

# Mediation Country Report

## Austria

by  
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### 1) Definitions

*What are the definitions for mediation and conciliation in the legal framework of your jurisdiction?*

Mediation is a voluntary process in which a neutral specialized broker (mediator), using recognized methods, systematically promotes communication between disputing parties with the aim of assisting them to reach a mutually agreeable solution to their conflict.

Neither mediation nor conciliation is defined in statute of procedural rules in Austria. The suggestion on the differences between the two by the leading commentators is the following:

- Mediation can only be attempted and continued with the consent of the parties and conciliation follows a more rigid framework, with a mandatory sequence following the initiation of the process.
- Mediations are conducted by accredited mediators, while conciliations take place before public authorities.
- Agreements in mediation are derived by the parties and in conciliation may be put forward by a public official.
- Mediation costs are allocated between the parties regardless of the agreement being reached or not. Conciliation costs, if no agreement is reached, can be claimed as pre-procedural costs.

\*opinion provided by Philipp Graf in his response to CEDR questionnaire.

### 2) Legal Framework

- *What are the Statutes, procedural rules and case law that demonstrate how intertwined mediation is with the legal system in your jurisdiction?*
- *What is the protections provided to confidentiality of mediation proceedings under the law?*
- *Are the commercial contracts and mediation settlement agreements enforceable in your jurisdiction?*
- *Are the parties bound by terms of contracts that require mediation and is a settlement agreement they may reach enforceable?*

Commercial mediation is provided for under ZivMediatG, 2004. It is a voluntary court-annexed mediation system, case referral to mediation, training and accreditation of mediators and the duties incumbent on the mediators are governed by this law.

ZivMediatG does not provide any definition of **confidentiality** but outlines the parameters within which the principle operates. A registered mediator is required to preserve confidentiality of all information disclosed to him during the course of the mediation, or of which he otherwise becomes aware. The registered mediator is also prohibited from disclosing any of this information to the court and cannot be summoned to testify regarding the content of the mediation. Duty of the confidentiality for the parties is not covered by the law, but is often included in mediation settlement agreements.

**Mediation agreements** are enforceable only on a contractual basis, when the case is brought before a civil court.

**Mediation clauses** are enforceable. However, since the procedure is voluntary, such clause would be ineffective against a party that refuses to cooperate.

### 3) Mediation Schemes and Providers

- *What is the basis and the procedure for court-annexed schemes?*

- *Who are the major mediation providers in your jurisdiction?*

ZivMediatG enables the civil court, with the consent of the parties, to refer cases to registered mediators, thereby implementing a form of voluntary court-annexed mediation. If the parties agree, the court directs them to the list of registered mediators that is held by the Federal Ministry of Justice. The mediation takes place outside of the courthouse. The mediator is required to create a record of

- details regarding the location and time of mediation;
- circumstances from which the mediation arose;
- whether the mediation was conducted properly; and,
- when the mediation ended.

Upon the parties' request, the mediator may also document the result of the mediation and the steps required for its implementation. The mediator must safeguard this record for at least 7 years following the mediation and provide the parties with a copy, at their request.

Mediation providers tend to be organized on a sectoral basis. The leading ones are *Anwaltliche Vereinigung für Mediation und kooperatives Verhandeln (AVM)*, *Gesellschaft für Mediation im Notariat (GMN)*, *Kammer Akademie der Wirtschaftstreuhänder*, Austrian Federal Chamber of Commerce, *Plattform für Mediation*.

#### **4) Regulation of Mediators**

- *What training courses and accreditations are required for to be an accredited mediator in your jurisdiction?*
- *How many training hours are required for accreditation?*

Civil Law on Mediation Training governs training and accreditation. All mediators in civil matters must be registered with the Federal Ministry of Justice, must be over 28 years of age, hold a professional qualification, be trustworthy, possess the necessary professional indemnity insurance and have completed a training course (200 hours of theoretical learning and additional practical modules) at a Ministry of Justice approved training facility (currently 25 organizations are on the list). Persons who have not completed a training but who have the requisite level of knowledge and experience may still be entered on the list subject to the opinion of the Advisory Board. Members of certain professions are able to undergo reduced training course as a result of their specific professional experience (e.g. lawyers, notaries, financial trustees, psychotherapists, etc.).

#### **5) Uptake and Future Developments**

- *What is the success rate of mediation? Please reference statistics, where available.*
- *Is there any potential future legislation, plans or court-annexed schemes? If so, please discuss in detail.*

No statistics are available regarding the uptake and success of ZivMediatG mediations.

The ZivMediatG Advisory Board will be working with the Federal Ministry of Justice to create a cohesive framework for mediation regulation.

#### **6) Costs**

*What are the costs of mediation? Please assume that the duration of the procedure is one day for a dispute valued at 100.000 €.*

The only costs that are borne by the parties are those associated with the mediation agreement and any settlement reached.

### **7) Mediation Advocacy Training**

*Training schemes and providers are outlined, including the distinction between mandatory and optional training, length of the training and percentages of lawyers who have completed the courses.*

Training institutions must be registered with the Ministry of Justice. The current list contains approximately 25 such institutions.