

Kluwer Mediation Blog

New German Mediation Law passed in the Bundestag

Rafal Morek (DWF LLP) · Monday, January 9th, 2012

On December 15, 2011, the Act for the Promotion of Mediation and other Procedures of Extrajudicial Conflict Settlement (*Gesetz zur Förderung der Mediation und anderer Verfahren der außergerichtlichen Konfliktbeilegung*) was passed in the “lower chamber” of the German parliament (*Deutscher Bundestag*).

The adoption of the Act was based on the recommendation of the Legal Committee (*Beschlussempfehlung und Bericht des Rechtsausschusses*), which – as stressed in [the official release](#) – was made unanimously by all five political factions in the Bundestag (i.e. in a truly mediation-like manner!). The Committee agreed on a number of amendments to the original draft presented in April 2011 ([17/5335](#), [17/5496](#)). It took into consideration, amongst other things, the critical opinions expressed at [the expert hearing](#) which took place on May 25, 2011.

One of the most contentious issues at the final stage of the discussions was the role that judges are to play in mediation, and the model of “court-integrated mediation” (*gerichtsinterne Mediation*) or “mediation performed by judges” (*richterliche Mediation*). The Conference of Ministers of Justice (*Justizministerkonferenz*), the forum where the ministers representing the Federal states (*Landes*) meet, adopted a [resolution](#) supporting this model on November 9, 2011. On November 10, 2011, the Association of German Judges (*Deutscher Richterbund*) issued a [press release](#) welcoming this resolution, and endorsed the role of judges as mediators. However, the proposed regulation was finally disapproved by the Legal Committee.

Another important issue was the status of the mediator and the requirement for their certification. Pursuant to the Act, mediators will become “certified mediators” if they meet certain criteria regarding their education and training (e.g. at least 120 hours of mediation training). More information can be found on the proposed certification model at www.zertifizierter-mediator.de.

Other sections of the new Act regulate amongst other things:

- Article 1 § 1 Definitions
- § 2 Choice and role of mediator; the conduct of mediation (*Mediationsverfahren*)
- § 3 Disclosure requirements and some restrictions regarding other activities (*Offenbarungspflichten; Tätigkeitsbeschränkungen*)
- § 4 Duty of confidentiality (*Verschwiegenheitspflicht*)
- § 5 Education and training of the mediator, as well as their certification
- § 6 Statutory authorization for the Federal Ministry of Justice to adopt by ordinance more detailed provisions related to mediation training

- § 7 Financial support for mediation
- Articles from 2 to 8 Amendments to other acts, including the Code of Civil Procedure (*Zivilprozessordnung*), the law on the procedure in family matters (*Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit*) or the Court Fees Act (*Gerichtskostengesetz*).

It seems that the Mediation Act has been well received by the majority of the German mediation community. “*It means more security for the client and better legitimization for us,*” said Christoph Paul, former spokesman for the German Consortium for Family Mediation, for [Deutsche Welle](#).

The German Bar (*Bundesrechtsanwaltskammer*, BRAK) also praised the new regulation. In its [press release](#), Michael Plassmann, chairman of the BRAK’s Committee on Out-of-Court Dispute Settlement stated that “*the law will set the right course to promote mediation in Germany in the long term*”. See also e.g. the opinions of [Prof. Dr. Martin Henssler](#) and [Dozentin Anita von Hertel](#) of the University of Heidelberg.

The Mediation Act could come into force in late February or March 2012, on the date after its publication (Article 9). The “upper house”, *Bundesrat*, comprising the representatives of the Federal states, will have it on the agenda on February 10, 2012.

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