



FRENCH CHARTER OF CONSUMER MEDIATION¹

PREAMBLE

Created by Law No. 2010-737 of 1 July 2010 the Commission of Mediation of Consumer Affairs (CMC) is responsible for issuing advice and proposes measures of any kind to evaluate improve and disseminate best practices for non-judicial mediation in consumer matters.

The Commission of Mediation of Consumer Affairs is an independent body, consisting of one President and five consumer representatives, of which five professionals and two qualified individuals.

This commission is not intended to address individual mediation cases but to participate actively in the development of quality mediation in consumer matters.

While establishing the Commission on October 20, 2010, the Secretary of State in charge of consumers made it her particular mission to develop a charter of good practices of mediation. The purpose of this charter is to establish principles and rules to be followed by the mediators as well as businesses, industries and governments that implement mediation.

This Charter is part of the European Directive 2008/52/EC of 21 May 2008 "on certain aspects of mediation in civil and commercial matters."

It will serve as a foundation for the evaluation of the practices of mediators by the commission.

ARTICLE 1 - DÉFINITION OF CONSUMER MEDIATION

Mediation of consumer matters is a structured process in which the mediator's mission is to facilitate the resolution of a dispute between two parties, one of which is a professional and the other a consumer, an individual acting outside of his profession. Mediation is conducted by an impartial mediator with competence and efficiency.

Mediation is a process freely agreed to by the parties. The parties are at any time free to stop, continue, or not to enter into the mediation. Mediation requires the parties to show loyalty that is characterized by a willingness to work together and to meet information requests from the mediator.

The mediation is free to consumers.

Mediation is a confidential process unless the parties agree otherwise.

¹ <http://www.mediation-conso.fr/charte.html>



ARTICLE 2- THE COMMITTEE ON MEDIATION IN CONSUMER MATTERS (CMC)

The CMC is responsible for assessing good practices in mediation.

In this context, the CMC captures the opinion of any new projects of the mediation charter to ensure that the conditions for its implementation and operation are consistent with this Charter. The CMC performs the same evaluation regarding the mediation of existing consumer matters. Following this assessment, the CMC invited the Médiateur to agree to this Charter. He was then signed as a Médiateur of this charter on the site of the CMC: www.mediation-conso.fr

The Médiateur may mention this listing indicating "Mediation recognized by the Commission of Mediation Consumer (CMC)."

A consumer can inform the CMC of the misapplication by any mediator who referenced provisions of this Charter. The CMC may remove any mediator who practices or operates in an inconsistent manner with this Charter, from its site.

ARTICLE 3 - THE MÉDIATEUR

Article 3.1 - Guarantees of impartiality and independence

The Médiateur must have the necessary guarantees of impartiality and independence in the exercise of his functions. He must also have the assurance of the parties. For this purpose, he is expected to follow following rules:

- An advisory opinion of the consumer association may be asked to approve the appointment.
- In the case of a mediation business, appointment and his attachment are at the highest level.
- On his appointment, the Médiateur agrees to report any inconsistency or conflict of interest that should arise during his term.
- The mandate of the Médiateur has a term which must be sufficient to ensure stability and continuity in cases dealt with: a minimum period of three years, renewable in the same manner as the appointment is appropriate.
- A Médiateur can not be revoked during the term of office, except for legitimate reasons. He may not receive his mediation function with other functions within the company or sector.
- The Médiateur must have his own means of operation, including an independent budget and a dedicated team appropriate to their needs. His jurisdiction should be as wide as possible.
- The Médiateur is an identified person. When there is a mediation body, that body is represented by its president.



Article 3.2 - guarantees competence and efficiency

The Médiateur is chosen for his human qualities and competence. The Médiateur warrants, as applicable, training or experience appropriate to the practice of mediation in consumer matters. He is committed to regularly update his knowledge.

Legal training or being a specialist is not essential but the Médiateur must be able to call upon people in the case that legal or technical assistance is needed.

ARTICLE 4 - MEDIATION PROCESS

Article 4.1 - Information et communication

A company has its own Médiateur or a business using a sectoral Médiateur to inform consumers adequately about the existence of the Médiateur's role, scope, free proceedings, referral procedures and possibility for the consumer to be assisted by any person of his choice.

All appropriate contractual documents between the professional and the consumer must include details of the Médiateur.

Information on the Médiateur is communicated via the websites including businesses or sectors concerned and should be easily accessible.

Eligibility to apply to the Médiateur, with contact information and referral procedures, is indicated at the negative response of the last level internal appeals procedure.

Communications on the Ombudsman should never be used for advertising purposes.

Article 4.2 - Reference

The Médiateur can only be approached after all other avenues of the consumer service have been taken, or in the absence of a response of the customer services within the deadline of two months.

The existence of a customer service and appropriate quality is essential for the proper functioning of the mediation but cannot be confused with it.

The referral to the Médiateur must be made in writing and sent by mail, email or fax. Any request for mediation results in an acknowledgment.

It is recommended that the Médiateur redirects complaints to the right level if the case was sent prematurely.

If he declines jurisdiction, the Médiateur must inform the consumer in writing.

In cases of multiple mediation systems, the consumer is free to enter the mediator of their choice.



Article 4.3 Conduct

The date of receipt of the request for mediation, if it is admissible, is the starting point for mediation.

Each party must be able to hear their views.

The Médiateur and the parties are bound by confidentiality regarding the names of the parties, the information obtained during the investigation of the dispute and the facts they have learned in the context of mediation.

The Médiateur forms his opinions on the basis of law and equity.

He informs the parties in writing of the result of his mediation. His answer should be clear and easily understandable. At that date, the statute of limitations begins to be operational.

The parties are free to accept or reject the Médiateur's proposed solution, however, the refusal to follow the Médiateur's opinion must be substantiated and forwarded to the consumer and the mediator.

The end of the mediation process may be found, at the request of the parties, in a written protocol which states the points of agreement that people have decided to. This MOU may be subject to approval by a judge as provided in the Code of Civil Procedure.

If the notice was accepted by the parties, the Médiateur is destined to be informed by them of any difficulties in the implementation of this notice.

Article 4.4 Term

The duration of a mediation should normally not exceed two months from the date of acknowledged receipt of the request for an admissible mediation. In case of complex litigation, mediation can be extended once, for the same period, at the request of the Médiateur.

Article 4.5 Freedom of mediation

Each party retains the right to terminate the mediation at any time. For consumers, the mediation cannot, under any circumstances, be a prerequisite for legal action.



ARTICLE 5 - ANNUAL REPORT AND PUBLIC MEDEATEUR PROPOSALS

Each Médiateur prepares an annual report which is published and sent to the CMC for information.

This report includes an analysis of cases (total number, number of cases rejected, number of positive reviews to the professional or consumer ...) and a summary of the main disputes dealt with in the year. It also includes the charter under which the mediator shall hold office, his career and the means at his disposal to accomplish his missions.

In addition, from the treatment of individual cases, the mediator may make proposals for improvement to prevent the renewal of certain repetitive or significant litigation, and help improve the quality of service sectors.

These recommendations, which follow the implementation, are included in the Médiateur's annual report.

The principles and rules defined in this document must be included in each of the charters establishing a Médiateur for consumer matters.

This Charter refers in particular to the following texts:

- Articles L534-7, R534-11 et R534-12 of the Consumer Code
- Recommendation No. 98/257/EC of the European Union March 30, 1998 on the principles applicable to bodies responsible for the resolution of consumer disputes (JOCEL115 of April 17, 1998).
- European Recommendation No. 2001/310/EC of 4 April 2001 on the principles applicable to court bodies involved in the consensual resolution of consumer disputes (JOCEL109 of April 19, 2001).
- European Directive 2008/52/EC of 21 May 2008 on certain aspects of mediation in civil and commercial matters.
- Opinion of the National Consumer Council (NCC) of 6 July 2004 on mediation in the area of consumer matters (BOCCRF March 1, 2005).
- Opinion of the CNC of 27 March 2007 on mediation in the field of consumer matters and alternative dispute resolution.
- Charter of Médiateur of public services.
- Report of the State Council of July 20, 2010 "Developing mediation as part of the European Union"