



# **ADR point cross border network MEDIATION RULES**

**November 2019**

# **PREAMBLE**

ADR point – Center for Alternative Dispute Resolution ("ADR point") is a private dispute resolution entity with global presence offering mediation services to companies & individuals in civil, commercial, community & consumer disputes. ADR point recognizing the value of mediation in international trade, the increasing use of mediation as an alternative to litigation, the significant benefits for the parties involved and the way it works in different legal, social and economic systems has established the ADR point Cross Border Network of mediators with a view of mediating disputes that go beyond state borders through a panel of experienced mediation specialists from many countries of the world. The mediation procedures carried out by ADR point CROSS BORDER NETWORK are governed by the following Mediation Rules.

## **ARTICLES**

### **ARTICLE 1**

#### **General**

##### **1 Rules**

The Mediation Rules ("Rules") of ADR point CROSS BORDER NETWORK, ("Network") are applicable to cross border mediation procedures and are duly notified by the "Network" to its mediators and the parties of a dispute in order to offer them a good knowledge of the context of the procedures. All the Articles and the Annex herein form the "Mediation Rules" of ADR point CROSS BORDER NETWORK.

##### **2 Mediator**

The "Rules" provide for the appointment of a neutral and independent third party ("the Network mediator"), who will help the parties resolve their dispute.

##### **3 Procedure**

A cross border mediation is conducted in accordance with the "Rules", unless, prior to the agreement of the parties on the name of the "Network mediator" who will handle their dispute or before the appointment of the "Network mediator" by the "Network" or with the consent of the "Network mediator" and the approval of "ADR point", they have agreed to follow a different mediation procedure or a combination of settlement procedures. The term "mediation" as used in the "Rules" will be deemed to cover the specific resolution process (resolution of a dispute where an independent and neutral third party tries to help the parties resolve their dispute) and the term "Network mediator" will be deemed to cover the neutral and independent third party who conducts the resolution process. The term "resolution

process" as used in these "Rules" refers to the period from the beginning of the resolution process until the completion of the process in accordance with the "Rules".

#### **4 Scope**

The "Rules" and the Annex will apply to any dispute for which the national legislation of the country of both (all) parties provides that it can be referred to mediation. Parties may refer their dispute to mediation before resorting to arbitration and before or after commencing judicial proceedings.

#### **5 Amendment of rules**

Parties to the dispute may agree for practical reasons to modify "Rules" of the procedure. However, this would eventually be at the discretion of the "Network mediator" and "ADR point" to determine whether an amendment violates or not the principles of the "Network" and the standards of the "Rules" and to decide whether or not to accept this amendment. The parties' proposal for the amendment of any "Rules" could be approved only prior to the signing of the Agreement to Mediate. "ADR point" alone is competent to amend the "Rules".

#### **6 Online Dispute Resolution**

Where in the "Rules", the terms "mediation" and "resolution" are used, they will be taken to include mediation and settlement procedures conducted face to face or through online dispute resolution systems. When ODR procedures are followed, the "network mediators" will implement the Ethical Principles adopted by the National Center for Technology & Dispute Resolution of the United States of America and the UNCITRAL ODR Rules & standards providing instructions and securing minimum requirements as these have been developed by the United Nations Commission Working Group on International Trade Law (UNCITRAL).

### **Article 2**

#### **Mediation procedures where there is a prior agreement between parties to refer their disputes to the "Network"**

##### **1 Existing Agreement**

If there is an agreement between the parties to refer their disputes to the "Network", any of the parties wishing to initiate the mediation process should submit a written request (including submission through online form) to the "Network".

##### **2 Information request**

The request submitted to the "Network" must include:

###### **A. INFORMATION REQUIRED**

- a) names, addresses, phone numbers, email addresses, and any other available contact information of the parties to the dispute
- b) a copy of the agreement containing the ADR point Cross Border Mediation Clause ("Network clause") which provides for the referral of any disputes between the parties to the "Network"
- c) a brief description of the dispute including, if possible, an estimate of the monetary value of the dispute, if this is possible

#### B. OPTIONAL INFORMATION

- a) any agreement or proposal as to the time within which the mediation procedure must be conducted and completed
- b) any agreement or proposal as to the language (s) to be used in the mediation procedures
- c) any proposal or agreement as to the location (city, area, venue, etc.) of the joint & private meetings or to conduct the procedure online
- d) any joint proposal of the parties as to the name of the mediator or in the absence of such an agreement, any agreement for the profile of the mediator who will be appointed by the "Network".

### **3 Notification**

After the submission of the request for mediation, the "Network" forwards it immediately (within 24 hours) to the other side of the dispute, unless the request has been filed by both sides.

### **4 Date of initiation of procedures**

When there is an agreement between the parties for referring their disputes to the "Network", the date of the initiation of the mediation procedures will be the date when the request for mediation has been notified by the "Network" to the other side. If the request for mediation was submitted jointly by the parties to the dispute, the date of initiation of the mediation procedure is considered the date when the joint request was submitted to the "Network".

### **5 Deadline for Settlement**

If the parties have agreed on a specific time limit for settling their dispute, which is stated in the relevant "network clause", the starting date point for calculating this period is the date provided in Article 2.4 of the "Rules".

### **6 Refusal of mediation request**

If the party who has been notified about the request for mediation, despite the contractual obligation for referring disputes with the other party to the "Network" does not agree to participate in mediation, the mediation process does not start, the mediation request will not be further processed, the case will be closed and the "Network" will notify the requesting party accordingly.

## **7 Acceptance of mediation request**

If the party who has been notified about the request for mediation accepts (orally or in writing) to participate in mediation, all discussions with the parties or their representatives, their legal counsels and any authorized third party, which are considered to have started at the date when the mediation request has been notified to the other party by the "Network" are covered by the rules of confidentiality and secrecy (Article 8). The mediation process begins within twenty (20) days from the date provided for in Article 2.4 of the "Rules", unless the parties agree on an extension of this period.

## **Article 3**

### **Mediation procedures where there is no prior agreement between parties to refer their disputes to the "Network"**

#### **1 Refer case to mediation**

If there is no prior agreement between the parties for referring their disputes to the "Network", either of the parties may submit a written mediation request (including submission by online form) to the "Network" providing the information specified in Article 2.2. After receiving the request, the "Network" will immediately notify (within 24 hours) all other parties and will provide them with assistance and information on the proposed mediation.

#### **2 Date of initiation of procedures**

When there is no prior agreement between the parties for referring their disputes to the "Network", the date mediation procedures initiate is the date when the other side has accepted the request for mediation, notified by the "Network". This acceptance must be made in writing and sent to the "Network".

#### **3 Lapse of time**

In case the request for mediation is not accepted by the other side within twenty (20) days or within such period as the "Network" deems reasonable from the date on which it has notified the mediation request to that side, the mediation request will not be further processed, the case will be closed and the "Network" will notify the requesting party accordingly.

#### **4 New mediation request**

If the parties of the same dispute decide at some later point to resolve the same dispute through mediation they must refer their case again for mediation to the "Network" under the same conditions described above.

## **5 Acceptance of mediation request**

If the party who has been notified about the request for mediation accepts to participate in mediation, all discussions with the parties or their representatives, their legal counsels and any authorized third party, which are considered to have started at the date when the mediation request has been accepted by the other party are covered by the rules of confidentiality and secrecy (Article 8). The mediation process begins within twenty (20) days from the date provided for in Article 3.2 of the "Rules", unless the parties agree on an extension of this period.

### **Article 4**

#### **Time, place and language**

##### **1 Selecting time, place and venue**

In the absence of any agreement between the parties, the "Network" may suggest the time, the place and the venue where mediation will take place or ask the "Network mediator", if one has been chosen by the parties or appointed by the "Network", to do so. The "Network" or the "Network mediator" consult with the parties and ensure that time, place and venue is convenient for all parties involved and cover any special needs they may have. Parties to the dispute, their legal counsels, any experts appointed by them and the "Network mediator" may participate in the resolution procedure face to face, online or with a combination of the above. The "Network" provides the online dispute resolution environment and the "Network mediator" has the coordination of and the control over the process.

##### **2 Language**

The "Network" makes every effort to ensure that the parties can participate in the mediation process each in its native language. In cross border disputes, the "Network" appoints two or more "Network mediators", one from each of the parties' country of origin or establishment (if a company).

### **Article 5**

#### **Appointment of "Network Mediator"**

##### **1 Selection of mediator in cross border disputes**

If the party requesting mediation files an online mediation request through the mediator's profile in the "Network" website, it is deemed to have selected the mediator for the dispute. When the "Network" receives the mediation request it notifies the other party (or parties) and proposes a "Network mediator" from that party's country. If this other party agrees to the proposed "Network mediator" both sides have agreed to a mediator and the mediation procedure will move to the next stage. If this other party disagrees, then that party can either select a "Network mediator" or the "Network" appoints another "Network mediator" from the party's

country and in case there is no "Network mediator" from the other party's country any other "Network mediator" who considers suitable to mediate the dispute. The other party is obliged to accept the appointment made by the "Network". If not the case will not be further processed, will be closed and filed and the "Network" will notify the parties accordingly. In both instances the requesting party cannot object to the mediator selected by the other party or appointed by the "Network". If a mediation request is not filed through the profile of a "Network Mediator" and the mediation request has been accepted by the other party, the parties can either select one "Network Mediator" (or each party can select one "Network Mediator" from their respective countries) or the "Network" may appoint one "Network mediator" or one from each of the respective countries of the parties and in case there is no "Network mediator" from a party's country any other "Network mediator" who considers suitable to mediate the dispute. Both parties are obliged to accept the appointment made by the "Network". If not the case will not be further processed, will be closed and filed and the "Network" will notify the parties accordingly.

## **2 Agreement between the parties**

Irrespective of the way the mediation request has been filed (through the profile of a Network mediator" or not) parties wishing to resolve their dispute through the "Network" may agree and jointly select one or more "Network mediators" from the list of the "Network".

## **3 Selection from list**

If a mediation request is not filed through the profile of a "Network Mediator" and the parties wish to select only one "Network Mediator" to mediate their dispute and there is no agreement on the name of the mediator, any of the parties may request from the "Network" a selection to be made from a list. The "Network" sends to the parties a list of three "Network mediators" and asks them to raise within five (5) days any justifiable objections as to the independence and/or neutrality of the mediators. If such objections are justified the "Network" replaces one or more of the mediators. If such objection are not justified or not raised within five (5) days the "Network" asks each party to select two mediators from the list of three, so that there will be at least one mediator in common. If there is only one mediator in common the "Network" appoints that mediator and the case moves to the next stage. If there are two mediators in common the "Network" appoints one of them at its own discretion and the case moves to the next stage. The "Network" informs the parties in writing about the name of the appointed mediator. None of the parties can raise any other objection to the appointment at this stage. If any of the parties refuse to accept the mediator appointed through the above process, the mediation request will not be further processed, the case will be closed and the "Network" will notify the parties accordingly.

## **4 Profile of Mediator**

When the "Network" appoints a mediator, it ensures that the mediator meets all the requirements of the case. The "Network" examines the mediator's profile, qualifications, language skills, training, experience, availability, any known circumstances that may raise issues of independence and neutrality and the overall ability to conduct mediation in accordance with the "Rules" of the "Network".

## **5 Acceptance of appointment**

The "Network" informs the mediator of the appointment and invites him to sign a letter confirming the acceptance of appointment, his/her availability throughout the duration of the process and to disclose any information that might raise issues of impartiality and independence. Parties are informed of the acceptance and the contact details of the mediator and may submit to the mediator a short note with the main points of their dispute and any data in printed or electronic form which they consider important.

## **6 Impediments**

The "Network mediator" cannot accept to mediate a dispute if there are any impediments provided by legislation or if in any previous resolution procedure of the same dispute he/she had acted as a judge or arbitrator or as negotiator, agent or representative of one of the parties involved in the dispute.

## **7 Exclusion from standing as witness**

Unless required by the applicable law or if the parties and the "Network mediator" agree otherwise in writing, the mediator cannot stand as a witness in any judicial, arbitration or similar proceedings relating to any aspect of the dispute.

# **Article 6**

## **Mediation process**

### **1 Sign of the Agreement to Mediate**

Before the mediation process starts the "Network mediator" ensures that all participants in the process have signed the Agreement to Mediate. The Agreement to Mediate is also signed by any person added (with the consent of all parties) in the course of the mediation process (citing his/her name, identity number and the capacity under which he/she is participating in the process). The Agreement to mediate can be signed either by e-signature or by physical signature depending on the technical capabilities of the signatories. The "Network Mediator" and each of the parties to the dispute receive an original copy of the Agreement to Mediate.

## **2 Authorization**

Whether the process is conducted online or with the physical presence of those involved, the "Network mediator" checks a) the identities of the parties of the dispute, b) the identities of their appointed representatives (if any) and the relevant power of attorney or authorization documents, c) the identities of the legal counsels and c) the identities of any other individuals participating in the mediation process at the request of the parties. During the mediation process all those present are required to respect the instructions and the ground rules set by the "Network mediator".

## **3 Information**

The "Network mediator" informs the parties for the steps of the mediation process and answers any questions related to the process.

## **4 Documents**

The parties may submit to the "Network mediator" in printed or electronic form any documents or files they consider important for the "Network mediator" to know. If needed, and only with the express consent of the other party, the "Network mediator" may communicate the content of these documents or send some or all of them to the other side.

## **5 Special needs**

In conducting the mediation the "Network mediator" takes into account any special needs any of the parties may have and tries to meet them in order to build trust in the process and ensure that such needs will not affect the required impartiality and the participation of the parties in the process under equal terms.

## **6 Structure of the process**

The "Network mediator" has the discretion to implement during the mediation process any mediation techniques and organize any joint & private meetings with the parties as he/she deems appropriate ensuring that the right balance is maintained at all times and no biased behavior issues will be raised by either party. The mediator does not issue a decision and cannot provide any legal advice to the parties. The responsibility for the agreement rests entirely upon the parties of the dispute.

## **7 Minutes**

No minutes of the mediation process are kept by the "Network mediator". The "Network mediator" after the completion of the mediation process will destroy all notes taken during mediation and delete any hard copy or e-files and any electronic communication exchanged between him and the parties.

## **8 Good Faith**

Parties to the dispute, their legal counsels and any third party involved in the process must act in good faith throughout the course of mediation.

## **9 Withdrawal from the mediation process**

The "Rules" shall not prohibit the parties to withdraw from the mediation process at any time they consider appropriate and from commencing or resuming any judicial, arbitration or other resolution procedures in relation to their dispute. Likewise, the parties or the "Network mediator" could request a short & justifiable suspension of the mediation process, if they have reasons to believe that this suspension will increase the chances of a settlement.

## **10 Assistance - Observation**

The "Network" may, with the consent of the parties, allow one or more younger mediators to participate in the process in order to gain more experience. Younger mediators will either assist the "Network mediator" (assistants) or merely observe the process without participating in it (observation). In both instances younger mediators will sign the Agreement to Mediate and will be bound by the terms of confidentiality and secrecy.

# **Article 7**

## **Completion of the process**

### **1 Termination of mediation**

The "Network mediator" informs the "Network" for the termination of the mediation process if any of the following occurs:

- a) the parties have settled the dispute and sign the Mediation Agreement. The Mediation Agreement is drafted by the "Network mediator" with the assistance of the parties and their legal counsels and is signed by all of the above,
- b) the "Network mediator" has reasons to believe that the agreement likely to be achieved faces one or more legal issues,
- c) any of the parties delivers to the "Network mediator" a request to no longer participate in the mediation process,
- d) a withdrawal of one or both parties from the process without justifying their decision,
- e) the "Network mediator" believes that despite the efforts made by the parties to resolve the dispute, the continuation of the process is unlikely to result to a settlement. In such case the "Network mediator" drafts a Statement of no Settlement which is signed by the "Network mediator" the parties and their legal counsels, or just by the "Network mediator",

e) the deadline for completion of the mediation process, including any period of extension agreed between the parties, has expired and therefore the process must be terminated. The "Network mediator" may decide to give further extension to this deadline if he/she considers that the process is at a critical point that could lead to an agreement.

## **2 Non-payment of mediation fees**

The parties are required to proceed to the payment of the fees of the "Network mediator" and any other expenses related to the mediation process as provided for in Article 10 and the related Annex. If case payment is still overdue, the "Network" will inform the party (parties) for the obligation to pay and if the agreed amount of fees & expenses is still overdue after the deadline set by the "Network", the "Network mediator" can terminate the mediation process or temporarily suspend it until payment is completed.

## **Article 8**

### **Confidentiality-Privacy**

#### **1 Confidentiality**

If not otherwise agreed by the parties or if prohibited by applicable law:

- a) the mediation process, but not the fact that it takes place, is private and confidential,
- b) the agreement reached between the parties remain confidential, unless any of the parties to the dispute notifies the agreement by virtue of an obligation imposed by the applicable law or notification is necessary for the purposes of implementing and enforcing the agreement,
- c) the "Network mediator" cannot exchange between the parties any information the parties have entrusted him/her with during the private sessions unless he/she has the express consent of the party to do so,
- d) there are no minutes kept in the course of the mediation process and any temporary notes taken are destroyed after the completion of mediation

#### **2 Privacy**

Unless required by applicable law and in the absence of any opposite agreement between the parties, all those involved in the mediation process cannot produce as evidence in any judicial, arbitration or similar proceedings for the same case:

- a) any documents, written statements, communications or other material exchanged between them during the mediation process, unless all these documents, written statements & communication and material was in their possession prior to the mediation process

- b) any views expressed or suggestions made by any person involved in the mediation process
- c) any admissions, concessions or offers made by the parties, their representatives or their legal counsels during the mediation process,
- d) any proposals submitted by the mediator to the parties during the mediation process.

Privacy does not apply to documents and information which the parties can acquire outside the mediation process or was available to them prior to the mediation process.

### **3 ODR procedures**

In mediation conducted through online dispute resolution platforms confidentiality & privacy rules apply to all files and communications stored electronically, if acquired during the mediation process.

## **Article 9**

### **Enforcement of settlement agreements**

#### **1 Voluntary implementation**

Settlement Agreements resulting from mediation are voluntary implemented by the parties. If any of the parties fail to implement the agreement, the other party can enforce the agreement according to the applicable law of the country where relief is sought, in case of disputes between parties residing or established in the same country.

#### **2 Enforcement of cross border settlement agreements**

Settlement Agreements resulting from mediation in cross border cases are voluntary implemented by the parties. If any of the parties fail to implement the agreement, the other party could enforce the agreement according to the applicable law of the country where relief is sought, in case both countries of the parties have ratified the Singapore Convention under the provisions stated therein.

## **Article 10**

### **Fees**

#### **1 Referral fees**

Submission of a request for mediation to the "Network" is free of any fee.

#### **2 Mediation fees**

An indication of the Mediation pricing policy is cited in the Annex at the end of the Mediation Rules. The applicable Mediation fees are calculated after receipt of the mediation request and if needed, discussions with the parties.

### **3 Venue & support expenses**

The "Network" conducts most of the mediations online bearing the costs of the ODR platforms and other related expenses. There is no cost for the parties. However, when venues are required expenses are incurred by the parties and may differ depending on the country, the venue and the facilities. An estimation of the expenses is sent to and must be agreed by the parties before any final arrangements. The venue & support expenses are equally divided between the parties unless parties decide a different arrangement. The venue & support expenses are calculated in advance and their payment is made before the end of the mediation process, regardless of the outcome of the case. If the duration of the process is extended, payment of the extra expenses is made at the completion of the mediation process. If the process is terminated earlier than anticipated for any reason other than failure by any of the parties to pay the agreed expenses the respective amount of expenses is refunded.

### **4 Payment of mediation fees**

The mediation fees are calculated and paid by the parties upon the signing of the Agreement to Mediate. The mediation fees are equally divided between the parties unless parties decide a different arrangement. If the duration of the process is extended, payment of the extra fees is made before the completion of the mediation process. If the process is terminated earlier than anticipated for any reason other than failure by any of the parties to pay the agreed fees the respective amount of fees is refunded. The mediation fees are paid by the parties to the "the respective Network mediator" regardless of the outcome of the case. To avoid suspension or termination of the mediation process each party has the right to pay the outstanding amount which is overdue by the other side.

### **5 Minimum fees**

In the absence of any agreement as to the applicable mediation fees, the minimum charge for using the services of a "Network mediator" after an Agreement to Mediate has been signed between the parties is four (4) hours at an hourly rate of two hundred euros (200€) (plus VAT if applicable in the country where the receipt or invoice is issued), an amount equally divided between the parties unless the parties decide a different arrangement.

### **6 Pre-mediation fees**

When prior to signing the Agreement to Mediate a pre-mediation meeting takes place with a "Network mediator" and the parties finally decide to proceed to mediation, pre-mediation meeting is free of charge. If the parties, after the pre-mediation meeting decide not to proceed with mediation, they will be charged with a fee of 100 € each (plus VAT if applicable in the country where the receipt or invoice is issued). Pre-mediation meetings have a maximum duration of one (1) hour.

## **7 Other costs**

Any other costs such as translation services, use of consultants etc. are incurred by the parties themselves. These expenses are paid directly by the parties to the professionals who offered them their services.

## **8 Currency**

Fees & expenses are calculated & payable in the currency of the country of the "Network mediator". If a party uses another currency, payment will be executed after the conversion of that currency to the currency of the country of the "Network mediator". For the purposes of estimating the value of the dispute during the filing of a mediation request, all currencies must be converted to euros.

## **Article 10**

### **General provisions**

#### **1 Amendment of Rules**

For all matters not expressly provided in the "Rules", the "Network" and the "Network mediators" will act in the spirit of the "Rules". "ADR point" has the right to amend and supplement the "Rules" ensuring always that the parties and their legal counsels are aware of the latest edition of the "Rules".

#### **2 Email communication**

Where in the "Rules" there is an obligation for submission of information in writing by the parties, the "Network" or the "Network mediators" this may have the form of an email to simplify and speed up procedures.

## **Article 11**

### **Liability limitation**

"ADR point", its management and employees will not be held liable to any party for any act or omission by any "Network mediator" during the mediation process. The "Network mediators" are responsible during the mediation process only for intentional wrongdoing.

## **Article 12**

### **Entry into force**

The above "Rules" amend the "Rules" of March 1, 2016 and are in force as of November 30, 2019.

# ANNEX

## Mediation fees

### 1 Fees of "Network mediator"

The final applicable Mediation fees are calculated after receipt of the mediation request and if needed, after discussions with the parties. An indication of the Mediation pricing policy of the "Network" is found on the example of a claim up to 250.000€ in a two parties commercial cross border dispute of moderate difficulty where the fees for the services of the "Network mediator" would be 900€ per day (plus VAT if applicable in the country where the receipt or invoice is issued).

### 2 Definitions

For purpose of clarity as to the Fees of "Network mediator" above, "Per day" means 8 hours of mediating the dispute or up to 8 hours if the dispute is settled before the period of 8 hours lapse.

"Services" include mediation services which start at the date of his appointment and up to the termination or completion of the mediation process.

### 3 Value of dispute

The value in a monetary dispute is the highest amount the requesting and the other party claim against each other. If the value is not or cannot be clearly stated by the requesting party in the mediation request, the "Network" estimates the value based on the available description of the submitted case.



*November 30, 2019*