

European Commission Proposals on Consumer ADR and ODR

DG Sanco issued today a Communication¹ and two legislative proposals, one a draft Directive on ADR² and the other a draft Regulation on ODR.³ The Commission's objective is 'to improve the functioning of the retail internal market and more particularly to enhance redress for consumers'.

Subsidiarity and Legal Basis: Both proposals are based on Article 114 TFEU.

The Communication

The following statements are made:

- The vast majority of ADR procedures are free of charge for consumers or of moderate costs (below €50). Most disputes submitted to ADR entities are decided within 90 days.
- Most consumers who have used ADR recall it as a straightforward and transparent process where support and advice was provided. Hence, consumers are more willing to resolve disputes through ADR than through court proceedings. Businesses also prefer resolving disputes through ADR, and those businesses which have already used ADR would use it again in the future.
- However, the diversity and uneven geographical and sectoral availability of ADR entities prevent consumers and businesses from fully exploiting their potential.
- In order to develop the full potential of the Single Market as the growth engine for the European economy we need legislative action that ensures that every consumer in the EU can bring a dispute, regardless of the sector in which it has arisen, and regardless of whether it relates to a domestic or a cross-border transaction, to an appropriate ADR entity.

The ADR Directive tackles the three main problem areas:

- (a) Gaps in the coverage of ADR entities at both sector-specific and geographical level;
- (b) Lack of awareness and insufficient information preventing consumers and businesses from using ADR entities; and
- (c) Variable quality of ADR: a significant number of ADR entities are not in line with the core principles laid down by the two Commission Recommendations.

The Communication gives examples of consumer problems that the proposals would solve. It also says that it will introduce the following Flanking Measures:

1. Information campaigns to consumers, workshops for businesses, coordination with national entities;
2. Training and requirements for ADR entities, using the ECC-Net network.

The ADR Proposal

Evidence

¹ COM(2011) 791/2 ADR for consumer disputes in the Single Market.

² COM(2011) 793/2 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).

³ C(2011) 794/2 Proposal for a Regulation of the European Parliament and of the Council on online dispute resolution for consumer disputes (Regulation on consumer ODR) .

The Commission asserts that: 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.⁴ The losses incurred by European consumers because of problems with purchased goods or services are estimated at 0.4% of the EU GDP. 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.⁵

A detailed impact assessment (IA) has been made, analysing a range of policy options for both "*ADR coverage, information and quality*" and "*ODR for cross-border e-commerce transactions*". The IA 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.

In particular, a Framework Directive is the most appropriate way to ensure full ADR coverage in all Member States, to inform consumers about ADR and to ensure that ADR entities respect specific quality principles. Full ADR coverage will create the required framework on the basis of which an EU-wide ODR system can effectively deal with disputes relating to cross-border e-commerce transactions.

Scope

The proposal applies to procedures for the out-of-court resolution of contractual disputes arising from the sale of goods or provision of services by a trader established in the Union to a consumer resident in the Union. Thus, it would cover accept both, domestic and cross-border disputes. It does not apply to in-house dispute resolution services operated by traders, to direct negotiation, or to judicial attempts at settlement.

Main elements of the proposal

1. Ensuring that ADR procedures exist for all consumer disputes.

2. Information on ADR and cooperation. Consumers must be able to quickly identify which ADR entities are competent to deal with their dispute. 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. This obligation will act as an incentive for traders to use ADR more frequently. Member States may delegate responsibility for this task to their ECC-net offices. ADR entities will be encouraged to become members of networks of ADR entities in sector-specific areas. The proposal encourages cooperation between ADR entities and national authorities entrusted with the enforcement of consumer protection legislation.

3. Quality of ADR entities. ADR entities must respect the quality principles of impartiality, transparency, effectiveness and fairness, which are laid down in the two Commission Recommendations, and are given binding effect. The proposal requires that disputes should be resolved within 90 days, and that ADR procedures should remain accessible to all consumers by being free of charge or of moderate costs for consumers.

4. 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 publish regular reports on the development and functioning of ADR entities.

⁴ Eurobarometer 342, "Consumer Empowerment", p. 169.

⁵ Cf. Study on the use of Alternative Dispute Resolution in the European Union of 16 October 2009, http://ec.europa.eu/consumers/redress_cons/adr_study.pdf, pp. 56-63; 112-115; 120-121.

The Directive would enter into force in national law 18 months after adoption.

The ODR Regulation

Half the existing ADR schemes offer consumers the possibility of submitting their complaint online, very few offer consumers the possibility of conducting the entire procedure online (via online dispute resolution – ODR).⁶

The proposal is closely tied to the development of e-commerce. Objectives are stated of

- Increasing the number of consumers who are willing to buy online from another Member State by 20% in 2020
- Increase in the number of businesses that are willing to sell online in other Member States by 10% in 2020.

Main elements of the proposal

1. Establishment of the European online dispute resolution System

The present proposal aims at establishing a European online dispute resolution platform ("ODR platform"). This ODR platform takes the form of an interactive website which offers a single point of entry to consumers and traders who seek to resolve out-of-court a dispute which has arisen from a cross-border e-commerce transaction. The platform can be accessed in all official languages of the EU and its use is free of charge. ADR schemes established in the Member States which have been notified to the Commission in accordance with the "Directive on consumer ADR" will be registered electronically with the ODR platform.

Consumers and traders will be able to submit their complaints through an electronic complaint form which will be available on the platform's website in all official languages of the EU. The platform will check if a complaint can be processed and seek the agreement of the parties to transmit it to the ADR scheme which is competent to deal with the dispute. The competent ADR scheme will seek the resolution of the dispute in accordance with its own rules of procedure within 30 days from the date of receipt of the complaint. The ADR scheme will have to notify to the platform some data in relation to the development of the dispute (date when the complaint was notified to the parties; date when the dispute was resolved; outcome of the dispute).

Under the proposal, a network of online dispute resolution facilitators ("ODR facilitators' network") will be established which will consist of one contact point for online dispute resolution in each Member State. The ODR facilitators' network will provide support to the resolution of disputes submitted via the ODR platform.

2. Information on the EU-wide ODR system

The present proposal requires traders established within the EU that engage in cross-border e-commerce to inform consumers about the ODR platform. This information shall be made easily, directly, prominently and permanently accessible on the traders' websites as well as when the consumer submit a complaint to the trader.

⁶ The 2010 report of the European Consumer Centre's Network indicates that more than half of complaints (56.3%) received by the ECC-Net were linked to e-commerce transactions. However, out of the 35.000 cross border complaints received by ECC network in 2010, 91% could not be referred to an ADR scheme in another Member State as no suitable ADR scheme existed (http://ec.europa.eu/consumers/ecc/docs/2010_annual_report_ecc_en.pdf).

3. Monitoring

An annual activity report will be drawn up on the operation of the platform. The compliance by ADR schemes with the obligations set out in this Regulation will be monitored by the competent authorities to be established in the Member States in accordance with the Directive on consumer ADR. Every three years the Commission will report to the European Parliament and the Council on the application of the Regulation.

4. Data Protection rules

The data entered in the ODR platform by the parties and the ADR schemes will be stored in a database and will be subject to the relevant legislation on data protection.

Cost

The financial appropriations for implementing this proposal from 2012 to 2020 are said to amount to EUR 4,586 million in current prices.