Certain aspects of mediation in civil and commercial matters (Mediation Directive)

2016/2066(INI) - 12/09/2017 - Text adopted by Parliament, single reading

The European Parliament adopted by 606 votes to 30 with 54 abstentions a resolution on the implementation of Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (Mediation Directive).

As a reminder, Directive 2008/52/EC on mediation aims to facilitate access to alternative dispute resolution procedures and to facilitate the amicable settlement of disputes by promoting the use of mediation and ensuring satisfactory mediation and judicial proceedings.

Parliament recognised that the Directive has **proved useful for the introduction and application of mediation procedures** in the European Union even though its implementation has varied considerably from one Member State to another.

While most Member States have extended the scope of the application of their national measures to domestic cases too, Members regretted the fact that only three Member States have chosen to limit the transposition of the Directive to cross-border disputes only. The objectives of the Mediation Directive have clearly not been achieved, as mediation is used in less than 1 % of the cases in court on average in the majority of Member States.

The main conclusions of the resolution can be summarised as follows:

- all Member States provide for the possibility for the courts to invite the parties to information sessions on mediation;
- many Member States financially encourage parties to use mediation, either in the form of reducing costs, providing legal aid or sanctioning them in the event of an unjustified refusal to consider mediation;
- the European Conduct Code for mediators is used by interested parties or as a reference for the drafting of national or sectoral codes;
- most Member States have introduced the use of mediation compulsory or subject to incentives or sanctions.

Parliament welcomed the importance of mediation in **family matters** (especially concerning the proceedings concerning child custody, access rights and child abduction cases), where it can create a constructive climate of discussion and fair dealings between parents.

However, further steps must be taken to ensure the enforceability of mediated agreements in a quick and affordable manner, with full respect for fundamental rights, as well as Union and national law.

Recommendations: Members called on the Member States to **encourage the use of mediation in civil and commercial disputes**, in particular through information campaigns.

The Commission is called upon to:

- assess the need to develop **EU-wide quality standards** for the provision of mediation services;
- assess the need to create **national registers** of mediation proceedings;

- **examine the obstacles** to free circulation of foreign mediation agreements within the Union and on the various options to promote the use of mediation as an effective way to solve conflicts in internal and cross-border disputes in the Union.

In the context of the regulatory review, the Commission is invited to identify solutions that will **extend effectively the scope of mediation also to other civil or administrative matters**, paying particular attention to the implications that mediation could have on social issues, such as family law.

Members recommended that **appropriate safeguards** be put in place during mediation processes to limit the risk for weaker parties and to protect them against possible abuse of process or position by more powerful parties.

Lastly, Parliament regretted the difficulty of obtaining comprehensive statistical data on mediation, including the number of mediated cases.