

## **Alternative Dispute Resolution Forums in Consumer Disputes in Austria and Germany**

*By Noémi Suri\**

*The last fifteen years in Europe have been marked by the proliferation of alternative dispute resolution methods - mediation, arbitration, conciliation, conciliation - and the widening of the possibilities, which have affected public and private law, substantive and procedural law, national, international and European norms. In practice, mediation takes a variety of forms, depending on the (legal) field concerned. In Europe, out-of-court mediation is by far the most widespread form, but several jurisdictions have also made room for the institution of mediation in court. The aim of the study is to provide a comparative analysis of the civil substantive and civil procedural law of Austria and Germany with regard to alternative dispute resolution forums for resolving consumer-business disputes.*

**Keywords:** *Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation; Alternative dispute resolution forums; German Mediation Act; Alternative Dispute Resolution in consumer matters; Federal Act on Alternative Dispute Resolution; Conciliation bodies*

### **Introduction**

In order to comply with Article 25 of Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC,<sup>1</sup> all EU Member States had to comply with their legislative obligation to ensure that consumers and businesses have access to alternative dispute resolution for their disputes by 9 July 2015.

The aim of the study is to provide a comparative analysis of the civil substantive and civil procedural law of Austria and Germany with regard to alternative dispute resolution forums for resolving consumer-business disputes.

As a first step, the research assignment will clarify how the countries in the research project regulate the issues related to alternative dispute resolution forums. It then seeks to explore the specific substantive and procedural rules that apply to alternative dispute resolution forums available for resolving disputes between consumers and businesses. Finally, the specific provisions applicable to the members of the conciliation body (in particular the election, appointment and conflict of interest of members) will be examined in detail.

---

\*Ph.D., LL.M., Associate Professor, Pázmány Péter Catholic University, Faculty of Law and Political Sciences, Budapest, Hungary.

Email: [suri.noemi@jak.ppke.hu](mailto:suri.noemi@jak.ppke.hu)

<sup>1</sup>Official Journal of the European Union, L 165/63, 18.6.2013. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0011>

## Alternative Dispute Resolution Forums in Consumer Disputes in Germany

The German Mediation Act (*Gesetz zur Förderung der Mediation und anderer Verfahren der außergerichtlichen Konfliktbeilegung vom 21. Juli 2012, BGBl. I S. 1577*), hereinafter “*Mediationsgesetz*”, came into force on 26 July 2012. The *Mediationsgesetz* is the framework legislation for mediation as a means of alternative dispute resolution in Germany. With this act, Germany as a Member State fulfilled its legislation obligation under the European Mediation Directive<sup>2</sup>, and it laid the foundations for any mediation activity in Germany, irrespective of the nature of the dispute or the parties’ place of residence.<sup>3</sup> The *Mediationsgesetz* only defines the fundamental principles of the process. Mediators and parties must have a large leeway in the conduct of mediation. The act specifies the definitions of “mediation” and “mediator” to separate mediation from other conflict resolution methods. According to the definition, mediation is a structured process in which the parties strive on a voluntary basis and autonomously, to achieve an amicable resolution of their conflict with the assistance of one or more mediators. The mediators are independent and impartial persons without any decision-making power, who guide the parties through the mediation.<sup>4</sup> Their duty of confidentiality – including that of any other participant’s – is specifically stipulated in the Act.<sup>5</sup>

In Germany, various incentives were incorporated in several legislations to foster consensual conflict resolution. Pursuant to Section 278 (1) of the *Code of Civil Procedure (ZPO)*<sup>6</sup>, hereinafter “ZPO”, in all circumstances of the proceedings the court is to act in the interests of arriving at an amicable resolution of the legal dispute or of the individual points at issue. This can also be understood as a judicial mediation activity. When filing an application at a civil court, the parties must state whether they have made efforts to resolve the conflict amicably, for instance, through mediation, and whether, in their opinion, they have any reasons to oppose such a procedure. The court may recommend mediation, or other out-of court dispute resolution procedures, and if the parties accept such recommendation, it may order the suspension of the procedure. It is important to note, however, that mediation is currently not provided as a legal aid in Germany.<sup>7</sup>

Section 165 of the *FamFG*<sup>8</sup>, for instance, regulates court mediation in conflicts related to access rights over children. Moreover, pursuant to Section 363 of the

---

<sup>2</sup>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. Official Journal of the European Union, L 136/3, 24.5.2008. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008L0052>.

<sup>3</sup>Rühl (2014) at 8-11.

<sup>4</sup>Osswald & Flecke-Giammarco (2017) at 352.

<sup>5</sup>[https://www.bmj.de/DE/Themen/GerichtsverfahrenUndStreitschlichtung/Mediation/Mediation\\_no\\_de.html](https://www.bmj.de/DE/Themen/GerichtsverfahrenUndStreitschlichtung/Mediation/Mediation_no_de.html)

<sup>6</sup>Zivilprozessordnung (“Zivilprozessordnung in der Fassung der Bekanntmachung vom 5. Dezember 2005 (BGBl. I S. 3202; 2006 I S. 431; 2007 I S. 1781), die zuletzt durch Artikel 2 des Gesetzes vom 7. November 2022 (BGBl. I S. 1982) geändert worden ist”).

<sup>7</sup>[https://www.bmj.de/DE/Themen/GerichtsverfahrenUndStreitschlichtung/Mediation/Mediation\\_no\\_de.html](https://www.bmj.de/DE/Themen/GerichtsverfahrenUndStreitschlichtung/Mediation/Mediation_no_de.html)

<sup>8</sup>Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit (FamFG) (“Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen

*FamFG*, at the request of any of the heirs, the notary shall mediate in distributing the estate, except when there is an executor who is authorised to distribute the assets of the estate. Section 18 of the Rules of Professional Practice for Lawyers (*Berufsordnung für Rechtsanwälte*)<sup>9</sup> declares that lawyers are subject to the ethical rules even when they act as conciliators, arbitrators or mediators.

An act of mediation becomes mediation only if the mediator remains impartial and does not "develop" the solution for the parties concerned. This must be achieved by the parties involved in the conflict. The mediator may participate in the communication, the negotiation and the agreement processes, thereby promoting the reconciliation of interests; contrary, however, to a judge or an arbitrator, they do not have decision-making powers, and contrary to a conciliator, they do not propose solutions directly.

In Germany, mediation can occur through co-mediation, when two mediators act jointly in a matter. This method can better ensure impartiality or representation of the interests of both parties. For instance, co-mediation in a family conflict can be carried out by a male and a female mediator, one with a legal, the other one with a psychological professional background.

In Germany, the institution of mediation is applied in the following areas:

- family matters, specifically related to separation or divorce;
- international legal disputes, for example, in custody and access law cases,
- inheritance legal disputes;
- business;
- civil law (neighbour law, tenancy law, consumer law);
- construction law;
- public administration (focusing on environmental mediation);
- labour law;
- conflicts between doctors and patients,
- mediation between victims and perpetrators in criminal law,
- education (mediation at school),
- political conflicts.

The Act on Alternative Dispute Resolution in Consumer Matters (*Gesetz über die alternative Streitbeilegung in Verbrauchersachen – Verbraucherstreitbeilegungsgesetz, VSBG*)<sup>10</sup>, hereinafter "*VSBG*", was approved by the German *Bundestag* on 3 December 2015 in the version proposed by the Committee of Legal Affairs of the *Bundestag*. The Act of 19 February 2016 on the Execution of the Directive on Alternative Dispute Resolution in Consumer Matters and the Execution of the Decree on Online Dispute Resolution promulgated on 25 February 2016 entered into force on 1 April 2016. The traders' obligation to provide information is applicable only since 1 February

---

Gerichtbarkeit vom 17. Dezember 2008 (BGBl. I S. 2586, 2587), das zuletzt durch Artikel 12 Absatz 21 des Gesetzes vom 16. Dezember 2022 (BGBl. I S. 2328) geändert worden ist"), hereinafter *FamFG*.

<sup>9</sup>[https://www.brak.de/fileadmin/02\\_fuer\\_anwaelte/berufsrecht/bora\\_stand\\_01.01.2020.pdf](https://www.brak.de/fileadmin/02_fuer_anwaelte/berufsrecht/bora_stand_01.01.2020.pdf)

<sup>10</sup>Verbraucherstreitbeilegungsgesetz vom 19. Februar 2016 (BGBl. I S. 254, 1039), das zuletzt durch Artikel 2 Absatz 3 des Gesetzes vom 25. Juni 2020 (BGBl. I S. 1474) geändert worden ist". <https://www.gesetze-im-internet.de/vsbg/VSBG.pdf>

2017. Pursuant to Section 18 of the above act, matters not regulated in the *VSBG* are governed by the provisions of the *Mediationsgesetz*. In accordance with Section 4(2)2 of the *VSBG*, the out-of-court dispute resolution body for consumers and traders (*Außergerichtliche Streitbeilegungsstelle für Verbraucher und Unternehmer e.V.*) is the general conciliation body for consumer matters acknowledged by the Federal Office for Justice (*Bundesamt für Justiz*).<sup>11</sup> This body keeps and records the list of mediators who can act in legal disputes between consumers and traders.<sup>12</sup>

Consumer dispute resolution bodies are institutions that carry out procedures for the out-of-court resolution of civil law disputes in which the consumers and traders participate on opposing sides, and are qualified as consumer dispute resolution bodies acknowledged, appointed or established under the *VSBG* or other legal provisions (Section 2 of the *VSBG*). A consumer dispute resolution body must be a registered association with its own budget, separate from the budget of the sponsoring body, and with a budget sufficient for its operation.

At the consumer's request, the consumer conciliation body conducts out-of-court proceedings for the settlement of disputes arising out of or in connection with a consumer contract within the meaning of Section 310 (3) of the Civil Code (*Bürgerliches Gesetzbuch*) hereinafter – *BGB*<sup>13</sup>); disputes concerning employment contracts are excluded.

The competences of a consumer conciliation body may be restricted to

1. certain economic sectors,
2. certain types of contracts,
3. certain traders, or
4. traders with registered seats in a specific country (Section 4 of the *VSBG*).

They must have their own rules of procedure (hereinafter Rules of Procedure) which outlines the conflict resolution procedure and provides for the details of its implementation. The consumer conciliation body may not conduct any conflict resolution procedures that impose a binding solution on the consumer or exclude the consumer's right to take recourse to the courts (Section 5 of the *VSBG*).

In Germany, mediation is an out-of-court conflict resolution process between the affected parties conducted by one or more mediators as independent, impartial third parties following the principles of voluntariness, personal responsibility and mutual agreement. The mediators are responsible for the communication and negotiation between the parties, but not for the actual result of the negotiation. The result of the process is set out in writing. The process is further characterised by trustful, open communication and cooperation. Non-disclosure of the information uttered must be ensured throughout the mediation process.

Consumers may submit applications for conciliation at the conciliation body. Following this, the conciliation body submits a conciliation proposal for the parties

---

<sup>11</sup><https://www.streitbeilegungsstelle.org/faq/>

<sup>12</sup><https://www.streitbeilegungsstelle.org/faq/>

<sup>13</sup>"Bürgerliches Gesetzbuch in der Fassung der Bekanntmachung vom 2. Januar 2002 (BGBl. I S. 42, 2909; 2003 I S. 738), das zuletzt durch Artikel 6 des Gesetzes vom 7. November 2022 (BGBl. I S. 1982) geändert worden ist", hereinafter "BGB".

within 90 days. The conciliation process is concluded with the notification of its result. The result will not be published and is not enforceable. The process can be cancelled by either party at any time. Apart from cases of misuse, the costs are generally borne by the trader.<sup>14</sup>

In Germany, conciliation bodies must employ at least one person who is engaged in the out-of-court settlement of disputes, and who is responsible for the impartial and fair conduct of the (mediation) process. The mediator must possess appropriate legal knowledge specifically as regards consumer protection law as well as the expertise and skills necessary for the resolution of disputes under the jurisdiction of the conciliation body. In addition, this activity may only be conducted with judicial or mediator qualifications.

In the last three years before his appointment, the dispute mediator may not have worked

1. for a trader that has committed itself to taking part in the dispute resolution procedure of the consumer conciliation body or is committed to taking part on the basis of legal provisions, or
2. for a business associated with the trader under point 1, or
3. for an association to which the trader under point 1 belongs and that represents trader interests in the economic sector in which the consumer conciliation body is competent, or
4. for an association that represents consumer interests in the economic sector in which the consumer conciliation body is competent.

An activity as a dispute mediator for an association under points 1, 3 or 4 does not preclude a renewed appointment as a dispute mediator. (Section 6 of the VSBG).

The dispute mediator should be independent and is not subject to any instructions. He must offer a guarantee of impartial dispute resolution. The dispute mediator may not be remunerated or employed by only one trader or by a business associated with only one trader. The dispute mediator's remuneration may not be associated with the result of dispute resolution procedures.

The dispute mediator is obliged to disclose without delay to the supporting agency of the consumer conciliation body any circumstances that could affect his independence or impartiality. The dispute mediator shall disclose to the parties any circumstances that could affect his independence or impartiality. Under such circumstances, the dispute mediator may only take action if the parties expressly consent to his activity as a dispute mediator. If the dispute mediator's task has been transferred to a body to which representatives of both consumer and trader interests belong, the two sides must be represented in equal numbers. This provision does not apply to members of the body who only represent trader interests or consumer interests. The dispute mediator must be appointed for an appropriate period. The period of office should not be less than three years. Reappointment is permissible (Sections 7-8 of the VSBG).

---

<sup>14</sup><https://www.mediationskanzlei-goettingen.de/verbraucher-adr-schuetzt-verbraucher/>

## Alternative Dispute Resolution Forums in Consumer Disputes in Austria

Austria established legal rules for mediation in family law cases back in 1999,<sup>15</sup> and in 2004 it enacted the first mediation act in Europe.<sup>16</sup>

In Austria, mediation is a process aimed at the out-of-court settlement of conflicts in the private, professional, business and environmental sectors, the legislative grounds of which is provided for by the Federal Law on Mediation in Civil Law Matters (*Zivilrechts-Mediations-Gesetz – ZivMediatG*)<sup>17</sup>. Compared to civil proceedings, mediation is a more cost-efficient procedure without the risk of compensating the other party for their costs. With mediation, the parties save time since the results are often achieved faster than a court decision in a civil proceeding. Participation in the procedure is always voluntary, the resolution of the legal dispute is always dependent on the parties. With the help of optimal solution strategies, a conflict may be handled quickly and in a manner satisfactory for both parties. The sustainability of the problem-solving process creates a situation from which both parties can profit. The parties themselves select the proceeding mediator, who is obliged to hold confidential all information of which they become aware in the course of performing their activity. A person who is a party to a conflict between the parties, a representative of the parties, an adviser to the parties, acting as a judge in the case or who has previously taken a decision in the case, cannot act as a mediator.<sup>18</sup>

In Austria, mediation is an alternative dispute resolution procedure primarily in the following areas: family law disputes, business conflicts, neighbour law disputes, environmental matters, education-training (mediation at school), public sphere, construction, and politics.<sup>19</sup>

As in Germany, Austria has further legislation to regulate the alternative settlement of disputes between consumers and traders, in addition to the Act on General Mediation - The Federal Act on Alternative Dispute Resolution (*Alternative- Streitbeilegung-Gesetz*), hereinafter the “*Alternative Dispute Resolution Act*” – or *AstG*), entered into force on 9 January 2016.<sup>20</sup>

Under this act, traders can voluntarily undergo an alternative dispute resolution procedure instead of a court procedure in disputes with consumers.<sup>21</sup> The scope of the act covers contracts for goods and services concluded online or offline in exchange for a payment.<sup>22</sup>

---

<sup>15</sup>Marriage Law Amendment Act (Eherechts-Änderungsgesetz) 1999.

<sup>16</sup>Roth & Gherdane (2012) at 249.

<sup>17</sup>Bundesgesetz über Mediation in Zivilrechtssachen (*Zivilrechts-Mediations-Gesetz – ZivMediatG*) StF: BGBl. I Nr. 29/2003 (NR: GP XXII RV 24 AB 47 S. 12. BR: AB 6780 S. 696.). <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20002753>

<sup>18</sup>Lenz & Risak (2017) at 34-35.

<sup>19</sup>[https://www.oesterreich.gv.at/themen/familie\\_und\\_partnerschaft/scheidung/Seite.100800.html](https://www.oesterreich.gv.at/themen/familie_und_partnerschaft/scheidung/Seite.100800.html)

<sup>20</sup>Bundesgesetz über alternative Streitbeilegung in Verbraucherangelegenheiten (*Alternative-Streitbeilegung-Gesetz – AstG*). StF: BGBl. I Nr. 105/2015 (NR: GP XXV RV 697 AB 772 S. 85. BR: AB 9411S.844.) <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20009242>

<sup>21</sup>Wendland (2016).

<sup>22</sup><https://www.wko.at/service/wirtschaftsrecht-gewerberecht/Alternative-Streitbeilegung.html>

Section 4(1) of the Alternative Dispute Resolution Act of Austria (*AstG*) outlines eight state-approved institutions for alternative dispute resolution:

- “Schlichtung für Verbrauchergeschäfte”: the conciliation board for consumer transactions;<sup>23</sup>
- “Internet Ombudsmann”: the ombudsman for online infringements;<sup>24</sup>
- “Schlichtungsstelle der E- Control Austria”: the E- Control Austria conciliation board;<sup>25</sup>
- “Telekom Schlichtungsstelle der Rundfunk und Telekom Regulierungs GmbH”: the telecommunications conciliation board of the Rundfunk und Telekom Regulierungs GmbH;<sup>26</sup>
- “Post Schlichtungsstelle der Rundfunk und Telekom Regulierungs GmbH”: the postal services conciliation board of the Rundfunk und Telekom Regulierungs GmbH;<sup>27</sup>
- “Agentur für Passagier- und Fahrgastrechte”: the agency for passengers’ and travellers’ rights;<sup>28</sup>
- “Gemeinsame Schlichtungsstelle der Österreichischen Kreditwirtschaft”: the joint conciliation board of Austrian credit institutions;<sup>29</sup>
- “Ombudsmann Fertighaus”: the ombudsman for prefabricated houses.<sup>30</sup>

The conciliation board for consumer transactions (*Schlichtung für Verbrauchergeschäfte*) is a state-approved, independent and non-profit association. The board offers voluntary mediation procedures free of charge for the resolution of conflicts between consumers and traders with exclusive jurisdiction and competence. It does not take sides with the consumer or with the trader, it strives to promote an agreement through providing support for both parties. It is important to highlight, that the conciliation board is not a consumer protection organisation, but a so-called “service-provider organisation” for consumers and traders. Given that the conciliation board for consumer transactions is not a consumer protection organisation, it does not provide legal counselling, nor does it promote and defend consumer or trader interests in any court or out-of-court procedures (with no right to launch an action either).<sup>31</sup>

The conciliation board for consumer transactions operates as an association whose members may be natural persons or legal entities. Its members include the Federal Chamber of Labour (*Bundesarbeitskammer*), the Financial Market Authority

---

<sup>23</sup><https://www.verbraucherschlichtung.at/>

<sup>24</sup><https://www.ombudsstelle.at/ueber-uns/>

<sup>25</sup><https://www.e-control.at/>

<sup>26</sup>[https://www.rtr.at/TKP/was\\_wir\\_tun/telekommunikation/konsumentenservice/schlichtungsverfahren/TKKS\\_Schlichtung.de.html](https://www.rtr.at/TKP/was_wir_tun/telekommunikation/konsumentenservice/schlichtungsverfahren/TKKS_Schlichtung.de.html)

<sup>27</sup>[https://www.rtr.at/TKP/was\\_wir\\_tun/post/konsumentenservice/schlichtungsstelle/PKS\\_Schlichtung.de.html](https://www.rtr.at/TKP/was_wir_tun/post/konsumentenservice/schlichtungsstelle/PKS_Schlichtung.de.html)

<sup>28</sup><https://www.apf.gv.at/de/apf.html>

<sup>29</sup><https://www.bankenschlichtung.at/default.htm>

<sup>30</sup><http://www.ombudsstelle-fertighaus.org/>

<sup>31</sup><https://www.verbraucherschlichtung.at/ueber-uns/>

(*Finanzmarktaufsicht*), the State of Burgenland (*Land Burgenland*) and the State of Upper Austria (*Oberösterreich*).

Consumer conciliation is financed by the Federal Ministry of Social Affairs, (*Bundesministerium für Soziales, Gesundheit, Pflege und Konsumentenschutz*), by the Banking and Insurance Division of the Chamber of Commerce (*Sparte Bank und Versicherung der Wirtschaftskammer*), by the State of Lower Austria and by the association members.<sup>32</sup>

Further information on the association can be found in its Statutes<sup>33</sup>. Bodies of the association are the General Meeting (Sections 7 and 8), the Executive Committee (Sections 9 and 10), the Executive Board (Section 11), the Conciliation Board (Section 12), the Auditors (Section 13), and the so-called Court of Arbitration (Section 14). The consumer conciliation board has its own rules of procedure (Rules of Procedure)<sup>34</sup>.

A particular feature of the Austrian regulations is that a procedure before a conciliation board may only be launched by the consumer. The *AStG* defines for traders a strict data provision obligation about the competent conciliation board. The consumer must be notified of the conciliation organisation competent in their matter including its website address. Several legislations regulate the details of the data provision obligation, such as the Telecommunications Act (*Telekommunikationsgesetz*)<sup>35</sup>, the General Railway Act (*Eisenbahngesetz*)<sup>36</sup>, the Motor Vehicle Route Act (*Kraftfahrliiniengesetz*)<sup>37</sup>, the Federal Aviation Law (*Luftfahrtgesetz*)<sup>38</sup>, and the Shipping Act (*Schifffahrtsgesetz*)<sup>39</sup>. The trader is obliged to disclose this information on its website and in the General Terms and Conditions, if provided, in a clear, comprehensible and easily accessible manner. Failing to do so is considered an administrative offence and is punishable with a fine up to EUR 750.00.

The procedure opens when the consumer files a complaint at the competent conciliation board. Legal representation is not obligatory, but representation through an appointed person or a lawyer is possible. Participation in the procedure is voluntary both for the trader as well as the consumer and is generally more cost-

---

<sup>32</sup><https://www.verbraucherschlichtung.at/ueber-uns/>

<sup>33</sup><https://www.verbraucherschlichtung.at/wp-content/uploads/2018/05/Vereinsstatuten-vom-27.04.2018.pdf>

<sup>34</sup><https://www.verbraucherschlichtung.at/wp-content/uploads/verfahrensordnung.pdf>

<sup>35</sup>Telekommunikationsgesetz vom 23. Juni 2021 (BGBl. I S. 1858), das zuletzt durch Artikel 9 des Gesetzes vom 20. Juli 2022 (BGBl. I S. 1166) geändert worden ist.

<sup>36</sup>Allgemeines Eisenbahngesetz vom 27. Dezember 1993 (BGBl. I S. 2378, 2396; 1994 I S. 2439), das zuletzt durch Artikel 10 des Gesetzes vom 10. September 2021 (BGBl. I S. 4147) geändert worden ist". [https://www.gesetze-im-internet.de/aeg\\_1994/AEG.pdf](https://www.gesetze-im-internet.de/aeg_1994/AEG.pdf)

<sup>37</sup>Bundesgesetz über die linienmäßige Beförderung von Personen mit Kraftfahrzeugen (Kraftfahrliiniengesetz - KfllG) StF: BGBl. I Nr. 203/1999 (NR: GP XX IA 1118/A AB 2047 S. 180. BR: 6013 AB 6047 S. 657). <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20000098>

<sup>38</sup>Bundesgesetz vom 2. Dezember 1957 über die Luftfahrt (Luftfahrtgesetz – LFG). StF: BGBl. Nr. 253/1957 (NR: GP VIII RV 307 AB 318 S. 40. BR: S. 128). <https://www.ris.bka.gv.at/GeltendeFassung.Wxe?Abfrage=Bundesnormen&Gesetzesnummer=10011306>

<sup>39</sup>Bundesgesetz über die Binnenschifffahrt (Schifffahrtsgesetz – SchFG) StF: BGBl. I Nr. 62/1997 (NR: GP XX RV 564 AB 618 S. 67. BR: 5400 AB 5420 S. 624). <https://www.ris.bka.gv.at/GeltendeFasung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10012703>



efficient than a court action.<sup>40</sup> The procedure must be closed within 90 days. Its termination may be initiated by either party without any time limitation.

In Austria, the mediation process may be divided into several phases:

- (a) In the preliminary phase the mediator endeavours to define the grounds for the dispute, explains the objectives, the process and the rules of mediation, and concludes a mediation agreement with all the parties. In this agreement, the parties outline the expenses, the division of expenses, any potential conditions, possible deadlines and the rules of conciliation.
- (b) In the first phase, the mediator creates an atmosphere in the negotiation which reinforces the establishment of trust, and both (all) parties are given the opportunity to elaborate their position. The mediator describes the various aspects of the conflict; without making any judgments about the parties, the mediator creates a list of the issues.
- (c) In the second phase, the parties express their feelings. During the process, the parties' underlying interests, needs and objectives are defined. In the third phase, all possible, potential ways of resolving the conflict are explored based on the wishes and objectives of the parties involved, and all the solution proposals are gathered without a value judgment.
- (d) In the fourth phase, the parties evaluate all alternative solutions, check their feasibility and sustainability, and choose from the remaining solutions the one offering the most benefits for everyone.
- (e) In the fifth phase, following any potential external expert supervision, the mediation agreement is written down and signed by the parties. Furthermore, there is the evaluation, with other words, the follow-up phase, in which it may be optionally considered whether the results match or have matched the objectives and expectations for the details to be improved.
- (f) As a result of a successful mediation process, the parties find a common solution and the procedure is closed with an out-of-court agreement. In case they do not find a common solution, the parties are entitled to settle the legal dispute in a legal action.<sup>41</sup>

Pursuant to the regulations in force in Austria, an agreement reached in a conciliation procedure does not give rise to an enforceable title. Therefore, it is possible that following the closure of a conciliation board procedure, a court procedure (civil action) has to be launched, if the consumer does not fulfil their payment obligation as per the agreement.<sup>42</sup>

In Austria, at least one of the conciliation board members must have legal qualifications. All members must possess the knowledge and skills required for the out-of-court settlement of disputes or court procedures for the resolution of

---

<sup>40</sup><https://www.wko.at/service/wirtschaftsrecht-gewerberecht/ALTERNATIVE-STREITBEILEGUNG-IN-VERBRAUCHERANGELEGENHEITEN1.html>

<sup>41</sup>[https://www.oesterreich.gv.at/themen/familie\\_und\\_partnerschaft/scheidung/Seite.100800.html#Liste\\_BMJ](https://www.oesterreich.gv.at/themen/familie_und_partnerschaft/scheidung/Seite.100800.html#Liste_BMJ)

<sup>42</sup><https://www.wko.at/service/wirtschaftsrecht-gewerberecht/ALTERNATIVE-STREITBEILEGUNG-IN-VERBRAUCHERANGELEGENHEITEN1.html>

consumer disputes. During the execution of their tasks, conciliators are not bound by instruction, they are appointed by the board for at least three years. Their activity is supported by the Executive Board and the staff appointed by it. They may be dismissed from their office only on reasonable grounds and with a unanimous decision of the Board of Directors (Section 12 of the Statutes). The Statutes do not lay down any conflict of interest rules for the members of the conciliation board.

The list of mediators is kept by the Federal Ministry of Justice (*Bundesministerium für Justiz – BMJ*).<sup>43</sup> In addition to submitting the relevant application, registration is subject to the age of 28, professional qualifications, proof of trustworthiness (by means of a certificate of good conduct), the conclusion of a mediation liability insurance contract and information on the place where the mediator carries out their activities. Registered mediators must complete further trainings.

## Conclusions

In Germany and Austria, conciliation bodies operate in the form of associations. Their operation and procedures are governed partly by law and partly by their own rules of procedure. The difference between the two countries is that while in Germany there are several conciliation bodies, the Austrian conciliation body for consumer affairs ("*Schlichtung für Verbrauchergeschäfte*") is the body with exclusive competence and jurisdiction for the alternative resolution of disputes between consumers and businesses. In Germany the rules on conciliation board members are laid down in law with provisions primarily relating to qualifications. In Austria, provisions on the members of the conciliation body are laid down in the statutes. Among the conflict of interest rules, the intermediary must be an independent person, not bound by instructions. His or her person must guarantee the impartial settlement of the dispute. The mediator must immediately disclose to the competent consumer body any circumstances that may affect his or her independence or impartiality. In Germany, the VSBG regulates the rules for conciliation board members. The conciliation body must employ at least one person who is responsible for the out-of-court settlement of disputes and who is responsible for the impartial and fair conduct of the proceedings (mediator). The mediator must have appropriate legal knowledge, in particular in the field of consumer protection law, and the expertise and skills necessary for the settlement of disputes falling within the competence of the conciliation body. In addition, this activity may be carried out only if the person concerned has the qualifications required for the office of judge or mediator. In Austria, the conciliation body consists of five members, information on the members of the body can be found in the statutes. At least one of the members of the conciliation body must have a law degree. All members must have the knowledge and skills necessary for out-of-court dispute resolution or for the judicial settlement of consumer disputes. However, the statutes do not lay down any conflict of interest rules for the members of the conciliation panel.

---

<sup>43</sup><https://mediatoren.justiz.gv.at/mediatoren/mediatorenliste.nsf/docs/home>

## References

- Lenz, C. & M. Risak (2017). 'Austria' in Alexander, N., Walsh, S. & Svatos, M. (ed.) (2017) *EU Mediation Law Handbook - Regulatory Robustness Ratings for Mediation Regimes*. Kluwer Law International.
- Osswald, K. & G. Flecke-Giammarco (2017). 'Germany' in Alexander, N., Walsh, S. & Svatos, M. (ed.) (2017) *EU Mediation Law Handbook: Regulatory Robustness Ratings for Mediation Regimes*. Kluwer Law International.
- Roth, M. & D. Gherdane (2012). 'Mediation in Austria: The European Pioneer in Mediation Law and Practice' in Hopt, K.J. & Steffek, F. (ed.) (2012) *Mediation: Principles and Regulation in Comparative Perspective*. Oxford University Press.
- Rühl, G. (2014). 'Alternative und Online-Streitbeilegung in Verbrauchersachen – Neues aus Brüssel' in *Zeitschrift für Rechtspolitik* 47(1):8-11.
- Wendland, M. (2016). 'Abschied von der Privatautonomie durch Verbraucherschlichtung? – Zur Kritik des neuen Verbraucherstreitbeilegungsgesetzes (VSBG) aus der Perspektive der interdisziplinären ADR-Forschung. KritV, CritQ, RCrit.' in *Kritische Vierteljahresschrift für Gesetzgebung und Rechtswissenschaft/ Critical Quarterly for Legislation and Law / Revue critique trimestrielle de jurisprudence et de législation* Vol. 99(4):301-320.

## Legislation

### Austria

- Allgemeines Eisenbahngesetz vom 27 Dezember 1993 (BGBl. I S. 2378, 2396; 1994 I S. 2439), das zuletzt durch Artikel 10 des Gesetzes vom 10. September 2021 (BGBl. I S. 4147) geändert worden ist". [https://www.gesetze-im-internet.de/aeg\\_1994/AEG.pdf](https://www.gesetze-im-internet.de/aeg_1994/AEG.pdf)
- Alternative Dispute Resolution Act – AstG). Bundesgesetz über alternative Streitbeilegung in Verbraucherangelegenheiten. BGBl. I Nr. 105/2015 (NR: GP XXV RV 697 AB 772 S. 85. BR: AB 9411 S. 844.)
- Bundesgesetz über die Binnenschifffahrt (Schifffahrtsgesetz – SchFG) StF: BGBl. I Nr. 62/1997 (NR: GP XX RV 564 AB 618 S. 67. BR: 5400 AB 5420 S. 624). <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10012703>
- Bundesgesetz vom 2 Dezember 1957 über die Luftfahrt (Luftfahrtgesetz – LFG). StF: BGBl. Nr. 253/1957 (NR: GP VIII RV 307 AB 318 S. 40. BR: S. 128). <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10011306>
- Federal Law on Mediation in Civil Law Matters (*Zivilrechts-Mediations-Gesetz – ZivMediatG*). <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20002753>
- Marriage Law Amendment Act (Eherechts-Änderungsgesetz) 1999.
- The Motor Vehicle Route Act (*Kraftfahrliniengesetz*), (*Kraftfahrliniengesetz - KfLG*) StF: BGBl. I Nr. 203/1999 (NR: GP XX IA 1118/A AB 2047 S. 180. BR: 6013 AB 6047 S. 657).
- The Shipping Act (*Schifffahrtsgesetz*). <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10012703>.
- The Telecommunications Act (TKG - Telekommunikationsgesetz). <https://rm.coe.int/16806af19e>

Germany

The Act on Alternative Dispute Resolution in Consumer Matters (*Gesetz über die alternative Streitbeilegung in Verbrauchersachen* – (Verbraucherstreitbeilegungsgesetz - VSBG) VSBG Ausfertigungsdatum: 19.02.2016. <https://www.gesetze-im-internet.de/vsbg/VSBG.pdf>

Bürgerliches Gesetzbuch in der Fassung der Bekanntmachung vom 2 Januar 2002 (BGBl. I S. 42, 2909; 2003 I S. 738), das zuletzt durch Artikel 6 des Gesetzes vom 7. November 2022 (BGBl. I S. 1982) geändert worden ist", hereinafter: "BGB". <https://www.gesetze-im-internet.de/bgb/BGB.pdf>

The German Mediation Act (*Gesetz zur Förderung der Mediation und anderer Verfahren der außergerichtlichen Konfliktbeilegung vom 21 Juli 2012, BGBl. I S. 1577*).

Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit vom 17 Dezember 2008 (BGBl. I S. 2586, 2587), das zuletzt durch Artikel 12 Absatz 21 des Gesetzes vom 16 Dezember 2022 (BGBl. I S. 2328) geändert worden ist", hereinafter "FamFG".

Rules of Professional Practice for Lawyers (*Berufsordnung für Rechtsanwälte*).

Verbraucherstreitbeilegungsgesetz, *VSBG* vom 19 Februar 2016 (BGBl. I S. 254, 1039).

Zivilprozessordnung (*Zivilprozessordnung in der Fassung der Bekanntmachung vom 5 Dezember 2005 (BGBl. I S. 3202; 2006 I S. 431; 2007 I S. 1781), die zuletzt durch Artikel 2 des Gesetzes vom 7 November 2022 (BGBl. I S. 1982) geändert worden ist*). <https://www.gesetze-im-internet.de/zpo/ZPO.pdf>