



# litigation & arbitration

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## ROYAL DECREE 980/2013, OF DECEMBER 13, 2013, IMPLEMENTING CERTAIN ELEMENTS OF LAW 5/2012, OF JULY 6, 2012 ON MEDIATION IN CIVIL AND COMMERCIAL MATTERS

Royal Decree 980/2013, of December 13, 2013, was published on December 27, 2013 in the Official State Gazette, to **implement four essential elements of Law 5/2012, of July 6, 2012 on mediation in civil and commercial matters** (the “Law”): **(1)** mediators’ training; **(2)** making information on mediators and mediation institutions publicly available; **(3)** the scope of mediators’ obligation to have civil liability insurance and **(4)** the simplified online mediation process.

These four elements are further explained in the following paragraphs.

### 1. MEDIATORS’ TRAINING

The royal decree sets out the **need for specific training** to be able to conduct mediation activities (article 3).

As stated in its preamble, the royal decree starts out from an **open perception of training** in line with the principles of freedom to provide services and free competition governing mediators’ activities.

Despite this open perception, it lays down that mediators’ training must give them *“sufficient knowledge and skills for professional mediation practice, including, at least, in relation to the specialization area in which they provide their services, the legal framework, elements of the psychology and ethics of mediation, of communication techniques and processes, and of negotiation and dispute resolution”* (article 4).

It sets out in particular that the **specific mediation training must be developed through one or more courses, with both theoretical and practical elements; practical training must account for at least 35 percent of the established minimum length of 100 hours** and include exercises and mediation role plays and, preferably, assisted participation in real mediation (article 4 and article 5).

Also, **training must be ongoing** and mediators must carry on one or more predominantly practical activities at least every five years, having a total length of at least 20 hours (article 6).

The training must be given at public or private **training centers** which must have either the relevant legal enabling instrument to carry on those activities or the appropriate government approval (article 7.1).

The **instructors of the training centers** will be required to have the necessary specialization in mediation and at least hold the required official university degree, or higher level vocational training qualification. Practical training instructors must meet the conditions set out in this royal decree for registration on the Register of Mediators and Mediation Institutions (article 7.2).

The royal decree establishes lastly that the **training centers will have to forward to the Ministry of Justice, on its website: (i) their training programs**, setting out their contents, methodology, and assessment of the training, and the profile of the professionals to whom they are targeted by reason of their qualifications and experience; **and (ii), a sample of the electronic training certificate** that the students will receive which will have to include, at least, the student's qualifications, the characteristics of the training received and the successful completion of the course (article 7.3).

## 2. PUBLIC AVAILABILITY OF THE INFORMATION ON MEDIATORS AND MEDIATION INSTITUTIONS

In accordance with final provision number eight of the Law, the royal decree creates the **Register of Mediators and Mediation Institutions** (the "Register"), to facilitate the public availability and transparency of mediation, by placing the relevant information on the activities of professional mediators and mediation institutions within the reach of citizens (article 8).

For these purposes, the Register is set up as a **computerized database** accessible free of charge on the Ministry of Justice's website (article 9).

In keeping with its aim, **the Register is divided into three sections:** (i) section one is for the registration of mediators; (ii) section two is for the registration of the insolvency mediators under Title X of Insolvency Law 22/2003, of July 9, 2003, (added by Law 14/2013 of September 27, 2013 to support entrepreneurs and their internationalization) and (iii) section three, for mediation institutions (article 13).

The **effect** of registration on the Register is **to evidence mediator status** as well as mediation institution status, and also, regarding the insolvency mediators, it enables the supply of their information to the Official State Gazette portal, in accordance with article 233.1 of Title X of the Insolvency Law for their appointment in processes to reach an out-of-court payment agreement (article 12).

**Registration on the Register is voluntary** for mediators and mediation institutions **but not for the insolvency mediators** (articles 11, 19 and 20).

The insolvency mediators will necessarily have to be registered on the Register because, as mentioned, the Register will be in charge of supplying the information needed to the Official State Gazette's portal, in order to ease notaries and commercial registrars the appointment of those mediators.

According to the royal decree's preamble, however, the regulation on the Register makes it a key step **to strengthen legal certainty** in this sphere, since such registration will enable a person's mediator status to be evidenced and, after being set out in the initial mediation minutes, confirmed by both the notary recording the mediation agreement in a public deed and by the judge giving court approval to those agreements.

The last point to be underlined is **the importance of that evidence to comply with Directive 2008/52/EC**, which lays down a duty for the Member States to ensure that their rules on limitation and prescription periods do not prevent the parties from going to court or to arbitration if their mediation attempt fails and in relation to issues such as preserving confidentiality in any subsequent processes for parties who had previously used mediation.

### 3. MEDIATORS' OBLIGATIONS TO HAVE LIABILITY INSURANCE

This royal decree **implements the obligation to have insurance imposed on mediators by article 11.3 of the Law**. That insurance must take the form of a civil liability policy or equivalent protection to cover the damage and losses that could arise from their conduct.

It determines in this respect that the insurance or guarantee may be entered into **individually by the mediator or as part of a group policy** that includes their mediation activities, and **cover** all the damages and losses other than the expected outcomes of the mediation, that they may cause by their acts or omissions; such as those arising from an infringement of the principles of impartiality and confidentiality, professional error or the loss or disappearance of the parties' files and documents (articles 26 and 27).

It also sets out that the **insured or secured sum** in respect of the acts generating the mediator's liability, per claim and year, must be in proportion to the size of their cases and **the mediator must inform the parties, before the start of the process, of their civil liability cover** which must be recorded in the initial minutes (article 28).

There is a parallel **obligation for mediation institutions to have liability insurance**, also required in article 14 of the Law, to cover their liability as determined in the Law and, especially, that may arise from the appointment of the mediator (article 29).

#### 4. THE SIMPLIFIED ONLINE MEDIATION PROCESS

The aim of the last chapter of the royal decree is to **outline the simplified online mediation process**.

In particular, the scope of such proceeding is established for case of a monetary claim that does not exceed 600 euros, or any other claim whose economic interest does not exceed that amount: unless the use of these proceeding is impossible for any of the parties, or when they agree to a different process, and provided that the parties' claims arguments are not related to a legal controversy (article 30).

As stated in the preamble to the royal decree, **the simplified online mediation process has been designed to be in keeping with the flexibility and independence of mediation, allowing to change from a face to face to an online processing and vice versa, according to the parties' needs**. In the same vein, the parties can carry out combined processes, in which some of the proceedings are conducted face to face and some are conducted online.

Further, in line with the expediency of mediation, the simplified online process **will have a maximum length of one month**, reckoned from the day following the date of receipt of the request, extendable by agreement of the parties (article 36).

The **stages in the simplified process** may be summarized as follows (article 37 and article 38):

- (i) After the **request form** has been filed, setting out the sought amount, the mediator will contact the requested party without delay to obtain their consent to start the process.
- (ii) The mediator will grant the requested party a reasonable period in which to file a **request answer form**, either accepting or rejecting the claimed sum or making a counterclaim (if the requested party fails to answer within that period, the request will be considered to be rejected which does not mean the parties cannot later conduct a face to face or online process).
- (iii) Once the answer has been received, **the mediator will forward a certificate to the parties which will be considered as the minutes of the opening session** to generate a case number.

#### 5. ENTRY INTO FORCE

The royal decree **will enter into force** three months after its publication in the Official State Gazette (December 27, 2013), namely on March 27, 2014.

The Register, however, will be brought into service on the following dates (final provision number three):

- (i) The date for the training centers to start sending their training programs and the profile of the professionals to whom they are targeted, accompanied by the sample of the electronic training certificate, will be March, 1, 2014.
- (ii) The opening date of the Register for applications for registration of mediators, insolvency mediators and mediation institutions will be April 1, 2014.
- (iii) The date when the Register will be open to the public will be June 1, 2014.

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