Certain aspects of mediation in civil and commercial matters

2004/0251(COD) - 28/02/2008 - Council position

The Council's common position, for the most part, corresponds to the text of the political agreement formed in November 2007 – the result of negotiations between the Council, the Commission and the European Parliament.

Recitals:

The Council accepted, in substance most of the amendments relating to the recitals, albeit that many have been redrafted and inserted in a different order. The Council has inserted some new recitals that seek to explain certain aspects of the draft Directive. For example, the Council acknowledges that modern communication technologies are bound to be increasingly used in the mediation process. The Council has also made clear that the draft Directive does not lay down enforcement rules and the current Member State enforcement rules remain unaffected by the Directive. Additionally, in order to abide by the Interinstitutional agreement on better lawmaking, the Council has inserted a new recital that encourages the Member States to draw up correlation tables when implementing the Directive.

Articles:

Amendments, which to a large extent mirror the text of the common understanding (dating back to the December 2005) have largely been accepted.

In regard to other measures, the Council's common position:

- has accepted a new Article on the cross-border nature of the Directive, but has redrafted the provision to some extent;
- has agreed to specifically mention that the mediation process is of a voluntary nature (and as a result has decided not to insert a new paragraph as originally proposed by Parliament);
- has decided to maintain the text of the common understanding regarding mediator requirements;
- has decided not to accept an amendment which would have made is impossible for mediation parties to disclose information concerning the mediation process and that the ban on disclosure should also cover disclosure to third parties. By maintaining the text of the common understanding, the Council has decided not to oblige Member States to ensure that those involved in a mediation process will not have the right to give evidence;
- has decided not to publish the "European Code of Conduct for Mediators" in the Official journal given that the Code is not an officially adopted text. It is, however, referred to in Recital 17 of the common position;
- has decided to accept a review clause, albeit with different wording. The Council was, however, unable to accept the suggestion concerning harmonised limitation and prescription periods;
- has decided not accept an amendment concerning the implementation of voluntary agreements. This has been rejected on the grounds that it would be impossible for legal reasons. On the other hand, and in order to make it clear that existing self-regulating mediations systems can be maintained, in so far as they deal with all aspects not covered by the Directive, a sentence to this effect has been inserted in one of the recitals;
- has decided to propose different dates for the Directive's compliance. The Member States will now have 36 months from the date of adoption to comply with the Directive.

To conclude, the Council considers its common position to be a well-balanced text that faithfully reflects the agreement reached with Parliament in October 2007.