

Portugal and the Directive

RULES OF THE PORTUGUESE CODE OF CIVIL PROCEDURE, ACCORDING TO THE LAW 29/2009 of 29 June, which transposed the Directive of 2008, of the European Union, for the Portuguese national law.

“Article 249 – A

Pre-judicial mediation and suspension of terms

1 - The parties may, previously to the submission of any litigation in court, to appeal to systems of mediation for the resolution of these litigations.

2 - The utilisation of systems of pre-judicial mediation foreseen by ordinance of the member of the Government responsible for the area of Justice suspends the term of caducity and forfeiture from the date on which it is requested the intervention of a mediator.

3 - The terms of caducity and forfeiture are retake from the moment where one of the parties refuses to submit or opposes to continue with the mediation process, as well as when the mediator determine the conclusion of the mediation process.

4 – The lack of agreement and the refusal of submission to mediation referred to in the preceding paragraph are confirmed by the managing entities of the systems foreseen in the ordinance referred to in paragraph 2.

5 - The inclusion of the mediation systems in the ordinance referred to in paragraph 2 depends on verification of the idoneousness of the system as well as of the respective managing entity.

Article 249 - B

Homologation of the agreement obtained in pre-judicial mediation

- 1 - If the mediation results in an agreement, the parties may require its homologation by a judge.
- 2 - The request is presented in any competent court in the matter, preferentially by electronic means, under the terms to define by the ordinance of the Member of the Government responsible for the area of Justice.
- 3 - The judicial homologation of the agreement obtained in pre-judicial mediation aims to verify their conformity with the legislation in force.
- 4 - The request referred to in the preceding paragraph has an urgent nature, and decided without the need of prior distribution.
- 5 - In the case of refusal of homologation the agreement is returned to the parties being able these, in the term of 10 days, to submit a new agreement for homologation.

Article 249 - C

Confidentiality

Except in what says respect to the obtained agreement, the content of the mediation sessions is confidential, can not be valued as evidence in court except in exceptional circumstances, namely when is in cause the protection of the physical or psychic integrity of any person.

Article 279 – A

Mediation and suspension of the instance

1 - The judge in any state of the procedure, and whenever he understands it is convenient, may determine the remittance of the process for mediation, suspending the instance, unless when any of the parties expressly opposes to such remittance.

2 – Without prejudice of the disposed in the preceding paragraph, the parties may, jointly, opt to resolve the litigation by mediation, agreeing to in the suspension of the instance in the terms and for the maximum period foreseen in the paragraph 4 of the preceding article.

3- The suspension of the instance referred to in the above paragraph verifies, automatically and without necessity of judicial order, with the communication by any of the parties of the recourse to the systems of mediation.

4 - Verifying in the mediation the impossibility of agreement, the mediator gives knowledge to the court of this fact, preferentially electronically, ceasing automatically and without any act of the judge or of the general office, the suspension of the instance.

5 - Reaching the agreement in mediation, the same is sent to the court, preferentially electronically, following the defined terms in the law for the transaction.”