Certain aspects of mediation in civil and commercial matters

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The Commission presented a report on the application of Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters.

The Directive seeks to facilitate access to alternative dispute resolution (ADR) and to promote the amicable settlement of disputes, by encouraging the use of mediation and by ensuring a sound relationship between mediation and judicial proceedings. It applies in cross-border disputes to civil and commercial matters and had to be transposed into national law by 21 May 2011.

General assessment: based on a study carried out in 2013 and updated in 2016, a public online consultation and a discussion with Member States in the European Judicial Network in civil and commercial matters, the evaluation shows that overall, **the Directive has provided EU added value**.

It appears that the implementation of the Mediation Directive has had a **significant impact on the legislation** of many Member States. It has provided EU added value by raising awareness amongst national legislators on the advantages of mediation. Respondents in the public consultation recognised the important role of mediation in particular in family law matters (especially in proceedings concerning the custody over children, access rights and child abduction cases), besides the commercial disputes.

The report focused on the following points:

- **almost all Member States have extended the scope of their measures transposing** the Directive beyond cross-border to domestic cases;
- the adoption of **codes of conduct** at national level is perceived by stakeholders as an important tool to ensure the quality of mediation. The European Code of Conduct for Mediators plays a key role in this context, either because it is directly used by stakeholders or has inspired national or sectorial codes;
- 18 Member States have rules relating to **quality control mechanisms concerning the provision of mediation services**. Most Member States have obligatory accreditation procedures for mediators and run registries for mediators;
- 17 Member States **encourage training or regulate** it in part or in detail in their national legislation. Most Member States regulate the initial training of mediators and make it mandatory;;
- all Member States foresee the possibility for courts to **invite the parties to use mediation** or at least to attend information sessions on mediation. However, a significant majority of stakeholders considered practices aimed at motivating parties to use mediation as not effective;
- all Member States provide for the **enforceability of mediation** agreements as prescribed by the Directive;
- **confidentiality** of mediation is protected in all Member States as required by the Directive;
- all national laws ensure that that parties who choose mediation are **not subsequently prevented from initiating judicial proceedings** by the expiry of limitation or prescription periods during the mediation process;
- 13 Member States have included the obligation to **spread information about mediation** in their national legislation.

Possible improvements: the report noted certain **difficulties** concerning the functioning of the national mediation systems in practice. These difficulties are mainly related to the lack of a mediation "culture" in

Member States, insufficient knowledge of how to deal with cross-border cases, the low level of awareness of mediation and the functioning of the quality control mechanisms for mediators. A number of respondents in the public consultation argued that mediation was not yet sufficiently known and that a "cultural change" is still necessary to ensure that citizens trust mediation. They also stressed that judges and courts remain reluctant to refer parties to mediation.

The evaluation shows that there is **no need at this time to revise the Directive** but that its application can be further improved:

1. The report recommended that **Member States should increase their efforts to promote and encourage the use of mediation** through the various means and mechanisms foreseen in the Directive and addressed in this report. In particular, further efforts at national level should be made to increase the number of cases in which courts invite the parties to use mediation in order to settle their dispute. The following can be considered as **examples of best practice** in this regard:

- requirements for parties to state in their applications to courts whether mediation has been attempted,
- in particular in family law matters obligatory information sessions within the framework of a judicial procedure and an obligation on courts to consider mediation at every stage of judicial proceedings, financial incentives making it economically more attractive for parties to use mediation instead of resorting to judicial proceedings,
- ensuring enforceability without necessarily requiring the consent of all parties to the agreement.

2. The Commission will continue to **co-finance mediation-related projects** through its "Justice Programme".

Furthermore, it will continue to consult the European Judicial Network in civil and commercial matters to further promote the take-up of mediation, e.g. in order to obtain a more solid data basis on the use of mediation and to increase awareness of the public, in particular of the information available on the website of the European e-justice Portal on the mediation systems of Member States.