Alternative dispute resolution in civil, commercial and family matters

2011/2117(INI) - 10/10/2011

The Committee on Legal Affairs adopted the own-initiative report by Diana WALLIS (ALDE, UK) on alternative dispute resolution in civil, commercial and family matters.

Alternative dispute resolution (ADR), which helps parties avoid traditional adjudicative procedures, is capable of constituting a quick and cost-effective alternative to litigation. ADR is a mechanism for reaching out-of-court settlements by helping consumers and traders to resolve conflicts through the intervention of a third party (mediator or arbitrator). In many countries, the public authorities – including ombudsmen and regulatory authorities – play an important role in encouraging the resolution of disputes.

In this context, the report makes the following recommendations:

Horizontal approach: Members believe that ADR forms part of a general ‘justice-for-growth’ agenda across sectors. They take the view that any approach to ADR should go beyond consumer disputes so as to include business-to-business (B2B) civil and commercial transactions, irrespective of whether they are carried out between private or public undertakings, family disputes, defamation cases and other general interest disputes or ones involving parties with different legal statuses.

The Committee considers that whilst self-regulation remains important, legislative action setting out minimum standards upon which ADR schemes may be based is necessary in order to provide a framework for ADR within Member States' legal orders. It calls on the Commission to submit a legislative proposal on the use of alternative dispute resolution for consumer matters in the EU by the end of 2011 and emphasises the importance of its swift adoption.

Common standards for ADR: Members believe that ADR standards should include: adherence to /agreement on ADR; independence, transparency, effectiveness, fairness, impartiality and confidentiality; effects on limitation and prescription; enforceability of agreements resulting from ADR; qualification of third parties. They also take the view that ADR bodies should be monitored and assessed regularly by independent evaluators.

In order not to prejudice access to justice, rejects any wholesale imposition of a mandatory system of ADR at EU level, they suggest that a mandatory system of referral of the parties to consider possibilities of ADR could be examined. However, ADR decisions should only be binding with the explicit agreement of the parties involved. Furthermore, no ADR clause should hamper access to justice, in particular on the part of the weaker party. Lastly, there should be a requirement for third parties to keep ADR information confidential.

ADR in different areas: the report underlines that, although there are numerous ADR systems operating effectively in Europe at present, one of the main obstacles to their use is the lack of even development of such systems throughout the EU, both in geographical and sectoral terms. It encourages the Member States to consider introducing single points of contact for each sector, to provide information on how to initiate ADR.

Members see great potential for online ADR, in particular for smaller claims, as well as within the ongoing discussion on collective redress. They also see a need at EU level for ADR in the area of freedom of the press and rights of personality, given that in cases of defamation and breaches of rights of personality. Lastly, they emphasise the crucial role of types of ADR in family disputes.

They call upon the Commission to consider synergies between ADR and an instrument in EU contract law.

ADR as a mechanism to settle consumer disputes: the report stresses to ensure that European consumers can access ADR systems for transnational as well as national disputes, especially on the on-line market, which is growing rapidly in the EU. It calls for an effective out-of-court dispute settlement system for consumer matters which is operational across the EU.

It suggests that the Commission's future legislative proposal on the use of ADR for consumers in the EU incorporate the guidelines to be followed in relation to ADR systems established in Europe, these being the following:

- independence, impartiality and confidentiality: when mediators are being designated, the possibility of conflicts of interest arising should be avoided;
- competence of the professionals in charge;
- efficiency and speed: mediators must have adequate means at their disposal and be able meet the short deadlines between referral and decision;
- equity between consumers and professionals, in terms of information as well as conceptually and procedurally;
- funding: the system should be free, if a case is won, or offered at a very moderate cost to the consumer;
- freedom of choice and out-of-court nature: ADR must be optional and based on respect for the parties' freedom of choice throughout the process, allowing them the possibility of choosing, at any time, to settle their dispute before the courts; at the same time, guarantees must be provided that genuine efforts are being made to achieve successful mediation;
- proportionality: the costs borne must be in proportion to the damage incurred;
- transparency: any person acting as a mediator must be obliged to publish an annual report.

The report recommends, as a potential incentive for enterprises, that a quality label for mediation be introduced in relation to mediation in consumer disputes, which would be associated with guidelines recognising best practices.

Lastly, the committee notes that there needs to be an improvement in general information about rights and their enforcement and specific information on ADR schemes, including their existence, functioning and location. It calls on Commission, in cooperation with the Member States, to undertake information campaigns aimed at educating, and raising the awareness of, both consumers and businesses with regard to the benefits of using this institution.