

# Mediation Country Report

## Germany

by  
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### 1) Definitions

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

1. a) In Germany, we don't have a legal definition of the term "mediation". A federal mediation law is in the making, but there is not yet an official draft with a proposal for a legal definition that could be submitted to public discussion.

1. b) Neither do we have a legal definition of "conciliation".

1. c) What we have, are some articles in the law that mention the amicable settlement of disputes:

- Art. 779 of the civil code (BGB) defines the amicable settlement ("Vergleich") as "an agreement in which both parties terminate by mutual concessions a dispute or an uncertainty about a legal issue".

- The same definition is the base for the legal "settlement fee" that a lawyer can demand who has contributed by negotiations to an amicable settlement.

### 2) Legal Framework

*1. What are the Statutes, procedural rules and case law that demonstrate how intertwined mediation is with the legal system in your jurisdiction?*

*2. What is the protections provided to confidentiality of mediation proceedings under the law?*

*3. Are the commercial contracts and mediation settlement agreements enforceable in your jurisdiction?*

*4. Are the parties bound by terms of contracts that require mediation and is a settlement agreement they may reach enforceable?*

2. 1. Some procedural legal norms oblige the courts to look for amicable settlements:

2. 1. a) Art. 278 paragraph 2 of the code of civil procedure (ZPO) obliges the civil courts to begin the hearing with a conciliatory hearing in which the judge has to discuss the issues of fact and of law with the parties and to put questions, if appropriate.

2. 1. b) According to Art. 278 paragraph 1 of the code of civil procedure (ZPO) the judge shall in every situation of the lawsuit strive for an amicable settlement.

2. 1. c) Art. 15 a of the Introductory Law to the Code of Civil Procedure entitles the regional legislator to prescribe that lawsuits on small claims, lawsuits against neighbours and libel suits are admissible only after a prior extrajudicial attempt of conciliation.

2. 1. d) Pursuant to art. 135 of the Code of Family Procedure the court can oblige the parties to participate at an information session about mediation. In appropriate cases the court shall propose an extrajudicial settlement. Pursuant to art. 156, in cases concerning children the court shall indicate in appropriate cases to mediation or other forms of extrajudicial dispute resolution.

2. 2. There is until now no legal rule that grants confidentiality of mediation proceedings as such. If the mediation is done by a lawyer, he may be subject to his professional confidentiality. This, however, would not

be a protection for the mediation, but for the professional secret of lawyers.

2. 3. + 4. Parties can bind themselves by all sorts of contracts not to go to court before having tried an amicable settlement of their dispute. Such a (latin) “pactum de non petendo” has to be respected by the courts. If there are no exceptions or reasons for nullity of the contract, the court has to reject the lawsuit as inadmissible.

### **3) Mediation Schemes and Providers**

1. *What is the basis and the procedure for court-annexed schemes?*
2. *Who are the major mediation providers in your jurisdiction?*

3. 1. a) When the court proposes mediation and the proposition is accepted, there are no further rules concerning any contact between the mediation and the lawsuit.

3. 1. b) In many German courts mediation sections have been established. Judges have been trained in mediation. In appropriate cases, lawsuits can be submitted to them. If they reach a settlement, they can integrate it in the record.

3. 2. Mediation is mainly provided by individuals, law firms and institutes. There is no hierarchy of importance.

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

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

4. 1. + 2. There is neither a formal accreditation of mediators nor a protection of this title. Everybody can call himself or herself a mediator. A sort of standardization is granted only by the institutions that provide professional training for mediators. There are some professional organizations as BAFM, BM and others which have elaborated binding criteria for their members who offer professional training of mediators. Above this, various universities and schools offer such training. The standard formation includes a minimum of 200 hours, a documentation of four mediations, a series of supervisions and a final colloquium. After having finished this training, the graduated persons can use the name of the institution where they graduated and call themselves “mediator (BAFM)”, “mediator University of X”.

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

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

5. 1. There are no reliable figures on success rates of mediation.

5. 2. The federal ministry of justice is outlining a draft for a law on mediation. This text, however, is not yet officially available. The discussion is influenced by disputes between interest groups.

### **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 €.*

6. Costs can be based on the value or on time. The fees per hour can depend on the type of conflict (family, environment, commercial issues etc) as well as on the individual tariffs of mediators. Sometimes the fees per hour are based on the income of the parties, for instance 1 % of monthly net income as fee per hour.

- On the base of € 250 per hour, the remuneration for 8 hours would be € 2.000 plus 19 % of value-added tax.
- On the base of the value of € 100.000, a lawyer could demand approx. € 2.000 plus 19 % of value-added tax.

### **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.*

7. a) see reply 4. 1 + 2

7. b) There are no reliable figures on the percentage of lawyers who have finished the training.