



EU Standard Mediation Clauses

Read before use

These EU Standard Mediation Clauses are intended for **commercial disputes** between two commercial partners. They are not intended for disputes arising between a professional and a consumer, nor for disputes between two non-professionals (e.g. family law).

The clauses provided hereunder serve as a **robust blueprint** for the insertion of mediation clauses in your contracts with commercial partners. They have been designed based on the best practices across Europe to ensure an adequate level of protection of the parties.

The **core elements of the mediation clauses** constitute a minimum level of agreement necessary to achieve an efficient mediation clause in your contracts with commercial partners. The core elements of the mediation clauses include: the commitment to recourse to mediation, the avoidance of judicial proceedings or arbitration until mediation has been attempted, the conditions for the designation of a mediator, the reference to the applicable national legislation, and the sharing of costs between parties. While these elements can be adapted to your specific situation, agreement on these points is essential to an effective mediation process. In principle, the core wording should not be modified. Where necessary, however, it must be adapted to your specific situation (see below).

The **additional elements of the mediation clauses** provide a further level of agreement on the potential mediation process. They are not mandatory but provide parties with more certainty. Additional elements under Part 1 cover the process of initiation of mediation, including the timeframe, the duration and termination of mediation, and follow-up. Additional elements under Part 2 allow the parties to make sure the mediation clause is respected via the imposition of a financial penalty, if a party fails to start the mediation process as required. This is entirely optional.

The parts highlighted in yellow must be adapted to your individual and national situation:

- **Accredited by the national mediation association:** if your Member State requires (or simply allows) mediators to be recognised by a specific institution, you may specify that the mediator must be recognised by this specific institution. Having recourse to a recognised mediator ensures that your case will be handled with the highest level of professionalism. If this is not the case in your Member State, this element may be deleted.



- 
- **Holding a national mediation certification:** alternatively, if your Member State requires (or simply allows) mediators to obtain a national mediation certification, you may specify. Having recourse to a certified mediator ensures that your case will be handled with the highest level of professionalism.
If this is not the case in your Member State, this element may be deleted. If you do not know, information can be obtained e.g. from your national or regional chamber of commerce, or national mediation official organisation or association.
 - **Requirements of national mediation / alternative dispute resolution law:** If your Member State recognises and gives a legal framework to the use of mediation or alternative dispute resolution, you may specify. If not, you may specify “with the requirements of (e.g.) German legislation”.
 - **Name and seat of arbitration institution:** If you make use of additional elements of Part 1, there is the possibility to recourse to arbitration if mediation is not successful. If so, you may want to specify the specific arbitrator or arbitration institution.
 - **City Court:** If you make use of additional elements of Part 1, there is the possibility to recourse to court litigation if mediation is not successful. This is the place to indicate the competent jurisdiction for your contract. This may already be specified elsewhere in your contract.

Milieu Consulting developed these clauses based on research conducted in all 27 Member States. This work is part of a pilot project supported by the Belgian Federal Mediation Commission and funded by the European Commission under the Single Market programme.

For any questions, please contact us at mediationpilot@milieu.be.



EU Standard Mediation Clause

EU standard mediation clause	
Core elements	In case of any dispute arising out of or relating to this contract or agreement (including any question relating to its existence, validity, termination, interpretation or performance), the parties shall try to resolve them in the first instance by mediation. To this end, the parties undertake to take part in at least two mediation sessions, as long as the dispute is not resolved, in person or by delegating a person with decision-making authority.
	No party may commence any court proceedings/arbitration in relation to any dispute arising out of this agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated, or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.
	Without prejudice to national law, the parties give preference, when appointing the mediator, to mediators accredited by [insert name of national mediation association] / [a reputable mediation association], and/or holding a national mediation certificate
	The mediation will comply with the requirements of [national mediation/alternative dispute resolution law].
	The costs of the mediation shall be borne equally by the parties.
Additional elements Part - 1	To initiate the mediation a party must give notice in writing ('ADR notice') to the other party[ies] to the dispute, referring the dispute to mediation. Unless otherwise agreed, the mediation will start not later than [28] calendar days after the date of the ADR Notice.
	The parties shall attend two mediation sessions jointly and thereafter are free to terminate the mediation, as long as the dispute is not resolved.
	The mediation shall commence at the time the parties attend the first joint mediation session. If it has proved impossible to resolve a dispute as referred to above {within [45] calendar days} by means of mediation, that dispute shall be settled by: a) Arbitration, in accordance with the relevant rules of [Name and seat of arbitration institution] as they read on the date of application. b) The competent court at [City court].
Additional elements Part - 2	If a party commences court proceedings or arbitration on a dispute to which this clause relates without complying with this clause, the party concerned shall forfeit to the other party a fine of [EUR 1000] which shall be immediately due and payable, without prejudice to the other party's right to claim damages. The other party shall also be entitled to have the said court or arbitral proceedings stayed until the termination of the mediation thereof.

Notes:

- Parts highlighted in yellow need to be tailored to the individual national context.
- With regard to additional element 1, the option of adding timeframes is helpful if parties are concerned that mediation might be used as a delaying mechanism.
- With regard to additional element 2, the element adds a sanction in case of non-compliance with the mediation clause.