Certain aspects of mediation in civil and commercial matters

2004/0251(COD) - 22/10/2004 - Legislative proposal

PURPOSE : to promote the further use of mediation in civil and commercial matters.

PROPOSED ACT : Directive of the European Parliament and of the Council.

CONTENT : Mediation can provide a cost-efficient and quick extra-judicial resolution of disputes in civil and commercial matters through processes tailored to the needs of the parties. Settlement agreements reached through mediation are more likely to be enforced voluntarily and are more likely to preserve an amicable and sustainable relationship between the parties. These benefits become even more pronounced in situations displaying cross-border elements.

Bearing this mind, the Commission presents this proposal. It provides that a court before which an action is brought may invite the parties to use mediation in order to settle the dispute. The court may in any event require the parties to attend an information session on the use of mediation. This is without prejudice to national legislation making the use of mediation compulsory or subject to incentives or sanctions. Furthermore:

- the Commission and the Member States must encourage the development of and adherence to voluntary codes of conduct by mediators and organisations providing mediation services, at Community as well as at national level, as well as other effective quality control mechanisms concerning the provision of mediation services.

- Member States will encourage the training of mediators in order to allow parties in dispute to choose a mediator who will be able to effectively conduct a mediation in the manner expected by the parties.

- Member States must ensure that, upon request of the parties, a settlement agreement reached as a result of a mediation can be confirmed in a judgment or any other form by a court or public authority that renders the agreement enforceable in a similar manner as a judgment under national law;

- Mediators, as well people involved in the administration of mediation services, may not in civil judicial proceedings give testimony or evidence regarding certain matters; These include: an invitation by a party to engage in mediation or the fact that a party was willing to participate in mediation; views expressed by a party in a mediation in respect of a possible settlement of the dispute; statements or admissions made by a party in the course of the mediation; and the fact that a party had indicated its willingness to accept a proposal for a settlement made by the mediator.

There are, however, some prescribed exceptions to this provision. Finally, there are provisions relating to the suspension of limitation periods.