THE VARIEGATED LANDSCAPE OF MEDIATION

A COMPARATIVE STUDY OF MEDIATION REGULATION AND PRACTICES IN EUROPE AND THE WORLD

MANON SCHONEWILLE FRED SCHONEWILLE (EDS.)

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1. Attempt to mediate

a. Always voluntary

Yes. According to Section 1 of Act 5/2012, of 6 July 2012, on mediation in civil and commercial matters (Official State Bulletin No. 162, of 7 July 2012; hereinafter, Act 5/2012), which implemented 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 in the Spanish legal system, mediation is a ‘dispute resolution method, however named or referred to, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a mediator’. Mediation is a voluntary process and therefore there is no obligation to participate or reach an agreement (Sections 6.1 and 6.3, Act 5/2012).

Moreover, according to (i) Section 129 of the Statute of Autonomy of Catalonia, which assigns exclusive power over civil-law matters to the Generalitat of Catalonia (Catalonian Government) with the exception of those assigned to the Spanish Government by Section 149(1) of the Spanish Constitution, and (ii) Section 130 of the Statute of Autonomy of Catalonia, which empowers the Generalitat to issue specific rules of procedure that result from the particularities of Catalonian substantive law, the Catalonian legislator passed Act 15/2009, of 22 July 2009, regarding mediation in the sphere of private law (Official Catalonian Government Bulletin num. 5432, of 30 July 2009; hereinafter, Catalonian Act 15/2009), which has been recently developed by Decree 135/2012, of 23 October 2012 (Official Catalonian Government Bulletin num. 6240, of 25 October 2012; hereinafter, Catalonian Decree 135/2012); Order JUS 428/2012, of 18 December 2012, that regulates the essential content and the proceedings for the authorisation of specific mediation training in the sphere of private law (Official Catalonian Government Bulletin num. 6282, of 28 December 2012; hereinafter, Catalonian Order JUS 428/2012), as well as the Decision of the Department of Justice JUS 2896/2012, of 17 December 2012, that establishes mediator fees in mediation proceedings regulated by Act 15/2009 (Official Catalonian Government Bulletin num. 6283, of 31 December 2012; hereinafter, Catalonian Decision JUS 2896/2012). According to Section 1 of Catalonian Act 15/2009, mediation is a ‘voluntary and confidential non-jurisdictional process aimed at facilitating communication among individuals so that they themselves can negotiate a solution to the disputes in which they are involved, with the assistance of a mediator who acts in an impartial, neutral manner’. Mediation is based on the principle of voluntariness, by which parties are free to take part in the process and to
discontinue mediation at any given moment. If in the course of the mediation proceedings, either party chooses to terminate the process, such termination shall have no consequences on any subsequent proceedings, nor shall parties' negotiation offers, settlements revoked in an appropriate and timely manner, or any other circumstance disclosed in connection with the proceedings (Section 5, Catalonian Act 15/2009).

b. Mandatory (in some cases)

**No.** According to Section 6(2) of Act 5/2012, parties who have submitted their disputes to a mediation process in either a written clause or agreement will have to attempt to mediate in good faith before initiating court proceedings or using an alternative dispute resolution system.

c. Court referral or court-connected mediation possible

**Yes.** Act 5/2012 modified Act 1/2000, of 7 January 2000, on Civil Procedure (Official State Bulletin No. 7, of 8 January 2000; thereinafter, Act 1/2000) in order to introduce court referral rules enabling judges to refer parties to mediation in some stages of the judicial proceedings. In this sense, during the hearing, judges must inform parties about the possibility to initiate a mediation process to solve their disputes. Moreover, they can invite the parties to attend an informative session on mediation (Section 414, Act 1/2000). Finally, once the controversial facts have been established during the hearing, courts can suggest that the parties, their representatives and their lawyers try to reach a mediation agreement that terminates the court proceedings (Sections 415 and 428, Act 1/2000).

Furthermore, according to Section 12.2 of Catalonian Act 15/2009 and Section 29 of Catalonian Decree 135/2012, mediation may be initiated at the request of the court in any stage of the judicial proceedings or on referral by a justice of the peace, who may propose mediation to the parties and contact the Centre for Mediation in Private Law of Catalonia in order to conduct an informative session. If parties do not cooperate and attend an informative session or they reject participation in mediation, the Centre for Mediation in Private Law of Catalonia will inform the court, within 5 working days, that it has been impossible to initiate the mediation. If parties submit to mediation, a mediator will be appointed who will have to notify the court, within five working days of the end of mediation, whether or not a settlement has been reached (Section 19(4), Catalonian Act 15/2009). Breach of this obligation to notify the court will be deemed (i) a minor infringement if it does not entail damage to the parties or (ii) a serious infringement if it entails minor damage to the parties. Sanctions for minor infringements will consist of a written warning that must be recorded in the registry. Sanctions for serious infringements will include the temporary suspension as mediator for a period of one month to one year (Sections 30 to 32, Catalonian Act 15/2009).

d. Court-ordered mediation possible

**No.** Judges can advise parties to try mediation, but they cannot order parties to go to mediation. If the parties refuse to mediate, the court proceedings will continue.

e. Sanctions by the court if mediation is not tried (in good faith)

**No.**

f. Sanctions by law if mediation is not tried (in good faith)

**No.**

g. Incentives if mediation is tried voluntarily before going to court

**Yes.** According to the Second Additional Provision of Act 5/2012, public administrations will try to include mediation within the free advising and guidance foreseen by Section 6...

Section 27 of Catalonian Act 15/2009 and Section 40 of Catalonian Decree 215/2012 state that individuals who contact the Centre for Mediation in Private Law of Catalonia may enjoy the benefits of free services, provided that the conditions prescribed by the rules governing free legal assistance are met. Moreover, in the interest of the users and of increasing access to mediation, the administration has the option to organise programmes in which mediation is offered to users free of charge, either at the initiative of the department responsible for civil law or in cooperation with other public or private entities.

h. Outside counsel presence/representation during mediation sessions allowed

Yes. Since Section 23(2) of Act 5/2012 foresees that mediation agreements can be signed by the parties or their representatives, it is possible to conclude that decisions about the presence of representatives are up to the parties and the mediator.

Catalonian Act 15/2009 foresees that, in mediation, the parties and the mediator shall attend meetings personally and shall not appoint representatives or intermediaries (Section 8, Catalonian Act 15/2009). Nevertheless, mediators shall inform the parties that it is advisable for them to receive legal assistance during mediation and that it is necessary for an attorney of their choice to draw up the settlement or an alternative appropriate legal document, based on the outcome of the mediation. Where applicable, the attorney may be a court-appointed lawyer, at the request of the parties involved (Section 15.3, Catalonian Act 15/2009). Moreover, depending on the circumstances of the case, the mediator may advise the parties to pursue specific counselling outside the legal sphere (Sections 15.3, Catalonian Act 15/2009 and 32.3, Catalonian Decree 135/2012).

i. Outside counsel presence mandatory

No. Nevertheless, in both complex commercial and cross-border disputes the presence of lawyers is common practice.

2. Mediation clause

a. Case admissible in court with a mediation clause

No. According to Section 6.2 of Act 5/2012, mediation clauses are enforceable. Defendants may ask the court to decline its jurisdiction and to declare the action inadmissible if a mediation clause exists (Section 10.2, Act 5/2012 and Sections 39 and 63(1), Act 1/2000). See 1.b.

b. Case admissible in court, however, the judge may take this into account and there is some case law

No. See 1.b and 2.a.

c. If parties included a mediation clause in their contract, they have to mediate first before they can go to court

Yes. See 1.b and 2.a.

3. Mediation procedure

a. Details of mediation procedure, approach and/or specific duties of the mediator described in the law

Yes. A general procedural framework is described in Sections 16 to 27 of Act 5/2012, 10-19 of Catalonian Act 15/2009 and 32-38 of Catalonian Decree 315/2012, which regulate the
different ways to initiate the mediation procedure, the information session, the initial meeting, the different ways to terminate mediation and the enforcement of mediation agreements. Sections 30 to 38 of Royal Decree 980/2013, of 13 December 2013, that develops some issues of Act 5/2012, of 6 July 2012, on mediation in civil and commercial matters (Official State Bulletin num. 310, of 27 December 2013; hereinafter, Royal Decree 980/2013) have also foreseen basic rules for simplified mediation procedures which are conducted by means of electronic devices.


These rules must be complemented by those foreseen by Act 1/2000.

b. Mediation procedure, style and approach of the mediator fully flexible/contractual

Yes. The aim of the Spanish and Catalonian legislators was to establish a simple and flexible mediation procedure in order to allow the parties to freely determine its essential stages.

c. Mediator can offer a non-binding opinion

Yes. Although this option is not foreseen by law, nothing prevents mediators from giving their opinion or advice at the request of the parties.

d. Mediator can offer a binding opinion

No. Although nothing prevents mediators from giving their opinion or advice at the request of the parties, such advice would in any case be non-binding. If the parties have agreed to be bound by the mediator’s advice, the dispute resolution process would no longer be considered a mediation.

e. Predominant mediation style for commercial disputes re substance (facilitative, evaluative, transformative, other)

Facilitative. The mediation style for commercial disputes is predominantly facilitative. According to Section 8 of Act 5/2012, mediators will act in such a way that allows parties to reach an agreement on their own. Moreover, Section 13 of Act 5/2012 states that mediators have to facilitate communication between the parties and be proactive in order to bring the parties closer together.

Section 6.2 of Catalonian Act 15/2000 stipulates that mediators must help participants to reach agreements and decisions on their own, without imposing solutions or specific measures and without taking part in negotiations. Mediators carry out their role by encouraging appropriate communication among the parties (Section 13, Catalonian Act 15/2000), and therefore: (a) facilitate dialogue, promote understanding and help parties to find solutions to their disputes; (b) see that the parties take their own decisions and have sufficient information and advice so they may reach their agreements freely and conscientiously; and (c) help the parties to remain aware of the most important interests at stake.

f. Predominant approach in commercial disputes re process (facilitative, directive, other)

Facilitative. The mediation style for commercial disputes is predominantly facilitative. See 3.e.

g. Predominant mediation style for civil disputes re substance (facilitative, evaluative, transformative, other)

Facilitative. The mediation style for civil disputes is predominantly facilitative. See 3.e.
h. Predominant mediation approach for civil disputes re process (facilitative, directive, other)

**Facilitative.** The mediation style for civil disputes is predominantly facilitative. See 3.e.

i. If applicable, how is evaluative mediation used (neutral, general advice, legal opinion, other)?

NA.

j. Predominant mediation process for commercial disputes (caucus (only), joint session (only), mix, other)

**Mix.** According to Section 21 of Act 5/2012, communications between mediators and parties may be simultaneous or successive. Mediators have to inform the parties about holding separate meetings.

Section 34(2) of Catalonian Decree 135/2012 also provides for holding individual or joint sessions, but at least one of the sessions must be a joint session.

k. Predominant mediation process for civil disputes (caucus (only), joint session (only), mix, other)

**Mix.** See 3.j.

**4.1. Mediator accreditation**

a. Accreditation/certification or recognition of mediators

**No.** Spanish and Catalonian Acts do not provide for mediator accreditation or certification but it does provide for mediator training.

b. Set by market (private certifying bodies)

**No.** See 4.1.a.

c. Set by public regulation

**No.** See 4.1.a.

d. Number of hours for basic mediator training

**Min. 100 (SP) / min. 170 (CA).** According to Sections 5 and 6 of Royal Decree 980/2013, mediation training programs will have a minimum duration of 100 hours and they will include both theoretical and practical contents. Practical contents will take at least 35% of the mediation training programs.

Regarding Catalan regulation, Section 3 of Catalonian Order JUS 428/2012 states that mediation training programmes must be divided into two parts: (i) general mediation training must have a minimum duration of 110 hours including practices; (ii) specific mediation training for different areas in the sphere of private law must have a minimum duration of 60 hours including practices.

e. Mandatory Continuing Professional Development for accredited/certified mediators

**No.** Although Spanish and Catalanian Acts do not provide for mandatory continuing professional development for accredited/certified mediators, nothing prevents Spanish and Catalanian legislators from including mandatory continuing professional development when they regulate training criteria. See 4.1.a.

f. Accreditation through set of rules (e.g., age, education, professional background, experience, etc.)

**No.** See 4.1.a.
g. Accreditation through written exam
   No. See 4.1.a.

h. Accreditation through performance-based assessment
   No. See 4.1.a.

4.2. Mediation advocacy accreditation

i. Accreditation/certification or recognition of mediation advocates
   No. Mediation advocacy accreditation is not foreseen by Spanish and Catalonian Acts, and there is no information about mediation advocacy certification/accreditation being done through practice.

j. Set by market (private certifying bodies)
   No.

k. Set by public regulation
   No.

5. Who can be a mediator?

a. Set by market (private certifying bodies)
   No. Specific public regulation is available. See 5.b.

b. Set by public regulation
   Yes. According to Section 11 of Act 5/2012, three requirements must be fulfilled by individuals in order to be able to act as a mediator: firstly, mediators must have the free exercise of their civil rights; secondly, they must have an official university degree or superior professional training as well as specific mediation training; finally, they must take out civil liability insurance or an equivalent guarantee. Legal entities that include mediation among their functions can also be mediators if they appoint individuals that fulfil the requirements foreseen by the Act.

   A Registry of Mediators and Mediation Institutions overseen by the Ministry of Justice has been created and regulated by Sections 8-25 of Royal Decree 980/2013. However, except for bankruptcy mediators, registration is voluntary. This Registry shall coexist with the Registry of Mediators of each Region.

   Bankruptcy mediators must be individuals or legal entities which fulfil the requirements foreseen by Section 11 of Act 5/2012 and are registered in the Registry of Mediators and Mediation Institutions (Section 233.1, Bankruptcy Act). Since bankruptcy mediators will become trustees in bankruptcy if debtors and creditors are not able to reach a mediation agreement, mediators must be – or must include if they are legal entities – lawyers, economists or auditors with at least 5 years of professional experience (Section 27, Bankruptcy Act).

   According to Section 3 of Catalonian Act 15/2009, any individual may act as a mediator if he or she has an official university degree and is able to provide proof of completion of specific mediation training and professional proficiency, duly updated to the standards established by regulation. Individuals must belong to an official professional mediators association, to a similar professional association accredited by the department responsible for civil-law matters, or to a mediation service provider for the public administration.
c. Only a lawyer/legal professional can be an accredited/certified mediator (domestic)  
   No. See 5.b.

d. Only a lawyer/legal professional can be an accredited/certified mediator (cross-border)  
   No. See 5.b.

6. EU Directive

a. EU Directive implemented for cross-border cases only  
   No. See 6.b.

b. EU Directive implemented for all national and cross-border commercial cases  
   Yes. Act 5/2012 governs national and cross-border civil and commercial mediations (Sections 2, 3 and 27, Act 5/2012).

c. EU Directive implemented for all national and cross-border civil cases  
   Yes. See 6.c.

7. Mediation legislation besides Directive

a. Mediation legislation since  
   2001. Since 2001 several Acts on family mediation were passed by the Regions:  
   - Act 7/2001 of Valencia Community, of 26 November 2001, on Family Mediation  
   - Act 4/2005 of Castile-La Mancha, of 24 May 2005, regarding the Specialised Social Service on Family Mediation  
   - Act 1/2006 of Castile and Leon, of 6 April 2006, on Family Mediation  
   - Act 1/2007 of Community of Madrid, of 21 February 2007, on Family Mediation  
   - Act 3/2007 of Principality of Asturias, of 23 March 2007, on Family Mediation  
   - Act 1/2008 of Basque Country, of 8 February 2008, on Family Mediation

   Regarding commercial mediation, no specific regulation existed beyond institutional projects launched in 2000 by the Consolat de Mar, the Dispute Resolution Centre of the Barcelona Chamber of Commerce and in 2005 by the Bilbao Chamber of Commerce.

b. Legislation updated since EU mediation directive (date update)  
   - Act 1/2009 of Andalusia, of 27 February 2009, on Family Mediation  
   - Act 14/2010 of Balearic Islands, of 9 December 2010, on Family Mediation  
   - Act 9/2011 of Aragon, of 24 March 2011, on Family Mediation  
   - Act 1/2011 of Cantabria, of 28 March 2011, on Family Mediation

The Spanish Ministry of Justice prepared the draft project on the Mediation in Civil and Commercial Affairs Act of 19 February 2010, which was passed as the Act on 29 April 2011.

Moreover, Act 11/2011 of 20 May 2011, regarding the amendment of Act 60/2003, of 23 December 2003, regarding arbitration and the regulation of institutional arbitration in state administration, modified Section 955 of the Royal Decree of 3 February 1881 on the enactment of the Civil Procedure Act, which established the courts’ authority to deal with the recognition and enforcement of foreign mediation agreements.

The Spanish government using the urgency process passed by the Royal Decree-Act 5/2012, of 5 March 2012, on civil and commercial mediation, which implemented Directive 2008/52/EC. This Royal Decree-Law 5/2012 was passed as an Act on 6 July 2012 (Act 5/2012, of 6 July 2012, on mediation in civil and commercial matters). Act 5/2012 has been recently developed by Royal Decree 980/2013 (Royal Decree 980/2013, of 13 December 2013, that develops some issues of Act 5/2012, of 6 July 2012, on mediation in civil and commercial matters).

Finally, Act 14/2013 has introduced a new Title X in Bankruptcy Act in order to regulate bankruptcy mediation.

8. Bodies providing mediation

a. Mediation bodies may have various legal forms

Yes. According to Section 5 of Act 5/2012, mediation institutions whose aim consists of promoting mediation may be public or private, Spanish or foreign entities and corporations governed by public law. Moreover, according to Section 11 of Act 5/2012, mediators may be individuals or entities (professional corporations, etc.).

According to Section 3 of Catalonian Act 15/2009, any individual may act as a mediator if he or she has an official university degree and is able to provide proof of completion of specific mediation training and professional proficiency, duly updated to the standards established by regulation. The individual must belong to an official professional mediators association, to a like professional association accredited by the department responsible for civil-law matters, or to mediation service provider for public administration. In this sense, the Centre for Mediation in Private Law of Catalonia is a body attached to the department responsible for civil-law matters in Catalonia whose goal is to promote and organise mediations and to provide access thereto.

b. Individuals may be providers of mediation services

Yes. See 8.a.

c. Mediation provider qualifications/requirements determined by public regulation

Yes. See 8.a.

9.1. Mediator fees

a. Freely contracted

[Yes]. Moreover, mediators and mediation institutions can ask the parties for a provision of funds in order to deal with the mediation costs. If any of the parties do not fulfil this obligation, the mediator or mediation institution will be able to terminate the procedure. Nevertheless, if one of the parties has not fulfilled this obligation, the mediator or mediation institution
will inform the other party of the possibility of contributing to the outstanding amount (Section 15(2), Act 5/2012).

Regarding Catalan regulation, Section 27 of Catalan Act 15/2009 and 39 of Catalan Decree 135/2012 state that individuals taking part in mediation through the Centre for Mediation in Private Law of Catalonia who do not qualify for free services while the other party does enjoy such benefits must pay the mediator half of the fees prescribed by the department responsible for civil-law matters. In mediations among several parties handled by the Centre for Mediation in Private Law of Catalonia, remuneration is decided on the basis of the fees prescribed by the department responsible for civil-law matters and according to the number of parties and the complexity of the case. Mediations organised by professional associations, city and town councils and public entities must comply with the provisions set out by the respective organisation, paying special attention to social groups in circumstances of dependency or faced with difficult circumstances.

b. Fixed in some cases by public regulation
   **Yes.** See Catalan regulation 9.1.a.

c. Average mediator fee per hour for commercial or cross-border cases
   **€ 30-120 (estimate).** In general terms, mediator fees are lower than those of lawyers.

   Catalan Decision JUS 2896/2012 states that fees applicable to proceedings regulated by Catalan Act 15/2009 are as follows: (i) € 40 to be paid by each party and for each mediation session involving 2 parties; (ii) € 30 to be paid by each party and for each mediation session involving 3 to 5 parties; (iii) € 120 to be paid for joint mediation sessions involving more than 6 parties; (iv) € 40 to be paid for each individual session with any of the mediation participants.

   Regarding bankruptcy mediators, fees will be fixed according to the rules foreseen by Royal Decree 1860/2004, of 6 September 2004, that establishes the fees of trustees in bankruptcy (Official State Bulletin num. 216, of 7 September 2004).

d. Average mediator fee per hour in civil cases
   **€ 30-120 (estimate).** See 9.1.c.

9.2. Financing and legal aid

e. Legal aid available for mediation services
   **Yes.** According to the Second Additional Provision of Act 5/2012, public administrations will try to include mediation within the free advising and guidance foreseen by Section 6 of Act 1/1996, of 10 January 1996, on Free Legal Aid (Official State Bulletin num. 11, of 12 January 1996) in order to reduce litigation and its costs.

   Regarding Catalan regulation, Section 27 of Catalan Act 15/2009 and Section 40 of Catalan Decree 215/2012 state that individuals who contact the Centre for Mediation in Private Law of Catalonia may enjoy the benefits of free services provided that the conditions prescribed by the rules governing free legal assistance are met. Moreover, in the interest of the users and of increasing access to mediation, the administration has the option to organise programmes in which mediation is offered to users free of charge, either at the initiative of the department responsible for civil law or in co-operation with other public or private entities. Mediators cannot ask parties who benefit from legal aid to pay any amount (Section 25(2), Catalan Decree 135/2012).

f. Mediator fees covered by legal insurance schemes
   **No.**
g. Mediator fees subsidised in court-connected schemes

(No). There is nothing in this sense in the legislation, but some chambers of commerce (e.g., Bilbao) have included within their budget the fees of mediators participating in court-annexed mediation.

10. Legal context

a. Is there a special relationship between judges and mediators/mediation, apart from court-connected referrals or court-connected mediation schemes?

No. However, judges can refer cases to mediation at some stages of the court proceedings. See 1.c.

b. Relationship between mediation and legal system (is mediation seen as part of the legal system?)

Yes. Since Act 5/2012 has defined the position of mediation within the Spanish legal system, such a relationship does exist.

c. Mediation procedure has impact on statute of limitations

Yes (Spain). According to Section 4 of Act 5/2012, mediation requests suspend limitation periods from their reception by the mediator or their submission to a mediation institution. Limitation periods start to run again if the initial statement is not signed within 15 days from the receipt of the mediation request. The suspension of limitation periods goes on until (i) the signing of the final mediation agreement or, where applicable, the signing of the final statement, or (ii) until mediation proceedings finish due to any of the reasons foreseen by law.

Yes (Catalonia). Catalonian Act 15/2000 does not foresee a specific provision regarding statute of limitations but Section 4 of Act 5/2012 applies.

11. Mediated settlement

a. Contract

Yes. Mediated settlements qualify as binding settlement agreements. According to Section 23(3) of Act 5/2012, mediators must inform the parties that the settlement agreement is binding as well as the possibility of converting the agreement into a public deed in order for it to become enforceable.

Regarding Catalonian regulation, Section 19(1) of Catalonian Act 15/2009 states that agreements regarding issues and individuals in need of special protection and concerning matters of public order determined by law are deemed proposals and must be endorsed by the court for them to become enforceable. According to Section 38 of Catalonian Decree 215/2012, the legal effects and the enforceability of mediation agreements depend on (i) the object of the mediation, (ii) the legal formalisation of the agreements and (iii) the requirements of procedural laws. In cases involving court referral, agreements have the effects foreseen by procedural legislation.

b. Automatically enforceable

No. Mediated settlement agreements are not automatically enforceable. If no judicial proceedings are pending, enforcement of mediation agreements is subject to their conversion into public deeds (Sections 23(3), Act 5/2012 and 517(2)(2), Act 1/2000). If judicial proceedings are pending, parties may ask the court to make their settlement agreement enforceable (Sections 25(4), Act 5/2012 and 19(2), Act 1/2000).
c. Enforceable under some circumstances which are up to the parties
   Yes. Parties can ask a civil-law notary or a judge make their settlement agreement enforceable. See 11.b.

d. Enforceable under some circumstances defined by public regulation
   No. See, however, 11.b.

12. Confidentiality

a. Regulated by law
   Yes. Mediators, mediation institutions and parties cannot disclose information arising out of or in connection with a mediation procedure [Section 9(1), Act 5/2012]. Furthermore, mediators are exempt from the obligation to give evidence either in civil and commercial judicial proceedings or in arbitration regarding information arising out of or in connection with a mediation procedure [Sections 9(2), Act 5/2012, 335(3) and 347, Act 1/2000]. Nevertheless, the duty of confidentiality is not be applicable if parties exempt mediators from this duty expressly and in writing, and if information or documentation has been properly requested by criminal judges [Section 9(2), Act 5/2012].

   Regarding Catalan regulation, Section 7 of Catalan Act 15/2009 states that any mediator or other professional participating in mediation proceedings is obligated to refrain from disclosing information obtained through mediation. Mediators and specialists participating in such proceedings are bound by professional secrecy to preserve confidentiality. Parties to mediation proceedings must not, in judicial or administrative proceedings, request mediators to declare as experts or witnesses for either party, so as not to compromise their neutrality, subject to the provisions established by criminal and procedural law. All documents drawn up throughout the process of mediation are deemed confidential. Information obtained during the mediation process is not subject to confidentiality if: (i) it is not personalised and is used for the purposes of training or research; (ii) it entails a threat to the life or physical or mental integrity of an individual; (iii) it is obtained through community mediation, if public dialogues are used as a type of mediation intervention open to citizen participation. If the mediator receives information that reveals either the existence of a threat to the life or physical or mental integrity of a person, or the existence of criminal acts that a court, of its own motion, may deem indictable, he or she shall suspend the mediation proceedings and report the situation to the judicial authorities.

b. Exemption from obligation to give evidence in court proceedings or arbitration [regulated by law or contract]
   Yes. See 12.a.

13. Education

a. Mediation education is a common component of legal education
   No.

b. Mediation advocacy education is a common component of legal education
   No.
14. Most relevant literature or references, case law, articles, law

15. Mediation legislation texts

a. Weblink to legislation in national language
   - http://www20.gencat.cat/portal/site/portaldogc/menuitem.c973d2fc58aa0083e449292b0c0e1a0/?vgnextoid=485946a6e5dfe210VgnVM1000000b0c1e0aRCRD&applianceName=default&action=fitxa&documentId=619128&language=ca_ES
   - http://www20.gencat.cat/portal/site/portaldogc/menuitem.c973d2fc58aa0083e449292b0c0e1a0/?vgnextoid=485946a6e5dfe210VgnVM1000000b0c1e0aRCRD&applianceName=default&action=fitxa&documentId=624317&language=ca_ES
   - http://www20.gencat.cat/portal/site/portaldogc/menuitem.c973d2fc58aa0083e449292b0c0e1a0/?vgnextoid=485946a6e5dfe210VgnVM1000000b0c1e0aRCRD&applianceName=default&action=fitxa&documentId=624418&language=ca_ES

b. Weblink to English or other translation
   - http://www.parlament.cat/departaments/docs/30051118370455.doc

c. Other references
   - NA.

16. Country specific remarks

Several regulations on mediation in civil and commercial matters exist in Spain. General regulation is foreseen by Act 5/2012, of 6 July 2012, on mediation in civil and commercial matters, which applies to the whole country except for Catalonia. Act 5/2012 has been recently developed by Royal Decree 980/2013, of 13 December 2013, that develops some issues of Act 5/2012, of 6 July 2012, on mediation in civil and commercial matters. Moreover, Act 14/2013, of 27 September 2013, on support for entrepreneurs has introduced specific rules on bankruptcy mediation in Bankruptcy Act 22/2003, of 20 July 2003. Catalonia’s legal regime on mediation in civil and commercial matters is foreseen by Act 15/2009, of 22 July 2009, regarding mediation in the sphere of private law, which has been developed by Decree 135/2012, of 23 October 2012, by Order JUS 428/2012, of 18 December 2012, that regulates the essential content and the proceedings for the authorization of specific mediation training in the sphere of private law as well as by the Decision of the Department of Justice JUS 2896/2012, of 17 December 2012, that establishes the mediators’ fees in mediation proceedings regulated by Act 15/2009. No other Spanish Regions have passed regulations on this matter.
**Mediation definition**

Spain has in principle adopted the definition of the EU Directive. The only difference is the omission of the words 'structured process' that the Directive mentions.

**Spanish Law**

**Section 1 of Act 5/2012, of 6 July 2012, on mediation in civil and commercial matters**

**Section 1. Definition**

Mediation is a dispute resolution method, however named or referred to, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a mediator.

**Art. 1 de la Ley 5/2012, de 6 de julio, de mediación en asuntos civiles y mercantiles**

Artículo 1. Concepto.

Se entiende por mediación aquel medio de solución de controversias, cualquiera que sea su denominación, en que dos o más partes intentan voluntariamente alcanzar por sí mismas un acuerdo con la intervención de un mediador.

**Catalanian Law**

**Section 1.1 of Act 15/2009, of 22 July 2009, regarding mediation in the sphere of private law**

**Section 1**

Definition and objective of mediation

1. For the purpose of this Act, mediation means the voluntary and confidential non-jurisdictional process aimed at facilitating communication among individuals so that they themselves can negotiate a solution to the disputes in which they are involved, with the assistance of a mediator who acts in an impartial, neutral manner.

**Art. 1.1 de la Llei 15/2009, del 22 de julio, de mediació en l’àmbit del dret privat**

Article 1

Concepte i finalitat de la mediació

1. Als efectes d’aquesta llei, s’entén per mediació el procediment no jurisdiccional de caràcter voluntari i confidencial que s’adreça a facilitar la comunicació entre les persones, per tal que gestionin per elles mateixes una solució dels conflictes que els afecten, amb l’assistència d’una persona mediadora que actua d’una manera imparcial i neutral.

Regarding the distinction between mediation and conciliation, conciliators may propose solutions to the parties’ disputes, which are binding if they are accepted by the parties.
## Mediation regulation and approach

**Country:** Spain  
**Prepared by:** Mercedes Tarrazón, Marian Gili Saldaña

<table>
<thead>
<tr>
<th>1. Attempt to mediate</th>
<th>a. Always voluntary</th>
<th>Yes</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>b. Mandatory (in some cases)</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>c. Court referral or court connected mediation possible</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>d. Court ordered mediation possible</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>e. Sanctions by the court if mediation is not tried (in good faith)</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>f. Sanctions by law if mediation is not tried (in good faith)</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>g. Incentives if mediation is tried voluntarily before going to court</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>h. Outside Counsel presence/representation during mediation sessions allowed</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>i. Outside Counsel presence mandatory</td>
<td>No</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2. Mediation clause</th>
<th>a. Case admissible in court with mediation clause</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>b. Case admissible in court, however the judge may take this in account and there is some supporting case law</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>c. If parties included a mediation clause in a contract they have to mediate first before they can go to court</td>
<td>Yes</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>3. Mediation procedure</th>
<th>a. Detailed traits of mediation procedure, approach and/or specific duties of the mediator described in the law</th>
<th>Yes</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>b. Mediation procedure, mediator duties, style and approach of the mediator fully flexible/contractual</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>c. Mediator can offer a non-binding opinion</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>d. Mediator can offer a binding opinion</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>e. Predominant mediation style for commercial disputes re substance (facilitative, evaluative, transformative, other)</td>
<td>F</td>
</tr>
<tr>
<td></td>
<td>f. Predominant approach in commercial disputes re process (facilitative, directive, other)</td>
<td>F</td>
</tr>
<tr>
<td></td>
<td>g. Predominant mediation style for civil disputes re substance (facilitative, evaluative, transformative, other)</td>
<td>F</td>
</tr>
<tr>
<td></td>
<td>h. Predominant mediation approach for civil disputes re process (facilitative, directive, other)</td>
<td>F</td>
</tr>
<tr>
<td></td>
<td>i. If applicable: how is evaluative mediation used (neutral, general advice, legal opinion, other)</td>
<td>NA</td>
</tr>
<tr>
<td></td>
<td>j. Predominant mediation process for commercial disputes (caucus only), joint session (only), mix, other</td>
<td>Mix</td>
</tr>
<tr>
<td></td>
<td>k. Predominant mediation process for civil disputes (caucus only), joint session (only), mix, other</td>
<td>Mix</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>4.1. Mediator accreditation</th>
<th>a. Accreditation or certification of mediators</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>b. Set by market (private certifying bodies)</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>c. Set by public regulation</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>d. General amount of hours for basic mediator training</td>
<td>Min. 100 (SP) / min. 170 (CA)</td>
</tr>
<tr>
<td></td>
<td>e. Mandatory Continuing Professional Development for accredited/certified mediators</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>f. Accreditation through set of rules (e.g. age, education, professional background, experience, etc.)</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>g. Accreditation through written exam</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>h. Accreditation through performance based assessment</td>
<td>No</td>
</tr>
</tbody>
</table>
## Mediation regulation and approach

### Country: Spain

Prepared by Mercedes Tarrazón, Marian Gili Saldaña

| 4.2. Mediation Advocacy accreditation | i. Accreditation/certification or recognition of mediation advocates | No |
| | j. Set by Market (private certifying bodies) | No |
| | k. Set by public regulation | No |

| 5. Who can be mediator? | a. Set by market (private certifying bodies) | No |
| | b. Set by public regulation | Yes |
| | c. Only lawyer/legal professional can be accredited/certified mediator (domestic) | No |
| | d. Only lawyer/legal professional can be accredited/certified mediator (cross-border) | No |

| 6. EU directive | a. EU Directive implemented for cross-border cases only | No |
| | b. EU Directive implemented for all national and cross-border commercial cases | Yes |
| | c. EU Directive implemented for all national and cross-border civil cases | Yes |

| | b. Legislation updated since EU mediation directive (date update) | 2009-2013 |

| 8. Mediation providing bodies | a. Mediation bodies can have various legal forms | Yes |
| | b. An individual can be a provider of mediation services | Yes |
| | c. Structure of mediation provider determined by public regulation | Yes |

| 9.1. Mediator fee | a. Freely contracted | [Yes] |
| | b. Fixed in some cases by public regulation | Yes |
| | c. Average mediator fee per hour in commercial or cross-border cases: | € 30-120 (est.) |
| | d. Average mediator fee per hour in civil cases: | € 30-120 (est.) |

| 9.2. Financing and Legal aid | e. Legal aid available for mediation services | Yes |
| | f. Mediator fee covered by legal insurance schemes | No |
| | g. Mediator fee subsidized in court connected schemes | [No] |

| 10. Legal context | a. Is there a special relationship between judges and mediators/mediation, apart from court referrals or court connected mediation schemes? | No |
| | b. Relationship mediation and legal system (is mediation seen as part of the legal system?) | Yes |
| | c. Mediation procedure has impact on statutes of limitation | Yes |

| 11. Mediated settlement | a. Contract | Yes |
| | b. Automatic enforceable title | No |
| | c. Enforceable title under some circumstances, which are up to the parties | Yes |
| | d. Enforceable title under some circumstances defined by public regulation | No |

| 12. Confidentiality | a. Regulated by law | Yes |
| | b. Exemption from obligation to give evidence in court proceedings or arbitration (regulated by law or contract) | Yes |

| 13. Education | a. Mediation education common component at legal education curriculum | No |
| | b. Mediation advocacy education common component at legal education curriculum | No |

Yes = Yes
[Yes] = Yes as a rule, but with (informal) exceptions
No = No
[No] = No as a rule, but with (informal) exceptions