

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

2011/0373(COD) - 16/10/2012 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Internal Market and Consumer Protection adopted the report by Louis GRECH (S&D, MT) on the proposal for a Directive of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR).

The Committee on Legal Affairs was also consulted for an opinion on this report pursuant to [Rule 50 of the Rules of Procedure](#) (Associated committee).

The parliamentary committee responsible recommends that the position of the European Parliament adopted at first reading under the ordinary legislative procedure should be to amend the Commission's proposal as follows:

Legal base: Members call for the proposal to be based on Articles 114 and **169** of the Treaty on the Functioning of the European Union.

Scope: the Directive should ensure that in the event of contractual disputes arising from the sale of goods or the provision of services, that consumers can, on a voluntary basis, submit complaints against traders to entities offering **impartial, transparent, effective, independent, fast and fair alternative dispute resolution procedures**.

In order to achieve a high level of consumer protection it is important that the proposed Directive **applies to cross-border and domestic disputes**. This Directive shall also apply to those ADR entities which are set-up by national associations or groups of firms and which constitute a different legal entity from an individual trader.

Accessibility: Members consider it necessary that information on the ADR procedure should be provided in a **clear, comprehensible and easily accessible way** in the appropriate formats. Moreover, they have added a clause whereby ADR entities may refuse to deal with a given dispute on the grounds that it is frivolous or vexacious, or that it has previously been considered by another ADR entity. In all cases of refusal on the grounds of procedural rules, ADR entities should provide the parties with a **statement of reasons** for their decision within 14 calendar days of receiving the application for ADR.

Member States may limit the admissibility of a dispute for ADR by setting **minimum thresholds** for the value of the claim, taking into account whether the value of the claim is disproportionately lower than the actual costs of the ADR procedure.

Another amendment also provides that 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 ADR in order to settle the dispute.

Independence: in addition to the requirement that persons responsible for ADR should be impartial, Members propose to introduce the requirement that these persons are also independent of all those who might have an interest in the outcome and should have **no conflict of interest** which could impede the reaching of a decision in a fair, impartial and independent manner.

Natural persons in charge of ADR should possess the **required skills**. Specific training programmes should therefore be provided by Member States working together with the Commission.

Transparency: Members stress that ADR entities should be **accessible and transparent** and that the parties receive the information they need in order to take an informed decision before engaging in an ADR procedure. Parties should, for example, be informed of the requirement that an attempt be made by the consumer to reach an amicable resolution of the matter directly with the trader prior to an ADR procedure being instituted.

The report suggests that “**exemplary decisions**” are published reflecting the outcomes of significant disputes, in order to raise traders' standards and to facilitate the exchange of information and best practices.

Effectiveness: Members propose that ADR entities be required to **resolve both online and offline disputes** rapidly within 90 days from the time they officially open proceedings. This **timeframe could only be extended** at the discretion of the persons in charge of the ADR procedure where an extension is necessary to guarantee good quality dispute resolution in a particularly complex or technical dispute.

ADR procedures should preferably be **free of charge** for the consumer. In the event that costs are applied, the ADR procedure should be accessible, attractive and inexpensive for consumers.

Equity and freedom: the amendments introduced seek to authorise each party: (i) allow the parties to withdraw from the procedure at any stage if they are dissatisfied with the performance or the operation of the procedure; (ii) to express their point of view, to be provided with and **comment upon the arguments**, evidence, documents and facts put forward by the other party, including any statements and opinions given by experts, and to respond within a reasonable period.

Members also propose to:

- introduce a new article to protect the right of both parties to be informed of and choose whether to accept a binding decision. Furthermore, consumers cannot be subject to a binding decision if it was agreed before the dispute arises and if it deprives the consumer of their right to bring an action before the courts;
- lay down the **principle of legality** for disputes whereby the a solution is binding on the consumer, so as to ensure that consumers are not deprived of the protection afforded by the mandatory provisions of the law in force.

Information: traders should inform consumers about the name, address and website address of the ADR entity or entities by which they are covered. Traders should also specify whether or not they commit or are obliged to use those entities for the purpose of resolving disputes with consumers.

Guidelines: the Commission, after consulting the European Parliament, the Council and relevant stakeholders, should draw up guidelines for the implementation of this Directive. It should also facilitate cooperation and exchanges of experience between ADR entities.