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*Committee on Legal Affairs*

PROVISIONAL  
**2004/0251(COD)**

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**\*\*\*I**

## **DRAFT REPORT**

on the proposal for a directive of the European Parliament and of the Council  
on certain aspects of mediation in civil and commercial matters  
(COM(2004)0718 – C6-0154/2004 – 2004/0251(COD))

Committee on Legal Affairs

Rapporteur: Arlene McCarthy

### ***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\* Assent procedure  
*majority of Parliament's component Members except in cases  
covered by Articles 105, 107, 161 and 300 of the EC Treaty and  
Article 7 of the EU Treaty*
- \*\*\*I Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission.)

### ***Amendments to a legislative text***

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a directive of the European Parliament and of the Council on certain aspects of mediation in civil and commercial matters  
(COM(2004)0718 – C6-0154/2004 – 2004/0251(COD))

(Codecision procedure: first reading)

*The European Parliament,*

- having regard to the Commission proposal to the European Parliament and the Council (COM(2004)0718)<sup>1</sup>,
  - having regard to Article 251(2) and Articles 61(c) and 67(5) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0154/2004),
  - having regard to Rule 51 of its Rules of Procedure,
  - having regard to the report of the Committee on Legal Affairs and the opinion of the Committee on Civil Liberties, Justice and Home Affairs (A6-0000/2006),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1  
Recital 2

(2) The European Council meeting in Tampere on 15 and 16 October 1999 called for, ***in relation to*** better access to justice ***in Europe, for*** alternative, extra-judicial procedures to be created by Member States.

(2) The ***principle of access to justice is fundamental and, with a view to securing*** better access to justice, ***the*** European Council meeting in Tampere on 15 and 16 October 1999 called for alternative, extra-judicial procedures to be created by ***the*** Member States.

*Justification*

*It is important to stress that access to justice is a fundamental principle of Community law and that alternative dispute resolution (more specifically, mediation) can afford better access to justice. This amendment should be read in conjunction with the amendment to recital 8,*

<sup>1</sup> Not yet published in OJ.

*which makes it clear that the intention of promoting mediation is not to deprive parties of their right to their day in court if they wish to exercise that right.*

Amendment 2  
Recital 8

(8) This directive should cover processes where two or more parties to a dispute are assisted by a mediator to reach an amicable agreement on the settlement of the dispute, but exclude processes of an adjudicatory nature such as arbitration, *ombudsmen* schemes, consumer complaint schemes, expert determination or processes administered by bodies issuing a formal recommendation, be it legally binding or not, as to the resolution of the dispute.

(8) This directive should cover processes where two or more parties to a dispute are assisted by a mediator to reach an amicable agreement on the settlement of the dispute, but exclude processes ***such as pre-contractual negotiations or processes*** of an adjudicatory nature such as arbitration, *ombudsman* schemes, consumer complaint schemes, expert determination or processes administered by bodies issuing a formal recommendation, be it legally binding or not, as to the resolution of the dispute. ***Cases where a court refers parties to mediation or national law prescribes mediation should also be covered, although the principle remains that mediation is a voluntary process and national legislation making the use of mediation compulsory or subject to incentives or sanctions should not prevent parties from exercising their right of access to the judicial system.***

***Furthermore, mediation conducted by a judge who is not responsible for any judicial proceedings relating to the matter or matters in dispute should also come within the scope of this Directive. Nevertheless, this Directive does not extend to attempts made by the court or judge seised to settle a dispute in the context of judicial proceedings concerning that dispute or to cases in which the court or judge seised requests assistance or advice from a competent person.***

*Justification*

*It is important to delimit the scope of the directive as precisely as possible, whilst making it clear that promoting mediation should not cause parties to forfeit their right to litigate should*

they wish to exercise it.

Amendment 3  
Recital 9

(9) *A minimum degree of compatibility of civil procedural rules is necessary as concerns the effect of mediation on limitation periods and how the confidentiality of the mediator will be protected in any subsequent judicial proceedings. The possibility for the court to refer the parties to mediation should also be covered, while retaining the principle that mediation is a voluntary process.*

(9) ***Given the importance of confidentiality in the mediation process, a minimum degree of compatibility of civil procedural rules is necessary with regard to how the confidentiality of the mediation is protected in any subsequent civil and commercial, judicial or arbitration proceedings. It is also necessary to provide for a minimum degree of compatibility of civil procedural rules with regard to the effect of mediation on limitation and prescription periods, at least in cross-border cases. Although the provision on limitation and prescription periods is limited to cross-border cases, Member States are encouraged to apply it also to internal cases with a view to facilitating the proper functioning of the internal market.***

*Justification*

*This wording is intended to be clearer and to reflect better the structure of the directive.*

Amendment 4  
Recital 10

(10) Mediation should not be regarded as a poorer alternative to judicial proceedings in the sense that settlement agreements are *dependant* on the good will of the parties for their enforcement. It is therefore necessary to ensure that ***all Member States provide for a procedure whereby a settlement agreement can be confirmed*** in a judgment, decision or authentic instrument by a court or ***public*** authority.

(10) Mediation should not be regarded as a poorer alternative to judicial proceedings in the sense that settlement agreements are *dependent* on the good will of the parties for their enforcement. It is therefore necessary to ensure that ***parties to a written settlement agreement may request that it be recognised and its content be made enforceable insofar as recognition and enforceability of such content is possible under the law of the Member State in which the request for recognition and/or enforcement is made. The content of a***

settlement agreement **may be rendered enforceable** in a judgment *or* decision or **by an authentic act** by a court or **by another competent authority in accordance with the law of the Member State where the request is made.**

*Justification*

*This amendment, together with the amendments moved to Article 5, is designed to cater for concerns which have been expressed with regard to the recognition and enforceability of settlement agreements, which may contain terms which are intrinsically unenforceable. It is also important to make it clear that settlement agreements should be reduced to writing in order for them to be recognised/enforced.*

Amendment 5  
Recital 11

***(11) Such a possibility will allow for a settlement agreement to be recognised and enforced across the Union, under the conditions laid down by Community instruments on mutual recognition and enforcement of judgments and decisions.***

***(11) The content of a settlement agreement rendered enforceable in a Member State will be recognised and declared enforceable in the other Member States in accordance with applicable Community or national law, for example on the basis of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters(1) or Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility(2).***

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***(1) OJ L 12, 16.1.2001, p. 1.***

***(2) OJ L 338, 23.12.2003, p. 1.***

*Justification*

*It appears desirable to make express reference to the relevant Community instruments.*

Amendment 6  
Recital 11 a (new)

*(11a) Whereas this Directive covers mediation in family law matters, it extends only to the rights available to the parties under the law of the Member State in which mediation takes place. Moreover, if the content of a settlement agreement in family matters is not enforceable in the Member State where it was concluded and where its enforcement is sought, this Directive does not enable the parties to circumvent the law of that Member State by having the settlement agreement rendered enforceable in another Member State, given that Council Regulation (EC) No 2201/2003 specifically requires that such agreement has to be enforceable in the Member State in which it was concluded.*

*Justification*

*It is important to add this clarification in respect of mediation in family matters.*

Amendment 7  
Recital 13

(13) These mechanisms and measures, which **shall** be defined by the Member States and may include having recourse to market-based solutions, should aim at preserving the flexibility of the mediation process and the private autonomy of the parties. The Commission **shall** encourage self-regulatory measures at Community level **through, for example, development of a European code of conduct addressing key aspects of the mediation process.**

(13) These mechanisms and measures, which **should** be defined by the Member States and may include having recourse to market-based solutions, should aim at preserving the flexibility of the mediation process and the private autonomy of the parties. The Commission **should** encourage self-regulatory measures at Community level **and the Member States should encourage and promote the application of the European Code of Conduct for Mediators, which the Commission will publish in the C Series of the Official Journal of the European Union.**

*Justification*

*It is considered that the utility of the European Code of Conduct for Mediators should be expressly recognised and its publication in the Official Journal secured so as to ensure that it is widely published and readily accessible.*

Amendment 8  
Recital 17

(17) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and the Treaty establishing the European Community, the United Kingdom and Ireland have notified their wish to take part in the adoption and application of this Directive. / ***In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and the Treaty establishing the European Community, the United Kingdom and Ireland do not take part in the adoption of this Directive, which is therefore not binding on those Member States.***

(17) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and the Treaty establishing the European Community, the United Kingdom and Ireland have notified their wish to take part in the adoption and application of this Directive.

*Justification*

*The United Kingdom and Ireland have signified their intention to take part in the adoption of this directive.*

Amendment 9  
Article 1, paragraph 1

1. The objective of this directive is to facilitate access to dispute resolution ***by promoting*** the use of mediation and ***by*** ensuring a ***sound*** relationship between mediation and judicial proceedings.

1. The objective of this directive is to facilitate access to dispute resolution ***and to promote the amicable settlement of disputes by encouraging*** the use of mediation and ensuring a ***balanced*** relationship between mediation and judicial proceedings.

*Justification*

*Clarifies and tightens up the scope of the directive.*

Amendment 10  
Article 1, paragraph 2

2. This directive shall apply in civil and

2. This directive shall apply in civil and

commercial matters.

commercial matters. ***It shall not extend, in particular, to revenue, customs or administrative matters or the liability of the State for acts and omissions in the exercise of State authority (acta iure imperii).***

*Justification*

*Clarifies and tightens up the scope of the directive.*

Amendment 11  
Article 1, paragraph 3

3. In this directive, "Member State" shall mean Member States with the exception of Denmark.

3. In this directive, "Member State" shall mean ***all*** Member States with the exception of Denmark.

*Justification*

*Clarifies and tightens up the scope of the directive.*

Amendment 12  
Article 2, point (a)

(a) "Mediation" ***shall mean any*** process, however named or referred to, where two or more parties to a dispute ***are assisted by a third party*** to reach an agreement on the settlement of ***the*** dispute, ***and regardless of whether the process is*** initiated by the parties, suggested or ordered by a court or prescribed by the ***national*** law of a Member State.

***It shall*** not include attempts made by the judge to settle a dispute within the course of judicial proceedings concerning that dispute.

(a) "Mediation" ***means a structured*** process, 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.

***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.

*Justification*

*Seeks to improve the definition of mediation by making it more explicit.*

Amendment 13  
Article 2, point (b)

(b) “Mediator” ***shall mean*** any third ***party conducting a mediation***, regardless of the denomination or profession of that third ***party*** in the Member State concerned and of the way the third ***party*** has been appointed or requested to conduct the mediation.

(b) "Mediator" ***means*** any third ***person who is appointed in circumstances indicating a reasonable expectation that the mediation will be conducted in a professional, impartial and competent way, in particular a third person who has committed to, and fulfils the requirements of, the European Code of Conduct for Mediators and conducts the mediation in accordance therewith***, regardless of the denomination or profession of that third ***person*** in the Member State concerned and of the way the third ***person*** has been appointed or requested to conduct the mediation.

*Justification*

*The original definition seems too loose. A specific reference to the European Code of Conduct for Mediators is highly desirable.*

Amendment 14  
Article 2 a (new)

***Article 2a***

***Ensuring the quality of mediation***

***(1) Member States shall, by any means which they consider to be appropriate, encourage the development of and adherence to voluntary codes of conduct, especially the European Code of Conduct for Mediators, by mediators and organisations providing mediation services as well as other effective quality control mechanisms concerning the provision of mediation services.***

***(2) Member States shall encourage the***

***initial and further training of mediators in order to ensure that the conduct of mediation is fair, effective, impartial and competent in relation to the parties and that the procedures are suited to the circumstances of the dispute.***

*Justification*

*This amendment replaces the Commission's original Article 4. Again, express reference to the European Code of Conduct for Mediators seems highly desirable. It is important to stress that mediation must be conducted in a way that is fair, effective, impartial and competent and that mediation procedures are suited to the circumstances of the dispute.*

Amendment 15  
Article 3, paragraph 1

1. A court before which an action is brought may, when appropriate and having regard to all circumstances of the case, 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.

1. A court before which an action is brought may, when appropriate and having regard to all circumstances of the case, 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.***

*Justification*

*Attendance at information sessions on mediation, where they exist, should be voluntary.*

Amendment 16  
Article 3, paragraph 2

2. This directive is without prejudice to national legislation making the use of mediation compulsory or subject to incentives or sanctions, whether before or after judicial proceedings have started, provided that such legislation does not ***impede on the*** right of access to the judicial system, ***in particular in situations where one of the parties is resident in a Member State other than that of the court.***

2. This directive is without prejudice to national legislation making the use of mediation compulsory or subject to incentives or sanctions, whether before or after judicial proceedings have started, provided that such legislation does not ***prevent parties from exercising their*** right of access to the judicial system.

*Justification*

*It is also important to stress the parties' right to litigate should they wish to exercise it.*

Amendment 17

Article 4

*Article 4*

*Deleted*

***Ensuring the quality of mediation***

***1. The Commission and the Member States shall promote and 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.***

***2. Member States shall promote and 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.***

*Justification*

*This article is replaced by the new Article 2a.*

Amendment 18

Article 5, paragraph 1

1. Member States shall ensure that, ***upon request of the parties, a settlement agreement reached as a result of a mediation can be confirmed in a judgment, decision, authentic instrument 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, provided that the agreement is not contrary to European law or to national law in the Member State where the request is made.***

1. Member States shall ensure that ***the parties, or one of them with the consent of the others, is able to request that the content of a written settlement agreement resulting from a mediation be made enforceable to the extent that enforceability of the content of the settlement agreement is possible under and not contrary to the law of the Member State where the request is made.***

*Justification*

*This amendment, together with the other amendments moved to Article 5 and to recital 10, is designed to cater for concerns which have been expressed with regard to the recognition and enforceability of settlement agreements, which may contain terms which are intrinsically unenforceable. It is also important to make it clear that settlement agreements should be reduced to writing in order for them to be recognised/enforced.*

Amendment 19  
Article 5, paragraph 1 a (new)

***1a. The content of the agreement may be made enforceable in a judgment or a decision or by an authentic act by a court or other competent authority in accordance with the law of the where the request is made Member State.***

*Justification*

*Reflects the diversity of legal traditions in the Member States.*

Amendment 20  
Article 5, paragraph 2

2. Member States shall inform the Commission of the courts or ***public*** authorities that are competent for receiving a request in accordance with ***paragraph 1***.

2. Member States shall inform the Commission of the courts or ***other*** authorities that are competent for receiving a request in accordance with ***paragraphs 1 and 1a***.

Amendment 21  
Article 5, paragraph 2 a (new)

***2a. Nothing in this Article shall affect the rules applicable to the recognition and enforcement in another Member State of settlement agreements which have been made enforceable in accordance with paragraph 1.***

Amendment 22

**Article 6**

**Deleted**

***Admissibility of evidence in civil judicial proceedings***

***1. Mediators, as well as any person involved in the administration of mediation services, shall not in civil judicial proceedings give testimony or evidence regarding any of the following:***

***(a) An invitation by a party to engage in mediation or the fact that a party was willing to participate in mediation;***

***(b) Views expressed or suggestions made by a party in a mediation in respect of a possible settlement of the dispute;***

***(c) Statements or admissions made by a party in the course of the mediation;***

***(d) Proposals made by the mediator;***

***(e) The fact that a party had indicated its willingness to accept a proposal for a settlement made by the mediator;***

***(f) A document prepared solely for purposes of the mediation.***

***2. Paragraph 1 shall apply irrespective of the form of the information or evidence referred to therein.***

***3. The disclosure of the information referred to in paragraph 1 shall not be ordered by a court or other judicial authority in civil judicial proceedings and, if such information is offered as evidence in contravention of paragraph 1, that evidence shall be treated as inadmissible. Nevertheless, such information may be disclosed or admitted in evidence;***

***(a) to the extent required for the purposes of implementation or enforcement of a settlement agreement reached as a direct***

*result of the mediation,*

*(b) for overriding considerations of public policy, in particular when required to ensure the protection of children or to prevent harm to the physical or psychological integrity of a person, or*

*(c) if the mediator and the parties agree thereto.*

*4. The provisions of paragraphs 1, 2 and 3 shall apply whether or not the judicial proceedings relate to the dispute that is or was the subject matter of the mediation.*

*5. Subject to paragraph 1, evidence that is otherwise admissible in judicial proceedings does not become inadmissible as a consequence of having been used in a mediation.*

#### *Justification*

*This provision is replaced by the new Article 6a on confidentiality.*

Amendment 23  
Article 6a (new)

#### *Article 6a*

##### *Confidentiality of mediation*

*1. Given that mediation is intended to take place in a manner which respects confidentiality and legal privilege, Member States shall 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:*  
*(a) for overriding considerations of public policy or other substantial reasons, in*

*particular when required to ensure the protection of the best interests of children or to prevent harm to the physical or mental integrity of a person; or*  
*(b) where disclosure is necessary to implement or enforce the agreement resulting from mediation.*

*2. Nothing in the preceding paragraph prevents Member States from enacting stricter measures to protect confidentiality of mediation.*

#### *Justification*

*This amendment introduces minimum rules on confidentiality. It is designed, on the one hand, to take account of the fact that in common-law jurisdictions confidentiality is a question of legal privilege. On the other, there is little point in providing that parties cannot be compelled to make disclosure or give evidence if they have the right to do so.*

#### Amendment 24 Article 7, paragraph 1

*1. The running of any period of prescription or limitation regarding the claim that is the subject matter of the mediation shall be suspended as of when, after the dispute has arisen:*

*(a) the parties agree to use mediation,*

*(b) the use of mediation is ordered by a court, or*

*1. To ensure that parties who choose mediation to try to resolve a dispute are not prevented from subsequently initiating judicial proceedings in relation to that dispute by the expiry of periods of limitation or prescription, Member States shall ensure that any such period does not expire between:*

*(a) the date when the parties agree in writing, after the dispute has arisen, to use mediation or, in the absence of such written agreement, the date on which they attend the first mediation meeting, or the date on which an obligation to use mediation arises under national law; and*

*(b) the date of a settlement agreement, the date on which at least one of the parties informs the others in writing that mediation is terminated or, in the absence of such written notification, the date on which the mediator declares on his or her own initiative or at the request of at least one of the parties that mediation is*

*terminated.*

***(c) an obligation to use mediation arises under the national law of a Member State.***

*Justification*

*It is considered that this formulation is clearer than the original Commission proposal.*

Amendment 25  
Article 7, paragraph 2

***2. Where the mediation has ended without a settlement agreement, the period resumes running from the time the mediation ended without a settlement agreement, counting from the date when one or both of the parties or the mediator declares that the mediation is terminated or effectively withdraws from it. The period shall in any event extend for at least one month from the date when it resumes running, except when it concerns a period within which an action must be brought to prevent that a provisional or similar measure ceases to have effect or is revoked.***

***2. Paragraph 1 shall be without prejudice to provisions on periods of limitation or prescription in international agreements to which Member States are parties which are not compatible with this Article.***

*Justification*

*It is considered that it is necessary to take account of international agreements.*

Amendment 26  
Article 7, paragraph 2 a (new)

***2a. This Article shall apply where a claim arising from a matter or matters in connection with which a mediation procedure to which this Directive applies is sought to be pursued in a civil or commercial action in a court or tribunal situated in a Member State other than that in which***

***(i) the mediation in question took place,***

*or*

***(ii) at least one of the parties to the mediation, or the mediator, was, at the time of the commencement of the mediation, habitually resident or domiciled.***

*Justification*

*This amendment is designed to limit the provision on limitation/prescription to cross-border cases with a view to reaching a compromise with the Council.*

*The rapporteur is conscious that the situation with regard to prescription and limitation periods in cross-border cases is already very complicated on account of the absence of harmonisation at Community level and the fact that some Member States categorise the relevant rules as substantive and determine them in accordance with the applicable law whereas others qualify them as procedural and apply the *lex fori*. However, this could be the basis for a compromise if, for instance, the Council were to mandate the Commission to take up the question of limitation periods in cross-border cases and how their treatment under private international law affects the proper functioning of the internal market, and to make suitable proposals.*

*In any event, the rapporteur trusts that the Member States will adopt this provision also for domestic cases.*

Amendment 27  
Article 7 a (new)

***Article 7a***

***Information for citizens***

***(1) Member States shall ensure that information is available to citizens, in particular on Internet sites, on how to contact accredited mediation providers and mediators, in particular those adhering to the European Code of Conduct for Mediators.***

***(2) Member States shall encourage legal practitioners to inform their clients about the possibility of mediation.***

*Justification*

*This amendment is calculated to ensure that the public is informed about how to obtain access to accredited mediators and that lawyers should inform their clients about the*

*possibility of mediation.*

Amendment 28  
Article 7 b (new)

***Article 7b***

***The European Code of Conduct for  
Mediators***

***The Commission shall publish the  
European Code of Conduct for Mediators  
in the C Series of the Official Journal of  
the European Union as a notice without  
legal effects.***

*Justification*

*Whereas it is not the intention to attach any legal effects to the European Code of Conduct for Mediators, it is considered important to publicise it and make it readily accessible.*

Amendment 29  
Article 9, paragraph 1

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ***1 September 2007*** at the latest. They shall forthwith inform the Commission thereof.

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ***1 September 2008*** at the latest, ***with the exception of Article 8, for which the date of compliance shall be 1 September 2009.*** They shall forthwith inform the Commission thereof.

## EXPLANATORY STATEMENT

The rapporteur has always been convinced about the value and interest of alternative dispute resolution, in particular mediation. It affords a cheaper, quicker and less stressful alternative to court proceedings for citizens, without removing their right to their day in court as a last resort. It may also allow parties in dispute to remain in, or even improve, a valuable relationship, which the adversarial nature of litigation might jeopardise. It also allows for creative solutions which satisfy parties' real needs. For instance, in medical negligence cases, the injured party often wants an explanation and an apology just as much as he or she seeks compensation. The very nature of litigation is apt to frustrate those needs.

However, the rapporteur initially questioned the need for a directive at a time when mediation systems across the EU are still in an embryonic phase in some Member States. Moreover, in order to be effective, mediation must be flexible. Any attempt to "regulate" mediation could stifle its development. However, as a result of her on-line consultation and the evidence presented by the experts invited to the committee's hearing, the rapporteur recognises that there is overwhelming support for the principle of having a directive. She notes that even those experts who were sceptical about the directive or critical of its legal basis were enthusiastic about mediation as an alternative means of providing access to justice. Her objective therefore has been to create a workable, light-touch directive, which reflects existing guidelines and best practice and can serve to encourage the wider use of mediation across the EU. She would take this opportunity to thank the experts who took part in their hearing for their willingness to provide drafting suggestions after the hearing, some of which she has drawn upon in drafting the report.

In the amendments, the rapporteur has sought to clarify and improve on the original proposal, in particular by modifying the definitions of mediator and mediation. She is particularly concerned to ensure that quality standards are ensured, especially by including references to the European Code of Conduct for Mediators. She has amended the provisions on recognition and enforcement to make sure that they are legally watertight and respect the legal traditions of the various Member States. As far as confidentiality is concerned, the solution proposed offers 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.

As far as the question of legal basis is concerned, it would appear that a majority of Member States in the Council take the view that the proposed directive should be limited to cross-border cases on the ground that, under Article 65 of the EC Treaty, measures "eliminating obstacles to the good functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States" have to have "cross-border implications" and to be taken in so far as they are "necessary for the proper functioning of the internal market". The compromise which the rapporteur has put forward is designed to take into account Member States concerns' about the application of Article 65, while giving consumers and citizens in the internal market practical and user-friendly options to have access to a high standard of mediation across the EU. It is hoped that the Council will take a commonsense view of the benefits of mediation and that the directive can also be applied to domestic cases in Member States.

Rather than opting for a general definition of cross-border cases (a solution which has been adopted in other instruments, such as the instrument on the order for payment), which would cause difficulties in practice, the rapporteur proposes merely to limit the provisions on limitation periods to cross-border cases, on the ground that those provisions are the only ones which will impact in any substantial way on national legal systems.

For the rest, it is self-evident that the provisions on recognition and enforcement apply only to cross-border cases and it would be absurd to have special definitions of "mediation" and "mediator" solely for such cases. Equally, it would serve no useful purpose to have special rules limited to cross-border cases on referral to mediation or quality assurance.

Lastly, the rapporteur commends this initiative insofar as it will serve to publicise and promote mediation as an alternative means of access to justice and afford a framework of common rules which are sufficiently robust to protect the parties' interests, yet light enough to allow market-driven solutions to emerge.