



19.4.2017

AMENDMENTS

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Draft report
Kostas Chrysogonos
(PE595.445v01-00)

Certain aspects of mediation in civil and commercial matters (The Mediation Directive)
(2016/2066(INI))

Amendment 1
Enrico Gasbarra

Motion for a resolution
Recital A

Motion for a resolution

A. whereas the implementation of Directive 2008/52/EC has differed greatly among Member States, with some opting for a relatively literal implementation of its provisions, others for an in-depth revision of alternative ways to dispense justice, and others deeming their existing laws to be already in line with the Mediation Directive;

Amendment

A. whereas the implementation of Directive 2008/52/EC has differed greatly among Member States, with some opting for a relatively literal implementation of its provisions, others for an in-depth revision of alternative ways to dispense justice (*such as Italy, for instance, which uses mediation at a rate six times higher than the rest of Europe*), and others deeming their existing laws to be already in line with the Mediation Directive;

Or. it

Amendment 2
Daniel Buda

Motion for a resolution
Recital A

Motion for a resolution

A. whereas the implementation of Directive 2008/52/EC has differed greatly among Member States, with some opting for a relatively literal implementation of its provisions, others for an in-depth revision of alternative ways to *dispense justice*, and others deeming their existing laws to be already in line with the Mediation Directive;

Amendment

A. whereas the implementation of Directive 2008/52/EC has differed greatly among Member States, *depending on the pre-existing level of national mediation systems*, with some opting for a relatively literal implementation of its provisions, others for an in-depth revision of alternative ways to *resolve disputes*, and others deeming their existing laws to be already in line with the Mediation Directive;

Or. ro

Amendment 3
Emil Radev

Motion for a resolution
Recital A a (new)

Motion for a resolution

Amendment

Aa. whereas mediation, as an alternative, voluntary and confidential out-of-court procedure, which enables natural and legal persons to settle disputes out-of-court quickly and cheaply, helps ensure better access to justice;

Or. bg

Amendment 4
Emil Radev

Motion for a resolution
Recital A b (new)

Motion for a resolution

Amendment

Ab. whereas the mediation procedure enables civil and commercial disputes to be settled quickly and cheaply and may thus contribute to economic growth;

Or. bg

Amendment 5
Daniel Buda

Motion for a resolution
Recital B

Motion for a resolution

Amendment

B. whereas most Member States have extended the scope of application of their national transposing measures to domestic cases too;

B. whereas most Member States have extended the scope of application of their national transposing measures to domestic cases too, ***and only three Member States have chosen to transpose the Directive with respect to cross-border cases only^{1a};***

^{1a} See the Commission report to the

European Parliament, the Council and the European Economic and Social Committee on the application of Directive 2008/52/EC of the European Parliament and of the Council on certain aspects of mediation in civil and commercial matters (COM(2016)0542), p. 5.

Or. ro

Amendment 6
Enrico Gasbarra

Motion for a resolution
Recital B

Motion for a resolution

B. whereas most Member States have extended the scope of application of their national transposing measures to domestic cases too;

Amendment

B. whereas most Member States have ***considerably*** extended the scope of application of their national transposing measures to domestic cases too, ***having a decisively positive impact on the laws of the Member States and the categories concerned***;

Or. it

Amendment 7
Daniel Buda

Motion for a resolution
Recital C

Motion for a resolution

C. whereas the Mediation Directive has provided EU added value by raising awareness among national legislators of the advantages of mediation;

Amendment

C. whereas the ***implementation of the*** Mediation Directive has provided EU added value by raising awareness among national legislators of the advantages of mediation, ***bringing about a degree of alignment with regard to procedural law and diverse practices in the Member States***;

Or. ro

Amendment 8
Daniel Buda

Motion for a resolution
Recital D

Motion for a resolution

D. whereas the objectives stated in Article 1 of the Mediation Directive aimed at encouraging the use of mediation and in particular at achieving a ‘balanced relationship between mediation and judicial proceedings’ 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 States¹⁶ ;

¹⁶ PE 571.395, p.25.

Amendment

D. whereas, ***even though Directive 2008/52/EC has been an extremely important milestone with regard to the implementation and use of mediation procedures in the European Union***, the objectives stated in Article 1 of the Mediation Directive aimed at encouraging the use of mediation and in particular at achieving a ‘balanced relationship between mediation and judicial proceedings’ have not been achieved ***to the extent expected***, as mediation is used in less than 1 % of the cases in court on average in the majority of Member States¹⁶;

¹⁶ PE 571.395, p.25.

Or. ro

Amendment 9
Jean-Marie Cavada

Motion for a resolution
Recital D a (new)

Motion for a resolution

D a. whereas mediation can be a useful tool to alleviate overloaded court systems in certain cases and subject to the necessary safeguards, notably it can contribute to reducing the length of court proceedings which - in excess - can be a violation of Article 47 of the Charter of Fundamental Rights as well as Article 6 of the European Convention on Human Rights;

Amendment 10
Enrico Gasbarra

Motion for a resolution
Recital D a (new)

Motion for a resolution

Amendment

Da. whereas the difficulties which have emerged at the transposition stage of the directive largely reflect the differences in legal culture across the national legal systems;

Or. it

Amendment 11
Enrico Gasbarra

Motion for a resolution
Recital D b (new)

Motion for a resolution

Amendment

Db. whereas the priority which should be given to a change in the legal mindset and the development of a mediation culture and friendly dispute settlement is an issue which has been repeatedly raised - first at the inception of the EU directive and subsequently during national transposition - by European networks of legal professionals;

Or. it

Amendment 12
Daniel Buda

Motion for a resolution
Recital E

Motion for a resolution

Amendment

E. whereas the Mediation Directive has not created a Union system for out-of-court dispute resolution in the strictest sense, with the exception of the introduction of specific provisions in the field of expiration of limitation and prescription periods in legal proceedings when mediation is *attempted* and in the field of confidentiality obligations for the mediators and their administrative staff;

E. whereas the Mediation Directive has not created a Union system for out-of-court dispute resolution in the strictest sense, with the exception of the introduction of specific provisions in the field of expiration of limitation and prescription periods in legal proceedings when mediation is *used*, and in the field of confidentiality obligations for the mediators and their administrative staff, ***which have been correctly implemented in all the Member States***;

Or. ro

Amendment 13
Jean-Marie Cavada

Motion for a resolution
Paragraph 1

Motion for a resolution

1. Welcomes the fact that in many Member States mediation systems have recently been subject to changes and revisions, and in others amendments to the applicable legislation are envisaged¹⁷ ; ***observes that most Member States are not only compliant, but are in fact exceeding the Mediation Directive's requirements***;

¹⁷ Croatia, Estonia, Greece, Hungary, Ireland, Italy, Lithuania, the Netherlands, Poland, Portugal, Slovakia and Spain.

Amendment

1. Welcomes the fact that in many Member States mediation systems have recently been subject to changes and revisions, and in others amendments to the applicable legislation are envisaged¹⁷ ;

¹⁷ Croatia, Estonia, Greece, Hungary, Ireland, Italy, Lithuania, the Netherlands, Poland, Portugal, Slovakia and Spain.

Or. en

Amendment 14
Daniel Buda

Motion for a resolution
Paragraph 2

Motion for a resolution

Amendment

2. Deplores *however* the lack of a mediation culture in the Member States *and* the low level of awareness of mediation in the majority of Member States;

2. Deplores *the fact that only three Member States have chosen to transpose the Directive and notes that certain difficulties exist in relation to the functioning of the national mediation systems in practice, mainly related to the adversarial tradition and* the lack of a mediation culture in the Member States, the low level of awareness of mediation in the majority of Member States, *insufficient knowledge of how to deal with cross-border cases, and the functioning of the quality control mechanisms for mediators*^{1a};

^{1a} See the Commission report to the European Parliament, the Council and the European Economic and Social Committee on the application of Directive 2008/52/EC of the European Parliament and of the Council on certain aspects of mediation in civil and commercial matters (COM(2016)0542), p. 4.

Or. ro

Amendment 15
Daniel Buda

Motion for a resolution
Paragraph 2 a (new)

Motion for a resolution

Amendment

2a. *Notes that all the Member States make provision for the possibility for courts to invite the parties to use mediation or at least to attend information sessions on mediation; notes that, in some Member States, participation in such information sessions is obligatory, on a judge's initiative*^{1a}, *or in relation to specific disputes prescribed by law, such as family matters*^{2a}; notes, likewise, that some Member States require lawyers to inform their clients of the possibility to use mediation, or that applications to the court confirm whether mediation has

been attempted or whether there are any reasons which would stand in the way of such an attempt;

^{1a} For example in the Czech Republic.

^{2a} For example in Lithuania, Luxembourg, and England and Wales.

Or. ro

Amendment 16
Kostas Chrysogonos

Motion for a resolution
Paragraph 3 a (new)

Motion for a resolution

Amendment

3 a. Notes that Article 8 of the mediation directive ensures that parties that 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;

Or. en

Amendment 17
Jean-Marie Cavada

Motion for a resolution
Paragraph 4

Motion for a resolution

Amendment

4. *Is concerned by* the difficulty of obtaining comprehensive statistical data on mediation, including the number of mediated cases, the average length and success rates of mediation processes; *regrets* the fact that without a reliable database it is very difficult to further promote mediation and increase public

4. *Regrets* the difficulty of obtaining comprehensive statistical data on mediation, including the number of mediated cases, the average length and success rates of mediation processes; *notes* the fact that without a reliable database it is very difficult to further promote mediation and increase public trust in its

trust in its effectiveness; notes on the other hand the increasing role of the European Judicial Network in civil and commercial matters in improving national data collection on the application of the Mediation Directive;

effectiveness; notes on the other hand the increasing role of the European Judicial Network in civil and commercial matters in improving national data collection on the application of the Mediation Directive;

Or. en

Amendment 18
Daniel Buda

Motion for a resolution
Paragraph 4 a (new)

Motion for a resolution

Amendment

4a. Welcomes and highlights the particular importance of mediation in the field of family law (especially in proceedings concerning child custody, access rights and child abduction cases), where it can create a constructive atmosphere for discussions and ensure fair dealings between parents; notes, further, that amicable solutions are likely to be long-lasting and can also address, in addition to the child's primary residence, visitation arrangements or agreements concerning the child's maintenance;

Or. ro

Amendment 19
Daniel Buda

Motion for a resolution
Paragraph 4 b (new)

Motion for a resolution

Amendment

4b. Welcomes the important role played by the European Judicial Network in civil and commercial matters in drawing up recommendations aimed at enhancing the use of family mediation in a cross-border context, in particular in

child abduction cases;

Or. ro

Amendment 20
Kostas Chrysogonos

Motion for a resolution
Paragraph 5 a (new)

Motion for a resolution

Amendment

5 a. *Considers that the adoption of codes of conduct constitutes an important tool to ensure the quality of mediation; observes in this regard that the European Code of Conduct for Mediators is either directly used by stakeholders or has inspired national or sectoral codes; also observes that most Member States have obligatory accreditation procedures for mediators and/or run registries of mediators;*

Or. en

Amendment 21
Kostas Chrysogonos

Motion for a resolution
Paragraph 7

Motion for a resolution

Amendment

7. Stresses that, despite the voluntary nature of mediation, 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;

7. Stresses that, despite the voluntary nature of mediation, 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; ***recalls in that respect that the domestic enforceability of an agreement reached by the parties in a Union Member State is, as a general rule, subject to homologation by a public authority, which gives rise to additional costs, is time consuming for the parties to***

the settlement, and could therefore negatively affect the circulation of foreign mediation settlements, especially in cases of small disputes;

Or. en

Amendment 22
Enrico Gasbarra

Motion for a resolution
Paragraph 7

Motion for a resolution

7. Stresses that, despite the voluntary nature of mediation, 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;

Amendment

7. Stresses that, despite the voluntary nature of mediation, 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; ***calls on the Commission to look into the issue of mandatory mediation more carefully; considers that this issue should be raised also bearing in mind the risk that mediation might lose its attractiveness and added value if excessively stringent standards for the parties were introduced;***

Or. it

Amendment 23
Emil Radev

Motion for a resolution
Paragraph 8

Motion for a resolution

8. Calls on the Member States to step up their efforts to ***provide*** citizens and legal persons with appropriate, comprehensive information regarding ***mediation*** and its advantages and to ensure improved cooperation between legal professionals for that purpose;

Amendment

8. Calls on the Member States to step up their efforts to ***encourage use of the mediation procedure in civil and commercial disputes, by providing*** citizens and legal persons with appropriate, comprehensive information regarding ***the thrust of the procedure*** and its advantages

and to ensure improved cooperation between legal professionals for that purpose;

Or. bg

Amendment 24
Enrico Gasbarra

Motion for a resolution
Paragraph 8 a (new)

Motion for a resolution

Amendment

8a. Stresses the importance of promoting appropriate information campaigns on the legal arrangements provided for by mediation and the advantages it has in terms of economising time and money and streamlining and simplifying legal procedures;

Or. it

Amendment 25
Daniel Buda

Motion for a resolution
Paragraph 8 a (new)

Motion for a resolution

Amendment

8a. Calls on Member States to step up the exchange of best practice in the various national jurisdictions, which, supported by appropriate measures at European level, will help to boost awareness of how useful mediation is;

Or. ro

Amendment 26
Heidi Hautala

Motion for a resolution

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Paragraph 9 a (new)

Motion for a resolution

Amendment

9 a. *Calls on the Commission to put in place appropriate safeguards in mediation processes to limit the risks for weaker parties and to protect them against any possible abuse of process or position by the more powerful parties, and to provide comprehensive statistical data on such safeguards;*

Or. en

Amendment 27

Gilles Lebreton, Marie-Christine Boutonnet

Motion for a resolution

Paragraph 10

Motion for a resolution

Amendment

10. *Calls on the Commission also to assess the need for an obligation to be introduced for Member States to create and maintain national registers of mediated proceedings;*

deleted

Or. fr

Amendment 28

Jean-Marie Cavada

Motion for a resolution

Paragraph 10

Motion for a resolution

Amendment

10. *Calls on the Commission also to assess the need for an obligation to be introduced for Member States to create and maintain national registers of mediated proceedings;*

10. *Calls on the Commission also to assess the need for an obligation to be introduced for Member States to create and maintain national registers of mediated proceedings, **which could be a source of information for the Commission but also used by national mediators to benefit from best practices across Europe; stresses that***

any such register must be established under full compliance with the General Data Protection Regulation 2016/679^{1a};

^{1a} OJ L 119, 4.5.2016, p. 1.

Or. en

Amendment 29
Emil Radev

Motion for a resolution
Paragraph 10

Motion for a resolution

10. Calls on the Commission also to assess the need for *an obligation to be introduced for* Member States to create and maintain national registers of mediated proceedings;

Amendment

10. Calls on the Commission also to assess the need for Member States to create and maintain national registers of mediated proceedings;

Or. bg

Amendment 30
Enrico Gasbarra

Motion for a resolution
Paragraph 11 a (new)

Motion for a resolution

11a. Calls on the Commission, in its review of the rules, to find solutions whereby the gateways to mediation can be multiplied, extending it also to business tribunals and commercial law;

Or. it

Amendment 31
Enrico Gasbarra

Motion for a resolution

Paragraph 11 b (new)

Motion for a resolution

Amendment

11b. Calls for special attention to be paid to the implications that mediation has on certain social issues, such as family law, which requires strengthened protection and guarantees, by introducing mandatory uniform procedures in this instance to avoid imbalances and discrepancies in such sensitive matters;

Or. it

**Amendment 32
Enrico Gasbarra**

**Motion for a resolution
Paragraph 11 c (new)**

Motion for a resolution

Amendment

11c. Considers it important to ensure that fair criteria are complied with in terms of costs, especially in order to protect the interests of insolvent people and disadvantaged groups;

Or. it