

Mediation Country Report

France

by
ADR Center

1) Definitions

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

“Mediation” and “mediator” are terms used very broadly and in various contexts in France (to refer to any third party that assists in settling a conflict. “Mediation” is used in legislation only when it is clear from the actions performed that it refers to the act of conciliation.

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 are 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?*

The **legal basis** for all civil (including commercial and work-related mediation) is *Law No. 95-125* of February 8 1995. Article 21 provides that the judge, with the parties’ consent, can appoint a third person to mediate their dispute at any stage of the procedure.

Law of 4 March 2002 enshrined family mediation into the heart of family law.

Under French law, there is no legal provision which specifically relates to the **confidentiality** of contractual conciliation proceedings, notwithstanding the fact that confidentiality is considered by French practitioners as being an essential component of conciliation. The provisions under French law applicable to judicial mediation (i.e. mediation ordered by a judge), however, specifically provide that: “The mediator [is] bound by the obligation of confidentiality towards third parties. The observations of the mediator and the declarations that he gathered cannot be referred to before the judge in charge of the dispute, except with the parties’ consent. They cannot be used in other proceedings (...).”. French courts have extended this rule to contractual conciliation proceedings, ruling that “by its very nature, aiming at favoring amicable settlement of a dispute, the judicial or contractual conciliation implies that each party can confide in the mediator in a free manner, and that, except unanimous agreement, the confidentiality is kept on information, proposals or concessions received by the latter”. Since there is no special legislation or rule of procedure that can be referred to in order to secure the confidentiality of contractual conciliation proceedings, and notwithstanding the case law referred to above, it is advisable to include appropriate confidentiality clauses in any agreement providing for conciliation.

Pursuant to Article 10 of the French Civil Code and Article 11 of the French Code of Civil Procedure, each person is held to support the judiciary’s purpose to establish the truth in any one case. Consequently, a judge can order a party to provide documents, information which are considered necessary to the manifestation of truth, subject to a fine or daily penalty, in the event of a failure to comply with the order. The judge’s power is only limited by the existence of a legitimate ground, which can either be the respect of privacy or professional confidentiality.

In France, a **settlement agreement** is granted enforcement by way of approval from the District court (tribunal de grande instance), upon a party’s request. As part of the courts’ homologation review, the court only checks the apparent regularity of the settlement agreement, in particular, that it does not run foul of French public order.

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?*

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?*

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.*

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 €.

Costs vary based on mediation provider. The parties are to pay the mediator themselves, unless they are receiving financial aid.

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.