

Alternative dispute resolution for consumer disputes (Directive on consumer ADR)

2011/0373(COD) - 29/11/2011 - Legislative proposal

PURPOSE: to contribute to the functioning of the internal market and to the achievement of a high level of consumer protection by ensuring that disputes between consumers and traders can be submitted to entities offering impartial, transparent, effective and fair alternative dispute resolution procedures.

PROPOSED ACT: Directive of the European Parliament and of the Council.

BACKGROUND: a substantial proportion of European consumers encounter **problems when buying goods and services in the internal market**. In 2010, this was the case for approximately 20% of European consumers. These problems are often left unresolved. The losses incurred by European consumers because of problems with purchased goods or services are estimated at 0.4% of the EU GDP.

The Commission has adopted two Recommendations on consumer ADR and established two networks dealing with ADR (ECC-NET and FIN-Net). A number of EU sector-specific legislation contains a clause on ADR and Directive 2008/52/CE (the Mediation Directive) promotes the amicable settlement of disputes, including consumer disputes. However, the **analysis of the current situation identified the following main shortcomings which hinder the effectiveness of ADR:** gaps in the coverage, the lack of consumer and business awareness as well as the uneven quality of ADR procedures.

The lack of effective ADR poses particular challenges in the context of cross-border transactions (e.g. language barriers, potentially higher costs, differences in legislation between Member States).

In view of the problems identified, the Commission undertook to propose measures on ADR that ensure that all consumer complaints can be submitted to an ADR entity and that disputes arising from cross-border transactions could be more easily resolved.

A [proposal for a regulation](#) on establishing a European platform facilitating out-of-court resolution of disputes is presented at the same time as this proposal.

IMPACT ASSESSMENT: the Commission has carried out a detailed impact assessment, analysing a range of policy options for (i) ADR coverage, information and quality and(ii) ODR for cross-border e-commerce transactions. The impact assessment concluded that only a **combination of two instruments** on ADR and ODR can ensure access to impartial, transparent, effective and fair means to resolve domestic and cross-border consumer disputes out-of-court.

A **Framework Directive** is the most appropriate way to ensure full ADR coverage in all Member States.

LEGAL BASIS: Article 114 TFEU.

CONTENT: the proposal aims to ensure that that disputes between consumers and traders can be submitted to **entities offering impartial, transparent, effective and fair alternative dispute resolution procedures**.

The main points of the proposal are as follows:

Ensuring that ADR procedures exist for all consumer disputes: Member States must ensure that all disputes between a consumer and a trader arising from the sale of goods or the provision of services can be submitted to an ADR entity, including through online means.

The proposal applies to ADR entities that seek to resolve disputes between consumers and traders out-of-court through the intervention of a dispute resolution entity. It covers in particular mediation procedures but also non-judicial procedures of an adjudicatory nature, such as procedures before consumer complaint boards, arbitration and conciliation procedures. The proposal does not apply to consumer complaint handling systems operated by the trader nor to dispute resolution entities where the natural persons in charge of dispute resolution are employed exclusively by the trader. It also excludes direct negotiations between the parties.

Information on ADR and cooperation: consumers must be able to find information on the competent ADR entity in the main commercial documents provided by the trader and, where a trader has a website, on that website. In addition, traders will have to inform consumers on whether or not they commit to use ADR in relation to complaints lodged against them by a consumer.

Member States shall ensure that consumers can obtain assistance when they are involved in a cross-border dispute. They may delegate responsibility for this task to their centres of the European Consumer Centre Network (ECC-net), which currently performs the function of guiding consumers to the ADR entities competent to deal with their cross-border disputes.

ADR entities will be encouraged to become members of networks of ADR entities in sector-specific areas when they deal with disputes in that area.

The proposal contains provisions ensuring the respect of strict guarantees of confidentiality and data protection, in compliance with the relevant Union legislation.

Quality of ADR entities: the proposal aims at ensuring that ADR entities respect the quality principles of impartiality, transparency, effectiveness and fairness. It provides that the parties should receive all the information they need to take an informed decision before engaging in an ADR procedure. Based on the results of existing studies, the proposal requires that disputes should be resolved within 90 days. It also provides that they should be free of charge or of moderate costs for consumers.

Monitoring: in each Member State, a competent authority will be in charge of monitoring the functioning of ADR entities established on its territory. The competent authorities will inter alia assess, on the basis of information notified to them by ADR entities, whether a given ADR entity respects the quality requirements laid down by the proposal. In addition, the competent authorities will publish regular reports on the development and functioning of ADR entities. Every three years, the Commission will report to the European Parliament and the Council on the application of the Directive.

BUDGETARY IMPLICATIONS: the proposal has no implications for the EU budget.