

ADR in Portugal: Hopes for the Future

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The Law No. 29/2013, which entered into force on 20 May 2013, lays down the general principles applicable to mediation in Portugal. There are many reasons to believe that mediation could develop faster than before on the Europe's West Coast. Fans of *fado* (a distinctly Portuguese music genre, well known for its artistic refinement and emotiveness) will agree that there are not too many nations that are able to express their feelings in a comparable way. Some historical examples of peaceful conflict resolution in Portugal (to start with the Treaty of Tordesillas) are also unique. Therefore despite the current economic crisis, there are hopes for a brighter future, with a greater role for ADR.



The new mediation law follows the recent reform of the Portuguese arbitration law (No. 63/2011 of 14 December 2011), (see Miguel Pinto Cardoso's post on KluwerArbitrationBlog). It applies to mediation in civil and commercial matters, with the express exclusion of all disputes that may be subject to family, labor and criminal mediation (*Âmbito de aplicação*, Article 10).

The objective "mediability", which determines the range of disputes that may be mediated, is defined in the following way. Disputes falling within the scope of the civil or commercial matters, relating to interests of a patrimonial nature, can always be subject to mediation. Other disputes (i.e. non-patrimonial) can only be subject to mediation if the parties are entitled to settle a disputed right (*Litígios objeto de mediação civil e comercial*, Article 11).

Principles of mediation

Under the new rules, mediation remains a fully voluntary process (*Princípio da voluntariedade*, Article 4). Submitting a dispute to mediation depends always on the will and consent of all the parties. Each party may, at any time during the mediation process, revoke their consent to participate in mediation, and withdraw from it.

The other mediation principles regulated in the law include:

- confidentiality (*Princípio da confidencialidade*, Article 5),
- equality and impartiality (*Princípio da igualdade e da imparcialidade*, Article 6)
- mediator's independence (*Princípio da independência*, Article 7) and
- his professionalism and responsibility (*Princípio da competência e da responsabilidade*, Article 8).

Agreement to mediate and settlement agreement

A mediation clause should be executed in writing. In the event this formal requirement is not fulfilled, the agreement to mediate shall be deemed invalid.

The enforceability of a mediation settlement without the need for court approval (*Princípio da executoriedade*, Article 9) is a legislative innovation in Portugal. The rule applies if the following premises are met: (i) a dispute may be the subject of mediation and no specific provisions require a specific court approval; (ii) the parties have capacity to enter into it; (iii) it was reached through mediation conducted in accordance with the terms set out in the law; (iv) its content is not against the public order; (v) the mediation was conducted by a mediator officially registered by the Ministry of Justice.

Mediation settlement agreements signed in another EU Member State are also enforceable, provided that points (i) and (iv) above are complied with and as long as under the laws of such Member State the given agreement is enforceable.

Other issues

The law regulates also, among other things:

- pre-judicial mediation, including suspension of time limitation periods (*Mediação pré-judicial*, Article 13 et sub.)
- the conduct of a mediation process (*Procedimento de mediação*, Article 16 et sub.)
- the status of a mediator, including the required qualifications such as professional training (*Mediador de conflitos*, Article 23 et sub.).

More commentaries on the new law can be found on the [websites of some Portuguese mediation centers](#). It will be interesting to see how the new legislation works in practice.