Civil and commercial law: access to justice, alternative dispute resolution ADRs. Green paper

2002/2144(COS) - 12/03/2003 - Text adopted by Parliament, single reading

The European Parliament adopted a resolution drafted by Diana WALLIS (ELDR, UK) on ADR. (Please refer to the document dated 20/03/02.) To expand, Parliament stated that the Commission's follow-up Green Paper should consider a future Europe-wide model code encompassing at least the following minimum procedural guarantees: - the use of ADR in cross-border disputes should not prejudice access to justice in any way; - both parties, in particular where they come from different Member States, should recognise the dispute-settlement procedure; - the third party conciliator or mediator should be independent and impartial; it should be established that the neutral third party has a duty to assist the parties where necessary, while maintaining his or her impartiality; - there should be a duty of confidentiality in so far as matters disclosed by party A to the dispute to the mediator/conciliator should be disclosed to party B or a third party only with party A's consent; - the principles of natural justice must be sacrosanct; - ADR should be consensual and the parties should be fully informed of the scope of the ADR and of the enforceability of decisions. In certain cases, the parties should be guaranteed a minimum cooling-off or reflection period before agreeing to the results of mediation; expiry of a time limit for recourse to ADR should not result in a denial of access to the courts; - in general, consumers should always be able to go to court if they are dissatisfied with the result of - even mandatory - ADR, even if only to have the legality of the ADR clause reviewed; - formalities should be kept to a minimum and legal jargon eschewed; - records should be kept of ADR decisions and, in principle, published, provided that the parties agree and having due regard to the protection of personal data; - there should be no penalties in the form of costs orders for parties reasonably refusing to have recourse to ADR.