



# Best Practice Conflict (Cost) Management 2012

The true value of mediation

German Bundestag  
17th legislative period

Printed matter 17/5335  
15.12.2011

Draft Bill  
of the German Federal Government

Draft Bill for the Promotion of Mediation and other Forms of Extrajudicial Conflict Resolution



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Information as of: March 2012

# Best Practice Conflict Management 2012

## The true value of mediation

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## Conflicts and their costs

Usually all participants of a mediation leave very satisfied, even in case that the mediation has not resulted in a final agreement.

People who are not involved often find it difficult to understand why this is the case. What are the concrete benefits of mediation? Generally speaking, what are the benefits of conflict management for a company?

The answer is in fact very simple. Conflict management and mediation reduce conflict costs. Conflict costs mainly arise from lost working hours which are consuming those involved in the conflict. In 2009, KPMG published the first comprehensive study on conflict costs in German companies and initially determined that conflict costs do not only exist but can also be measured. The most decisive measure here is working time, as the following example shows:

Which employer allows his employees to sleep on the job for 24 minutes or more every day? And which employer gladly continues paying salaries, i.e. personnel costs, during this time? The most frequent answer to this question is "Why should I, as an employer, pay for employees who are sleeping? I pay for a specific work activity, not for private recuperation." The only objection might be that an employer might be happy to pay for a recuperation of an employee in recognition of an exceptional performance or in order to facilitate exceptional performance in the

future. But what does sleep have to do with conflict costs?

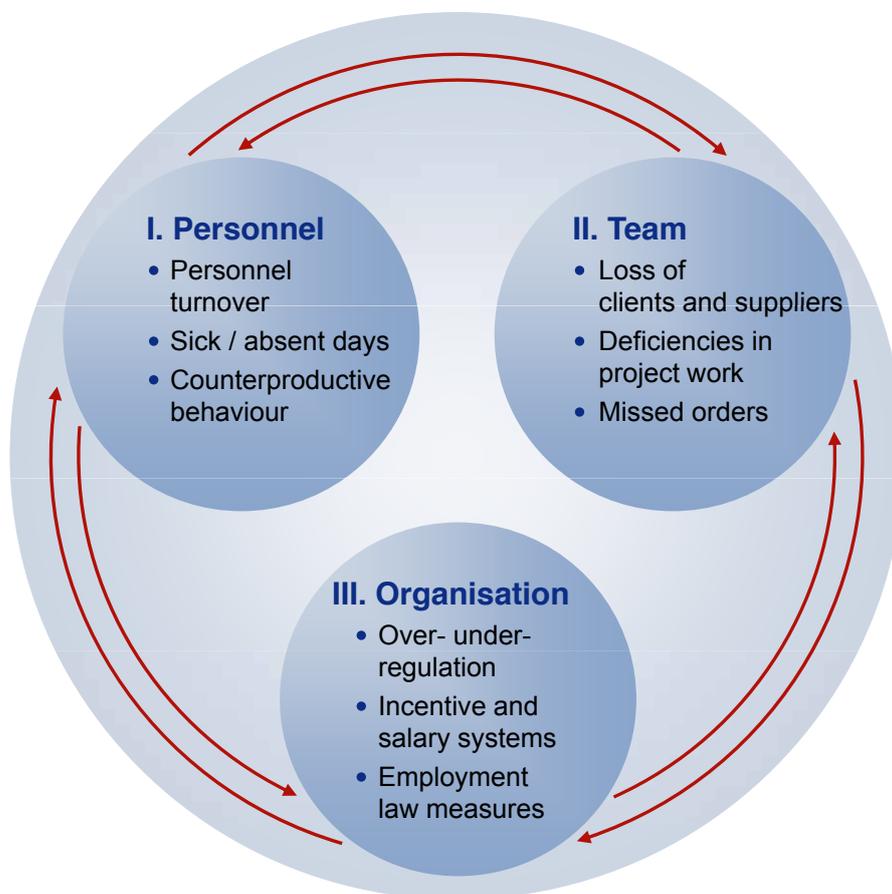
Sleep – as a metaphor for inactivity – is virtually the mildest form of conflict at the workplace. This is because during this time, the employee is not working in the way the employer had planned. On the other hand, he does not actively harm the company, since the only conflict costs generated are those of his own lost working time. From a conflict-cost-controlling perspective, the sleeping employee shows the relevant measurement for conflict costs: Lost working time which is paid for by the employer, i.e. wasted personnel costs.

Additionally it becomes apparent that any other kind of conflict resolution, such as factual discussions or a less factual disputation between colleagues up to yelling at or avoiding each other, sending or ignoring e-mails, stealing office supplies, etc. will always generate higher costs for the employer than sleeping employees.

The 2009 conflict cost study defined conflict costs and divided them into 9 categories and furthermore determined that German companies spend several million on conflict costs each year; depending on the size of the company,

this often amounts to several hundred thousand euros per company. The macro perspective was clear. But now, on the part of companies and mediators, the question arose about how conflicts develop in individual cases and what kinds of conflict costs they generate. Furthermore it was necessary to determine those methods of conflict resolution, such as mediation, that are most suitable for conflict management and conflict cost reduction.

In 2011 the “Employers’ Association Düsseldorf” developed the idea of initiating an exchange of experience between companies. The aim was to present conflicts which had been solved successfully and subsequently transparently calculate the generated and, if applicable, saved conflict costs. Once the KPMG study on conflict costs had provided for a bird's eye view of the landscape of conflict costs and showed that this landscape does indeed exist, individual villages started to come into focus in a detailed view with street names and houses.



KPMG Conflict Cost Categories / Circle of Conflict

All case studies were evaluated using the same method, classifying them under the nine categories of KPMG's Circle of Conflict model. This model is subdivided into three dimensions, following the development of the organisation: Person, Team and Organisation. The model thus allows costs to be allocated to those groups of persons in the company who actually generate them. It is important that in a first stage not the source of the conflict, but the impact of the conflict on the company is evaluated. It is not until a second stage that a distinction is made between dysfunctional, i.e. harmful conflict costs which are to be avoided and functional conflicts, i.e. those which ultimately have positive implications for the company, because they are useful in the long term<sup>1</sup>.

Conflict-cost-controlling ties in with the initial image of the sleeping employee. Emphasis is put on how much working time is spent on the specific conflict situation, i.e. in a relevant measuring period, by how many people and how these people are typically remunerated for their working hours. Therefore, factors which increase conflict costs are the duration of the conflict or conflict management respectively on the one hand and the number of people involved on the other hand. This is easily understandable on the basis of the following example:

1. If an employee argues with his boss for one hour and then leaves the company on schedule at the end of the day inflamed with anger, both have spent a total of 2 hours of working time on the conflict. Assuming the manager costs the company 100 Euros internally per working hour and the employee costs the company 50 euros, conflict costs of initially 150 euros occur.
2. But if the same manager stays angry about the discussion for another 30 minutes, so that he starts his next meeting with senior management only a quarter of an hour later, in turn causing them to waste time waiting for him, the following costs incur: 50 euros for the half hour of the manager plus another 15 minutes waiting time per person present at the meeting, in this case 10 senior managers with an hourly rate of 80 euros, totalling 200 euros in conflict costs. This example shows that the quarter of an hour of waiting time for the senior managers was more expensive for the company than the initial one hour of discussion between the manager and the employee.

Why is conflict cost controlling not already being implemented to a larger extent in practice? The main missing link regarding conflict cost controlling is the lack of transparent data. It is not clear

<sup>1</sup> see Insam/Seidel, Konfliktkosten-Controlling, Controller Magazin 2010, p. 76 ff.

how much working time is actually spent on the resolution of individual conflicts. In addition it is often still unclear in practice, where a conflict begins and where it ends. And, finally, not every conflict is dysfunctional. There are also functional conflicts, i.e. conflicts which are beneficial for the company, where the time spent on handling the conflict can ideally lead to a subsequent improvement of the performance of the employee, team or the whole organisation. In such a case, we speak of so-called functional conflict costs, which need to be maintained rather than reduced. The definition of conflict costs as being dysfunctional or functional depends on the business and therefore needs to be made for each company individually. Thus, in general only the total amount of conflict costs can be determined.

As shown by the 2009 KPMG study, it is useful to answer the above questions in sequence, in order to gain results which are meaningful in practice. The easiest method is to determine how the employees' working time was planned and how it was actually used. The resulting difference defines the total amount of conflict costs, which has to be supplemented with various other cost positions that are not working time or personnel costs, but which manifest e.g. in the form of stolen office supplies or external consulting fees, such as lawyer's fees or contractual penalties.

In each case this first step was carried out in all nine conflict cost categories in order to transparently portray all relevant conflict costs that incurred in practice. Unavailable figures were compensated with estimations by the conflicting parties and in these cases balanced through conservative rounding down. Thus, it is to be expected that in case of an exact measurement the actual conflict costs would be higher than determined in each of the following case studies.

The second question concerning start and end points of the conflict can be resolved by defining the start of the relevant duration of the conflict as the point in time when the conflict became apparent in the organisation, i.e. at least two persons were involved in the conflict, it had gained attention by senior managers and had reached the point of conflict management. In this regard it must be assumed that the hidden, not yet communicated conflict had already caused initial costs which would also increase the total amount of conflict costs. It is not unreasonable to assume that a blanket increase in the amount of at least 10% of the conflict costs for so-called initial costs of the conflict would have been necessary in individual cases.

The third question, which conflicts are dysfunctional and which are functional is a question of conflict management, since this question aims to clarify (and

ideally this happens particularly well during the mediation) which interests are pursued by those involved in the conflict and how these interests can be satisfied to the largest possible extent. In case this kind of conflict management succeeds, dysfunctional conflict costs should be avoided in the future and dysfunctional behaviours that are to be avoided in the future can be defined.

Case studies have shown that dysfunctional conflicts that occur repeatedly are regularly structural conflicts, e.g. in matrix organisations, i.e. that employees are given contradictory instructions and if they want to act “correctly” inevitably break rules in one direction or another. In these cases, a sustainable conflict resolution also necessitates an examination of the company’s structures and processes which cause the structural conflict.

Now, we hope that you will enjoy your journey through the case studies and we are sure that you will be as surprised as we were by the astonishingly high amounts of conflict costs which incurred in seemingly minor conflicts.



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KPMG

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## 1 Two friends: creativity vs. structure

The scene of the first case study is a small creative agency with four employees. Two of them have been close friends for several years. One is the owner and creative director of the agency. About one year ago he brought his good friend into the agency to assume responsibility for the administrative and commercial sides of the business.

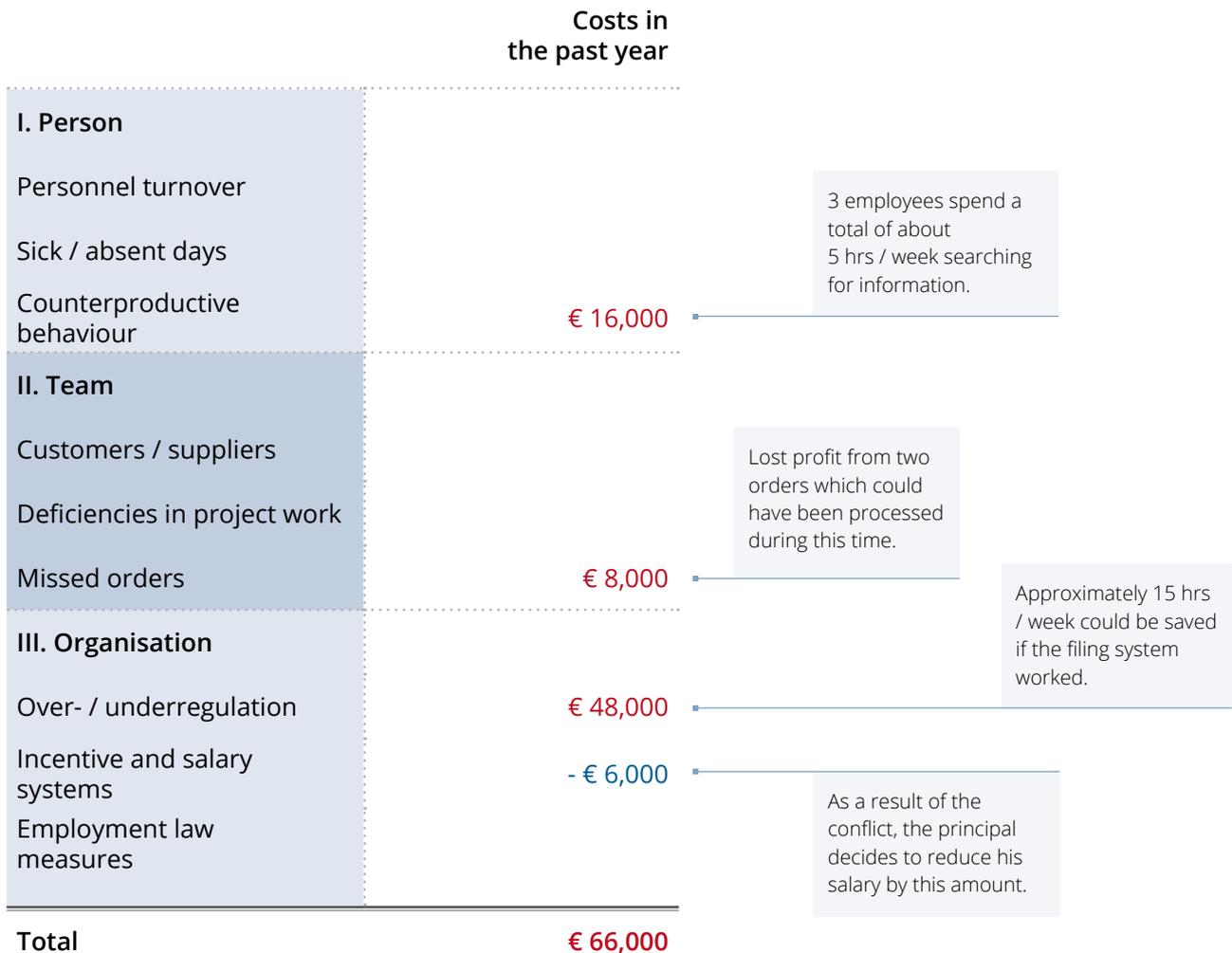
The main difficulty proved to be the lack of structure within the agency. The principal himself was mainly focussed on the creative content and often kept other important information concerning bookkeeping and invoicing only in his head. Thus, information got “stuck” with him, some orders were never even written down. Together with the other employees, a new organisation and filing system was agreed upon. The intention was to provide everyone with rapid access to all information relating to an order.

To standardise the files, fixed terms were defined to describe the different steps in the working process (bid, order, etc.). The new workflow was depicted graphically and explained, printed out and pinned to the wall in each office.

The current major problem: The principal of the company himself does not adhere to the agreed-upon structures. This makes it difficult for his friend and the other two employees to find information, in particular when the principal is not on site in person. In their private lives the two friends still get along very well – the conflict remains limited to the administrative level within the company. But the two friends have not yet managed to find a solution. While the friend’s supervision of the principal does work to some extent, the situation is straining for both parties. Neither have one-on-one conversations during walks yet been able to provide a solution.

## Calculation of conflict costs

People involved: 1 company owner  
 3 employees, personnel costs: € 128,000 / year



## Conclusion

Conflicts without an open argument are called “cold conflicts”. Tensions and negative effects on atmosphere and productivity are still prevalent. Future re-escalations of the conflict are to be expected. Currently, conflict costs already amount to approx. € 66,000. As soon as awareness is raised by calculating conflict costs, the responsible manager is able to take appropriate measures. For example he could seek advice / coaching or could initiate a mediation process, enabling the team to process the effects of mutual behaviour and develop a sustainable solution.

## 2 Team conflict with bullying

In a sales department, the long-time head of department is being replaced by a new, younger head of department. After only a short time tensions arise between the deputy manager, the new head of department and the other employees in the team.

After one employee, in leaving the department, informs the works council of bullying by the head of department, a multitude of meetings take place between the head of department, senior management and personnel management. As a consequence, the head of department promises to change his management style. In a second phase, senior management receives an additional complaint from the works council in conjunction with the request to dismiss the head of department, as he supposedly repeatedly and systematically unsettles and degrades his employees. In addition, the works council considers taking legal action. Discussions with the head of department result in his willingness to leave the company for a payment of severance.

To resolve the situation, two mediation processes are initiated. Firstly, a meeting is held between the head of department, the works council and an in-house mediator. The employees are not involved in this meeting, as any mutual trust with the head of department had been irreparably destroyed.

In a second round of discussions, the employees of the department analyse the events together with the management of the company. The main subject of these discussions are agreements on how conflicts should be encountered in the future, as well as the relationship with the new head of department.

In a final report, the main conclusions are summarised. It is mutual consent that the escalation of the conflict could have been avoided through earlier intervention. In addition, the mediation process has created the preconditions for a positive new start for the new head of department.

## Calculation of conflict costs

People involved: 1 head of department (approx. € 100,000 / year)  
 + team (approx. € 500,000 / year)



	Costs for entire period		
<b>I. Person</b>			
Personnel turnover	€ 40,000	€ 100,000	1 employee leaves the team (€ 40,000), contract with head of department cancelled (€ 100,000).
Sick / absent days	€ 7,500		
Counterproductive behaviour	€ 150,000		Approx. 30 % of the team's combined working time.
<b>II. Team</b>			
Customers / suppliers	€ 6,000		Includes e.g. Costs for acquisition of new customers and lost profits.
Deficiencies in project work	€ 30,000		
Missed orders	€ 5,000		
<b>III. Organisation</b>			
Over- / underregulation	€ 30,000		Lawyers' fees for conflict with the works council as well as severance payment in connection with dismissal of the head of department.
Incentive and salary systems	€ 5,000		
Employment law measures	€ 60,000		
<b>Total</b>		<b>€ 433,500</b>	

## Intervention costs

### Actual costs in the current example

17.5 days of mediation € 28,750

## Conclusion

This shows how in an open conflict (“hot conflict”), mediation can lead to substantial cost savings. In this case, further escalation of the conflict in its concrete form could certainly have been prevented if a mediation process aiming to involve all conflicting parties in finding a solution had been initiated at an earlier stage.

### **3** Employees willing to change/relocate

The third conflict situation takes place in an industrial company which works in shifts. Three employees of an alternating shift crew of 16 consult the company's social counselling service team and complain about a generally poor working atmosphere. All three are among the top workers within the team. The main source of the poor working atmosphere seems to be one particular foreman who will however switch positions in the next two months due to restructuring measures. During the course of conversations with management and the senior foreman, it becomes apparent that they, too, see the foreman as one of the central figures in the conflict.

Social counselling and management together decide to initiate a mediation procedure, starting with one-on-one interviews with all members of the shift crew. In the subsequent presentation of the results of the individual interviews, a one-day workshop was mutually agreed

upon in order to determine the conflict and to develop resolution strategies.

The workshop shows that the foreman is not the only person being seen as problematic. Communication is disturbed, the senior foreman treats employees unequally and there is no mutual support within the group. Two employees who do not take part in the one-day workshop and who are described as being rather difficult by the group, meet with both mediators and the senior foreman for a separate discussion. They agree to accept and to support mutual agreements. The senior foreman also has an individual coaching session with the mediators. At the end of the mediation the mutual agreements defined in the workshop are presented to the management. The retrospective evaluation of the mediation process shows a positive development in the group's working atmosphere.

## Calculation of conflict costs

People involved: Shift team of 16 employees, each approx. € 50,000 / year, including one senior foreman (approx. € 70,000 / year) + 1 master senior foreman (approx. € 70,000 / year)



	Cost per fiscal year	
<b>I. Person</b>		
Personnel turnover	€ 75,000	3 employees wish to change their field of work. The costs of training new employees amount to approx. one annual salary. The probability of change is 50%.
Sick / absent days		
Counterproductive behaviour	not taken into account, see to the right	Effects on occupational safety? Loss of productivity due to conflict? Overtime? No data available, collection, e.g. through comparison with other groups, possible.
<b>II. Team</b>		
Customers / suppliers		
Deficiencies in project work		
Missed orders		
<b>III. Organisation</b>		
Over- / underregulation	€ 7,000	Insufficient communication rules, senior foreman and master senior foreman each spend about 2 hrs / week.
Incentive and salary systems		
Employment law measures		
<b>Total</b>	<b>€ 82,000</b>	

## Intervention costs

Exact costs cannot be determined, because the counselling was conducted by a social counselling service which costs the company a fixed annual amount.

### Costs for mediation in the company

Social counselling, 9 employees,  
of which 2 are trained  
mediators.

€ 133,300 / year

Total salary of  
the 9 employees:  
€ 600,000 / year, 2 out  
of 9 are responsible  
for conflict mediation.

### Actual costs in the current example

Working time lost  
during mediation

€ 4,800

Approximately 140  
hrs for all involved  
persons, average  
salary approximately  
€ 55,000 / year.

## Conclusion

In this case, the calculation of the intervention costs exemplifies how quickly the expenses for employing mediators can be amortised.

## 4 Mismanagement in a social organisation

Case study 4 takes place in a church-funded organisation. After 25 years, the previous head of the organisation enters the passive phase of partial retirement. Thus, the parish council negotiates a management contract with a private company, as they intend to keep the building, but would like to outsource the business. The new business management contract comes into effect by the end of 2009.

When the private company takes over the management, it becomes apparent that the relationship between the parish council and the head of the organisation is severely disturbed. Moreover, there are other serious deficits within the business: Employees are not paid correctly according to collective bargaining agreements. The number of employees exceeds the budget and there is severe uncertainty due to the omission of the previous head of organisation, who assumed multiple functions at the same time.

Furthermore, the head of administration, who is dismissed one year later and is

replaced by a new head of administration, boycotts the business management agreement by not issuing invoices, not billing any costs and by provoking further deficiencies in the administration.

In addition, the building structure requires renovation, since for several years there have been no investments in important areas. Instead, new oversized buildings were constructed (e.g. an industrial kitchen) whose costs still have to be depreciated.

During the transitional period, the head of the private company takes care of the organisation, correctly regrades the employees, reduces the number of employees to match the budget and finally hires a new head of organisation as well as a deputy head of organisation who can take over additional tasks. Furthermore, an external consulting service is hired in order to conduct an administrative analysis with respect to tax questions. Overall, the working atmosphere is relatively poor due to increased pressure and resulting demotivation.

## Calculation of conflict costs

		2009-2010	
<b>I. Person</b>			
Personnel turnover		€ 55,000	Costs of head of organisation in passive phase (€ 55,000); costs for hiring of new head of organisation (€ 70,000); salary increases for employees taking over tasks of former head of organisation (€ 8,000).
		€ 70,000	
		€ 8,000	
Sick / absent days			
Counterproductive behaviour		€ 35,000	Necessary external consultancy services (€ 35,000); management contract with private company (€ 10,000); investment costs arising from reconstruction backlog (€ 300,000).
		€ 10,000	
		€ 300,000	
<b>II. Team</b>			
Customers / suppliers			
Deficiencies in project work		€ 180,000	Depreciation costs for uneconomic and oversized industrial kitchen.
Missed orders			
<b>III. Organisation</b>			
Over- / underregulation			
Incentive and salary systems			
Employment law measures		€ 110,000	Retrospective salary payments to employees who were graded incorrectly.
<b>Total</b>		<b>€ 768,000</b>	

	2010-2011	2011-2012	
<b>I. Person</b>			
Personnel turnover	€ 55,000	€ 55,000	In addition: Costs for hiring a head of organisation (€ 30,000 from 2010) and personnel turnover due to poor working atmosphere (approx. 4 employees at € 45,000 / year).
	€ 70,000	€ 70,000	
	€ 8,000	€ 8,000	
	€ 30,000	€ 30,000	
Sick / absent days	€ 31,500	€ 24,500	Days of sickness and absence due to lack of motivation, in 2010-2011 approx. 190 days, in 2011-2012 approx. 150 days (based on an annual salary of € 45,000).
Counterproductive behaviour	€ 35,000	€ 35,000	
	€ 10,000	€ 10,000	
	€ 300,000	€ 300,000	
<b>II. Team</b>			
Customers / suppliers	€ 100,000	€ 100,000	Loss of customers, approx. 3% of total turnover.
Deficiencies in project work	€ 180,000	€ 180,000	
Missed orders	€ 180,000		Extra costs for additional unnecessary construction projects.
<b>III. Organisation</b>			
Over- / underregulation			Retrospective salary payments to employees who were graded incorrectly.
Incentive and salary systems			
Employment law measures	€ 70,000		
<b>Total</b>	<b>€ 1,069,500</b>	<b>€ 992,500</b>	

## Conclusion

This case shows in particular how useful an early visualisation and calculation of conflict costs can be. The various positions of conflict costs rapidly add up to such substantial figures that the use of mediators or coaches in addition to the external consultants already hired would have been economically advisable. In cases like this, the goal is to keep the intervention period as short as possible by using all necessary methods.

## 5 Works council conflict

In a factory of a major industrial company, tensions arise between the works council and the company's management. Issues are pay-scale grouping as well as "soft factors" like communication rules or the lack of appreciation of the company's management for the works council. The conflict has been brewing for several years, an escalation which could manifest itself in strikes, press coverage or court proceedings is to be expected.

The effects of the conflict have already been noticed by the top management, who consequently initiate a mediation process to which the factory management consents.

In advance, the mediator conducts phone interviews with all parties in order to subsequently organise joint meetings with a co-mediator and all involved parties in a business hotel. After the fourth meeting the climate between the parties had already noticeably improved. The agreement however did not contain detailed provisions at this point, so that a comprehensive agreement covering all issues was not achieved until the end of the sixth meeting.

Overall a sustainable solution can be found during six full-day meetings and the mutual trust and partnership between works council and management is substantially improved.

### Costs in case of escalation

The imminent escalation of the conflict could have given rise to the following costs in addition to the conflict costs as listed on the right: In case of court proceedings approx. € 30,000 to € 100,000 would have to be added (category "Employment law measures"). A possible strike could, with a probability discount (approx. 10%), cost about € 400,000 per day of strike (rough estimation, compound item across all categories of conflict costs). The additional costs in the event of a publication of the conflict in the press are more difficult to assess. On the one hand, the loss of reputation could affect the personnel turnover (difficult recruitment, category "Personnel turnover"); on the other hand, costs for a positive image campaign would consequently have to be taken into account as well.

## Calculation of conflict costs

People involved: 1 chief executive officer, 8 works council members (of whom one is exempt) + 7 directly involved employees, of whom 3 are executive officers  
 Personnel costs of the 3 executive officers: approx. € 500,000 / year  
 Personnel costs for all 16 persons: approx. € 1,000,000 / year

	<b>Cost per fiscal year</b>	
<b>I. Person</b>		
Personnel turnover	€ 2,500	5% of the working time of the 3 managing directors.
Sick / absent days		
Counterproductive behaviour	€ 25,000	
<b>II. Team</b>		
Customers / suppliers		
Deficiencies in project work		
Missed orders		All 16 people involved each spend approx. 30 minutes per week on the conflict.
<b>III. Organisation</b>		
Over- / underregulation	€ 225,000	
Incentive and salary systems		
Employment law measures		
<b>Total</b>	<b>€ 252,500</b>	

## Intervention costs & conclusion

Actual costs in the current example	Overall costs for mediation in the company /year	
Lost working time during mediation (total of 475 hours, average salary for all employees: € 60,000)	<b>€ 17,800</b>	At the time of the conflict approx. 75 (part-time) mediators across the whole company (Total salary approx. € 4.5 million, 5% of working time for mediation) <b>€ 225,000</b>
Expenses	<b>€ 4,000</b>	

Similar to case study 3 (Employees willing to change/relocate) we can see that employing mediators and the awareness within the company that mediation is a suitable method of conflict resolution can lead to significant cost savings and can also improve the relationship between the conflicting parties for future collaboration.

## 6 Management conflict between two departments

In an international company, new conflicts consistently arise between two IT-development departments. Issues are mutual assignments of guilt concerning exceeded completion deadlines of software-versions as well as the extent of testing before the release of the software.

In joint discussions, the different hierarchy levels aim to resolve issues in a factual way and to define rules for collaboration. In order to be able to better analyse the situation, further documentation of the working procedures is implemented. In practice, however, this is mainly used to protect the individual areas of the departments against accusations by other departments.

The employees themselves consider the conflict as a major problem and call on the works council. The recurring fruitless discussions between the heads of the departments and their superiors are critically examined. Many employees react with "mental termination" to the overall situation, employee surveys show a highly negative prevailing mood. Additionally the senior heads and heads for both departments are included in the conflict, but a defined goal resp. the necessary transparency concerning the different methods of operation are missing as well.

## Calculation of conflict costs

People involved: Total of 98 employees (each approx. € 51,500 / year)  
 6 department heads (each approx. € 81,000 / year)  
 3 main department heads (each approx. € 87,500 / year)  
 2 area managers (each approx. € 96,000 / year)

	2008-2009	2009-2010
<b>I. Person</b>		
Personnel turnover	€ 100,000	€ 400,000
Sick / absent days	€ 34,000	
	€ 50,000	€ 50,000
Counterproductive behaviour	€ 604,000	€ 604,000
<b>II. Team</b>		
Customers / suppliers		
Deficiencies in project work	€ 1,100,000	€ 1,100,000
Missed orders		
<b>III. Organisation</b>		
Over- / underregulation	€ 1,300,000	€ 1,300,000
Incentive and salary systems		
Employment law measures	€ 10,000	
<b>Total</b>	<b>€ 3,198,000</b>	<b>€ 3,454,000</b>

2 employees in 2008; possibly up to 16 employees in 2009-2010, probability of occurrence: 50%.

In 2008 2 employees with burn out (approx. 150 absent days) + about 230 absent days for all employees overall.

Head of division: 12.5% of working time; senior heads of department, heads of department and employees: each approx. 10% of working time.

Missed deadlines in delivery of software. International consequences: 280,000 employees depending on the software, approx. 1% of the employees are affected per release, around 8 deadlines were missed, costs for 2,800 employees (€ 30,000 / year) 3hr each.

## Conclusion

For conflicts which have a major impact on other company processes, the introduction of a conflict management system should be taken into consideration. Mediation teams could be employed who in a first step would conduct a systematic analysis of the conflict and its repercussions and would subsequently implement a conflict management system in the company.

Too much documentation overhead, approximately 25% of working time of all 101 employees could be saved.

## What is mediation and what can it accomplish

In the above case studies, conflicts arose because varied interests, wishes, feelings and goals were not addressed or were not addressed in a proper way.

Similarly, solutions for conflict resolution and in particular conflict comprehension were either not sought at all or were only sought too late. The belief that “win-win” situations cannot be achieved is prevalent. But mediation creates mutual face-saving and fair win-win solutions behind closed doors.

Mediation is a form of extrajudicial conflict management. The aim is to find a solution to a conflict which is acceptable for all parties. Be it in a group of companies, a small business or a family enterprise – between business partners,

shareholders, employees, teams or customers. By using a structured discussion procedure, mediation creates the necessary space, allowing the parties to come together, speak openly and find creative solutions which can be approved by all parties. The success of mediation led to the passing of a directive by the European Union in 2008 requiring the transposition of a mediation act into national law. In Germany, the Bundestag passed the Mediation Act on 15 December 2011. Therein, mediation is legally defined as follows:

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### Mediation Act, § 1 Definitions

- (1) Mediation is a confidential and structured procedure in which parties voluntarily and on their own responsibility strive for an amicable settlement of their conflict with the aid of one or several mediators.
  - (2) A mediator is an independent and neutral person who guides the parties through the mediation without the authority to decide.
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Furthermore, the Mediation Act stipulates the principles of voluntariness and confidentiality, as well as the required preconditions for mediation. The mediator is equally committed to all parties. He promotes communication between the parties and ensures that the parties are involved in the mediation in an appropriate and fair way. In preparation of a mediation

process, preliminary talks with the initiator and the individual parties are held.

Subsequently, the mediation procedure generally continues in five phases:

1. Clarification of purpose
2. Compilation of all relevant topics
3. Clarification of interests and backgrounds

4. Development and evaluation of possible solutions
5. Final agreement

In the first phase of a mediation a **clarification of purpose** is conducted: The course of the mediation process and discussion rules are determined. Issues needing clarification and the desired goal of the procedure are identified.

In the second phase, the **relevant issues** are gathered from the parties and reviewed. Listening to one another is critical at this stage. The various positions of those involved become apparent, it becomes clear what the parties aim to achieve with their actions.

In phase three, the participants work out the respective **interests**, needs and values, which form the basis of their positions. Misunderstandings are resolved, mutual understanding grows.

In the fourth phase, the parties develop possible solutions for a settlement and how the various **interests** can be accommodated to the largest possible extent.

In the last phase, the ideas are refined to become precise solutions, which are sealed in a **final agreement**. Control elements are agreed upon. After a defined period, a follow-up discussion is

usually conducted to determine if further agreements are deemed necessary.

In the meantime, mediation is used in all areas of life. Particularly in business, mediation can be used in a multitude of cases:

- Conflicts with customers, suppliers, consumers, as well as between companies and public authorities (e.g. building projects, environmental conflicts)
- Conflicts between employees, teams and departments
- Questions of liability and warranty (e.g. manufacturer's liability, construction defects liability, environmental questions)
- Conflicts in family businesses and questions of company succession
- Shareholder conflicts
- Trade disputes and negotiations of provisions between representation bodies and the company management

The outstanding success of mediation can be attributed to many different factors:

- Mediators can act immediately, efficiently and unbureaucratically
- Mediators lead to individualised, cooperative and constructive solutions which take the needs and specific situations of the conflicted parties into consideration

- Mediators avoid expensive and disappointing court proceedings
- Mediators help reduce the visible and hidden costs of unresolved conflicts within and between companies.

These benefits once more lead to constructive collaboration following the mediation, (business) relationships are preserved. In internal conflicts, this also has positive effects on the working atmosphere and productivity. A particular advantage for companies

is the confidentiality. The conflict is not perceived outside the company, neither by customers nor by business partners. There are no media reports / court proceedings which could damage the company's reputation.

### **Bernd Lichtenauer**

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for Mediation in the Economy and  
World of Work)

## A conflict culture which promotes communication

There are three reasons why projects in companies fail: First: Lack of communication. Second: Lack of communication. Third: Lack of communication.

According to a current study of German innovation researcher Jens-Uwe Meyer, only 18 percent of respondents in companies indicated that area borders are open and “everyone speaks to everyone”.

Consequently only every fourth company uses internal and external networks. And: The vast majority of internal meetings is used for planning and discussion, but not for systematic idea development, i.e. no consistent communication.

The same applies to a case we are currently working on. An organisation experiences great difficulties in executing projects in a manner which is profitable for everyone. E-mails are not answered or allegedly do not arrive. After project discussions, not all participants know exactly their tasks and what the objectives of the team are. The results are misunderstandings, duplicate work without rhyme or reason and ultimately a project which is not completed to everyone's satisfaction.

One thing which becomes increasingly evident in my mediative work in companies and organisations is that communication is an important part of team work and project processes. For this

reason, it is of key importance to review the communication structures within companies and organisations, as this leverages the working capacity of teams in the most effective and immediate manner and is one of the most important success factors of successful teams, networks and project work.

Why is the important lever of communication so rarely used? A good question! In the above mentioned survey, 24 percent of the interviewed employees confirmed that their companies handicapped themselves due to secretiveness and the concealment strategic targets. Also, the potential of meetings to achieve sensible and successful communication is not fully used. Jens-Uwe Meyer fears that a large part of management regards informal structures with some suspicion. Instead, managers – consciously or subconsciously – prefer structures promoting compliance and control. Meyer: The value of informal networks is difficult to measure, and informal communication channels nearly always lead to a certain loss of control.

Communication and conflict culture in a company or organisation belong together – this is an opinion shared by Berlin professor Lars Kirchhoff from

the Institute for Conflict Management at Viadrina-Universität in Frankfurt/Oder, where the Component Model which encompasses six action fields was developed. Kirchhoff is convinced that without communication, conflict management models do not work in practice. Companies need to increase accessibility to topics and people and need to develop a conflict culture in the company and, if necessary, in between companies. This requires good and complete communication and suitable internal and external presentation. According to Kirchhoff, the central question is: How does an exchange on concrete measures with employees come about and how is the company conflict culture presented internally and externally? The action field communication is complemented by five additional areas: conflict contact offices in the company, a system for procedure selection, procedural standards, conflict consultants as well as documentation, controlling and quality assurance.

Accordingly, the Düsseldorf Centre for Conflict Management and Conflict Culture (DZKK) has developed a corresponding communication model which is applied, for example, when conflicts occur and when they are analysed in companies and organisations. However, the DZKK also uses this model proactively and

preventively in processes and projects to detect potential conflicts before they occur. This saves time, nerves and money - another result of the present study.

Professor Kirchhoff sees an overall tendency towards sustainable, cooperating professionalisation of conflict management systems using common standards. The federal associations, predominantly the BMWA (Federal Association for Mediation in the Economy and World of Employment), also perform rewarding work by defining and jointly enforcing common standards for the introduction of conflict management systems and for the training of future mediators.



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## Challenges for the managers of tomorrow

As the case studies have clearly shown, managers will have to further develop their competencies in the area of conflict management in the future.

Consequently, the personal requirements for experts and managers will also rise. Dealing with conflicts is a challenge for the personality of each manager which results in the necessity for continuous training and qualification. The internal and external requirements for managers will be as follows:

- Strong tolerance towards contradiction (ambiguity): Ability to cope with conflictive thinking or interests
- High tolerance towards structure resolution: Relinquishing and terminating old concepts or structures, developing new ones
- Pronounced conflict ability: Perceiving / thinking, feeling / attitude, wanting / being able / behaviour

Accordingly, professional conflict management will be a deciding factor if a future employee is interested in the company or not. Consequently, it is urgently required that companies and organisations develop their company culture towards a conflict culture and support and reward their managers with

regard to detecting, revealing and resolving conflicts. This can be an aspect of employer branding (attractivity). The characteristics of a constructive conflict culture are:

- Appreciating diversity
- Risk appetite: Eagerness to experiment, recognition for innovations
- Inventorying future/possible problems with foresight, early detection system, early warning system, multidisciplinary teams
- Quality culture: Binding self-commitment to quality
- Looking for causes - not someone to blame
- Learning culture
- Unfreezing capacity: Relinquishing thinking habits

Large companies upgrade themselves under this title. They shape their companies attractively and offer their employees life concepts. All this aims to retain, promote and bind employees and to gain new ones. In this respect, the area of conflict management is an essential aspect of leading and binding employees.

Conflict costs can be lowered sustainably in various ways: Conflict coaching for individual employees, mediation for both sides including integration of conflict management as a structural change to avoid future conflicts, thus stabilising the company culture.

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“Those who never made a mistake never attempted anything new.”

Albert Einstein

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## Conflict culture and responsibility

Should employees address conflicts? How do you encourage employees to assume responsibility if they encounter conflicts or grievances? Are suggestions for improvement really desired?

In my experience as a consultant and mediator, most companies have no regulations for dealing with conflicts. In large parts, there are no specially qualified conflict contact partners (or managers), no training and no company agreements or conflict management systems. I often hear the opinion, that every employee is “responsible” individually if they are involved in a conflict. Employees, for

example, are expected to assume “responsibility” and report - while employees expect that managers fulfil their “responsibility” and take action. Clear regulations and a practised “culture of responsibility” would be useful here. Because conflicts are inevitable. Everywhere people meet, different opinions, attitudes, interests and desires clash - and frequently intercultural

differences as well. Furthermore, each change in the company causes conflicts, as supporters of the new face preservers of the old.

Thus, conflicts are “normal” and dealing with conflicts should therefore also be “normal”. Because only when conflicts are ignored or dealt with incorrectly do they escalate. Because conflicts that are not resolved amicably have the unpleasant tendency to develop. If conflicts are not actively addressed, the conflicting parties will experience the same disputes and annoyances time and time again. Much time is spent on discussing the perceived problems and injustices, and on searching for supporters of one's own argument.

Over time, the mood becomes ever more aggressive and the conflict escalates. In this phase, high conflict costs are created by unproductive situations, and in the case of escalated conflicts, personal injury is often added. Bullying, burnout and psychosomatic illnesses can be the result of conflicts. If one conflict party prevails over the other, or if a superior decides - ultimately without adequately resolving the conflict - in form of a power decision, one party feels inferior and treated unfairly. If employees frequently feel inferior, their motivation will decrease and their relationship to the superior - and often to the company as well - will be burdened.

### **Are employees encouraged to address conflicts?**

Many superiors do not recognise that early intervention in conflicts is important. Maybe they do not intervene early enough because they have an inner conflict. (“I need to intervene quickly, otherwise the argument might escalate” versus “They are adults. They will sort it out themselves.”). Maybe they feel overly challenged in the role of the intervener.

However, only an early intervention reduces conflict costs and makes efficient work possible again quickly. At the same time, it is possible to look into the positive effects a conflict can have. For example, conflicts can indicate that existing procedures need to be adjusted, competencies need to be newly regulated, etc.

Besides dysfunctional conflicts, the audit firm KPMG therefore also speaks of functional conflicts which can be beneficial to a company.

However, if employees get the impression that voicing a different opinion or pointing out existing conflicts is not desired, they feel they are not being taken seriously and could conclude that their opinion is without value. This lack of appreciation has a lasting effect on the motivation of employees and leads to a decline in the willingness to accept responsibility. Approaches which could lead to more efficient work and an improvement of the company performance are ignored.

Thus, companies should have an interest in conflicts being discussed constructively. But for this purpose, companies need to create appropriate preconditions:

First: Managers must be trained in detecting and addressing conflicts early. Training appreciative dealing with the conflicting parties is necessary to create win-win situations and to realise the opportunities resulting from a conflict. In this way, high escalations are prevented, personal injuries are avoided and conflict costs are saved.

Second: The company must actively initiate and maintain the forming of a "culture of responsibility". The word responsibility contains the word "response". Each employee must be encouraged to find answers to changes, conflicts and crises and share them. However, acting responsibly does not happen automatically, companies must create the proper preconditions so that employees

- **want**
- **can**
- **may**
- **and should**

assume responsibility. Employees must be encouraged to take on the attitude to assume responsibility for their task, their team and their company. This also means:

- Responsibility for developing improvement options
- Responsibility for uncovering grievances
- Responsibility for addressing conflicts

Employees should know how to behave in difficult situations, either by means of training the right communications behaviour or the possibility to contact a qualified conflict manager. Frame conditions and structures should be created individually so that the system can be practised, e.g. such as

- Qualification of conflict contact partners, provision of social services
- Introduction of a proposal system
- Support of employees by the company in expressing criticism and addressin conflicts (How do superiors react? May one's own opinion be expressed without fear of repercussions?)
- Introduction of employee surveys
- Creation of mission statements and leadership guidelines
- Regulation in works agreements

The aim of a culture of responsibility is:

- to achieve better cooperation
- to increase motivation
- to uncover and overcome weak points and errors - in order
- to achieve a more efficient mode of operation
- and better results.

## Conclusion

Each conflict is essential for the conflicting parties. Because being permitted to resolve conflicts is a basic need. If no actively practised culture of responsibility and conflict resolution with well trained managers and, if necessary, conflict officers exists, conflicts will escalate further and lead to demotivation, a worse working climate, worse cooperation, bullying, burnout, psychosomatic illnesses... and thus ultimately to higher costs for a company.



### **Bernd Lichtenauer**

Conflict Management and  
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## Mediation and personnel development

In modern personnel development, not only employment, payroll processes, references creation or dismissals are important, but also the development of the company's employees.

Which competencies do the company's employees have? Is there undiscovered potential which would be worth developing? How much need for qualified personnel exists in the company? Further development and qualification are thus the two central aspects in the focus of modern personnel development.

If employees are supported in accordance with their abilities and offered opportunities for promotion, then good personnel can be bound to the company for a longer time period. This is a clear competitive advantage as the number of school leavers and high school graduates will decrease in the coming years. But how do mediation and personnel development go hand in hand? At first glance, the combination seems a bit unusual - after all, there is no direct association between further development and conflict resolution.

In order to approximate the topic, it is necessary to cast a glance on the development of the environmental conditions of workers in the past decades. Team and project work steadily increase, and it often is good cooperation and coordination among each other which decide on success or failure. A good

climate within the various project teams or in the individual departments also often contributes to positive company results. Individual motivation is crucial - thus, personnel development attempts to create incentives for employees to personally contribute to the company's success - with target agreements, employee discussions and commission-based compensation systems. Different people respond differently to these instruments: While some see commissions and target agreements as an incentive for their own work, such instruments cause stress in others. These individuals cannot always cope with this pressure to perform.

It is therefore not difficult to recognise that conflicts are pre-programmed in the tension field described. On the one hand, companies demand that work is done productively and cooperatively in teams, while on the other hand, individual incentives cause employees to think competitively. Other developments as well provide reason for conflict, such as the clash of old and young generations. Due to the extension of people's working lives and the resulting longer stay of older generations in their profession, an increasing number of highly diverse

teams with large age differences will have to work together.

So-called soft skills such as team skills and social competencies are required in almost all job descriptions today. Further training in these areas is not uncommon. Why then should conflict management and the ability to deal with conflicts not be a part of personnel development? After all, the targets of modern personnel development fit nicely with good mediation: People are the key focus. In this manner, a company is not only able to support its employees in their further development, but to support them in cases of conflict, which are part of working life as well as successful situations.

In practice, integration of conflict management can occur in the context of personnel development in various ways. First, there is the possibility to address emerging conflicts actively and to resolve them via internal or external mediators - if no internal mediator is available. On the other hand, personnel departments can also rely on conflict prevention. This can include the already mentioned training regarding social interaction, team building measures or the training of contact partners who

are available to other employees in the case of (impending) conflict. The goal of such measures is that employees can resolve conflicts independently without a mediation being absolutely necessary. Thus, an instruction on conflict resolution is ultimately a measure in the original context of personnel development. Because here too, employees are being further qualified - not on the technical, professional level, but in the context of the ever more important social skills, the so-called soft skills.



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## In-house mediation – empirical values

The corporate benefit of systematic conflict management is increasingly recognised. It is no coincidence that mediation plays a central role in many German companies.

Just a few years ago, mediation only led a shadowy existence in everyday business life. This has now changed. For good reasons. Many companies have recognised and established mediation as a useful supplement to the traditional range of procedures for conflict resolution, e.g. in the B2B context or with a focus on company internal or group internal conflict resolution. The companies' spirit of optimism and their clearly increased openness to mediation as well as other procedures and methods of conflict handling up to the development and establishment of a comprehensive conflict management system also finds its expression in the creation of the "Round Table Mediation & Conflict Management for German Industry" (see [www.rtmknm.de](http://www.rtmknm.de)). In addition to E.ON and SAP as the founding companies, Deutsche Telekom, Deutsche Bahn, Deutsche Bank, Audi, Siemens, Areva, Bombardier Transportation, the Fraunhofer Gesellschaft as well as many other medium-sized companies are members of the Round Table.

The initial *conviction* that the implementation of mediation strengthens the company culture, massively reduces internal conflict costs and promotes

cooperation and efficiency within the company or within a group of companies has become proven *experience* that mediation makes valuable contributions to this development. E.ON, SAP and Deutsche Bahn are just examples of companies where an internal pool of mediators is actively and successfully used to resolve a wide variety of internal conflict situations. In a nutshell: Mediation works!

For example at E.ON. under the guidance of the author in early 2006, a pilot project was set up with the working title "Mediation in the E.ON Group", which is outlined below. Briefly, the status quo of "group mediation" at E.ON can be described as follows: Since 2007, 100 employees have been successively trained to become internal mediators through a certified in-house mediation training. The mediator pool is managed by the central mediation office of E.ON Group, which is located in the legal area managed by the author. This "control centre" is responsible for the entire project management, starting with the original initiative to introduce mediation, including the development and application of the basic concept to establishing mediation and further to

questions of training and education for “E.ON mediators” as well as – last but not least – coordinating their involvement in specific conflict situations.

Parallel to the creation of a pool of mediators, we also moved forward with the training of conflict advisors. The target group are employees who are – often due to their function – “contact points” regarding conflicts. Colleagues who are members of the works council, from the HR or legal departments are often called upon to give initial advice on possible ways to resolve a conflict and conflict procedures. Project managers, equal opportunity officers and those responsible for health and occupational safety also frequently find themselves in a similar position. The aim of the training is to achieve the ability to recognise conflict-prone situations professionally and at an early stage, to hold precise, deescalating one-on-one conversations with the parties, to provide systematic and individual advice and finally the parties’ reassignment to (generally internal) experts. At the core, this is a question of qualified counselling in response to a core question for an orderly conflict management, but one which in practice is not nearly asked often enough: “Which procedure is best suited for this particular conflict?”

In adequate cases, the conflict counsellors refer their “clients” to the central mediation office. Of course those

involved can also approach the mediation office directly. Strict confidentiality is guaranteed in every case. Conflicts which occur within a (group) company have proved to be the ones which are most often referred. Conflicts within teams and groups make up a large portion of conducted mediations. But these also frequently involve discord between individual employees, disagreements between employees and managers or foremen and conflicts between top or middle management on the one hand and the works council on the other. Success rates for the procedures carried out are well over 80% – even for conflicts which had arisen a long time ago, sometimes even years ago and which had failed to be resolved otherwise.

In summary: The experience in carrying out internal mediation emphatically confirms the high level of usefulness of mediation for those involved in a conflict as well as for the company as a whole. For the employees, simply having the option and the availability of this type of procedure shows that their conflicts and concerns are being taken seriously and that they – in line with the values of our corporate culture – are met with appreciation. The parties involved in the mediation profit from the high success rate of the procedures and can share the burden of specific – and often personally stressful – conflicts. This also leads to concrete benefits for the company. Internal conflict costs are noticeably

reduced and the negative effects of “untreated” conflicts – such as loss of motivation and productivity, absences due to illness or even mental or actual resignations, recruitment and induction costs etc. – are countered rapidly, “unbureaucratically” and sustainably. The full benefit of mediation however goes far beyond this. Employees trained in mediation obviously also use their skills outside of the formal mediation processes to the benefit of the company, whether in complex negotiation situations or in difficult discussions with employees, customers, suppliers and business partners, etc.

In the future, conflict-prevention is likely to become increasingly important: Why, for example, should identifiably conflict-prone change- or restructuring processes not be monitored by trained mediators a priori? Businesses are

simply facing the choice whether to allow potential conflicts along with all their negative effects to unfold or to counteract these conflicts by implementing proactive interest-oriented process consulting. What is more economically feasible?



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## Addresses and links

Would you like to know more details about mediation / business mediation?  
If yes, we recommend the following associations, societies and organisations:

### **Bundesverband Mediation in Wirtschaft und Arbeitswelt e.V.**

c/o Jupp Schluttenhofer  
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### **Deutsche Gesellschaft für Mediation e.V.**

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### **Centrale für Mediation Verlag Dr. Otto Schmidt GmbH**

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### **Düsseldorfer Zentrum für Konflikt- management und Konfliktkultur**

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## Recommended Literature

The number of books available on mediation is growing quickly. Here are some reading recommendations from the editors with respect to mediation & coaching:

Altmann, Gerhard, Fiebinger,  
Heinrich, Müller, Rolf:

**Mediation: Konfliktmanagement für  
moderne Unternehmen**, Weinheim,  
Basel 2005

Bamberger, Günter:

**Lösungsorientierte Beratung**,  
Basel 2010

Bähner, Christian, Oboth,  
Monika, Schmidt, Jörg:

**Konfliktklärung in Teams und  
Gruppen**, Paderborn 2008

Breidenbach, Stephan:

**Mediation – Struktur; Chancen und  
Risiken von Vermittlung im Konflikt**,  
Berlin 1995

Doppler, Klaus, Fuhrmann, Hellmuth:  
**Unternehmenswandel gegen  
Widerstände**, Frankfurt 2011

Duve, Christian, Eidenmüller, Horst,  
Hacke, Andreas:

**Mediation in der Wirtschaft**,  
2nd Edition, Frankfurt 2011

Grossmann, Ralph, Mayer, Kurt:

**Organisationsentwicklung konkret**,  
Wiesbaden 2011

Hösel, Gerhard:

**Mediation**, Munich 2009

Insam, Alexander:

**Mediationsverfahren - Grundlagen  
und Chancen außergerichtlicher**

**Streitbeilegung**, pp. 18 - 44 in Manual  
Ärztliches Berufs- und Vertragsarztrecht  
in der Praxis, loose leaf collection, 2009,  
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