

MEDIATION DIRECTIVE

EU Directive on Mediation in Civil and Commercial Matters – Ref. 2008/52/EC

INTRODUCTION

According to an EU-wide survey, 4 out of 10 Irish people feel that they would be at a disadvantage in legal proceedings in another EU country. Lack of knowledge of rules of procedure in the other country, language barrier and the cost of legal proceedings factored most in the minds of those surveyed.

The EU recognises that increased access to civil justice abroad is a further key element of European integration and trade. The purpose of the *EU Directive On Mediation In Civil And Commercial Matters* is to facilitate access to cross-border dispute resolution and to promote the amicable settlement of disputes by encouraging the use of mediation and by ensuring a sound relationship between mediation and judicial proceedings.

IN FORCE

On 23 April 2008, the European Parliament formally approved the Council's common position on the new Mediation Directive. On 21 May 2008 the Directive was adopted and was published in the Official Journal on 24 May 2008 and came into force 20 days after that date.

The Directive will now have to be transposed into Irish law within 36 months after the date of adoption.

When Member States transpose the Directive, they will have to decide whether they want to limit their implementing legislation to cross-border cases or whether they also want to apply the provisions of the Directive to internal cases.

THE KEY COMPONENTS

- Member States are obliged to encourage the **training of mediators** and the development of, and adherence to, voluntary **codes of conduct** and other effective quality control mechanisms concerning the provision of mediation services.
- **Judges** in the EU are now empowered with the right to suggest that the parties attend an information meeting on mediation and, if the judge deems it appropriate, to invite the parties to have recourse to mediation.
- Parties are now enabled to give a post-mediation settlement agreement a similar status to a court judgment by rendering it **enforceable** by way of judicial approval.
- The Directive also ensures that mediation takes place in an **atmosphere of confidentiality** and that information given or submissions made by any party during mediation cannot be used against that party in subsequent judicial proceedings if the mediation fails. This provision is essential to give parties confidence in, and to encourage them to make use of, mediation. To this end, the Directive provides that the mediator cannot be compelled to give evidence about what took place during mediation in subsequent judicial proceedings between the parties.
- The Directive contains a **rule on limitation periods** which ensures that, when the parties engage in mediation, any such period will be suspended or interrupted in order to guarantee that they will not be prevented from going to court as a result of the time spent on mediation. The Directive thus preserves the parties' access to justice should mediation not succeed.

View the [full text of the directive](#) on the EUR-Lex website.