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**EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE
(CEPEJ)**

**Mediation Development Toolkit
Ensuring implementation of the CEPEJ Guidelines on mediation**

Guidelines on Designing and Monitoring Mediation Training Schemes

Document elaborated jointly with the International Mediation Institute



*As adopted at the 32th plenary meeting of the CEPEJ
Strasbourg, 13 and 14 June 2019*

The aim of the present tool is to provide guidance to the Member States' governments and mediation stakeholders on how to set and maintain efficient and quality mediators' training schemes, harmonising minimum training standard and ensuring adequate number of well-trained mediators in each Member State jurisdiction.

Given its expertise in developing global, professional standards for mediators, lawyers and others involved in collaborative dispute resolution and negotiation processes, this document has been elaborated jointly with the International Mediation Institute (IMI)¹.

This tool has been developed in reference to point 1. Availability of the CEPEJ Guidelines on mediation.

1. Registration of Training Programmes

Within some jurisdictions, there may be a type of formal regulation of mediation training courses in place. This can take the form of self-regulation through a professional body, or direct regulation by the relevant government entity/ministry of law or justice. Where such external registration exists, it provides minimum standards of training that can be applied objectively to all courses in any jurisdiction. It not only serves as a point of reference for new entrants to satisfy but also may help to raise overall standards of training.

If there is a requirement within a jurisdiction that a training course should be registered, it should be complied with by the training provider.

2. Training Providers

Either public or private (profitable or non-profitable) bodies can provide and be entitled to accreditation for mediation training courses.

It is advisable that an accreditation body should not act itself as a training provider to assure its independence and avoid unfair competition.

Given the strong connection between training and practice, it is recommended that training providers shall not be precluded to function as well as mediation providers to facilitate and support the participants' practice as observers or co-mediators after completion of the training modules.

When the training providers are not simultaneously mediation providers, such might be the case of the universities and institutes, they should assure sufficient practical training.

3. Course Content

While maintaining flexibility of training providers to include content in the course which meets the needs of their social, cultural and legal context as well as the ethos of their course, there are certain topics that are fundamental in any mediator skills training program and must be covered. These are the topics specified in the Annex "Basic Mediator Training Curriculum" below.

If national regulations of specific Member State require involvement of other topics not listed in the Annex below, training provider shall also integrate these topics into its mediator training course.

Training providers could include other knowledge and skills development topics broadening scope of training.

The content of the training and training methodology shall take into consideration background, initial level of knowledge and practical expertise of the trainees.

The mediator training curriculum should address, reveal and encourage good practices in the field.

It is strongly recommended that the mediation training should be followed by supervision, mentoring and continuing professional development, affixing, improving and refreshing the mediator's knowledge and professional skills, and educating on new developments in the field.

4. Competency Framework

¹ IMI also convenes stakeholders, promotes understanding and disseminates skills, all in a non-service provider capacity <http://www.imimediation.org/>

A competency framework shall be included into training program and used throughout the course to give clarity to participants as to what mediator competencies they should achieve. It can also be used by the trainers, coaches and assessors, to provide consistent input, coaching, assessment and feedback to participants measured against a clear set of competency criteria.

Accordingly training course must have a 'competency framework' which clearly and concisely sets out the core competencies that an effective mediator should possess. This framework should be consistent with the content and skills requirements of the course.

In developing a competency framework for use on a course, training providers could draw on:

- Their own individual and organizational knowledge of mediator skills training;
- Existing external sources, including relevant legislation and other published frameworks.

5. Enrolment and Accessibility

In general, there are no special requirements with regards to previous qualifications or experience needed to enrol in a basic mediation course.

Conversely, advanced or specialised mediation training courses require the participants previous proven knowledge and/or mediation practice.

Mediation training requires the participants to be fluent in the course language to enable them to fully participate in the training activities, particularly as a role player.

6. Fees

Mediation training fees should encompass learning, coach practice and assessment as well as training materials.

Member States should be encouraged to fund mediation training when justifiable, for example, to implement and disseminate mediation in general or to develop specific projects and/or legal initiatives.

Member States and training mediation providers should be encouraged to award scholarships based in participant's economic needs.

7. Course Duration

For a course to cover adequately the necessary content using appropriate methodologies, courses should have a substantial number of training hours being not less than 40 hours, which is the minimal acceptable benchmark for the teaching and practice of the practical aspects of mediator skills, bearing in mind that these trainings are only intended to train people to a base level of mediator competence. This does not include pre-course preparation, lunch and breaks.

This minimum level of 40 hours, however, should not prevent training providers from aspiring to a higher number of practical hours, given that more practice will translate into better learning opportunities for participants. Therefore, whenever possible, a number of training hours higher than 40 is suggested.

8. Group Size

One of the key factors affecting the quality of a course is to ensure that students have sufficient opportunities to interact with each other and the trainers. It is generally accepted that overly large class sizes and a low trainer- high student ratio can compromise this course quality.

It is recommended that courses have a maximum class size of 30 students, with the trainer-student ratio ranging between an ideal of 1 trainer to every 6 participants; to a maximum of 1 trainer to every 10 participants.

Some of the factors to be taken into account when determining the participant to trainer ratio include:

- overall class size;
- breakdown of teaching, coaching, assessing and number of days;
- the presence of assistant trainers, facilitators or coaches.

For example, if the class is only comprised of 12 students, then a ratio of 1:12 might be appropriate for delivering presentations. However, one or two coaches could be brought in when the students are practicing role plays.

9. General Teaching Approach

Given the focus Mediator Skills training courses is on preparing the participants to practice mediation, and not on the study of mediation as an academic subject the course should be participatory, interactive and learner focused. To ensure this, a variety of teaching methodologies should be used, including lecturing, videos, interactive exercises, individual work, group discussion, talking in pairs, and role-playing. For the practical part of any course, that is designed to teach the process and skills to be an effective mediator, the following percentage of time should be spent on these different approaches to training delivery:

- Lecturing/knowledge input/presentation – approximately 10%;
- Exercises and discussion – approximately 40%;
- Role-playing, coaching and feedback– approximately 50%.

10. Participant Materials

The sort of materials that might be distributed in hard or soft copy in advance of a course includes:

- Course handbook/workbook;
- Supplementary materials such as general instruction for role plays;
- Mediation rules and procedures, relevant legislation;
- Academic articles and textbooks.

When preparation prior to the course is required, participants should receive comprehensive materials in sufficient time to allow them to prepare adequately. As a guideline, it is suggested that this should be no later than two weeks in advance of the course.

In a similar way, when participants are required to prepare for their roles in advance of the role plays, role play confidential briefs should be supplied in sufficient time to allow role players to prepare. It is suggested that this should be no later than one week in advance of the course.

11. Setting Up Role Plays

Role plays are used for participants to practice the wide range of mediation skills in a simulated environment and also for participants to have the benefit of feedback and coaching from an experienced mediator, acting as a coach. Accordingly, role plays should be planned and run to allow the participants the maximum opportunity to learn.

A role play here is defined as a simulated case where the mediator has an opportunity to practice a wide range of mediator skills, possibly across multiple phases of the process. This should be distinguished from a shorter scenario-based role play, exercise or vignette which is designed to practice a specific skill, e.g. a short exercise to practice active listening or reality testing.

When designing role plays within a course the following should be considered:

- Each role play in a course should have a maximum of six persons for a two-party mediation. This is recommended in order to keep the role plays manageable for a new mediator to practice adequately and to allow maximum engagement of the other participants as role players;
- Mediation time slots within role-plays should be a minimum of 45 minutes in order to allow sufficient time for the mediator to practice a range of skills as the mediation develops;
- At a minimum, at least 50% of all role-plays should be supervised by an experienced coach/trainer, and of those, a supervising coach should be present a minimum of 50% of actual role-playing time. This is a minimum level of supervision and coaching for role plays, and training providers should aspire to the highest possible level of coached or supervised role plays;
- When role plays are used as assessments, these should be supervised by the assessor 100% of the role play time;
- Coaches should be rotated among groups and participants to ensure that a variety of coaching approaches is experienced by all the participants;

- In courses that contain assessment, any coach/trainer who coaches a participant should not be involved in any subsequent assessment of that participant;
- Role plays throughout the course should ensure that all participants work with the widest range of their fellow participants as possible;
- In order to ensure fairness and equality of participation, all participants should mediate the same number of times in role plays;
- Role plays should be varied in subject matter and should allow for practice of different stages of the mediation process.

12. Providing Feedback

Participants learn not only by practicing the skills of mediators but also from receiving feedback from experienced mediators acting in the role of coaches throughout the course. Training programs should provide opportunities for feedback to participants. This feedback should be delivered using a competency framework (mentioned in Article 4 above) to ensure consistency of approach. Coaches should be trained in delivering effective feedback.

A variety of different methods to deliver the feedback can be utilized, including:

- Group coaching during a role play. Here feedback is not only for the benefit of the participant acting as mediator but also for the other participants involved in the role play;
- Private one-to-one feedback following a role play. This enables more focused and detailed feedback on the performance of an individual, and can increase the opportunity for behaviour change during the course, particularly for those courses in which a participant is preparing for assessment. While it is not required, course leaders should aspire to design their programs to include at least one opportunity to provide private one-to-one feedback;
- Written feedback on a participant's performance is recommended to be used, particularly during an assessment element of a course.

13. Performance Assessment and Accreditation

If a course is designed to assess, certify or accredit a participant as having the necessary skills and knowledge to mediate a dispute competently, then it must contain an actual assessment of the participant's mediator competence, as compared to its own competency framework. In relation to assessment of a mediator's skills, this should be done using a participant's performance during a role play.

The following should be taken into account when the assessment process is designed:

- While some form of on-going continual assessment throughout the course could be included as part of the assessment process, there should be at least one separate assessment based solely on performance during a role play;
- Assessments could be recorded and assessed afterwards, although live assessments are generally more advisable;
- While one assessment is the minimum number, it is recommended that two different assessment sessions are conducted for each participant assessed by different assessors. This would support fairness and would avoid assessor bias. Alternatively, the same assessment may be assessed by two assessors;
- It is recommended that each assessment role-play should be for a minimum of one hour of role-play time, not including any time needed to draft a settlement agreement.

If mediation knowledge is also to be assessed, this can be done through a written or verbal test, or through pre or post course assignments, and should be consistent with the knowledge requirements set out in the provider's competency framework.

14. Complaints and Appeals Policy

All courses should have a clearly set out written complaints policy for participants who are dissatisfied with the quality of the course.

In addition, for those courses that have an assessment element, there should be a clearly set out appeal or review process for participants who are not satisfied with the outcome of their assessment.

15. Trainers, Coaches, and Assessor (TCA)

Those providing input during a training programme can be divided into three key roles:

- a trainer delivers the skills and knowledge content set out in the program;
- a coach observes the performance of a participant in the role of the mediator, usually during a role-play, and provides coaching and feedback to the participant, during and after the role-play, in order to improve their competency as a mediator;
- an assessor also observes a participant's performance and provides a formal assessment of competence. The assessor may also provide feedback, which is normally given at the end of the assessment.

Getting trained

Anyone seeking to act as a Trainer, Coach or Assessor (TCA) should have successfully participated in a mediation training course and where mediator registration is required in a jurisdiction, trainers, coaches and assessors should be registered mediators. They should also have attended sufficient train-the-trainer training to undertake their role. Following this they should be sufficiently shadowed by experienced TCA's on their first courses able to provide feedback and also reassurance as to quality of delivery to participants.

Staying up to date as mediators:

Ideally, TCAs should have conducted at least two actual mediations of at least four hours' duration in each of the preceding three years before being appointed. Once appointed, they should conduct two actual mediations of at least four-hours duration per year AND are able to show that they have maintained continuous professional development (CPD) of six hours per year.

Staying up to date as TCA's:

TCA's should deliver at least one basic mediator skills training course or refresher course every two years. Coaches and assessors should coach and/or assess at least four role play sessions over the course of two years.

On-going feedback should be sought from course participants on trainer performance, and given to those delivering the course. Peer Feedback between TCA's should also be considered.

16. Quality Management and International Standards of Excellence

Quality management and independent monitoring measures should be applied to ensure sufficient contents, provision of the training, performance assessment and accreditation.

Mediation training providers are encouraged to benchmark their course to international standards, as a means of providing reassurance to trainee mediators that the course they are considering undertaking is of the highest possible quality.

Training providers could consider certifying their programmes with the International Mediation Institute's Certified Mediator Training Program (CMTP).

Successful registration as an IMI-CMTP means that training programs meet the independent international standards for mediator training. This is a guarantee of quality that can be used by organizations in marketing their people and services; it also helps to ensure that those organizations continue to develop and attain the high standards associated with business success.

Basic Mediator Training Curriculum

Annex to the Guidelines on Designing and Monitoring Mediation Training Schemes

1. Knowledge development

The mediator training curriculum should cover at least these main domains of knowledge development:

1.1. Conflict theory

1.2. Traditional settlement of disputes and mediation

1.3. Basics of mediation:

1.3.1. Basic principles of mediation:

- a. Voluntariness
- b. Confidentiality
- c. Independence, impartiality and neutrality of the mediator
- d. Parties self-determination and control over the process
- e. Equality of the parties
- f. Creativity and sustainability
- g. Flexibility
- h. Cost-effectiveness

1.3.2. Aims of mediation

1.3.3. Indications and counter-indications of mediation in assessment for suitability of cases

1.4. The main attributes of a mediator:

- a. Attitude and role of the mediator
- b. Credibility
- c. Basic skills and techniques
- d. Professional ethics
- e. Professional requisites and practice

1.5. Roles of the parties, their counsel and the other participants in mediation

1.6. Styles of mediation

1.7. Stages of mediation²:

- a. Preparation
- b. Opening
- c. Exploration
- d. Negotiation
- e. Agreement

1.8. Legal framework of mediation and legislation related to mediation, including review of legal framework for mandatory and opt-out mediation if available

1.9. Interaction between mediators, judges, lawyers, mediation users and other mediation stakeholders

1.10. Main characteristics and differences of mediation in civil, family, penal and administrative matters

² There are many different phase models for the mediation process and the model below is provided for illustrative purposes only.

2. Practical skills training

In terms of skills development, the essential skills topics that should be covered, demonstrated and practiced in any training programme are:

- a. Forms of listening skills and communication strategies
- b. Mediation process management skills and techniques including but not limited to the use of joint and private meetings
- c. Negotiation strategies and skills to manage the content of the dispute
- d. Ways of responding to the diverse behaviours of the parties
- e. Problem solving and decision making skills
- f. Conflict analysis and management skills, including reasonable selection of dispute resolution strategy and methods
- g. Co-mediation skills

Trainers may include other skills-based topics including but not limited to management of emotions, dealing with difficult people, responding to impasse, neuro-linguistic programming, etc.

Mediator Skills training courses should be participatory, interactive and learner focused. To ensure this, a variety of teaching methodologies should be used, including lecturing, videos, interactive exercises, individual work, group discussion, talking in pairs, and role-playing. As a guideline, for the practical part of any course, that is designed to teach the process and skills to be an effective mediator, a substantial part should be devoted to role-playing, coaching and feedback, as well as discussions and exercises.

3. Peculiarities of specialised mediation training

Additional topics and skills development exercises should be covered in the specialised mediation training programs.

For mediation training in family matters:

- a. Core principles of family mediation
- b. Sufficient knowledge of family law
- c. Models of family mediation
- d. Skills of the family mediator
- e. Limits of the principle of confidentiality
- f. Child focused mediation and the best interest of the child
- g. Participation of children
- h. Assessment meetings (pre-mediation stage)
- i. Domestic abuse
- j. Power imbalances
- k. Cross-border mediation techniques
- l. International legal framework

For mediation training in civil matters:

- a. Sufficient knowledge of provisions of public order and social protection law in the areas in which they practice in particular:
 - i. in leases and rents disputes
 - ii. in the field of labour law
 - iii. in consumer law
- b. Power imbalances
- c. Models of civil mediation
- d. Cross-border mediation techniques
- e. International legal framework

For mediation training in penal matters:

- a. Sufficient knowledge of criminal justice system
- b. Various methods of restorative justice
- c. The relationship between criminal justice and mediation

- d. Skills and techniques of communication and of work with victims, offenders and others engaged in the mediation process, including basic knowledge on reactions of victims and offenders
- e. Specialist skills for mediation in cases of serious offences and offences involving minors

For mediation training in administrative matters:

- a. Core principles of mediation in administrative matters
- b. Sufficient knowledge of constitutional and administrative law
- c. Balance of principles of the confidentiality of mediation and of the transparency of administrative activity
- d. The boundaries of the public interest
- e. The role of the mediator – particularities of the principles of independence and impartiality
- f. Assessment/evaluation meetings (pre-mediation stage)
- g. Code of ethics of mediators in the administrative field