

Conciliation Rules of the German Society for Law and Informatics e.V. (DGRI) (Non-binding Convenience Translation)

Preamble

The German Association for Law and Informatics e.V. (DGRI), based in Frankfurt am Main, has a general interest in the competent out-of-court settlement of disputes relating to information and communication technology by means of mediation and conciliation, which is accessible to its members, among others. In particular, it considers conciliation offices operating on the basis of the following rules of procedure (Conciliation Rules) to be suitable institutions for this purpose.

Provided that it bases its activities on the Conciliation Rules adopted by the DGRI Board in their current version, the DGRI may permit a Conciliation Office to use the name "DGRI Conciliation Office" or "DGRI Conciliation Office IT" and, if applicable, the DGRI trademark, business name, logo, etc. until further notice.

DGRI reserves the right to revoke such permission at any time.

§ 1 Scope of application

- (1) The Conciliation Rules are available for national and cross-border disputes arising in the field of information and communication technology. These include in particular disputes
 - between suppliers and customers of goods and services in the information and data processing industry;
 - between providers and customers of online services, including telemedia;
 - on the infringement of industrial or intellectual property rights, including legal positions protected by competition law, in information and communication technology products;
 - via employment, service or work contracts related to the information or data processing value creation process.
- (2) Disputes pursuant to § 77 German Telecommunications Code [TKG] shall not be subject to conciliation in accordance with these Conciliation Rules.
- (3) Only §§ 3, 9, 10 (2) and § 11 of these Conciliation Rules apply to the non-contentious conciliation accompanying the project. The details of the procedure shall otherwise be determined jointly by the parties involved in the conciliation accompanying the project on their own responsibility.

§ 2 Initiation of the proceedings

- (1) The conciliation procedure begins on the day on which the Conciliation Office receives an application from a party for its implementation in writing or by e-mail (Application for Conciliation). If the request is made in writing, the request should be submitted in duplicate plus copies for all parties involved. Missing copies or the preparation of copies upon receipt of the request for conciliation by e-mail may be charged to the requesting party by the Conciliation Office in accordance with the provisions of the German RVG.

The following information should be included in the request for conciliation:

- (a) Names, addresses, e-mail addresses, telephone numbers or other means of communication of the parties, the legal representative and, if applicable, the authorized representative of the party filing the request for conciliation, as well as the legal representative and, if applicable, the authorized representative of the other parties, if known;
 - (b) the language in which the conciliation proceedings are to be conducted in accordance with para. 5, if the proceedings are not to be conducted in German;
 - (c) a brief description of the subject matter of the dispute and a declaration of submission to the provisions of these Rules of Conciliation;
 - (d) the documents required to understand the facts of the case (contracts, correspondence, technical documents, etc.).
- (2) The Conciliation Office shall send a copy or electronic copy of the request for conciliation to each of the other parties named in the request for conciliation and shall set them a reasonable deadline of no more than two weeks to declare their consent to the conciliation procedure. A one-off extension of this deadline may be granted at the request of either party.
 - (3) The Conciliation Office shall inform all parties of the date on which the conciliation proceedings commence.
 - (4) If the other parties do not declare their consent within the deadline, the conciliation procedure ends.
 - (5) The conciliation procedure is generally conducted in German. It may be conducted in another language. The application pursuant to para. 1 must specify the language in which the conciliation proceedings are to be conducted. An application to conduct the conciliation proceedings in another language is only admissible if the parties have agreed on a language before submitting the application. If there is no agreement, the proceedings shall be conducted in German.

§ 3 Composition of the conciliation team

- (1) The Conciliation Office shall inform the parties of the intended members of the conciliation team and appoint them. Each party may make suggestions for the composition of the conciliation team. The Conciliation Office does not have to take these suggestions into account when selecting the conciliators.
- (2) The conciliation team usually consists of a fully qualified lawyer and an IT expert who is usually publicly appointed and sworn in. In suitable individual cases, a single conciliator or mediator can also be proposed. The conciliators must have the necessary expertise and reliability and, if possible, also have experience in out-of-court dispute resolution.
- (3) A third conciliator with one of the aforementioned qualifications shall be appointed by the Conciliation Office in accordance with paras. 1 and 2 if the conciliation team does not agree on the procedure, a settlement proposal (§ 6 (1)) or a conciliation award (§ 6 (3)) or if the parties request this by mutual agreement.

- (4) The conciliators must be neutral, impartial and independent. They may not (have not) represented or advised either party in or out of court in connection with the matter in dispute. They may also not act as a judge or arbitrator or in a similar capacity in proceedings that are related to the subject matter of the conciliation proceedings.
- (5) The conciliators shall make a declaration of neutrality to the parties before commencing their work, in which they disclose all circumstances that could give rise to doubts about their impartiality or independence.
- (6) The Conciliation Office shall decide on motions of bias. Any necessary replacement of a conciliator shall be made in accordance with paras. 1 and 2.

§ 4 General procedural maxims

- (1) Suspension of the statute of limitations: The conduct of conciliation proceedings is deemed to be a hearing within the meaning of § 203 sentence 1 German Civil Code [BGB]. Subject to other grounds for suspension, the limitation period for all claims arising from the matter subject to conciliation shall be suspended in any case from receipt of the request for conciliation by the Conciliation Office until the end of the conciliation proceedings.
- (2) Confidentiality: Unless the parties agree otherwise, the conciliation proceedings shall take place in private. All persons involved in the conciliation proceedings, including the conciliation team, the parties, their legal representatives, experts and other persons present during the conciliation hearings, must maintain the confidentiality of the conciliation proceedings and may not use or disclose to a third party any information relating to the conciliation proceedings or which they have obtained in the course of the conciliation proceedings. Each of the aforementioned persons shall, at the request of a party, make a written declaration to this effect before participating in the conciliation proceedings. At the end of the conciliation proceedings, the parties shall return any documents that they have received from other parties during the conciliation proceedings to the party that introduced them to the proceedings.
- (3) Representation: Each party may be represented or assisted in the conciliation proceedings by an authorized representative. At the request of the conciliation team or another party, the authorized representative must prove their identity by means of a written power of attorney.
- (4) Notification: The application to initiate conciliation proceedings and decisions of the conciliation team shall be served on the parties by simple letter or email, in each case against confirmation of receipt. Any further pleadings, summonses and orders (setting deadlines) shall be sent informally by letter, fax or e-mail. If a party is represented by an authorized representative, service shall be made on that representative.
- (5) Duty to promote the proceedings: The conciliation team shall work towards the expeditious conduct of the proceedings. For their part, the parties must promote the proceedings by preparing the facts of the case in a timely and complete manner and by providing all information deemed necessary by the conciliation team in such a way that the proceedings can be concluded after a maximum of one hearing date. The Conciliation Office provides the conciliators with a handout containing information on how to conduct the proceedings swiftly.

§ 5 Implementation of the conciliation

- (1) The conciliation team shall determine the further procedure in accordance with the following rules.
- (2) The conciliation team may, at its discretion, first hold an oral discussion, also in the form of mediation, after having heard and heard the views of both parties.
- (3) If the conciliation team does not conduct a discussion in accordance with § 5 (2) or if the conciliation proceedings could not be concluded at the discussion meeting, the conciliation

team shall give the parties the opportunity to present in writing the subject matter of the dispute, the background to the dispute, the desired objective of the conciliation and the arguments regarding the legal situation. Relevant documents and other evidence suitable for submission must be attached. If a copy is submitted, the conciliation team may request the submission of the original at the hearing if the authenticity is disputed. Other evidence (e.g. witnesses, inspection) must be offered.

- (4) At any stage of the conciliation procedure, the conciliation team may request the parties or one of them to submit additional information or documents that the conciliation team considers useful for a comprehensive assessment of the factual and legal situation.
- (5) Each party may make information or documents in respect of which it conclusively asserts an interest in confidentiality available exclusively to the conciliation team. The other party must be informed of this. The conciliation team may not disclose such information or documents to the other parties without the written consent of that party.
- (6) Requests by the conciliation team in accordance with paras. 3 and 4 may be made with a deadline. These deadlines may be extended at the request of a party if the extension is in its legitimate interest and is compatible with the interests of the other party. A legitimate interest exists if the party is prevented from complying with the deadline through no fault of its own and despite reasonable efforts.
- (7) Upon receipt of the statements pursuant to para. 2 or the written statements pursuant to para. 3, the conciliation team shall provide the parties with information on the expected focus of the proceedings and, if requested, provide them with a non-binding cost estimate.
- (8) As a rule, the conciliation team will then schedule an oral hearing, which will take place at the location of the subject matter of the dispute if this appears appropriate under the circumstances, otherwise at a location determined by the conciliation team. The conciliation team is authorized to inspect the subject matter of the dispute and to call in knowledgeable employees or representatives of the parties or experts. It may question them individually and also negotiate in the absence of a party.
- (9) The conciliation team should encourage the parties' willingness to reach an agreement and, as far as possible, submit proposals for an amicable settlement of the dispute or individual points in dispute at every stage of the proceedings, including in the form of provisional or partial settlements.
- (10) The above-mentioned procedural steps may be deviated from in agreement with the parties. In agreement with the parties, the conciliation team may also decide in simple cases in a written procedure. In this case, the parties must be informed in advance of the aspects relevant to the decision and given the opportunity to comment.
- (11) In addition, §§ 1042 to 1050 German Civil Procedure Code [ZPO] apply accordingly, unless the Conciliation Rules provide otherwise.

§ 6 Result of the conciliation

- (1) Conciliation settlement: If an agreement is reached between the parties at the suggestion of or with the assistance of the conciliation team, it must be recorded as a conciliation settlement and the minutes must be signed by the members of the conciliation team and the parties or their authorized representatives. Under the conditions of § 796a ZPO, the conciliation settlement can also be concluded in the form of a lawyer's settlement.
- (2) Provisional settlement: The result of conciliation can also be agreements on individual points of dispute or provisional settlements that are reached at the suggestion of or with the involvement of the conciliation team and that enable a process that is in dispute and not yet concluded to be continued.
- (3) Conciliation award: If the parties are unable to reach an agreement, the conciliation team will submit a conciliation award with a brief statement of reasons. The conciliation award should take into account a fair balance of interests (in particular also commercial interests), the preservation of a further opportunity for cooperation and the presumed outcome of legal proceedings between the parties. The deadline for accepting the conciliation award is two weeks. It may be extended once at the request of one of the parties. If the conciliation award is accepted by all parties, it shall be deemed a settlement within the meaning of para. 1. The conciliation team shall inform the parties of this.

§ 7 Relationship between conciliation and court or arbitration proceedings

- (1) Unless otherwise agreed between the parties, settlement proposals made by the parties or the conciliators, the fact that a party has shown willingness to accept a settlement proposal or conciliation award, concessions made or promised during the conciliation proceedings or other statements made by the parties or the conciliation team or individual members thereof may not be introduced into court or arbitration proceedings between the parties. This does not apply to a conciliation award pursuant to § 6 (3) and its justification.
- (2) Conciliation proceedings may also be conducted or continued if a legal dispute is pending or has been brought before an ordinary court. However, either party and the conciliation team may terminate the proceedings by declaration if the dispute is brought before an ordinary court in whole or in part or if dormant court proceedings are resumed by a party.
- (3) In any case, the Conciliation Office must ensure that the parties clearly and mutually agree on the desired type of procedure to be conducted.

§ 8 Termination of the conciliation proceedings

- (1) The conciliation procedure ends,
 1. if consent to the conciliation procedure is not granted (§ 2 (4));
 2. by the conciliation team's decision that further efforts at conciliation are not promising due to a lack of
 - a. Willingness of the parties or a party to support the proceedings or
 - b. Willingness of a party to disclose information or documents that are considered to be confidential in accordance with § 5 (5) to other parties, although in the view of the conciliation team they are decisive for the decision in the dispute; before making such a decision, the conciliation team should give the parties the opportunity to remove the impediment by informing them of the reasons for the impediment;
 3. with the conclusion of a settlement regarding the subject matter of the dispute in accordance with § 6 (1);

4. upon expiry of the period for acceptance of a conciliation award pursuant to § 6 (3), irrespective of whether or not it is accepted;
 5. by submitting a declaration in accordance with § 7 (2);
 6. by a party making a declaration to this effect at any stage of the proceedings.
- (2) The Conciliation Office must be informed promptly by the conciliation team of the conclusion of the procedure and its results.

§ 9 Exclusion of liability

The conciliation team shall only be liable to the parties for acts or omissions in connection with the conciliation proceedings or their initiation or termination for intentional conduct. In individual cases, the conciliation team may agree a different arrangement with the parties for its members. The Conciliation Office shall only be liable to the parties for acts or omissions in connection with the conciliation proceedings or their initiation or termination for intentional or grossly negligent conduct.

§ 10 Costs

- (1) The conciliation team shall decide on the allocation of the costs incurred in the conciliation proceedings between the parties at its reasonable discretion, taking into account the state of the facts and dispute to date. As a rule, the parties shall be ordered to bear their own costs. Exceptions to this require special justification.
- (2) The members of the conciliation team have their own claims to remuneration against the parties in accordance with § 11. A member of the conciliation team shall retain his or her claim to remuneration even if his or her activity ends before the end of the conciliation procedure, unless he or she is justifiably rejected due to reproachable misconduct.

§ 11 Fees of the members of the conciliation team; reimbursement of expenses of the Conciliation Office

- (1) The members of the conciliation team calculate their fees on the basis of the time spent on their conciliation activities. The hourly rate is EUR 250.00 to EUR 1,000.00. The amount of the hourly rate depends on the complexity of the subject matter of the dispute, the economic significance and the difficulty of the matter. The Conciliation Office proposes the specific hourly rate for a case after consultation with the Conciliation team.
- (2) The Conciliation Office receives an appropriate level of compensation for its expenses. The applicable expense allowance can be found on the website of the Conciliation Office and on the DGRI website (<http://www.dgri.de>).
- (3) The parties shall be jointly and severally liable for the costs in accordance with § 11.
- (4) Once the conciliation proceedings have been initiated, the Conciliation Office and the conciliation team may request each party to pay an equal amount as an advance on the fees of the members of the conciliation team and the other costs of the conciliation proceedings. The amount of the advance on the fee shall be based on the cost estimate of the conciliation team pursuant to § 5 (7). Further advances may be requested during the conciliation proceedings. The Conciliation Office and the conciliation team are not obliged to take (further) action before the advance payments have been received.
- (5) At the end of the conciliation proceedings, the conciliation team shall send the parties a statement of the costs incurred; taking into account the decision on costs pursuant to § 10 (1), it shall reimburse the parties for any advance payments made in excess or demand payment of

any outstanding balance of costs or fees.

