

Federal Act on Certain Aspects of Cross-border Mediation in Civil and Commercial Matters in the European Union (EU Mediation Act)

In the version of its promulgation, Federal Law Gazette I 21/2011

Scope

Art. 1. (1) This Federal Act applies to mediation in cross-border disputes in civil and commercial matters. It shall not apply to disputes over the rights and obligations which are not at the parties' disposal under the applicable law not to disputes over the liability of the state for acts and omissions in the exercise of state authority ("acta iure imperii").

(2) Articles 3 and 4 shall also apply to judicial or arbitration proceedings which have been initiated after completion of the mediation in a member state other than the one in which the parties are domiciled or habitually resident on the dates stated in Art. 2 Sec. 1 Subsec. 3.

Definitions of Terms

Art. 2. (1) In this Act

1. Mediation shall mean a structured process, however named, whereby two or more parties to a dispute attempt themselves, on a voluntary basis, with the assistance of a mediator to reach an agreement on the resolution of their dispute, irrespective of whether this process is initiated by the parties themselves, recommended or ordered by a court or prescribed by the law of a member state;

2. a Mediator shall mean a third party who is asked to conduct mediation in an effective, impartial and competent manner, and who is domiciled or habitually resident in a member state;

3. cross-border dispute shall mean any dispute in which at least one of the parties is domiciled or habitually resident in a member state other than that of any of the other parties on the date on which

- a) the parties agree to use mediation after the dispute has arisen; or
- b) the mediation is ordered by a court; or
- c) an obligation to use mediation arises under the law of a member state; or
- d) the parties are asked by a court to make use of mediation;

4. domicile shall mean domicile as defined in Articles 59 and 60 of the Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matter, OJ L 12 of 16 January 2001, p. 1;

5. Member State shall mean a member state of the European Union.

(2) If it is contested whether the preconditions under Sec. 1 Subsec. 1 or 2 have been satisfied, the court may obtain a statement from the Board for Mediation (Art. 7 Law on Mediation in Civil Law Matters, Federal Law Gazette I No. 29/2003).

Confidentiality

Art. 3. Unless the parties agree otherwise, the mediators and those involved in the conduct of the mediation in juridicial or arbitration proceedings in civil and commercial matters shall not disclose information arising out of or in connection with a mediation process, except where

1. this disclosure of evidence is necessary for overriding considerations of public policy (ordre public), in particular when required to ensure the protection of the interests of children or to prevent harm to the physical or psychological integrity of a person, or

2. the disclosure of the content of the agreement resulting from the mediation is necessary to implement or enforce this agreement.

Suspension of time limits

Art 4. The beginning and proper continuation of the mediation suspends the application of the start and running of the statute of limitations as well as other time limits concerning rights and claims which are affected by mediation.

Relationship with ZivMediatG

Art. 5. (1) The regulations under the Act on Mediation in Civil Law Matters shall apply to mediators registered in the List of Mediators (Art. 13 ZivMediatG) and cross-border mediations conducted by them.

(2) If a mediator is not registered in the List of Mediators he shall notify the parties of this circumstance.

Transposition

Art. 6. This federal act transposes the provisions of Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters, OJ L 136 24 May 2008, p. 3.

Entry into Force and Final Provisions

Art. 7. (1) This Federal Act shall enter into force on 1 May 2011. It shall apply to mediation processes which are initiated after 30 April 2011.

(2) Wherever in this Federal Law a term refers to a natural person, it shall refer to both genders regardless of which is named.

(3) The Federal Minister of Justice is entrusted with the execution of this Federal Act.