

**EUCON – Europäisches Institut
für Conflict Management e.V.**

Rules of Procedure

EUCON – Europäisches Institut für Conflict Management e.V.
Brienner Str. 9 - 80333 Munich - Germany
Tel.: +49 / (0)89 – 57 95 18 34
Fax: +49 / (0)89 – 57 86 95 38
2011

§ 1 - Scope of application

- (1) If the conduct of a mediation procedure under the EUCON Institute Rules of Procedure has been contractually agreed between the conflict parties (hereinafter referred to as "Parties") then the version of those Rules of Procedure in effect at commencement of the mediation procedure will apply.
- (2) If the EUCON Institute's Rules of Procedure have not yet been agreed between the Parties (ad hoc mediation) then those Rules of Procedure will become applicable upon any mediation procedure initiated with the EUCON Institute.
- (3) The EUCON Institute must ensure the Parties' written consent to these Rules of Procedure. The Parties will at the beginning of the mediation procedure be given one copy each of these Rules of Procedure by the EUCON Institute.
- (4) The Parties may at any time mutually agree in writing to provisions of regulations relating exclusively to them that diverge from or supplement these Rules of Procedure. Where, besides the Parties, EUCON and/or the Mediator are affected by such provisions written supplements to or departures from these Rules of Procedure may only be reached in mutual consultation with the EUCON Institute or the Mediator. No divergence from §§ 11 and 13 will be allowed.

§ 2 - Initiation of the mediation procedure

- (1) The mediation procedure is initiated with a written application by a Party (mediation application) filed with the office of the EUCON Institute. Filing of the application by fax will be sufficient. The address of EUCON's office is:

Brienner Str. 9
80333 Munich
Telephone: 089 - 57 95 1834
Fax: 089 - 57 86 95 38
Email: info@eucon-institut.de

- (2) The mediation application should include the following information:
 - a) The names of the Parties, in case of legal entities the names of their managing directors as well, together with the address, telephone and fax numbers of the Parties and an indication of the preferred mode of communication.
 - b) Where available, a copy of the agreement on conduct of a mediation procedure or a copy of the clause providing for a mediation procedure if conflicts occur.
 - c) A brief description of the conflict.
 - d) Indication of the value in contention.

- (3) The mediation procedure commences after both Parties have given the EUCON Institute their written agreement to have it conducted and upon the EUCON Institute's receipt of the agreement by the non-initiating Party. If the non-initiating Party rejects the mediation procedure or if it does not respond within two weeks of dispatch of the invitation by EUCON then mediation is deemed to have been rejected.
- (4) The EUCON Institute must immediately transmit the mediation application to the non-initiating Party by registered letter and simultaneously invite it to give notification of its willingness to engage in mediation. After consent by the non-initiating Party EUCON will subsequently without delay inform both Parties about initiation of the mediation procedure. EUCON will likewise inform the initiating Party in case of rejection of mediation or, after passing of the deadline cited in § 2 (3), that mediation has not materialised.

§ 3 - Appointment of the Mediator

- (1) At the request of the Parties, EUCON will propose to the Parties at least three mediators whom it considers to be suitable for resolving the conflict. It will in advance of that clarify with the mediators to be proposed whether they are available and willing to take on the case in question. The EUCON Institute will enclose the relevant mediator profiles with its proposal.
- (2) The EUCON Institute takes the Parties' preferences into account when making its proposals and ensures that the mediators proposed are able and willing to take on the mediation assignment and conduct the mediation procedure expeditiously.
- (3) If the Parties cannot reach agreement on a mediator by written notification to EUCON within a week after receipt of the EUCON Institute's list of proposals the Parties must within one additional week send the EUCON Institute their written ranking of the mediators proposed by EUCON in the descending order of their preference starting with "1," where "1" will signify a Party's highest ranking value. A copy of the ranking must be sent to the other Party without delay. In this matter, each Party is entitled to delete one or more mediators unacceptable to it from the list and to only rank the remaining mediators. The mediator with the smallest numerical ranking sum is then deemed to be the mediator determined by the Parties. In case of an equal ranking number the EUCON Institute will decide which of the two mediators with the smallest ranking number should act as mediator in this procedure. Where no mediator can be determined by means of the ranking procedure the EUCON Institute will at the request of the Parties submit a new list of mediators. The EUCON Institute will without delay inform the Parties of the results of ranking and of any eventual determination of the Mediator and will immediately inform the Mediator selected or determined who will regulate the further procedure with the Parties.
- (4) The Mediator must without delay and at the latest within one week from receiving notification of his/her appointment from the EUCON Institute notify the Parties and EUCON in writing of his/her acceptance of the mediation assignment, including his/her binding recognition of these Rules of Procedure.
- (5) The relations of the Parties to each other as well as the relation between the Parties and the Mediator (including the latter's fee) will then be regulated in the mediation agreement or mediation contract, with due consideration given to these Rules of Procedure or their admissible modification.

- (6) If the Parties have agreed upon a Mediator without the participation of the EUCON Institute then they should notify EUCON of the Mediator's name.

§ 4 - The Mediator's obligations

- (1) The Mediator is bound to impartiality and neutrality. Prior to acceptance of the mediation assignment the Mediator must disclose to the Parties whether he/she or his/her firm has advised any of the Parties in this matter or any other one. He/she and his/her firm are not entitled to represent or advise either of the Parties, as an attorney or in any other way, in the legal matter that constitutes the subject of the mediation procedure. This also applies if the mediation procedure should be unsuccessful. He/she is also obliged to inform the Parties in advance if he/she or his/her firm is to provide services for either of the Parties in any other matter.
- (2) Barred from being a mediator is anyone who prior to commencement of the procedure advised or represented either of the Parties in the same matter. This also applies to any advisory services or representation by the Mediator's firm.
- (3) The Mediator must upon commencement of the mediation discuss with the Parties the basic features of the mediation procedure, the planned sequence of steps in the procedure as well as the rights and obligations of the participants.
- (4) The Mediator must promote resolution of the conflict between the Parties in any way and by any means that he/she considers appropriate. He/she is not authorised to adjudicate the conflict or any parts thereof.

§ 5 - Conduct of the mediation procedure

- (1) Where the Parties have not reached any separate agreements on conduct of the mediation procedure, in particular any arrangements about the language, venue and timeframe of the mediation, the Mediator will determine the manner in which the mediation procedure will be conducted taking, the interests of the Parties into consideration and in consultation with them.
- (2) The Mediator and the Parties will endeavour to conduct the mediation procedure expeditiously.
- (3) Each Party may prior to any agreement in the mediation procedure present arguments in supplement to the facts and may submit documentation. The Mediator may at any time urge the Parties to provide additional information or documentation.

§ 6 - Support for mediation by the EUCON Institute

- (1) Throughout the entire procedure, the EUCON Institute advises and supports the Parties and the Mediator in all matters pertaining to the mediation procedure.

- (2) Briefs may be forwarded up to commencement of the mediation procedure to the other Party via the EUCON Institute.
- (3) If either of the Parties during the course of the mediation has any doubts about the actions of the Mediator in regard to the latter's impartiality, independence or professional qualifications the EUCON Institute will discuss these doubts with the Parties and the Mediator and, if required, will in consultation with the Parties appoint another mediator.
- (4) In order to be able to guarantee the quality and efficiency of the mediation procedure the EUCON Institute will at the end of the mediation ask the Parties to assess the Mediator. A corresponding evaluation questionnaire will be sent to the participants by the EUCON Institute after the end of the mediation. The Parties must declare their consent to having the Mediator send the Board of Directors of the EUCON Institute a final report on the course and the results of the mediation for the Board's confidential treatment. The Mediator is obliged to reach agreement with the Parties on this report in advance of doing so.

§ 7 - Private consultations

With the consent of the Parties, the Mediator may conduct talks with one Party at a time. At the request of either of the Parties the Mediator must treat the contents of such private talks confidentially in relation to the other Party.

§ 8 - Guarantee of confidentiality

- (1) Unless otherwise expressly agreed, the Parties, their advisors, the Mediator and the EUCON Institute must in relation to third parties treat all matters pertaining to the mediation procedure confidentially, including after the end of the procedure as well.
- (2) Parties who are obliged on the basis of a special legal relationship to inform third parties about matters pertaining to the mediation must notify the other Party of this prior to commencement of the mediation.
- (3) The Parties and the Mediator will only engage third parties (e.g. experts, witnesses, co-mediators, persons in training, etc), or agree to having them engaged, if those third parties put themselves under an obligation of confidentiality in the same way as the Parties do. At the demand of either Party, such persons must issue a written statement of their obligation to confidentiality in accordance with paragraph 6 below.
- (4) Where the Mediator in subsequent court proceedings is called as a witness or an expert in respect of the mediation procedure, he must avail himself of his rights to refuse to testify unless he is expressly released by all Parties from his obligation to remain silent.
- (5) The Parties must put themselves under an obligation not to call the Mediator in any subsequent arbitration or court proceedings as a witness to testify to facts disclosed in the mediation procedure.

- (6) Either Party may demand the signing of a written agreement on confidentiality of the mediation procedure and the matters it deals with, including the inclusion of a provision for contractual penalties.

§ 9 - Ending the mediation procedure

- (1) The mediation procedure is ended:
- a) by a written agreement to resolve the conflict. This agreement should contain a comprehensive and exhaustive regulation of all conflicts recognised during the mediation procedure. Should total agreement not be possible then the Parties should endeavour to at least reach an agreement on parts of the conflict. Should this likewise not be possible, consensus on how to proceed further to resolve the conflict should be sought;
 - b) by means of a written statement by one Party addressed to the other Party and by the Mediator announcing termination of the mediation procedure with immediate effect;
 - c) by means of a written statement by the Mediator that he considers the mediation procedure to have failed for serious reasons that he must describe; prior to such a statement he must inform the EUCON Institute and give the Parties an opportunity to state their positions;
 - d) if either Party does not pay within a period of two weeks after written request by the Mediator to pay or to fully pay an advance on costs required by the Mediator, and that advance on costs is not assumed by the other Party either and the Mediator for that reason declares the mediation procedure ended.
- (2) If agreement about the conflict is reached by the Parties it must be set forth in a written agreement between the Parties and signed by the Parties at the mediation meeting. Should this still not be possible then the results of the consensus must be set forth in a memorandum of understanding and signed by the Parties. The Parties and their advisors will without delay, and if requested with the participation of the Mediator, conclude the mediation procedure with a final written agreement regarding resolution of the conflict.
- (3) Upon ending the mediation procedure the Mediator must without delay notify the EUCON Institute in written form of the end of the mediation procedure as well as of how and on what date it ended. At the same time, the Mediator must send the Parties a copy of the notification sent to the EUCON Institute.
- (4) The EUCON Institute must treat the Mediator's notification confidentially and may not, without written consent by the Parties, disclose to third parties either the conduct or the results of the mediation procedure.
- (5) The EUCON Institute is entitled to include information about the mediation procedure in its statistics and, in connection with its media releases (brochures, homepage, etc), to publish the information in anonymised form. In doing so, it must be ensured that this does not allow for identification of either the conflict or the Parties.

- (6) If no agreement can be reached the Mediator will at the request of at least one of the Parties issue the Parties written certification of the unsuccessful mediation attempt.

§ 10 - Costs

Unless the Parties agree otherwise, they must each pay one-half of the EUCON Institute's fees, the Mediator's fee including his expenses as well as all other costs connected with the mediation procedure.

§ 11 - The EUCON Institute's fees

- (1) The EUCON Institute's fees are calculated from the fee schedule applicable at the time when the mediation procedure is initiated.
- (2) The Parties are liable as joint and several debtors for fees owed to the EUCON Institute.

§ 12 - The Mediator's fee

The Mediator's fee is agreed between the Mediator and the Parties.

§ 13 - Liability disclaimer

- (1) The EUCON Institute is not liable for the Mediator's actions. The EUCON Institute is only liable for its own actions and those of its agents in case of gross negligence or deliberate intent.
- (2) The Mediator's liability is regulated in the mediator contract.

§ 14 - Suspension of litigation

- (1) The Parties must agree that no lawsuit brought before a court or an arbitration panel on the subject of the mediation procedure prior to the conduct and ending (§ 8) of a mediation procedure and no set-off with the claim dealt with in the mediation procedure in outside proceedings will be allowed. Where court or arbitration proceedings are pending when the mediation agreement is signed then the Parties agree to move for suspension of such proceedings for the duration of the mediation procedure.
- (2) Paragraph 1 does not apply to injunctory relief proceedings.

§ 15 - Pactum de non petendo and agreement of statutes of limitation

- (1) For the duration of the mediation procedure the obligor Party will in respect of the claims constituting the subject of the mediation procedure be entitled to refuse to make the payment in contention or to act or desist as demanded (pactum de non petendo). § 14 (2) is not prejudiced by this.
- (2) The Parties must be in agreement that the statute of limitations on the claims constituting the subject of the mediation procedure is suspended during the mediation procedure. For all disputes where German law is applicable, § 203 of the Civil Code (BGB) will apply.
- (3) Suspension commences upon receipt by the EUCON Institute of the statement of consent made by the non-initiating Party in accordance with § 2 (3). The EUCON Institute will inform the Parties of the date of receipt when informing the Parties about initiation of the mediation procedure in accordance with § 2 (4).
- (4) Suspension ends upon the ending of the mediation procedure in accordance with § 9 (1). The statute of limitations begins to run at the earliest three months after the end of the mediation procedure.
- (5) Rights covered by pactum de non petendo that could possibly have lapsed due to the passing of the deadline must be contractually re-constituted by the Parties by means of the mediation procedure. Beyond that, the Parties must agree that invoking any loss of rights due to such peremptory time limit is an abuse of law and thus inadmissible.
- (6) As protection against any such loss of rights, supplemental clauses may at the demand of either Party be agreed.