

# Kluwer Mediation Blog

## A Useful Little Resolution – The EU Parliament Resolution on the Implementation of the Mediation Directive, September 2017

Sabine Walsh (Sabine Walsh Mediation) · Saturday, December 9th, 2017

One could be forgiven for assuming that the EU has bigger things to worry about these days than whether the EU Mediation Directive has had its desired impact, and therefore the most recent [European Parliament Resolution](#) on this area has passed under the radar – at least my radar – until now. Drawing on various research reports on the implementation and efficacy of the Directive in recent years, it makes a number of findings in relation to what has, and has not worked as regards the Directive, and makes recommendations in this regard.

In this post I will summarise those which I find most interesting. In framing these recommendations, the Parliament recognised the wide variety of approaches taken by Member States to the implementation of the Directive, based mainly on the diverse nature of legal systems and cultures in the various different states. This was certainly the experience of myself, Nadja Alexander and Martin Svatos in editing of the EU Mediation Handbook, which showed just how diverse the legal cultures and resulting schemes of implementation of the directive were. Furthermore, this process is ongoing, with new mediation laws and regimes being designed in a variety of countries including of course the new Mediation Act 2017 in Ireland.

It is interesting therefore that the Parliament seems to put particular emphasis on the provision of mediation information in relation to increasing the uptake of mediation. It highlights the value of mediation information sessions, noting that attendance at these is mandatory in some jurisdictions, and calls on Member States to “step up their efforts” to encourage the use of mediation by means of public information campaigns and information on the benefits of mediation. It also “regrets” the difficulty of obtaining statistical information on mediation, something I addressed in a previous [blog](#) on the subject of mediation research, and offers an interesting approach to addressing this by calling on the Commission to assess the need for Member States to create “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.” (par. 13).

Further recommendations to increase the use of mediation include ensuring the free circulation of mediated settlement agreements and a broadening of the scope of matters which can be referred to mediation.

The Resolution is useful in a number of ways. It provides a useful summary of the thrust of recent EU research into, and thinking on the impact of the Directive and the general status of mediation in Europe. Some of the reports to which it refers are long and a little cumbersome to read, so this

distillation of their main findings is useful.

It also acts as a series of signposts for jurisdictions currently engaged in mediation law and policy creation or reform, indicating what measures the EU deems most useful or desirable. What it says in relation to training standards, for example, is interesting. Most readers will be aware that consistency in training standards for mediation in Europe is an oxymoron. Even within many Member States, no consistent training standards exist, and across EU member States, the approach to setting and enforcing minimum standards is as diverse as EU membership is itself.

It acknowledges the role that Codes of Conduct, in particular the European Code of Conduct for Mediators, has played a role in ensuring the quality of mediation, but in its recommendations goes further and asks the Commission to assess the need to develop EU wide quality standards for mediation, “especially in the form to minimum standards ensuring consistency”. It sees this as another means of increasing the use of mediation.

Given the lack of any kind of consistency in Europe at present, it is quite possible that the Commission would assess this need as a valid one, and that would then put a requirement on legislators and other policy makers to at least consider what other Member States have in place when setting standards for mediation with a view to moving towards, at least, alignment of standards in the future.

In any event, this Resolution shows that the EU mediation movement is alive and well, at least within the Institutions of the EU, and that Member States are rising to the challenge of integrating mediation into their national systems. Might we someday be looking at a European Mediator Certification or a European mediation database? Who knows, but the indications are that mediation in Europe is here to stay anyway.

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