

## New rules to encourage out-of-court settlement of civil and commercial disputes

*Organic Law 1/2025, of 2 January, on measures for the efficiency of the Public Justice Service*

### Obligation to negotiate

The recent Organic Law 1/2025, published on 3 January, aims to improve the efficiency of the courts. To this end, various measures have been adopted, including those that promote the out-of-court resolution of civil and commercial disputes. For instance, as of 3 April 2025, the use of appropriate alternative dispute resolution methods (ADR) will be mandatory before initiating civil or commercial court proceedings.

The general rule is that non-compliance with this requirement will lead to the dismissal of the claim.

Certain proceedings are excluded from this requirement. Among others, those that have as their object: (a) the protection of fundamental rights; (b) the request for preliminary injunctions prior to the filing of the lawsuit; or (c) the request for preliminary proceedings.

### Appropriate alternative dispute resolution methods

Appropriate alternative dispute resolution methods refer to *“any type of negotiation activity undertaken in good faith by the parties to a dispute with a view to finding an out-of-court solution to the dispute, either by themselves or through the intervention of a neutral third party”*.

Organic Law 1/2025 lists a number of systems to be considered as “appropriate alternative dispute resolution methods”. Among others, the following are listed:

- a) Mediation or conciliation,
- b) Confidential binding offer, acceptance of which is irrevocable,
- c) A neutral, non-binding and confidential opinion of an independent expert, to which the parties may voluntarily adhere,
- d) Direct negotiation between the parties or with the intervention of their lawyers,
- e) Submission to a collaborative law process, consisting of a negotiation in which the lawyers involved will waive the right to represent their clients in court if they do not achieve a total or partial solution to the dispute.

### How to prove compliance with this requirement

The claim must include a section describing the prior alternative dispute resolution process or the impossibility of carrying it out.

In addition, the claim must be accompanied by documentation proving the attempt to engage in the ADR/negotiation process or, if applicable, a declaration stating that it has been impossible to carry it out due to the defendant’s address and contact information being unknown.

### Effects of the ADR/negotiation process on the statute of limitations and the lapse of actions

The request to initiate an ADR/negotiation process shall interrupt the statute of limitations or suspend the lapse of actions, from the date on which the attempt at communication is recorded. The



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request may be made by any of the means of electronic communication used by the parties in their previous relations.

The interruption or suspension of the statute of limitations and lapse periods will be extended until the date of the signing of the mutual agreement reached or the termination of the ADR/negotiation process without agreement. On the other hand, there are rules for restarting the calculation of time limits if the ADR/negotiation process does not progress, and special time limits if a neutral third party intervenes as mediator, conciliator, independent expert, etc.

### Deadline for filing a claim

In the event that the initial request for ADR/negotiation process is not answered, or the ADR/negotiation process ends without agreement, the parties must file a claim within one year from the date of receipt of the request for ADR/negotiation process or, as the case may be, from the date of termination of the ADR/negotiation process without agreement.

Special time limits are foreseen for cases where preliminary injunctions have been granted.

### Confidentiality

The parties may conduct the ADR/ negotiation process through any type of telematic procedure, such as videoconference or other similar means, provided that the identity of the intervening parties is guaranteed.

The negotiation process and the documents used in the negotiation process are confidential, except for information relating to whether or not the parties attended the ADR/negotiation attempt, and information relating to the subject matter of the dispute. Other exceptions are also provided for (voluntary waiver, proceedings for the assessment of costs, criminal offences or the protection of public order).

### Costs of proceedings

The courts will have to assess the cooperation shown in reaching a consensual resolution of the dispute when deciding who should bear the costs of the trial.

### Criminalisation of the abuse of justice

Organic Law 1/2025 also introduces other relevant reforms aimed at streamlining judicial processes. Among these is the creation of the concept of abuse of the public service of justice, which will make it possible to sanction litigants whose behavior is not compatible with the sustainability of the justice system, such as irresponsible access to the courts when a consensual solution would have been feasible and evident or when the claims are notoriously lacking grounds.

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