

## ESSENTIAL REQUIREMENTS AND KEY PERFORMANCE INDICATORS

This note has been extracted from  
C Hodges, I Benöhr and N Creutzfeldt-Banda, *Consumer ADR in Europe*  
published by  
Hart Publishing in May 2012.

We propose that the following essential requirements and key performance indicators (KPIs) should apply to *all* dispute resolution (DR) systems, including ADR and courts. These are meant to update the EU Recommendations of 1998<sup>1</sup> and 2001.<sup>2</sup>

### Proposed Essential Requirements

#### 1. Accessibility.

- a. The DR system should be visible to potential users.
- b. Its procedures, costs and duration should be clear in advance of use, and be proportionate.
- c. The service should be free to consumers.
- d. It should provide a service in all languages appropriate to the nature of disputes that it purports to handle.

#### 2. Requirements of justice.

- a. Confidence and trust. Every DR system should maintain the confidence of the public and not attract disrepute.
- b. Impartiality and independence. Both those responsible for the DR system and those involved in making decisions should be independent of all who might have an interest in the outcome, and should demonstrably have no conflict of interest. Decisions should be manifestly impartial.
- c. Transparent Rationality. Reasons should be given for decisions.
- d. Consistency. Decisions involving similar subject matter should be consistent and sufficiently predictable. Consistency should apply both to decisions of the particular DR system and to decisions made by similar DR systems.
- e. Fairness. Decisions should conform to principles of justice and fairness. Systems should not attract unmeritorious claims, and should identify them and stop them at an early stage.

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<sup>1</sup> Commission Recommendation of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes (98/257/EC), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1998:115:0031:0034:EN:PDF>

<sup>2</sup> Commission Recommendation of 4 April 2001 on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes (2001/310/EC), available at [http://ec.europa.eu/consumers/redress/out\\_of\\_court/adr/acce\\_just12\\_en.pdf](http://ec.europa.eu/consumers/redress/out_of_court/adr/acce_just12_en.pdf)

- f. Competence. The DR system should not make decisions on issues or cases for which it does not have competence, or for which another DR system would be more appropriate.
- g. Confidentiality. Confidential information of the parties should be maintained during the DR process. Once a decision is reached, the outcome should be available. At that stage, parties should be able to assert the continuing confidentiality of facts that are subject to legal obligations of confidentiality.

### **3. Effectiveness.**

- a. The DR system should deliver outcomes appropriate to its role.
- b. The duration of its procedures should be proportionate and acceptable, given the nature of the subject matter.
- c. The cost of the system as a whole, and the fees payable in individual cases should be proportionate to the service provided and the disputes for which it is intended.
- d. Decisions should be binding on traders.
- e. The system should provide for an adequate level of compliance with its decisions.

### **4. Accountability and verification.**

- a. There should be appropriate and transparent oversight mechanisms, to provide democratic and social confidence in the process and in its outcomes.
- b. The ADR provider should publish at least annually data on:
  - i. its KPIs (the number of claims received, how they were processed, what resolutions were achieved, how long they took, and what the costs were)
  - ii. claims handled, in agreed formats, identifying types of claims, urgent issues, whether the traders complied with any agreements or determinations.

### **Proposed KPIs**

We propose that the following *KPIs* should be applied, so that the performance of ADR providers may have democratic accountability. These are matters of operational data, such as on:

- 1. Claims data:
  - a. The number of claims received,
  - b. how they were processed,
  - c. what resolutions were achieved,
  - d. how long they took,
  - e. whether the traders complied with any agreements or determinations,
  - f. what type of issues were raised,
  - g. which companies were involved,
  - h. what significant issues were raised.
- 2. The costs of the system.