Implementation of the directive on mediation in the Member States, its impact on mediation and its take-up by the courts

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The European Parliament adopted by 633 votes to 20, with 10 abstentions, a resolution on the implementation of the directive on mediation in the Member States, its impact on mediation and its take-up by the courts.

Parliament recalls that the objective of Directive 2008/52/EC is to promote the amicable settlement of disputes by encouraging the use of mediation and by ensuring a balanced relationship between mediation and judicial proceedings. Member States are required to comply with this Directive before 21 May 2011 with the exception of Article 10.

So far the majority of Member States have reported that they have completed the implementation process or will complete it by the deadline. Only a few Member States have not yet reported compliance with the Directive's provisions: the Czech Republic, Austria, Finland and Sweden.

In its resolution, Parliament looked at how Member States transposed the main provisions of the Directive regarding the possibility for the courts to suggest mediation directly to the parties (Article 5), the guarantee of confidentiality (Article 7), the enforceability of agreements resulting from mediation (Article 6) and the effect of mediation on limitation and prescription periods (Article 8).

Members consider that Member States are, **as a whole, largely on track to implement Directive 2008/52 /EC by 21 May 2011**. While Member States are using varied regulatory approaches and some are a little behind, the fact remains that most Member States are not only compliant, but are in fact ahead of the Directive's requirements, particularly in two areas, namely financial incentives for participation in mediation and mandatory mediation requirements.

The resolution observes that some European states have undertaken a number of initiatives to provide financial incentives to parties who refer cases to mediation: in Bulgaria, parties will receive a refund of 50% of the state fee already paid for filing the dispute in court if they successfully resolve a dispute in mediation, and Romanian legislation provides for full reimbursement of the court fee if the parties settle a pending legal dispute through mediation. Alongside the financial incentives, certain Member States whose judicial systems are overburdened have resorted to rules making recourse to mediation compulsory. The most striking example is Italian Legislative Decree No 28, which aims in this way to overhaul the legal system and make up for the notoriously congested Italian courts by reducing caseloads and the nine-year average time to complete litigation in a civil case.

Members note that national initiatives of this type help to make dispute resolution more effective and reduce the courts' workload. The results achieved in particular in Italy, Bulgaria and Romania prove that mediation can bring about a cost-effective and quick extrajudicial resolution of disputes through processes tailored to the needs of the parties.

Highlighting the consumer-friendly features of alternative dispute resolution schemes, which offer a tailored practical solution, Members **call for the prompt presentation of a legislative proposal on**

alternative dispute resolution by the Commission. The Commission is also encouraged, in its forthcoming Communication on the implementation of Directive 2008/52/EC, also to examine those areas where Member States have chosen to extend the measures of the Directive beyond its intended scope.

The resolution recommends :

- increasing **awareness** and understanding of mediation, and further action relating to education, growing awareness of mediation, enhancing mediation uptake by businesses and requirements for access to the profession of mediator;
- encouraging national authorities to develop **programmes** in order to promote adequate knowledge of alternative dispute resolution.

Lastly, Parliament recognises the importance of establishing common standards for accessing the profession of mediator in order to promote a better quality of mediation and to ensure high standards of professional training and accreditation across the Union.