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42. Calls on the Commission and the Member States to combat all forms of violence against older women, recognising the underestimation of this problem, tackling societal stereotypes and ensuring that service providers are able to take into account the specific needs of older victims of violence, in order to ensure full enjoyment of human rights and achieve gender equality, and making full use of the DAPHNE programme;

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43. Instructs its President to forward this resolution to the Council and the Commission.

## Directive on mediation in the Member States

P7\_TA(2011)0361

**European Parliament resolution of 13 September 2011 on the implementation of the directive on mediation in the Member States, its impact on mediation and its take-up by the courts (2011/2026(INI))**

(2013/C 51 E/03)

*The European Parliament,*

- having regard to Articles 67 and 81(2)(g) of the Treaty on the Functioning of the European Union,
  - having regard to its position of 23 April 2008 on the Council common position for adopting a directive on certain aspects of mediation in civil and commercial matters <sup>(1)</sup>,
  - having regard to the hearings held by the Committee on Legal Affairs on 20 April 2006, 4 October 2007 and 23 May 2011,
  - having regard to 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 <sup>(2)</sup>,
  - having regard to Rules 48 and 119(2) of its Rules of Procedure,
  - having regard to the report of the Committee on Legal Affairs (A7-0275/2011),
- A. whereas securing better access to justice is one of the key objectives of the European Union's policy to establish an area of freedom, security and justice; whereas the concept of access to justice should, in this context, include access to adequate dispute resolution processes for individuals and businesses,
- B. whereas 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,
- C. whereas in order to facilitate access to mediation as a viable alternative to the traditional adversarial approach and to ensure that parties having recourse to mediation in the European Union benefit from predictable framework legislation, the Directive introduces common principles addressing, in particular, aspects of civil procedure,

<sup>(1)</sup> OJ C 259 E, 29.10.2009, p. 122.

<sup>(2)</sup> OJ L 136, 24.5.2008, p. 3.

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- D. whereas, besides predictability, the Directive aims to establish a framework that preserves the main advantage of mediation, flexibility; whereas these two requirements should guide Member States when drawing up national laws implementing the Directive,
- E. whereas Directive 2008/52/EC has also been of interest to neighbouring States and has had a demonstrable influence on the introduction of similar legislation in some of these countries,
- F. whereas the Member States are required to comply with this Directive before 21 May 2011, with the exception of Article 10, for which the date of compliance was 21 November 2010; whereas so far the majority of Member States have reported that they have completed the implementation process or will complete it by the deadline, and only a few Member States have not yet reported compliance with the Directive's provisions: the Czech Republic, Austria, Finland and Sweden,
- G. whereas the European Parliament considers it important to examine how this piece of legislation has been implemented by the Member States, to see what practitioners and users of mediation think of it and to identify whether and how it could be improved,
- H. whereas, for this purpose, a thorough analysis of the main regulatory approaches of the Member States should be conducted in order to identify good practices and draw conclusions about any further action at European level,
- I. whereas the Commission's Action Plan for implementing the Stockholm Programme (COM(2010)0171) foresees a Communication on the implementation of the mediation directive in 2013,
- J. whereas it is worth considering how Member States have implemented the main provisions of the Mediation 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),
- K. whereas the Commission has included in its Work Programme for 2011 a legislative proposal on Alternative Dispute Resolution,
1. Observes that the requirement of confidentiality set out by the Directive already existed in certain Member States' domestic legislation: in Bulgaria, the Code of Civil Procedure states that mediators can refuse to testify about a dispute they have mediated; in France and Poland the laws governing civil mediation establish similar provisions; notes that, among the Member States, Italy adopts a rigorous approach to the confidentiality of mediation proceedings, whilst the Swedish mediation rules state that confidentiality is not automatic and require an agreement between the parties to that effect; considers that a more coherent approach seems to be needed;
  2. Observes that, pursuant to Article 6 of the Directive, the majority of Member States have a procedure for giving the mediation settlement agreement the same authority as a judicial decision; notes that this is achieved either by submitting it to the court or by having the agreement notarised, and that it appears that some national legislatures have opted for the former solution, while, by contrast, in many Member States notarisation is also an available option under national law: for instance, whereas in Greece and Slovenia the law provides that a mediation agreement record may be enforced by the courts, in the Netherlands and in Germany agreements can be rendered enforceable as notarial acts, and in other Member States, including Austria, they can, as the law currently stands, be rendered enforceable as notarial acts despite the lack of any explicit provision to that effect in the relevant national legislation; calls on the Commission to ensure that all Member States that do not yet comply with Article 6 of the Directive do so without delay;

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3. Takes the view that Article 8, which deals with the effects of mediation on limitation and prescription periods, is an essential provision in that it ensures that parties who choose mediation in an attempt to settle a dispute are not subsequently prevented from having their day in court as a result of the time spent in mediation; notes that no particular issue seems to have been raised by Member States in relation to this point;
4. Points out that some Member States have chosen to go beyond the core requirements of the Directive in two areas, namely financial incentives for participation in mediation and mandatory mediation requirements; notes that national initiatives of this type help to make dispute resolution more effective and reduce the courts' workload;
5. Acknowledges that Article 5(2) allows Member States to make the use of mediation compulsory or subject to incentives or sanctions, whether before or after judicial proceedings have started, provided that this does not prevent the parties from exercising their right of access to the courts;
6. 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; notes that similar provision is to be found in Hungarian legislation and that in Italy all mediation acts and agreements are exempt from stamp duties and charges;
7. Observes that, alongside the financial incentives, certain Member States whose judicial systems are overburdened have resorted to rules making recourse to mediation compulsory; notes that in such cases disputes cannot be filed in court until the parties have first attempted to resolve the issues by mediation;
8. Points out that 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; observes that, not surprisingly, this has not been well received by practitioners, who have challenged the decree in court and even gone on strike;
9. Points out that, despite the controversy, Member States whose national legislation goes beyond the core requirements of the Mediation Directive seem to have achieved important results in promoting the non-judicial treatment of disputes in civil and commercial matters; observes that 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;
10. Observes that compulsory mediation appears to be achieving the objective in the Italian legal system by relieving congestion in the courts; nevertheless stresses that mediation should be promoted as a viable, low-cost and quicker alternative form of justice rather than a compulsory aspect of the judicial procedure;
11. Acknowledges the successful results achieved by the financial incentives provided for by the Bulgarian law on mediation; recognises, however, that these are also due to the long-standing interest in mediation shown by the Bulgarian legal system in that the mediation community has been in existence since 1990 and the Settlement Centre – staffed by mediators working in shifts – has since 2010 been providing free mediation services and information for parties in pending court cases on a daily basis; notes that in Bulgaria two thirds of the cases referred were mediated and half of those cases were brought to a successful conclusion in mediation;

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12. Notes also the successful results of the Romanian law on mediation: as well as the provisions on financial incentives, a Mediation Council – a national authority for mediation practice which exists as a separate, autonomous legal body – has been established; it is entirely devoted to promoting mediation activity, developing training standards, preparing training-course providers, issuing documents certifying mediators' professional qualifications, adopting a code of ethics, and formulating proposals for more legislation;
  13. Believes that, in the light of all of the foregoing, the Member States are, as a whole, largely on track to implement Directive 2008/52/EC by 21 May 2011 and that, while Member States are using varied regulatory approaches and some states 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;
  14. Stresses that parties who are willing to work toward resolving their case are more likely to work with one another than against one another; believes that therefore these parties are often more open to consideration of the other party's position and work on the underlying issues of the dispute; considers that this often has the added benefit of preserving the relationship the parties had before the dispute, which is of particular importance in family matters involving children;
  15. Encourages the Commission, 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;
  16. Highlights the consumer-friendly features of alternative dispute resolution schemes, which offer a tailored practical solution; calls in this context for the prompt presentation of a legislative proposal on alternative dispute resolution by the Commission;
  17. Notes that solutions resulting from mediation and developed between parties could not be provided by a judge or a jury; believes, therefore, that mediation is more likely to produce a result that is mutually agreeable, or 'win-win', for the parties; notes that, as a result, acceptance of such an agreement is more likely and compliance with mediated agreements is usually high;
  18. Believes that there is a need for increased awareness and understanding of mediation, and calls for further action relating to education, growing awareness of mediation, enhancing mediation uptake by businesses and requirements for access to the profession of mediator;
  19. Considers that national authorities should be encouraged to develop programmes in order to promote adequate knowledge of alternative dispute resolution; considers that those actions should address the main advantages of mediation – cost, success rate and time efficiency – and should concern lawyers, notaries and businesses, in particular SMEs, as well as academics;
  20. Acknowledges 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;
  21. Instructs its President to forward this resolution to the Council, the Commission and the parliaments of the Member States.
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