



Federale Bemiddelingscommissie
Commission fédérale de médiation
Föderale Commission für Mediation

Belgian Mediation Experience :

Law

Certification

Training

Selection

BARBARA GAYSE

**Attaché
Federale Bemiddelingscommissie**



Federale Bemiddelingscommissie
Commission fédérale de médiation
Föderale Commission für Mediation

BELGIAN MEDIATION LAW

FOD Justitie - copyright B. Gayse



Federale Overheidsdienst **Justitie**
Service public fédéral **Justice**

.be

Belgian Mediation Law

- ***21 February 2005, into force since 30 September 2005***

- ***Types of mediation***

- *Voluntary mediation*
- *Judicial mediation*
court-instigated mediation

Belgian Mediation Law

VOLUNTARY MEDIATION

*Mutual agreement of the parties
to start a mediation*

*Before, during and after a
procedure*

No role for the judge

COURT-INSTIGATED MEDIATION

*Court ordered (consent of the
parties still necessary)*

Joint request by the parties

The judge appoints the mediator

Belgian Mediation Law

- Kind of conflicts:

- *Family matters*
- *Civil and commercial matters*
- *Social matters*

- National and cross border conflicts (>EU-directive)

Belgian Mediation Law

Principles of mediation

- **Voluntary**
“decide freely”
- **Confidential**
“ talk freely”

Belgian Mediation Law

VOLUNTARY

To initiate a mediation

No coercion to settle

*To be able to terminate the mediation
at any time
without any
disadvantage*

CONFIDENTIAL

Documents and communications

Not admissible as evidence

Belgian Mediation Law

- Enforceability of the Mediation agreements

- *ratification by the court*
- *or by the notary*

- Impact of Mediation on statues of Limitation



Federale Bemiddelingscommissie
Commission fédérale de médiation
Föderale Commission für Mediation

The Mediator: certification by the FMC

FOD Justitie - copyright B. Gayse



Federale Overheidsdienst **Justitie**
Service public fédéral **Justice**

.be

THE MEDIATOR

**A crucial person in the mediation:
he assists the parties to resolve their conflict**

→ **TRUST** in the mediator and mediation are essential to increase the use of mediation and the numbers of referrals by all the judicial actors (lawyers, judges, juridical advice centres, ...)

→ To gain TRUST in mediation/mediator the **QUALITY** of mediation must be ensured

**This principle is confirmed by art. 3 of the Directive
(definition of mediation and mediator)
and art. 4 of the Directive
(ensuring quality of mediation)**

The mediator

Art 3 of the Directive

‘Mediator’ means any third person who is asked to conduct a mediation in an effective, impartial and competent way, regardless of the denomination or profession of that third person in the Member State concerned and of the way in which the third person has been appointed or requested to conduct the mediation.’

Ensuring the quality of mediation

Art. 4 of the Directive

1. Member States shall encourage, by any means which they consider appropriate, the development of, and adherence to voluntary codes of conduct by mediators and organisations providing mediation services, as well as other effective quality control mechanisms concerning the provision of mediation services
2. Member States shall encourage the initial and further training of mediators in order to ensure that the mediation is conducted in an effective, impartial and competent way in relation to the parties.

How to ensure the Quality?

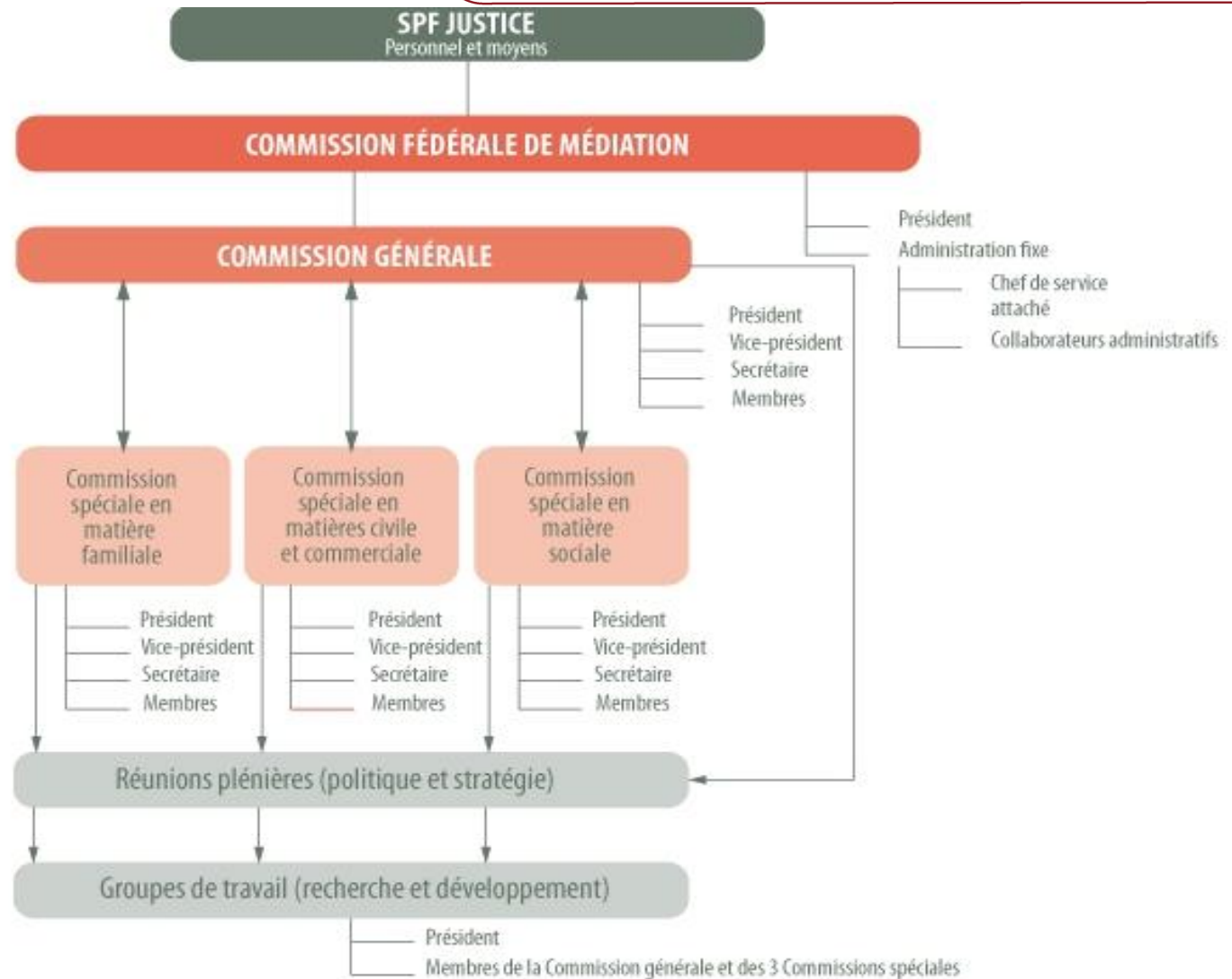
- **Can be reinforced by the creation of a minimal legal framework (goal of the Directive)**
- **Training of the mediator: initial and further training**
- **Certification or accreditation of the mediator**
- **To provide an up to date list of trained and certified/accredited mediators**
- **a code of conduct (self-regulation)**

**In Belgium these objectives are ensured
by the Federal Mediation Commission
and the accreditation of the mediators
(art. 1726 and 1727 J.C.)**

The Federal Mediation Commission

is composed of

- a **General Commission**
- and **three Special Commissions**



The General Commission:

Composed of six effective members and six alternate members and an equal number of Dutch-speaking and French-speaking members:

- two notaries
- two lawyers
- two representatives of mediators neither lawyers nor notaries.

The **three Special Commissions** are created in order to **give advice** to the General Commission:

- a Special Commission for **Family Matters**;
- a Special Commission for **Civil and Commercial Matters**;
- a Special Commission for **Social Matters**

A Special Commission

composed of 12 specialists and practitioners
of each of the types of mediation:

- two notaries
- two lawyers
- two representatives of mediators neither lawyers nor notaries.



Federale Bemiddelingscommissie
Commission fédérale de médiation
Föderale Commission für Mediation

The Mediator: training

FOD Justitie - copyright B. Gayse



Federale Overheidsdienst **Justitie**
Service public fédéral **Justice**

.be

The mediator

Training of the mediator

- ***Offered by accredited providers of mediation training***
- ***Minimum content and fixed number of minimum hours for the general part (60h) and specialisation part (30h)***
- ***obligation to attend permanent education (18 h each two years)***

The Mediator: selection

FOD Justitie - copyright B. Gayse

The mediator

Selecting the mediator

- **Choice of the parties**
“choose freely”
- **Choice between non-accredited versus accredited mediation**
- **List of accredited mediators**
(national list with cross border mediators)

The mediator

Selecting the mediator

- ***Possible criteria:***
 - ✓ ***Experience***
 - ✓ ***Professional background***
 - ✓ ***Style***
 - ✓ ***Language***
 - ✓ ***Specialist in the field of intervention***
 - ✓ ***Independence***
 - ✓ ***Fees***
 - ✓ ***Availability, etc.***

Challenge

To ensure the quality on a European and International level

- **Collaboration between the different mediation organisations?**
- **Collaboration between the different types of mediation?**
- **European Certification/Accreditation?**