Certain aspects of mediation in civil and commercial matters

2004/0251(COD) - 21/05/2008 - Final act

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

LEGISLATIVE ACT: Directive 2008/52/EC of the European Parliament and of the Council on certain aspects of mediation in civil and commercial matters

CONTENT: the objective of this Directive is to facilitate access to alternative dispute resolution and to promote the amicable settlement of disputes by encouraging the use of mediation and by ensuring a balanced relationship between mediation and judicial proceedings. The Directive will apply, in cross-border disputes, to civil and commercial matters except as regards rights and obligations which are not at the parties? disposal under the relevant applicable law. It shall 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).

A cross-border dispute is one in which at least one of the parties is domiciled or habitually resident in a Member State other than that of any other party on the date on which: the parties agree to use mediation after the dispute has arisen; mediation is ordered by a court; an obligation to use mediation arises under national law; or an invitation is made to the parties.

A court before which an action is brought may invite the parties to use mediation in order to settle the dispute. The court may also invite the parties to attend an information session on the use of mediation if such sessions are held and are easily available. This is without prejudice to national legislation making the use of mediation compulsory or subject to incentives or sanctions.

Enforceability of agreements resulting from mediation: Member States must ensure that it is possible for the parties, or for one of them with the explicit consent of the others, to request that the content of a written agreement resulting from mediation be made enforceable. The content of such an agreement must be made enforceable unless either the content of that agreement is contrary to the law of the Member State where the request is made or the law of that Member State does not provide for its enforceability. The content of the agreement may be made enforceable by a court or other competent authority in a judgment or decision or in an authentic instrument in accordance with the law of the Member State where the request is made. Member States must inform the Commission of the courts or other authorities competent to receive requests.

Confidentiality of mediation: 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 those involved in the administration of the mediation process will be compelled to give evidence in civil and commercial judicial proceedings or arbitration regarding information arising out of or in connection with a mediation process, except under certain specified circumstances.

Parties who choose mediation in an attempt to settle a dispute must not subsequently be prevented from initiating judicial proceedings or arbitration in relation to that dispute by the expiry of limitation or prescription periods during the mediation process.

Review: not later than 21 May 2016.

ENTRY INTO FORCE: 25/05/2008.

TRANSPOSITION: 21/05/2011, with the exception of Article 10 (Information on competent courts and authorities), for which the date of compliance shall be 21/11/ November/2010 at the latest.