Certain aspects of mediation in civil and commercial matters

2004/0251(COD) - 29/03/2007 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted the resolution drafted by Arlene **McCarthy** (PES, UK) and made some amendments which sought to clarify and improve on the original proposal. The main amendments are as follows:

- the definitions of mediator and mediation are modified. "Mediation" means a structured process of a voluntary nature, however named or referred to, where two or more parties to a dispute attempt themselves to reach an agreement on the settlement of their dispute with the assistance of a mediator. This process may be initiated by the parties or suggested or ordered by a court or prescribed by the law of a Member State , provided that the voluntary nature of mediation is respected. It includes mediation conducted by a judge who is not responsible for any judicial proceedings in that dispute. However, it does not include attempts made by the court or judge seised to settle a dispute within the course of judicial proceedings concerning that dispute. "Mediator" means any third person who is appointed in circumstances giving rise to a reasonable expectation that the mediation will be conducted in a professional, impartial and competent way;

- there is a new clause on the European Code of Conduct for Mediators, in order to see that quality standards are ensured. Member States must encourage the development of a system of certification of national bodies offering training courses in mediation;

- the provisions on recognition and enforcement are amended to make sure that they are legally watertight and respect the legal traditions of the various Member States;

- regarding scope, the amendments make it clear that the directive will not extend, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority (acta iure imperii). The Directive will apply if, as at the date on which the parties agree to mediate, at least one of them is domiciled or habitually resident in a Member State other than the Member State of any other party. Notwithstanding this provision, Articles 6 and 7 (relating to confidentiality) shall apply in relation to judicial proceedings following a mediation if, as at the date on which the parties agree to mediate, the court that would be seised in the event of any subsequent judicial proceedings would be in a Member State other than a Member State in which at least one of the parties is domiciled or habitually resident;

- the provisions on confidentiality are modified, with Parliament proposing what it feels is a workable way of dealing with this question which affords Member States the latitude to adopt stricter rules if they consider this to be desirable. Given that mediation is intended to take place in a manner which respects confidentiality, Member States must ensure that, unless the parties agree otherwise, neither mediators nor parties nor those involved in the administration of the mediation process are entitled or compelled to disclose to third parties, or to give evidence in civil and commercial judicial proceedings or arbitration regarding, information arising out of or in connection with a mediation except in certain prescribed cases;

- provisions regarding limitation periods are amended;

- Member States must ensure that information is available to citizens, in particular on Internet sites, on how to contact mediation providers and mediators.

- Parliament feels that the Directive should apply to domestic cases as well as cross-border ones.

A new recital states that Member States are encouraged to apply the provisions of this Directive also to internal cases with a view y to facilitating the proper functioning of the internal market. Moreover, the fact that the provisions of the Directive are expressed as being limited to cases having cross-border implications should not have the effect of limiting rules of national law that currently provide for the enforceability of agreements resulting from mediation, the confidentiality of mediation or the effect of mediation on limitation and prescription periods also in cases not covered by the Directive.

- a new recital states that the Directive also applies to consumer mediation. Therefore the particularities of consumer mediation should be taken into account. In particular, it should incorporate the principles set out in Commission Recommendation 2001/310/EC on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes. Parliament inserted this recital in view of the fact that the principles of transparency, impartiality, effectiveness and fairness included in Recommendation 2001/310 (consensual resolution of consumer disputes) should be incorporated in the proposed directive.

Lastly, the transposition clause has been amended. It now states that Member States shall bring into force the necessary laws, regulations and administrative measures or ensure that the parties to mediation introduce the requisite measures through voluntary agreements, with the Member States adopting all the precautions needed in order to guarantee at all times that the results indicated in this Directive are achieved, in order to comply with this Directive by 1 September 2008 at the latest, with the exception of Article 8, (review clause) for which the date of compliance shall be 1 September 2009.