

# Mediation legislation in Italy

De wetgeving van Italië verlangt – in omschreven gevallen – dat partijen eerst serieus mediation overwegen of beproeven alvorens zij een rechtszaak beginnen. Leonardo d'Urso vertelt over de werking en organisatie van dit systeem, en over wat het in tien jaar heeft gebracht.

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**In Italy, what is the legal strength of a contractual mediation clause in which the parties agreed to attempt to resolve their disputes in mediation, before bringing a case to court? Will a judge find a court case to be inadmissible if the filing party ignored such a clause? And, if so, what minimum efforts will the parties be required to make in mediation before they can bring a suit?**

According to Italian mediation law, when a commercial contract or a company's statute includes a mediation clause, parties must attempt to mediate before arbitrating or filing a dispute in court. If no attempt to mediate is made, the judge or arbiter can, by his own motion or upon motion by a party, allow the parties a period of fifteen days to file a request for mediation. The minimum effort to attempt mediation is to attend a 'first mediation meeting', in person or in a video conference, at a mediation provider office accredited by the Minister of Justice.

**Does your country have any kind of 'opt-out' system that requires the parties to first attempt to solve their matter in mediation before bringing a case to court? If so, in what fields of law? And what does the system look like and require of the parties?**

In the civil and commercial matters specified below, regardless of the value of the dispute, the plaintiff must first file a request for mediation with a mediation provider and attend an initial mediation session before recourse to the courts. The initial mediation session must be held within 30 days from the request and the presence of legal counsel is mandatory. Before attending this initial session, each party must pay a filing fee of € 40 (or € 80 for claims above a value of € 250,000). The mediator usually does not earn anything during the first meeting. The main reason was not to impose more costs to the parties for a mandatory step, since that could have been judged unconstitutional (it was never challenged) as a barrier to access to justice.<sup>1</sup> If the parties decide to proceed with the entire mediation procedure, which from that point is

voluntary, the fees are determined by the value of the case and regulated by law. Thus, participation in the entire mediation process is always voluntary.

The commercial and civil disputes that require an initial mediation session before filing a case in court are disputes coming from: property rights, division of assets, inheritances and wills, family business agreements, condominiums rules, landlords/tenants' contracts, business or commercial leases, medical malpractice liability, damages from libel, damages from insurance, banking and financial contracts and, introduced two years ago, all economic disputes related to the Covid 19-pandemic. These amount to about 25 percent of all civil and commercial disputes.

In addition to the initial mediation session, the Italian mediation law regulates the other three recourses to mediation: request by the parties in all civil and commercial disputes, court-ordered in pending cases, and, as described, from a mediation contract clause.

**Is there a legally regulated registry for mediators? And what quality standards – if any – will the registered mediators have to meet?**

Mediation processes can be administered only by accredited mediation providers where accredited mediators can offer their services. Currently, the Italian Minister of Justice keeps four public registers with: 575 mediation providers (each one can have multiple offices); 23.871 mediators; 346 training entities of mediators and 1.303 trainers in mediation. The quality standards to be accredited in each of these registers are detailed regulated in a Ministerial Decree.

**Are the above topics regulated in (or linked to) a specific mediation law?**

The mediation procedure in Italy on civil and commercial disputes is currently regulated under: a) the Legislative Decree no. 28/2010 – introduced in 2010 as transposition of the Eu Directive



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2008 on Mediation and then deeply reformed in 2013 – regulating the recourse to mediation, the mediation procedure and the relationship between mediation as required by law and judicial proceedings; b) the Ministerial Decree no. 180/2010 (MD 180/2010) regulating the accreditation of mediation providers, mediators, and the setting of mediation fees; c) and in addition the mediation process is also regulated by the Mediation Rules of the mediation provider chosen by the parties that must be approved by the Ministry of Justice.

**What aspects of the Italian mediation legislation do you particularly appreciate, and what do you think could or should be improved?**

After about 10 years of implementation of the so-called 'Italian Mediation Model', the statistics speak for themselves. For the past five years the participation rate in the first (mandatory) meeting is around 50% – a significant increase from the 27% participation rate in the first two years. The driving force of the model is to nudge the litigants to participate all together in a neutral space – in person or in a video conference – in a first mediation meeting and restore oral communication with the help of a mediator. At the end of this meeting, the litigants and their legal counsels if present can take an informed and rational decision either to opt-out or to voluntary opt-in. Almost thirty years of experience and data in Italy and in Europe demonstrate that without this initial nudge it is impossible to reach a 'balanced relationship

between judicial proceedings and mediations' as the EU Directive 2008 in mediation aimed in its article 1. Currently, both the primary law and the regulation are about to be strengthened in fall 2022 with the approval of some important amendments such as: the extension to new disputes types (like franchising and professional service contracts) where the participation of an initial mediation meeting is a condition to access to court; introduction of fiscal advantages with tax credits up to € 600 for mediation fees, lawyers' fees and reimburse of court fee if a case is pending in court; increase to possible sanctions to invited parties (especially large companies like banks and insurance companies) who do not attend the first meeting in person without justifiable reasons; introduction of the number of mediation referrals in the productivity evaluation of judges; increase the duration of the basic mediation training for mediators; and strengthening the accreditation criteria for mediation providers. These reforms are going in the right direction. However, there could have been a deeper impact with the extension of the first mandatory mediation meeting to all civil, family and labor disputes. ■

**NOTE**

1. The Alassini case of 18 March 2010 at the EU court (ECLI:EU:C:2010:146) states that the mandatory mediation is allowed if it is held within 90 days and free, or requires only a small fee. The Italian model strikes a good balance between mandatory first meeting (with a small fee) and voluntary mediation (with a full fee).