



Mediation and consumption: How does it work?

- How to build up confidence between businesses and consumers?



Centre européen des consommateurs
France
European Consumer Centre France

Réseau européen
ECC-Net

- ⇒ **A trader refuses to address your claim although you consider it well-founded? You do not know what to do in order to be proved right?**
- ⇒ **Whenever a dispute with a trader arises, under certain circumstances, mediation can be an alternative to the judicial process.**
- ⇒ **But what happens if the trader is located in another country, e.g. in France?**
- ⇒ **The ECC-Net will assist you in your attempt to contact the trader and will look for a competent mediator in the trader's country.**

Due to the low amount of money involved, a lot of consumer disputes are not suitable for a time consuming and expensive judicial procedure. In this booklet, we would like to draw your attention to the existence of alternative means of redress which can help consumers in dispute with a trader in another EU Member State, Iceland or Norway.

However, mediation is no miracle solution. It nevertheless represents a good chance for both consumer and trader to reach an amicable solution without necessarily going to court.

- 1. What is mediation ? 3**
- 2. The way to mediation..... 4**
- 3. Mediation and Internal Market 5**
- 4. List of French mediators in different sectors. 6**

1. What is mediation ?

In France, different Alternative Dispute Resolution (ADR) Schemes exist. However, most of the time, words like mediation, conciliation, arbitration are unfamiliar to the consumer and seem to be synonyms of each other. Yet, each of them is related to a specific form of ADR procedure.

Definitions:

Mediation :

Amicable form of dispute resolution in which two parties to a dispute turn to an independent and impartial third person, the mediator, whose mission is to offer a solution that is acceptable to both of them. This process implies both parties' explicit consent. During a judicial procedure, the judge may suggest such an alternative but both parties are free to accept it.

The mediator may rely her/his decision on the applicable law as well as on equity.

Conciliation :

Close to mediation, but the conciliator does not make a proposal for a solution to the dispute. He/she only brings both parties together and tries to help them to find a solution on their own. The agreement between the parties may be carried out in a draft agreement.

Arbitration :

Process in which the parties decide to submit the case to one or several third parties, called the arbitrators. Those are appointed by each party according to the arbitration convention. The decisions, called arbitration awards, are based upon the applicable law. They are binding to the parties. Whereas arbitration is used in disputes between consumers and traders in some European countries such as Spain or Portugal, this is not the case in France. An arbitration clause forcing both consumer and traders to make their dispute tried by an arbitrator would be considered as an unfair term.

Those types of procedures, which often lack any binding force, have many advantages because they are quick, simple and cheap, sometimes even free of charge. But the effect of the parties' agreement depends also on the policy of the company that is participating in the process. For instance, a company may accept to find an amicable solution but not implement it later. The agreement being not binding, it will be difficult to enforce it. However, for some companies, such as EDF, the mediator's decision is binding. Furthermore, it remains possible to turn to a judge in case the process fails, the parties' agreement or the mediator's decision is not complied with.

2. The way to mediation

◆ Before submitting your case to a mediator

There is no standardised proceeding for submitting a case to a mediator. Each mediator has her/his own rules.

However, in France and as far as consumer disputes are concerned, there is a recurring model. So when a consumer encounters difficulties with a trader, he/she first has to file a complaint with the customer service of the trader. Only at a later stage, after having tried to contact the trader and its customer service, the consumer may turn to the mediator of the trader's sector.

◆ Submitting your case to the mediator

The submission most often is made in written form; the mediator may also make application forms available. It is always important to make a clear and precise reminder of the facts in order to give an overall picture of the case. Make sure you attach all the necessary documents to support your complaint (copy of order form, invoices, proof of payment, exchanged mails and emails...). Make sure you do not send the original documents which are your written evidence! If you wish to obtain more details concerning the mediator's rules and proceedings, feel free to contact her/his services or try the internet in order to obtain all relevant information before sending your file.

◆ Assistance

It is always possible to be assisted by a legal adviser in the mediation process. You can also ask a consumers' association to represent you.

3. Mediation and Internal Market

◆ Out-of-court settlement of cross-border disputes

In order to develop the European internal market, to strengthen the consumers' confidence and to encourage them to shop cross-border, the European Commission adopted two recommendations on mediation in cross-border consumer disputes. Those recommendations, of 1998 and 2001, elaborate a set of standards the mediators have to meet, such as impartiality, independence, the legality principle, etc.

Mediators as well as other alternative dispute resolution schemes meeting these standards can be notified by the member states. The aim is to enable consumers to turn directly to the competent mediator in order to find a solution to their disputes.

The list of mediation schemes notified by each member state is available on the following link:

http://europa.eu.int/comm/consumers/redress/out_of_court/database/index_en.htm

Moreover, on October 22nd, 2004, the European Commission presented to the European Parliament a proposal for a new directive on certain aspects of mediation in civil and commercial matters in order to ensure a better access to mediation schemes within the European Union.

◆ Assistance to consumers in cross-border mediation procedures

The mission of the European Consumer Centres Network (ECC-Net) is to assist consumers in cross-border disputes and to assist them in amicable out-of-court-settlement proceedings. Those contact points look for competent mediators and help consumers to overcome language barriers, for instance.

So, in case you are involved in a dispute with a trader in France, please do not hesitate to contact the ECC of your home country, which will transmit your case to the ECC France. We will try to find a competent mediator and assist you in the case in close cooperation with your home ECC.

4. List of French mediators in different sectors.

Insurance

Mediateur de la FFSA (French Insurance Companies Federation).

BP 290

75425 Paris Cedex 09

Tel. 0820 03 15 24

Fax: 01-45-23-27-15

Web Site: www.ffsa.fr

In case of a dispute related to risk-coverage, the insured person, the insurance company or any third person, after having attempted to contact the trader and if the company is a member of FFSA (ask the company whether or not it is a member), can transmit his/her case to the mediator of the FFSA. The proceeding is explained in French on the FFSA website.

Mediateur de la GEMA (Mutual Insurance Companies Group)

09, rue de Saint Petersburg

75008 Paris

Tel. 01-53-04-16-37

Web Site: www.gema.fr (In French)

The GEMA mediator is competent for all disputes related to risk coverage of individuals as well as businesses. The mutual insurance company must be a member of GEMA and give its consent to mediation.

Banking

Since the MURCEF law came into force on December 11th, 2001, each bank must have its own mediator and her/his complete contact information must appear clearly on your bank statement. The mediator's field of competencies and how to submit a case to the mediator are defined by each bank, independently from each other. However, the consumer must have attempted to contact his agency and the clients' service first.

Ask your bank how to submit a case to the mediator.

If ever the bank should not have its own mediator, there are mediators competent on the national level you can turn to.

Médiateur de l'ASF (French association of finance compagnies)

24 avenue de la Grande Armée

75854 Paris Cedex 17

Tel. 01-53-81-51-51

Fax: 01-53-81-51-50

Web site: www.asf-france.com (In French)

This mediator is in charge of all members of ASF which have subscribed to ASF mediation. The mediator is competent for:

- Financial conventions concluded by individuals for their personal needs;
- the management of a deposit account for individuals;
- information precedent to the housing loan contract;

A case may be submitted to the mediator only if the consumer first tried to contact the trader.

Médiateur de l'AMF (Financial services regulatory authority)

17 place de la Bourse

75082 Paris Cedex 02

Tel. 01-53-45-60-00

Fax: 01-53-45-61-00

Web Site: www.amf-france.com (in English)

Competent for dealing with all individual disputes between consumers or non-professional investors (natural or legal persons) and their brokers or the companies they have invested in.

E-commerce

Médiateur du Net

6, rue Déodat de Séverac

75017 Paris

Tel. 01-44-01-38-00

Fax: 01-44-01-38-19

Web Site: www.mediateurdunet.fr (In French)

Competent for all disputes related to the use of the Internet (online buying, copy rights, protection of privacy, etc). Applications must be made in written form or by filling out the online application form available under the link: <http://mediateurdunet.fr>

General

Conciliateurs de Justice

In France, every Tribunal d'Instance (first instance court) appoints judicial conciliators. They are competent for all disputes in civil matters (disputes between neighbours, between renters and landlords,...). They do not intervene neither in disputes with the administration nor in disputes related to family law. The proceeding is chosen freely by every conciliator. In general, he/she tries to bring the parties together during one or several hearings. The parties may be accompanied by a person of their choice.

Boîtes Postales 5000

BP 5000 + N° of the Département

Web Site: www.finances.gouv.fr/DGCCRF

There are so called "Boîtes Postale 5000" in every "département", Their mission is to receive all complaints related to consumer disputes and dispatch them to competent mediators. Application must be made by letter in which the facts are related and to which a copy of all supporting documents must be attached.

Public Services

Médiateur d' EDF (French national electricity provider)

TSA 50026

75804 Cedex 08

Web Site : www.edf.fr (In English)

Competent for all disputes related to EDF. The consumer can either directly turn to the mediator or through the intermediary of consumers' organisations. But in all cases a first attempt has to be made to contact the trader. The application is to be made by filling out the form available on the web site.

Médiateur de GDF (French gas company).

TSA 90015

75837 Paris Cedex

Web site : www.gdf.fr

Competent for all disputes between GDF and individuals or businesses.

Before resorting to the mediator, an attempt must have been made to contact the trader. Therefore the consumer should contact his/her agency and then the director of EDF-GDF services at the address indicated by the agency. You may also contact your GDF "pôle conseil", then the GDF commercial delegate at the address indicated by your "pôle conseil". Or ask:

-Directeur clientèle national EDF GDF Services, TSA 82 120-92919 La Defense Cedex

or:

-Directeur commercial des particuliers Gaz de France, 23 rue Philibert Delorme, 75 840 Paris Cedex 17.

Should you not obtain neither a satisfactory response nor any response at all, you can then contact the GDF mediator. To do so, submit the case in written form. or fill out the registration form available on the GDF Internet site.

Individuals may be represented by a consumers' organisation.

Mediator of the city of Paris.

Miss Frédérique CALANDRA

Web Site: www.paris.fr

The mediator is competent for all disputes concerning services provided by the Département and/or the city of Paris. The users can turn to the mediator whenever a first attempt to solve the problem with the relevant service has failed. If the user did not receive a response or whenever he is not satisfied with the answer, he can submit the case via online registration forms available on the website of the city of Paris or by meeting one of the representatives at a "Point d'Accès au Droit" or in a "Maison de la Justice et du Droit" (list available on the Web site).

Médiateur du MINEFI (Ministry of Economy, Finance and Industrie)**

Monsieur Emmanuel CONSTANS

Télédoc 215

139 rue de Bercy

75572 PARIS CEDEX 12

Fax: 01-53-18-97-55

Web site: www.minefi.gouv.fr

The mediator is competent only for individual complaints of natural or legal persons relating to the functioning of the French Ministry of Economy, Finance and Industry in their relations to the citizens. The complainant must have made a first application to the relevant service which has been partially or totally rejected.

The submission of the case may be made by email or by filling out the form available on the Web Site of the MINEFI, or by mail or fax. Your file must contain the following information: description of the problem: object and reasons of your application, references to the service concerned, the copies of mails exchanged with the concerned administration (you may send them by mail or by fax), your address and your phone number if possible.

Médiateur du Service Postal Universel (universal postal service)**

Médiasup

Tour Gamma A

193 – 195 rue de Bercy

75572 Paris Cedex 12

Competent for all disputes related to the universal postal service, mainly the sending of mail or parcels, whether or not they are registered mails, and the sending of declared values. The submission is made via a consumers' organisation.

Telephony

Médiateur de la téléphonie**

B.P 999

75829 Paris Cedex 17

Web site : <http://www.mediateur-telecom.fr/>

Competent for all commercial disputes between a cell or a regular telephony service provider and one of its clients, apart from internet services. Again, a first attempt must have been made to settle the dispute before the case can be submitted to the mediator. Also, the company must have signed the Charte de la Médiation (Bouygues Telecom, Cegetel, France Telecom, neuf telecom, Orange, SFR and Télé2).

** Mediator notified to the European Commission

France Télécom – Service National Consommateurs

B.P 100

59652 Villeneuve d'Ascq Cedex 02

Web site : www.agence.francetelecom.com

Competent for all disputes related to the universal service of France Telecom. The complaint should be filed in written form after a first attempt to settle the dispute with the service has failed.

Distance selling

Médiateur de la FEVAD (Federation of Distance Selling Companies)**

60, rue de la Boétie

75008 Paris

Tel. 01 42 56 38 86

Web Site: www.fevad.com

Competent for all disputes arising between a distance selling trader and a consumer. Submission is to be made in written form.

Travelling

Médiateur de la RATP (Paris Subway)**

Monsieur Yves Le Gall

54, quai de la Rapée

75012 Paris

Web Site : www.ratp.fr

Competent for all disputes between RATP services and users related to offences to tariff regulations and with the police specialised in the surveillance of the public transportation service ("police des services publics de transports de personnes).

Submissions to the mediators must be made through the intermediary of an appointed national consumers' organisation that participates in the national consultation conducted by the SNCF or by the "Médiateur de la République" (Republics Ombudsman) or one of her/his delegates in the Départements.

Médiateur de la SNCF **

66, rue de Rome

75008 Paris

Web site : www.voyages-sncf.com

Competent for any individual dispute arising during a trip and which has not been resolved after a written complaint by the consumer to the customer service based in 62973 Arras Cedex 9.

** Mediator notified to the European Commission.

The submission can only be made by an appointed consumers' organisation or through the Médiateur de la République or one of her/his delegates in the Départements.

Should any kind of cross-border dispute arise, the European Consumer Centre Network (ECC-Net) provides information and assistance in the settlement of the dispute.

For any other information, please feel free to contact the European Consumer Centre France at the following address:

Centre Européen des Consommateurs France
Rehfusplatz 11
77694 Kehl
Allemagne

Web Site: www.euroinfo-kehl.com

Mailto: info@euroinfo-kehl.com

Tel. +49 7851 991 48 0

Fax: +49 7851 991 48 11

Euro-Info-Consommateurs



Association franco-allemande de protection des consommateurs
offrant un service qualifié et indépendant

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77694 Kehl
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