



STATUTORY INSTRUMENTS.

**S.I. No. 209 of 2011**



EUROPEAN COMMUNITIES (MEDIATION) REGULATIONS 2011

**(Prn. A11/0688)**

## EUROPEAN COMMUNITIES (MEDIATION) REGULATIONS 2011

I, ALAN SHATTER, Minister for Justice and Equality, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving full effect to Directive 2008/52/EC<sup>1</sup> of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters make the following regulations:

*Citation and commencement*

1. (1) These Regulations may be cited as the European Communities (Mediation) Regulations 2011.

(2) These Regulations shall come into operation on 18 May 2011.

*Definitions*

2. (1) In these Regulations—

“agreement” means an agreement in writing reached through mediation;

“court” means the High Court, the Circuit Court or the District Court;

“Directive” means Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters;

“party” means a party to a relevant dispute;

“relevant dispute” means a cross-border dispute to which the Directive applies.

(2) A word or expression that is used in these Regulations and which is also used in the Directive has, unless the context otherwise requires, the same meaning in these Regulations as it has in the Directive.

*Recourse to mediation*

3. (1) A court in proceedings concerning a relevant dispute, on the application of any of the parties or of its own motion, may, when it considers it appropriate to do so and having regard to all the circumstances of the case, order that the proceedings or any issue therein be adjourned for such time as the Court considers just and convenient and—

(a) invite the parties to use mediation to settle or determine the relevant dispute or issue, or

<sup>1</sup>O.J. L 136, 24.05.2008, p.3

*Notice of the making of this Statutory Instrument was published in  
“Iris Oifigiúil” of 10th May, 2011.*

(b) where the parties so consent, refer the proceedings or issue to such mediation.

(2) A court may for the purposes of paragraph (1), invite the parties to attend such information session on the use of mediation, if any, as the court may specify.

(3) Where the parties decide to use mediation under paragraph (1) the court may make such further orders or give such directions, as the court considers will facilitate the effective use of mediation.

*Confidentiality of mediation*

4. (1) Subject to paragraph (2), a mediator or a person involved in the administration of a mediation shall not be compelled to give evidence in civil or commercial proceedings or an arbitration relating to a matter arising out of or connected with a mediation.

(2) A person referred to in paragraph (1) may be compelled to give evidence where it is—

(a) contrary to public policy, and in particular those aspects of public policy relating to—

(i) the protection of children, or

(ii) the prevention of physical or psychological harm to a person, for such evidence to be withheld, or

(b) necessary for the purposes of implementing or enforcing an agreement under Regulation 5.

(3) Notwithstanding paragraph (1), where the parties to a mediation so consent in writing, a mediator or person involved in the administration of a mediation may give evidence in civil or commercial proceedings or an arbitration relating to a matter arising out of or connected to that mediation.

(4) For the purposes of this Regulation, a mediation commences upon the appointment of a mediator and ends when the mediator determines that the mediation is at an end or has concluded.

*Enforceability of agreements resulting from mediation*

5. (1) Where the parties enter into an agreement following the use of mediation under Regulation 3, they, or any of them with the consent of the others, may apply to the court concerned for an order making the agreement a rule of court and such an order shall be enforceable against the parties or any of them.

(2) Where the parties enter into an agreement following the use of mediation otherwise than under Regulation 3, they, or any of them with the consent of the others, may apply to the Master of the High Court for an order making the

agreement a rule of court and such an order shall be enforceable against the parties or any of them.

(3) (a) Where an application under paragraph (2) relates to an agreement concerning—

(i) the exercise of parental responsibility in respect of a child, or

(ii) maintenance,

the Master of the High Court may order that the agreement be deemed an order of the District Court and be enforceable against the parties or any of them accordingly,

(b) An order relating to subparagraph (a)(ii) shall be deemed to be an antecedent order within the meaning of the Family Law (Maintenance of Spouses and Children) Act 1976 (No. 11 of 1976).

(4) The court or the Master of the High Court shall grant an application under paragraph (1) or (2) except where—

(a) the terms of the agreement are contrary to the law of the State, or

(b) the law of the State does not provide for the enforcement of such an agreement.

(5) Where an application under paragraph (1) or (2) is made by one of the parties a court or the Master of the High Court may require a party, who is not an applicant under those paragraphs, to verify, by affidavit or otherwise, that party's consent to an application under paragraph (1) or (2).

(6) An application under paragraph (1) or (2) shall be made not later than 6 years from the date referred to in paragraph (2) of Regulation 6.

*Effect of mediation on limitation and prescription periods*

6. (1) In reckoning any period of time for the purposes of any limitation period specified by the Statute of Limitations 1957 (No. 6 of 1957) or the Statute of Limitations (Amendment) Act 1991 (No. 18 of 1991), the period beginning on the day on which the relevant dispute is referred to mediation and ending on the day which is 30 days after the mediation process is concluded shall be disregarded.

(2) A mediator shall inform the parties in writing of the date on which a mediation concludes.



GIVEN under my Official Seal,  
5 May 2011.

ALAN SHATTER,  
Minister for Justice and Equality.

EXPLANATORY NOTE

*(This note is not part of the Instrument and does not purport to be a legal interpretation.)*

This Regulation transposes Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters and makes the necessary provisions for the good administration of the Directive.

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