

Mediation gets a boost and collaborative negotiation as a new ADR tool

The Belgian legislature is betting heavily on ADR (Alternative Dispute Resolution, i.e. outside of the court system). In an earlier newsflash we already discussed the bill to promote alternative dispute resolution mechanisms.^[1] In the meantime the Parliamentary procedure has run its course and the new law was adopted.^[2] Below we briefly summarise the most important innovations.

Firstly, there are a number of new general provisions that should encourage ADR. Lawyers are expressly obliged to inform their clients about the possibility of alternative dispute resolution. Finding an amicable solution must in any event always stand high on a lawyer's agenda. Judges can question and inform the parties about the various alternative ways in which they can amicably resolve their dispute. The case can be adjourned in order to give these possibilities every opportunity.

Specifically with regard to mediation, the judges can - as was already the case earlier - at joint request or subject to the consent of all parties, order a judicial mediation at any stage in the legal proceeding. New is that the judge, if he believes that a reconciliation is possible, at the start of the proceeding and after having heard the parties, can order a judicial mediation on his own initiative, even if not all of the parties are in agreement about this. Only if every party is opposed to mediation can the judge not impose it. No appeal is possible against the order of a judicial mediation.

The documents drawn up and the communications made during the course of and for the purpose of the mediation are confidential. The new legislation gives the parties the possibility to modulate this confidentiality within limits that they themselves determine. In so doing one must of course proceed with the necessary caution.

As of 1 January 2019 the collaborative negotiation procedure is introduced as an additional alternative dispute resolution mechanism. This is a voluntary and confidential procedure of dispute resolution by negotiation, where each party is assisted by a lawyer specifically trained in this method. Just as with mediation, the judge can order the parties to resolve their dispute via collaborative negotiation but, unlike mediation, this can only be done at the joint demand of parties.

After conclusion of the negotiations, regardless of whether an agreement has been reached, the collaborative lawyers may no longer intervene in the dispute that formed the object of the collaborative negotiations. This prohibition also applies for all lawyers from the law firm of the

collaborative lawyer involved.

As is often the case, the new provisions quickly revealed a number of shortcomings, and a repair bill is already on its way. We'll keep you informed.

[1] 'New provisions concerning mediation and collaborative negotiation are coming'. See: <https://www.schoups.com/nl/nieuws/35802?subid=9378#nieuwe-bepalingen-omtrent-bemiddeling-en-collaboratief-onderhandelen-op-komst>

[2] Act of 18 June 2018 containing miscellaneous provisions concerning civil law and provisions to promote alternative dispute resolution mechanisms, Belgian Official Journal 2 July 2018.

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