on mediation took place in the early 1990s under Roland Proksch. This pilot project was called 'co-mediation'. After initial problems because of the lack of knowledge about mediation, more practical experience and training sessions helped to improve mediation in Austria. Since then mediation has been established in family law, in company law and in further fields of law.

There are no statistics available on mediation cases in Austria, as mediators are not required to report on their cases to any institution. Even Statistics Austria does not have any statistics on mediation in Austria.

13 Areas of disputes for mediation

In which areas of disputes is mediation preliminarily applied? Are there any disputes that cannot be mediated?

In Austria mediation is primarily used in criminal law, in law concerning the respective interests of neighbours, in schools and in family disputes, intercultural mediation, and in public law areas (eg, environmental law).

14 Procedural requirements

Are there procedural requirements for mediation proceedings in your country? Must the parties prepare for the mediation?

As mediation takes place between the parties, the parties have to be prepared for the process. Once they decide to mediate they must choose the mediator. The mediator's role is primarily to guide the parties to reaching a mutually agreed settlement.

The mediator has to pay attention to frequent phone calls, delayed appearances, non-compliance with the conditions of the meetings and mood changes during the mediation sessions. If this becomes problematic the mediator can walk away from the mediation.

Mediators offer the parties an initial meeting to inform them about the mediation procedure. At the very beginning of the mediation procedure details will not be discussed. The mediator wants to know whether the parties are interested in finding a solution or not. The parties have to declare their consent. Mediators ask set questions to get to know the intent of the parties. No handwritten summaries or statements are necessary.

15 Structure and process of mediation

Describe the most common steps for the mediator's preparation of a mediation proceeding. Describe the most common structure of mediation proceedings. What is the typical time frame for a mediation proceeding? Are there any special considerations for international mediation proceedings?

In Austria mediation follows the Harvard Concept. The mediation procedure consists of six phases: opening phase, framework phase, theme phase, information phase, decision phase and final phase as follows:

- opening phase: the parties get to know each other, which constitutes the warming-up phase;
- framework phase: defining the outside circle, which means determining the parties involved and time and place issues;
- theme phase: defining the important problems where the mediator has to find out what the actual dispute is between the parties and asks each party about the dispute;
- information phase: the mediator defines the real issues of the dispute with the help of the parties asking specific questions about expectations or imaginations and aims to ask open questions to encourage direct interaction between the parties but if the basis of discussion becomes lost in verbal disputes the mediator has to regulate this. Every party has to talk about his or her own situation;
- decision phase: the mediator with the help of the parties aims to find a solution working for all parties involved and the parties have to negotiate and find compromises; and
- final phase: the outcome of the mediation.

The structure for commercial mediation follows a win-win solution in Austria. Regarding the phases of mediation:

- the pre-mediation phase is dominated by information procurement and evaluation of the conflict and the possibility of finding a solution, examination of the case, getting into contact with the other parties to the dispute, and the decision of both parties to mediate;
- main mediation: initiation of the proceeding, outline of the points of view, finding out the parties' backgrounds and interests, finding solutions, and negotiation regarding the outcome. Generally speaking, the main mediation can be divided up into the opening, statements, interests, options, negotiation and closing; and
- post-mediation: drafting the agreement and implementation of it, followed by an evaluation of the proceeding.

A number of mediators are bilingual, so bilingual conflicts are often mediated by bilingual mediators rather than having one language used in the mediation sessions.

16 Mediation style

What is the primary mediation style in your country for commercial mediation: facilitative mediation, evaluative mediation or transformative mediation? Are private sessions (caucuses) or joined sessions, or both, commonly used in mediation?

There is no particular preference for one style of mediation for commercial arbitration in Austria. Mediation in Austria primarily follows the Harvard Concept. The mediation style depends mostly on the clients. A mediator decides which kind of style he or she will use after the pre-mediation phase or during the main mediation phase. Basically, that mediator acts as a guide through the mediation sessions, but the parties have to find a solution among themselves.

Regarding private sessions or joint sessions, at the beginning of a potential mediation proceeding the mediator talks to each of the parties individually. After the preliminary phase the mediation starts. In the first phase of the mediation the parties are interviewed jointly, but during the mediation they still can be interviewed individually. So in fact both sessions are used by the mediator.

17 Co-mediation

What form does team mediation typically take in your country? Is co-mediation regularly used in your country? In which kind of cases?

Co-mediation is regularly used in family, environmental, and commercial disputes. Co-mediation also follows the Harvard Concept. The mediator team could consist of just female or just male mediators or both genders. Mandatory prerequisites regarding gender or qualification do not exist. Different areas of disputes do need different team members with different qualifications. The only requirement is that the co-mediators have to work together in guiding the clients.

Co-mediation teams consisting of lawyers and psychologists are regularly used in family disputes.

Since co-mediation is expensive, it depends on the area and the parties choosing co-mediation.

18 Party representatives and third parties

What is the practice in your country with respect to the inclusion of party representatives in mediation proceedings? What is the practice with respect to experts and witnesses?

In Austria the party's lawyer can be an adviser to the mediation. In general lawyers have been sceptical towards mediation until recently, since they fear a financial loss in business. But clients who decide on mediation are supported emotionally by their lawyers who decide to attend mediation, because they trust them.

In certain types of mediations translators, experts and witnesses can be consulted in the mediation. They should provide an additional, unbiased view.

In general, the character of mediation proceedings is based on the parties finding a solution among themselves without representatives. Basically the opinions and perceptions of the parties are the most important factors.

19 Specific mediation procedures / conflict or dispute management systems

Have companies set up their own dispute management systems in your country? Are there any special routes for consumers to use mediation for small claims? Are there any institutions that offer mediation for their customers, users, etc? Is there any reported or published information regarding dispute management systems of companies for conflicts in employment matters?

Many Austrian companies choose to sign arbitration agreements in the event of disputes.

Specific mediation proceedings take place in environment and planning law in the case of business settlements, infrastructure projects, urban renewals, discrimination against people with disabilities, conflicts between neighbours, online mediation, real estate conflicts, termination of employees and intercultural differences. The Act of Out-of-Court Proceedings provides for mediation in these kinds of conflicts.

In Austria the court in cooperation with the society of mediators for pending conflicts may encourage the parties to mediate before entering into a judicial proceeding. In 2012, the Commercial Court in Vienna referred the parties to mediation, where a city in Austria (Linz) sued a bank (BAWAG) regarding swaps. At the beginning of 2013, BAWAG terminated the mediation. The civil proceedings that were interrupted to reach an out-of-court settlement have recommenced.

Latest developments show that court mediation is successful in terms of time and cost-efficiency. Even the Federal Council is convinced of the preference for mediation over judicial proceedings. So courts are increasingly referring parties to mediation, particularly in disputes between neighbours, where mediation must have priority.

Online settings for mediation are available in Austria, but not commonly used. Online mediation is still unknown. The Commercial Mediation Centre published an indicative study showing that only one out of 50 participants tried online mediation. In Austria an internet ombudsman exists for disputes in e-commerce issues. The company acts for free, so even disputes regarding small amounts of money can be mediated.

Mediation clauses and mediation agreement

20 Mediation clauses

Are mediation clauses commonly considered in the course of contract drafting? Are there special requirements for mediation clauses? Are there any relevant court decisions referring to such escalation clauses?

Up until now mediation clauses commonly are not considered in the course of contract drafting. There are no special requirements for mediation clauses and there are no relevant court decisions referring to escalation clauses.

21 Conclusion and content

Is there any obligation to conclude an agreement between the mediator and the parties or between the parties before or at the beginning of the proceeding? Are there any legal requirements regarding the content of the agreement between the mediator and the parties? What are the common provisions for such mediation agreement? Must the agreement be in writing?

Once the parties agree to mediation, they choose their mediator. In Austria the signing of the mediation agreement takes place after the first session within the first phase of the mediation. During the first session they have to agree on an individual procedure. After that the parties are ready to sign an agreement. It is very important for the parties that both of them are involved in designing the mediation agreement.

The mediation agreement has to be fair and equal to both parties, allowing for their cooperation and compromise. Both parties are required to find a solution jointly and not to work against one another. These individual conduct and communication norms have to be considered during the mediation.

More importantly the parties are not allowed to go to court prior to termination of the mediation by one of the parties, nor are parties allowed to use the mediator as a witness in a following trial or to use the information gained during the mediation.

Moreover there are certain formal provisions to consider, such as the time, place and payment of the mediator. The agreement contains a provision for the mediator to be absolutely silent about the mediation and to refuse to testify as a witness in following proceedings on the same dispute.

A formal requirement for a written agreement does not exist, although a written and signed agreement has the psychological effect of being taken more seriously.

22 Costs for mediation

Are there any legal provisions on mediators' fees? What is the average mediator's fee in mediations involving companies? Is there any legal aid or other financial support for mediation proceedings if parties cannot afford to pay the mediator?

No legal provision or official fee scale on mediators' fees for mediation involving companies exists within the Civil Law Mediation Act. The costs for mediation depend on many different factors. The parties have to agree on mediation fees, meaning the fee per hour and the duration of the mediation, within the mediation agreement in advance. The mediator has to make the parties aware of the cost splitting.

The average mediator's fee depends on the mediator's hourly rate. In Austria there are no legal provisions that regulate hourly rates for mediators.

Surveys have shown that the costs for mediation amount to 5 to 15 per cent of the costs expected in a trial.

Legal aid for mediation is only provided for family mediation. This kind of proceeding has to follow a certain scale of fees, depending on the family income and the number of children.

Professional matters for mediators

23 Regulation

Is there any specific regulation of mediators in your jurisdiction? Give details. Are there any regulations on immigration or tax issues or regarding the right to work for foreign mediators?

The Civil Law Mediation Act contains provisions about the qualification of mediators. Registered mediators have the right to hold the title of 'mediator', but it is also obligatory to hold this title while working as mediator.

Mediators have to be at least 29 years old, professionally qualified, trustworthy and covered by liability insurance to be qualified for registration. Moreover they are not allowed to have a criminal record.

'Professionally qualified' is defined as any person who, on the basis of appropriate training, is in possession of knowledge and skills of mediation and who is also familiar with its legal and psychosocial basic principles. The training shall be completed in training courses and practical workshops of those institutions, including the universities that the federal Minister of Justice has registered in the list of training institutions for mediation in civil matters. The assessment of the professional qualification shall take into account the knowledge gained by and the level of completion of qualification of the psychologists and health psychologists, lawyers, notaries, judges, state prosecutors, accountants, civil engineers, consultants, social workers, management consultants or secondary school teachers, in the course of their own training and their professional practice and that may assist in their practice of mediation. Generally speaking, it is not a requirement to be a lawyer to become a mediator.

Acceptance and delivery of remuneration for recommendation of other mediators is prohibited by law. The duties of a mediator include discretion and confidentiality. The mediator is obliged to keep confidential the facts of which he or she has become aware in the course of the mediation or that have otherwise become known. He or she shall deal with documents provided or delivered to him or her in the course of the mediation confidentially. The same applies to the supporting staff of the mediator as well as to persons who act for a mediator, under his or her direction in the course of a practical training.

A mediator has to prove by documents the beginning, continuation and end of the mediation sessions. All documents have to be stored for seven years. Mediators have to attend advanced education training for 50 hours within five years.

24 Training

Are there any requirements regarding training for mediators?

In order to work as a mediator, a person must undertake training as outlined in the Civil Law Mediation Training Act. It consists of theoretical and practical parts. The training covers the main features and development of mediation, basics of communication, procedure, analysis of conflicts, the ethical question of mediation, practical courses, peer group work, etc. The training normally takes about two years and is offered by different institutions, such as the promotion institute BFI, several colleges of higher education or the ARGE Education Management. The training usually concludes with a written examination.

25 Continued education

Must mediators undertake continued professional education? Is there a credit point system for the continued education of mediators?

Yes, they have to complete appropriate advanced training of at least 50 hours within five years. Moreover, they are obligated to provide evidence for mediation cases to the federal Minister of Justice for five years. These are legal requirements. A credit point system does not exist.

26 Accreditation of mediators

Outline the system for certification of mediators.

The federal Minister of Justice maintains a list of training institutions and courses in the area of mediation in civil law matters. The list shall be published electronically in an appropriate way. The procedure for registration of a training facility or course for mediation in civil law matters shall be made on the basis of the written request of the applicant to the federal

Minister of Justice (www.mediatorenliste.justiz.gv.at/mediatoren/mediatorenliste.nsf/docs/home).

The procedure for registration with the list of mediators is initiated on the basis of the written request of the applicant to the federal Minister of Justice. The application shall provide the following information: name of the mediator, birth date, other professions of the mediator, his or her title, and his or her address. The requirements regarding professional qualification and requirements for registration have to be evidenced by appropriate documents, such as references, confirmations and professional certificates. The trustworthiness of the applicant, insofar as it is not a legal requirement of the other professional activity of the applicant, is to be proven by a criminal record statement that is no older than three months and that confirms that there has been no conviction that might lead to doubts as to the reliability of the individual's practice as a mediator. The application shall also include a description of the individual's previous professional activities as well as the training undertaken to become a mediator, including a list of the institutions where the training has been completed.

The federal Minister of Justice shall first verify, on the basis of the application and its attachments, whether the requirements for registration concerning the applicant have been complied with, and whether the documents and certification necessary for the verification of the requirement in accordance with the professional qualifications are included with the application. If necessary the minister shall summon the applicant to submit additional documents within a reasonable time limit. The unjustified non-compliance with this summons amounts to a withdrawal of the application. If the professional requirements are not met, the federal Minister of Justice may obtain an opinion from the Board of Mediation. The federal Minister of Justice and the board may summon the applicant to a hearing.

Those persons who fulfil the requirements for registration in the List shall be registered by the federal Minister of Justice for a period of five years, with the end date being identified. Persons not meeting the requirements shall be informed by formal decision that they shall not be included in the List. The mediator may, at the earliest one year and at least three months before termination of the registration period, apply in writing for the continuation of the registration for another 10 years. In the application for continuation of the registration the mediator shall demonstrate his or her further training.

There is no two-tier system in Austria.

27 Mediator liability and sanctions

What are the duties of mediators in a mediation procedure? What liability do mediators face when offering their services and conducting mediation proceedings? Is professional indemnity insurance for mediators available or obligatory? Are there any further sanctions or other disciplinary measures for mediators in cases of misconduct, poor performance, etc? Are there any regulations referring to the dismissal of mediators?

A person who him or herself is or has been party, party representative, counsellor or decision-making body in a conflict between the parties, may not act as a mediator in the same conflict. Likewise, a mediator may not provide advice or decide in a conflict that makes reference to the mediation. However, after the end of the mediation with the approval of all

affected parties, he or she may act within the scope of his or her other professional competences to implement the result of the mediation. The mediator may only act with the approval of the parties. He or she shall clarify to the parties the character and the legal consequences of mediation in civil law matters and execute this to the best of his or her knowledge, in person, directly and impartially towards the parties. The mediator shall refer the parties to the counselling needs, particularly in respect of legal issues that result in the context of the mediation, as well as refer to the form required for the drawing up of the result of the mediation in order to ensure the implementation thereof. The mediator shall document the beginning, the circumstances that indicate whether the mediation procedure has been properly followed, and the end of the mediation. On request of the parties the mediator shall record the result of the mediation in writing as well as the steps necessary for the implementation. The mediator shall keep his or her records for at least seven years after the termination of the mediation.

The mediator shall conclude professional liability insurance with an insurer. For the insurance contract Austrian law must be applicable, a minimum insurance for each insurable matter shall be €400,000, and the exclusion or a time limit of the continuing liability of the insurer is not permissible.

Mediators can be removed from the mediator list if the federal Minister of Justice becomes aware of the fact that a requirement for registration has ceased to be met or has not been confirmed, or the mediator has not attended to his or her duties regarding advanced training sessions, or he or she has, despite warnings, grossly or repeatedly violated his or her duties. Further, mediators can be removed from the List in the event of their resignation or death, or because of the expiration of the time limit regarding registration.

Any person who shall reveal or exploit facts in breach of his or her obligation of secrecy and confidentiality and thereby violates the legitimate interests of another person shall be liable for prosecution by the court with a term of imprisonment of up to six months or a fine of up to 360 daily rates. The offender shall only be prosecuted on demand of the person whose interest to maintain secrecy has been breached.

Insofar as the deed does not amount to an offence of a criminal nature that falls within the jurisdiction of the courts, a breach of administration is committed, and is punished with a fine of up to €3,500 where a person refers to him or herself as a registered mediator or uses a similar title that may confuse, or where a person acts in breach of the provisions of general duties and rights of a mediator, duties towards the parties, obligation to notify and duty to report.

28 Appointment

Is there any regulation regarding the appointment of mediators? Is it common in your country to seek assistance by institutions or official bodies for the appointment of mediators? Are mediators obliged to inform about conflicts of interest in the course of appointment?

No regulation exists with regard to appointments, but parties may conclude written agreements. The above-mentioned mediation institutions (see question 11) and courts can help with regard to the election of mediators.

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Mediators have to make known potential conflicts of interest after becoming aware of such.

Cases**29 Notable cases**

Briefly give details of any significant recent mediation cases or disputes or judgments involving mediation that have been published in your country.

One published case involves a dispute between two board members of a corporation. Both board members had to develop a business-to-business e-commerce platform, but an in-house dispute endangered the successful

ending. The supervisory board decided to consult a mediator to find a solution. The two board members participated on a voluntary basis. The mediator drafted a mediation plan. The first step was to contact the parties and ask for their opinions individually. In the first meeting session the parties were able to talk with the mediator and clarify their point of view. Similarities and differences were written down. It was important that both parties focused on the economic welfare of the corporation. In several sessions the basis for discussions was extended. One of the last sessions included drafting the solutions prepared by the mediator. A points system helped to prioritise important issues. After five sessions the board members came to an agreement that was accepted by the supervisory board. In addition to the entrepreneurial solution the interpersonal relation between both board members was improved as a result of the mediation process.

Getting the Deal Through

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