



•ALERT•

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The civil proceedings reform pushes mediation with the approval of the delegation law



INTRODUCTION

The Italian parliament approved Law No. 206/2021 (published in the Official Gazette no. 292 of December 9, 2021). The instrument is a “**Delegation Law**”, setting forth the principles and parameters of the Italian civil procedure and alternative dispute resolution (ADR) reform. The Italian Government shall now approve the Legislative Decrees needed to implement the reform within December 24, 2022.

The cornerstone of the ADR reform is the **increase in the number of mediations** and their efficiency. In encouraging mediation, the reform shall follow the aim of attempting to reduce the Italian courts' backlog and integrating mediation into the justice system, treating it as a complementary approach.

KEY IMPORTANT POINTS OF THE REFORM FOR PARTIES AND PRACTITIONERS

It is worth highlighting in summary the main changes required by article 1, paragraphs 1-4, of Law No. 206/2021:

Mediation mandated by law

The reform will **increase** the number of areas in which **mediation** is a mandatory pre-requisite prior to resort to formal litigation before the courts.

Mediation will be mandatory for disputes relating to: (i) partnership and profit-sharing agreements (so called, “*associazione in partecipazione*”); (ii) consortium agreements; (iii) franchising; (iv) service agreements; (v) network contracts (so called, “*contratti di rete*”); (vi) supply contracts (“*somministrazione*”); (vii) general or limited partnerships and (viii) subcontract (“*subfornitura*”).

Note that mediation is already compulsory in a number of areas including insurance, banking and financial contracts, inheritance, real property ownership and leases, medical malpractice and libel.

In terms of opposition to a summary judgment, the reform will decide who bears the burden of initiating mediation between the defendant and the opposing plaintiff, and the consequences on the summary judgment in case the party who bears the burden of initiating mediation does not fulfill it.

Mediation invited by a judge

The reform will create **incentives** for the judges to refer the parties to mediation.

Also, to the same effect of enhancing the number of mediations, the reform will plan **training programs on mediation** for judges.



Parties' involvement in mediation and the use of technology

The reform will foster parties' personal participation in mediation and a real discussion on contentious issues, also establishing the consequences of lack of parties' personal participation.

However, if there is a legitimate reason for the party's absence, the reform will provide the party with the possibility of delegating a person with knowledge of the facts and settlement authority who will represent him or her in the mediation.

Additionally, the reform will acknowledge that mediation can be conducted with the **use of electronic means** and the hearings may be held remotely if the parties so agree.

Disputes that require specific technical expertise

For the event of appointment of an expert assisting the mediator, the parties will be entitled to decide whether the expert's report may be filed in the judicial proceedings and freely evaluated by the judge or not.

Mediation providers' requirements

The reform shall enhance the **quality and transparency of the mediation process** also by changing: (i) the requirements to become a public or private mediation provider (ii) the methods to prove such requirements in order register as a mediation provider.

The reform will also involve the suitability criteria and duties of the person in charge of the mediation provider.

Mediators' training and continuing education

The number of hours of specialized training and continuous training for mediators, both required by the Ministerial Decree no. 180/2010 will be increased.

Additionally, the criteria to become a mediators' trainer will be changed by requiring at least some legal education.

OTHER KEY POINTS OF THE REFORM

Tax incentives

The exemption from any registration fee of the mediation agreement up to the value of 50,000 Euros will be increased. However, the increment is not set by Law no. 206/2021.

Each party will be granted a **tax credit** of the value of the legal fees paid to the lawyers who assisted them in the mediation procedure, within the limit of the professional fees provided for by the Ministerial Decree no. 55/2014.

Additionally, each party will be granted a tax credit of the value of the court fees already paid for the judicial proceedings if the dispute is terminated because a mediation agreement is reached.

The reform will also touch upon the cost to initiate the mediation and the mediation's providers administrative fees and expenses.

CONCLUSIONS

At a first glance, it can be stated that the legislature's policy and intent remained the same of the 2010 mediation reform. Mediation is recognized as a valuable process in addition to the judicial process but its actors (i.e. mediators, mediation providers, trainers, judges and parties) need more incentives, trainings and regulations.

In fact, an increase in education for all mediation users is recognized as a way to enhance the number of mediations and the percentage of settlements.

For further information on this topic, please see our Guide "[When to negotiate, when to mediate, when to litigate \(and how\)](#)".

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