Certain aspects of mediation in civil and commercial matters

2004/0251(COD) - 07/03/2008 - Commission communication on Council's position

To recall, the Council’s common position is the result of negotiations between the three institutions. Although the Commission had wanted the proposed Directive to cover both cross-border and internal disputes, a majority in Parliament and Council opposed this provision. In view of these circumstances and in a spirit of compromise the Commission accepts the Directive’s scope, as presented in the common position – provided that the definition of cross-border cases is as broad as possible.

The Commission is of the view that the common position enlarges the definition of cross-border cases with regard to the two most important Articles of the Directive that concern confidentiality and limitation and prescription periods. Concerning the provisions on limitation and prescription period (Article 8), the common position does not harmonise national rules on limitation and prescription periods. It does, however, oblige the Member States to ensure that their rules on limitation and prescription periods do not prevent the parties from going to court or to arbitrate if their mediation attempts fail. A revised recital clarifies that this result has to be achieved regardless of differences in national legislation. In this respect the Council’s common position is in line with the objectives set out in the Commission’s initial position.

The common position varies from the position of the European Parliament, as set out in first reading, in the following way:

- It does not allow the Directive to be implemented by means of voluntary agreements between the parties. The Commission fully agrees with this, given that the Directive affects rules on judicial proceedings in the Member States, which cannot always be modified by agreements between the parties.
- It does not allow for the publication of the “European Code of Conduct for Mediators” in the Official Journal, given that the Code is not an official legislative act. It does, however, allow for the Code to be published on the internet. The Commission is also committed to including a reference to the Code of Conduct in the EU-Bulletin. The Commission accepts this stance.
- It requires the Commission’s review report to consider the development of mediation throughout the European Union – a position which the Commission also accepts.

Overall, therefore, the Commission accepts the common position which, although modifying some features of the initial proposal, remains faithful to its core objective, namely to facilitate access to dispute resolution and promoting the amicable settlement of disputes by encouraging the use of mediation and by ensuring a sound relationship between mediation and judicial proceedings.