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Plenary sitting

A7-0280/2012

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*****I**

REPORT

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)
(COM(2011)0793 – C7-0454/2011– 2011/0373(COD))

Plenary sitting

Committee on the Internal Market and Consumer Protection

Rapporteur: Louis Grech

Rapporteurs for the opinion (*):
Cristian Silviu Buşoi, Committee on Legal Affairs

(*) Associated committee – Rule 50 of the Rules of Procedure

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**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)
(COM(2011)0793 – C7-0454/2011– 2011/0373(COD))**

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2012)0793),
 - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0454/2011),
 - having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,
 - having regard to Article 294(3) and Article 169 of the Treaty on the Functioning of the European Union,
 - having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Senate of the Kingdom of the Netherlands and by the Bundesrat of the Federal Republic of Germany, asserting that the draft legislative act does not comply with the principle of subsidiarity,
 - having regard to the opinion of the European Economic and Social Committee of 28 March 2012¹,
 - having regard to Rules 55 and 37 of its Rules of Procedure,
 - having regard to the report of the Committee on the Internal Market and Consumer Protection and the opinion of the Committee on Legal Affairs (A7-0280/2012),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ OJ C 181, 21.6.2012, p. 93-98

Amendment 1

Proposal for a directive

Citation 1

Text proposed by the Commission

Having regard to the Treaty on the Functioning of the European Union, and in particular **Article** 114 thereof,

Amendment

Having regard to the Treaty on the Functioning of the European Union, and in particular **Articles** 114 **and 169** thereof,

Amendment 2

Proposal for a directive

Recital 1

Text proposed by the Commission

(1) Article 169(1) and Article 169(2)(a) of the Treaty on the Functioning of the European Union (TFEU) provide that the Union is to contribute to the attainment of a high level of consumer protection through the measures adopted pursuant to Article 114 thereof. Article 38 of the Charter of Fundamental Rights of the European Union provides that Union policies shall ensure a high level of consumer protection.

Amendment

(1) Article 169(1) and Article 169(2)(a) of the Treaty on the Functioning of the European Union (TFEU) provide that the Union is to contribute to the attainment of a high level of consumer protection ***inter alia*** through the measures adopted pursuant to Article 114 thereof. Article 38 of the Charter of Fundamental Rights of the European Union provides that Union policies shall ensure a high level of consumer protection.

Amendment 3

Proposal for a directive

Recital 2

Text proposed by the Commission

(2) In accordance with Article 26(2) TFEU, the internal market is to comprise an area without internal frontiers in which the free movement of goods and services is ensured. ***In order for consumers to have confidence in and benefit from the internal market, it is necessary that they have access to simple and low-cost ways of***

Amendment

(2) In accordance with Article 26(2) TFEU, the internal market is to comprise an area without internal frontiers in which the free movement of goods and services is ensured. ***The internal market should provide consumers with added value in the form of better quality, greater variety, reasonable prices and high safety***

resolving disputes which arise from the sale of goods or the provision of services. This applies to offline as well as to online transactions, and is particularly important when consumers shop across borders.

standards for goods and services, which should promote a high level of consumer protection.

Justification

Clarifies the tangible benefits that the internal market should offer to consumers.

Amendment 4
Proposal for a directive
Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) Fragmentation of the internal market is detrimental to Union competitiveness, growth and job creation. Eliminating the direct and indirect obstacles to the proper functioning of the internal market and improving citizens' trust is essential for the completion of the internal market.

Justification

The internal market is intended to constitute a space across national boundaries where citizens and businesses can move and exercise their rights, but the high level of fragmentation leads to shortcomings which frustrate citizens.

Amendment 5
Proposal for a directive
Recital 2 c (new)

Text proposed by the Commission

Amendment

(2c) Guaranteeing access to simple, efficient, expedient and low-cost ways of resolving domestic and cross-border disputes which arise from the sale of goods or the provision of services should benefit consumers and therefore boost their confidence in the market. That access should apply to offline as well as to online transactions, and is particularly important when consumers shop across

borders.

Justification

Improving citizens' confidence that they can obtain redress across the Union would increase their participation in the market, providing them with access to a wider range of products and spurring economic growth.

Amendment 6

Proposal for a directive

Recital 3

Text proposed by the Commission

(3) Alternative dispute resolution offers a simple, fast and low-cost out-of-court solution to disputes between consumers and traders. However, alternative dispute resolution is not yet sufficiently developed across the ***European Union***. ***In order for consumers to fully exploit its potential, it is necessary*** that alternative dispute resolution ***is available for all types of consumer disputes, quality levels of ADR procedures are even*** and consumers and traders are aware of ***such procedures***. ***It is also necessary that ADR entities handle cross-border disputes effectively.***

Amendment

(3) Alternative dispute resolution offers a simple, fast and low-cost out-of-court solution to disputes between consumers and traders. However, alternative dispute resolution is not yet sufficiently ***and consistently*** developed across the ***Member States***. ***It is regrettable that, despite Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes¹ and Commission Recommendation 2001/310/EC of 4 April 2001 on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes²,*** alternative dispute resolution ***mechanisms have not been correctly established and are not running satisfactorily in all geographical areas or business sectors in the Union***. Consumers and traders are ***still not*** aware of ***the existing alternative redress mechanisms, with only a small percentage of citizens knowing how to file a complaint with an ADR entity.***

¹ OJ L 115, 17.4.1998, p. 31.

² OJ L 109, 19.4.2001, p. 56.

Amendment 7
Proposal for a directive
Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) The remaining obstacles and gaps, such as a lack of information, uneven geographical and sectoral development of alternative dispute resolution (ADR) systems, and fragmented and uncoordinated regulation, hinder the ability of consumers to buy with confidence, especially across borders. For the same reasons, traders may abstain from selling to consumers in other Member States where there is insufficient access to high-quality ADR procedures. Furthermore, traders established in a Member State where quality ADR procedures are not sufficiently available are put at a competitive disadvantage with regard to traders that have access to such procedures and can thus resolve consumer disputes faster and cheaper. The disparities in ADR coverage, quality and awareness in Member States constitute a barrier for the single market and require action at Union level. This Directive should establish minimum standards for the quality of ADR entities, guaranteeing the same minimum level of protection and rights for consumers in both domestic and cross-border disputes. This Directive should not prevent Member States from adopting or maintaining rules that go beyond what is provided for in this Directive.

Justification

The large legislative, implementation and information gaps within the Market mean that it is not fully realising its potential. In particular, the fact that ADR is so unevenly developed necessitates action at the European level to ensure consumers have equal access to quality ADR procedures.

Amendment 8
Proposal for a directive
Recital 3 b (new)

Text proposed by the Commission

Amendment

(3b) In order for consumers to fully exploit the potential of the internal market, ADR should be available for all types of domestic and cross-border disputes covered by this Directive. ADR procedures should adhere to consistent minimum quality standards throughout the Union, and consumers and traders should be aware of the existence of such procedures. Due to increased cross-border trade and movement of persons, it is also important that ADR entities handle cross-border disputes effectively.

Amendment 9
Proposal for a directive
Recital 3 c (new)

Text proposed by the Commission

Amendment

(3c) As advocated by the European Parliament in its resolutions of 25 October 2011 on alternative dispute resolution in civil, commercial and family matters¹ and of 20 May 2010 on delivering a single market to consumers and citizens², any holistic approach to the single market which delivers for its citizens should as a priority develop simple, affordable, expedient and accessible system of redress.

¹ *Texts adopted, P7_TA(2011)0449.*

² *OJ C 161 E, 31.5.2011, p. 84.*

Justification

The European Parliament has consistently called for legislative action to guarantee access to consumer Alternative Dispute Resolution.

Amendment 10
Proposal for a directive
Recital 4

Text proposed by the Commission

(4) In its Single Market Act, the Commission has identified legislation on alternative dispute resolution which includes an electronic commerce dimension as one of the twelve levers to boost growth **and** strengthen confidence **in** the Single Market.

Amendment

(4) In its Single Market Act, the Commission has identified legislation on alternative dispute resolution which includes an electronic commerce dimension as one of the twelve levers to boost growth, strengthen confidence **and make progress towards completing** the Single Market.

Amendment 11
Proposal for a directive
Recital 5

Text proposed by the Commission

(5) The European Council has invited the Parliament and the Council to adopt, by the end of 2012, a first set of priority measures to bring a new impetus to the Single Market.

Amendment

(5) The European Council has invited the Parliament and the Council to adopt, by the end of 2012, a first set of priority measures to bring a new impetus to the Single Market. ***The Council has highlighted the importance of e-commerce and agreed that consumer ADR scheme should be able to offer low-cost, simple and quick redress for both consumers and traders. Successful implementation of that scheme requires sustained political commitment and support from all actors, without compromising the affordability, transparency, flexibility, speed and quality of decision-making by the ADR entities falling within the scope of this Directive.***

Justification

Fulfilling the potential of ADR will require full commitment and ownership on the part of the Commission, Parliament and Council. The Member States in particular must oversee the proper implementation of the Directive.

Amendment 12
Proposal for a directive
Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) Given the increasing importance of online commerce and in particular cross-border trade as a pillar of Union economic activity, a well-functioning ADR system and a properly integrated online dispute resolution framework for online contractual disputes are necessary in order to achieve the Single Market Act's aim of boosting citizens' confidence in the internal market.

Justification

Online trade has become an important pillar of economic activity within the EU, but many consumers and traders are hesitant to shop and sell online because they fear they will not have access to redress in the event of a dispute.

Amendment 13
Proposal for a directive
Recital 5 b (new)

Text proposed by the Commission

Amendment

(5b) This Directive and Regulation ... * of the European Parliament and of the Council of ... ** on online dispute resolution for consumer disputes (ODR Regulation) are two interlinked and complementary acts. The ODR platform is a tool which should offer consumers and traders a single point of entry for the out-of-court resolution of online disputes, supported by the availability of quality ADR entities across the Union. Proper functioning of the ODR platform will be possible only if full ADR coverage is achieved.

**** OJ: please insert the reference number.***

****OJ: please insert the date of adoption.**

Amendment 14
Proposal for a directive
Recital 6

Text proposed by the Commission

(6) The development within the *European Union* of well-functioning alternative dispute resolution is necessary to strengthen consumers' confidence in the internal market, including in the area of e-commerce. Such development should build on existing ADR procedures in the Member States and respect their legal traditions.

Amendment

(6) The development within the Union of well-functioning alternative dispute resolution is necessary to strengthen consumers' confidence in the internal market, including in the area of e-commerce, ***and to realise the potential and opportunities of cross-border and online trade***. Such development should build on existing ADR procedures in the Member States and respect their legal traditions. ***Both existing and newly established well-functioning dispute resolution entities that comply with the minimum quality criteria set out in this Directive should be referred to as "ADR entities". The dissemination of ADR can also prove to be important in those countries in which there is a substantial backlog of cases pending before the courts, preventing Union citizens from exercising their right to a fair trial within a reasonable time.***

Justification

In order to have a level playing field, ADR entities as defined in this Directive may be newly established or may be previously existing dispute resolution entities that are adapted to meet the requirements of this Directive.

Amendment 15
Proposal for a directive
Recital 7

Text proposed by the Commission

(7) This Directive should apply to contractual disputes between consumers

Amendment

(7) This Directive should apply to contractual disputes between consumers

and traders ***that are*** arising from the sale of goods or provision of services in all economic sectors. This should ***include*** complaints submitted by consumers against traders ***but also complaints submitted by traders against consumers***. This Directive should not apply to disputes between traders; however, ***it*** should not prevent Member States from adopting or maintaining in force provisions on procedures for the out-of-court resolution of such disputes.

and traders arising from the sale of goods or provision of services, ***both offline and online, including the supply of digital content for remuneration***, in all economic sectors. ***It should not apply to non-economic services of general interest, irrespective of the legal relationship between trader and consumer***. This ***Directive*** should ***apply to*** complaints submitted by consumers against traders. This Directive should not apply to ***complaints submitted by traders against consumers or*** to disputes between traders; however, ***this Directive*** should not prevent Member States from adopting or maintaining in force provisions on procedures for the out-of-court resolution of such disputes.

Amendment 16
Proposal for a directive
Recital 10

Text proposed by the Commission

(10) This Directive should prevail over Union legislation which contains provisions aimed at encouraging the setting up of ADR entities in a specific sector. Where sector-specific legislation mandates the setting up of ***such*** entities, this Directive should prevail only to the extent that ***such*** legislation does not ensure at least an equivalent degree of consumer protection.

Amendment

(10) This Directive should prevail over Union legislation which contains provisions aimed at encouraging the setting up of ADR entities in a specific sector. Where sector-specific legislation mandates the setting up of ***ADR*** entities, this Directive should prevail only to the extent that ***the sector-specific*** legislation does not ensure at least an equivalent degree of consumer protection.

Amendment 17
Proposal for a directive
Recital 11

Text proposed by the Commission

(11) ADR entities are highly diverse across the Union but also within the Member

Amendment

(11) ADR entities are highly diverse across the Union but also within the Member

States. This Directive should cover any entity that is established on a durable basis and offers the resolution of a dispute through an ADR procedure. An arbitration procedure which is created outside the framework of an ADR entity on an ad hoc basis for a single dispute between a consumer and a trader should not be considered as an ADR procedure.

States. This Directive should cover any entity that is established on a durable basis and offers the resolution of a dispute through an ADR procedure *that has been notified to the Commission and the Member States and is listed in accordance with Article 17(2) of this Directive*. An arbitration procedure which is created outside the framework of an ADR entity on an ad hoc basis for a single dispute between a consumer and a trader should not be considered as an ADR procedure.

Justification

ADR providers that do not choose to become ADR entities under this Directive should not be affected by the Directive's provisions.

Amendment 18 **Proposal for a directive** **Recital 11 a (new)**

Text proposed by the Commission

Amendment

(11a) ADR procedures are highly diverse across the Union and within Member States. They can take the form of procedures where the dispute resolution entity brings the parties together with the aim of facilitating an amicable solution, of procedures where the dispute resolution entity proposes a solution or of procedures where the dispute resolution entity imposes a solution. They can also take the form of a combination of two or more such procedures. This Directive should be without prejudice to the form which ADR procedures take in the Member States.

Amendment 19 **Proposal for a directive** **Recital 12**

Text proposed by the Commission

(12) This Directive should not apply to procedures before dispute resolution entities where the natural persons in charge of dispute resolution are employed *exclusively* by the trader *nor to* procedures *before consumer compliant handling systems operated by the trader. It should not apply to direct negotiations between the parties. Furthermore, it should not apply to attempts made by a judge to settle a dispute in the course of a judicial proceeding concerning that dispute.*

Amendment

(12) This Directive should not apply to procedures before dispute resolution entities where the natural persons in charge of dispute resolution are employed by, *or receive any form of remuneration exclusively from*, the trader *or professional or business association of which the trader is a member, unless those entities are in complete conformity with the quality requirements laid down in Chapter II of this Directive and comply with the rigorous additional safeguards of independence laid down in Article 2(2a). ADR entities offering dispute resolution through such* procedures *should be subject to regular evaluation of their compliance with the quality requirements set out in this Directive, including the specific additional requirements ensuring their independence.*

Amendment 20

Proposal for a directive
Recital 12 a (new)

Text proposed by the Commission

Amendment

(12a) This Directive should not apply to procedures before consumer-compliant handling systems operated by the trader, or to direct negotiations between the parties. Furthermore, it should not apply to attempts made by a judge to settle a dispute in the course of a judicial proceeding concerning that dispute.

Amendment 21

Proposal for a directive Recital 12a (new)

Text proposed by the Commission

Amendment

(12a) Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters¹ already sets a framework for systems of mediation at Union level, especially for cross-border disputes, without preventing its application to internal mediation systems. This Directive complements that system as regards other ADR procedures.

¹ OJ L 136, 24.5.2008, p. 3.

Amendment 22

Proposal for a directive Recital 13

Text proposed by the Commission

Amendment

(13) Member States should ensure that disputes covered by this Directive can be submitted to an ADR entity ***fulfilling the requirements*** set out in this Directive. Member States ***should have the possibility to*** fulfil this obligation by ***relying*** on existing ADR entities and adjusting their scope of application, if needed, or by providing for the creation of new ADR entities. This Directive should not oblige Member States to create a specific ADR entity in each retail sector. Member States should ***have the possibility to*** provide for the creation of a residual ADR entity that deals with disputes for the resolution of which no specific entity is competent.

(13) Member States should ensure that ***the contractual*** disputes covered by this Directive can be submitted to an ADR entity ***complying with the quality criteria*** set out in this Directive. Member States ***could also*** fulfil this obligation by ***building*** on existing ***well-functioning*** ADR entities and adjusting their scope of application, ***complying with the provisions of this Directive*** if needed, or by providing for the creation of new ADR entities. This Directive should not oblige Member States to create a specific ADR entity in each retail sector. Member States should provide for the creation of a residual ADR entity that deals with disputes for the resolution of which no specific entity is competent, ***in order to ensure full geographical***

coverage and access to ADR in all Member States.

Amendment 23
Proposal for a directive
Recital 14

Text proposed by the Commission

(14) This Directive should be without prejudice to traders established in a Member State being covered by an ADR entity which is located in another Member State. Member States should encourage the development of such entities.

Amendment

(14) This Directive should be without prejudice to traders established in a Member State being covered by an ADR entity which is located in another Member State. ***In order to improve the geographical coverage and consumer access to ADR across the Union,*** Member States should encourage the development of such ***regional, transnational and pan-European dispute resolution*** entities ***where traders from different Member States are part of the same ADR entity.*** ***The Commission should further facilitate the establishment of such entities at European level.***

Amendment 24
Proposal for a directive
Recital 15

Text proposed by the Commission

(15) This Directive should be without prejudice to Member States maintaining or introducing ADR procedures dealing jointly with identical or similar disputes between a trader and several consumers. ***Such procedures can be seen as a preliminary step to further developing collective ADR procedures within the Union.***

Amendment

(15) This Directive should be without prejudice to Member States maintaining or introducing ADR procedures dealing jointly with identical or similar disputes between a trader and several consumers. ***Comprehensive impact assessments must be carried out on collective out-of-court settlements before they are proposed at a Union level. The existence of an effective system for collective claims and easy recourse to ADR should be complementary and should not involve mutually exclusive procedures.***

Amendment 25
Proposal for a directive
Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) Confidentiality and privacy should be respected at all times during the ADR procedure. However, it should be permissible for final decisions of an exemplary nature to be published at the discretion of the Member States. Member States should be encouraged to protect the confidentiality of ADR procedures in any subsequent civil or commercial judicial proceedings or arbitration.

Justification

ADR should, as far as possible, try to raise the standard for good practice among industry, by publishing the “exemplary decisions” of particularly important disputes, which will facilitate exchange of information and best practices on consumer rights in specific fields.

Amendment 26
Proposal for a directive
Recital 16 b (new)

Text proposed by the Commission

Amendment

(16b) Member States should ensure that ADR entities resolve disputes in a manner that is fair, practical and proportionate to both the consumer and the trader, on the basis of an objective assessment of the circumstances in which the complaint is made and with due regard to the rights of the parties.

Justification

In order to be a credible and trusted by citizens and traders, ADR entities need to be seen to resolve disputes in a fair, objective way.

Amendment 27
Proposal for a directive
Recital 16 c (new)

Text proposed by the Commission

Amendment

(16c) The independence and integrity of ADR entities is crucial in order to gain Union citizens' trust that ADR mechanisms will offer them a fair and independent outcome. The person or collegial body in charge of the ADR should be independent of all those who might have an interest in the outcome and should have no conflict of interest which could impede him or it from reaching a decision in a fair, impartial and independent manner.

Justification

It is vital for consumers to trust that ADR entities are completely independent and not influenced by any of the parties to the dispute. Therefore, it is of the utmost importance that the principle of independence is included in this Directive.

Amendment 28

Proposal for a directive
Recital 17

Text proposed by the Commission

Amendment

(17) The natural persons in charge of alternative dispute resolution should only be considered impartial if they cannot be subject to pressure that potentially influences their attitude towards the dispute. There is a particular need to ensure the absence of such pressure where ADR entities are financed by one of the parties to the dispute or an organisation of which one of the parties is a member.

(17) The natural persons in charge of alternative dispute resolution should only be considered impartial if they cannot be subject to pressure that potentially influences their attitude towards the dispute. There is a particular need to ensure the absence of such pressure where ADR entities are financed by one of the parties to the dispute or an organisation of which one of the parties is a member. ***In order to ensure the absence of any conflict of interest, natural persons in charge of ADR should disclose any circumstances that might affect their independence or give rise to a conflict of interest.***

Amendment 29

Proposal for a directive Recital 17 a (new)

Text proposed by the Commission

Amendment

(17a) It is essential for the success of ADR, in particular in order to ensure the necessary trust in the ADR procedures, that the natural persons in charge of ADR possess the necessary expertise. Therefore, specific training schemes should be provided by way of cooperation between Member States and the Commission.

Amendment 30

Proposal for a directive Recital 18

Text proposed by the Commission

Amendment

(18) ***In*** order to ensure the transparency of ADR entities and of ADR procedures it is necessary that the parties receive ***all*** the information they need to take an informed decision before engaging in an ADR procedure.

(18) ***ADR entities should be accessible and transparent. Subject to any national rules making the participation of traders in an ADR procedure mandatory, in*** order to ensure the transparency of ADR entities and of ADR procedures it is necessary that the parties receive the ***clear and accessible*** information they need ***in order*** to take an informed decision before engaging in an ADR procedure.

Justification

Mandatory ADR schemes exist in some Member States which require, in certain circumstances, businesses to engage in ADR procedures.

Amendment 31

Proposal for a directive Recital 19

Text proposed by the Commission

(19) ADR *procedures* should *be effective*. *They should provide for a simple and fast procedure whose duration generally does not exceed 90 days*. The ADR entity should be able to extend *this time period when the complexity of the dispute in question so demands*.

Amendment

(19) A *well-functioning* ADR *entity* should *resolve online and offline dispute proceedings expeditiously, within a timeframe of 90 calendar days starting on the date of receipt by the ADR entity of the complete complaint file and ending on the date on which a decision is taken*. The ADR entity should *notify the complaint to the parties after receiving all the documents necessary for the carrying-out of the ADR procedure*. *In certain exceptional cases of a technical or highly complex nature, ADR entities should be able to extend the timeframe for the purpose of undertaking an objective examination of certain aspects of the case in question, in order to guarantee high-quality dispute resolution. The parties should be informed of any such extension, and of the expected approximate length of time that will be needed for the conclusion of the dispute.*

Amendment 32

Proposal for a directive Recital 20

Text proposed by the Commission

(20) ADR procedures should be free of charge *or of moderate costs for consumers so that it remains economically reasonable for consumers to use such* procedures.

Amendment

(20) 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. Member States should decide on an appropriate form of funding for ADR procedures on their territories, without restricting the funding of entities that are already*

operational.

Justification

Consumers will be deterred from using ADR if costs are associated with the procedure. Procedural rules on frivolous or vexatious claims will restrict claims to those that are necessary. In the current economic climate we must be clear that the taxpayer must not fund ADR procedures, this must be industry-led.

Amendment 33

Proposal for a directive

Recital 21

Text proposed by the Commission

(21) ADR procedures should be fair so that the parties to a dispute are fully informed about their rights and the consequences of the choices they make in the context of an ADR procedure.

Amendment

(21) ADR procedures should be fair so that the parties to a dispute are fully informed about their rights and the consequences of the choices they make in the context of an ADR procedure. ***The ADR entities should inform consumers of their rights under legal provisions before they agree to or reject the imposed or proposed solution. Both parties should also be able to submit their information and evidence without being physically present.***

Amendment 34

Proposal for a directive

Recital 21 a (new)

Text proposed by the Commission

Amendment

(21a) The right to an effective remedy and the right to a fair trial are fundamental rights guaranteed in Article 47 of the Charter of Fundamental Rights of the European Union. Therefore, ADR procedures should not be designed to replace court procedures and should not deprive consumers or traders of their rights to seek redress before the courts. Nothing in this Directive should prevent parties from exercising their right of

access to the judicial system.

Amendment 35
Proposal for a directive
Recital 21 b (new)

Text proposed by the Commission

Amendment

(21b) An agreement between a consumer and a trader to submit complaints to an ADR entity should not be binding on the consumer if it was concluded before the dispute arises and if it deprives the consumer of his right to bring an action before the courts for the resolution of the dispute. In the case of ADR entities which impose solutions, the solutions should only be binding on the parties if they were informed in advance of the binding nature of those solutions and if they specifically accepted this. Specific acceptance by the trader should not be required if national rules provide that solutions are to be binding on traders.

Justification

ADR procedures must not prevent citizens from accessing justice through exercising their right to go to court. The principle of liberty will ensure that ADR procedures do not impinge upon these rights.

Amendment 36
Proposal for a directive
Recital 21 c (new)

Text proposed by the Commission

Amendment

(21c) In the case of ADR procedures which impose binding solutions on consumers, consumers should be afforded at least the same level of protection as that laid down by the mandatory provisions applicable under the law of the Member State in the territory of which the ADR entity is established. Solutions imposed by ADR entities applying such ADR

procedures should therefore not result in the consumer being deprived of the protection afforded by such mandatory provisions. In the case of cross-border disputes, the solution imposed should not result in the consumer being deprived of the protection afforded by the mandatory provisions applicable under the law of the Member State in which he is habitually resident in instances where such protection is provided for by Article 6 of Regulation (EC) No 593/2008.

Justification

The legality principle has to be introduced for disputes imposing solution on the parties, to ensure that citizens should not be deprived of the protection of the mandatory provisions of the law.

Amendment 37

Proposal for a directive Recital 21 d (new)

Text proposed by the Commission

Amendment

(21d) In order to encourage the parties to use ADR, Member States should ensure that their rules on limitation and prescription do not prevent the parties from going to court if their attempt to find a solution through an ADR procedure fails. Member States should make sure that this result is achieved even though this Directive does not harmonise national rules on limitation and prescription. Provisions on limitation and prescription in international agreements as implemented in the Member States, for instance in the area of transport law, should not be affected by this Directive.

Amendment 38

Proposal for a directive Recital 21 e (new)

(21e) In order to function efficiently, ADR entities should have sufficient human, material and financial resources at their disposal. This Directive should be without prejudice to the question whether ADR entities are publicly or privately funded or funded through a combination of public and private funding. However, ADR entities should be encouraged to specifically consider private forms of funding and to utilise public funds only at Member States' discretion.

Amendment 39
Proposal for a directive
Recital 22

(22) When a dispute arises it is necessary that consumers are able to identify quickly which ADR entities are competent to deal with their complaint and to know whether or not the trader concerned will participate in proceedings submitted to an ADR entity. Traders should ***therefore provide such information on their main commercial documents and, where they have a website, on their websites. This obligation should be without prejudice to Articles 6(1)(t), 7(1) and 8 of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights. Article 6(1)(t) of Directive 2011/83/EU stipulates for consumer contracts concluded at a distance or off premises that the trader has to inform the consumer about the possibility of having recourse to an out-of-court complaint and redress mechanism to which the trader is subject, and the methods for having access to it, before the consumer is bound by the contract. Article 7(1) of Directive 2011/83/EU provides that, in the case of***

(22) When a dispute arises it is necessary that consumers are able to identify quickly which ADR entities are competent to deal with their complaint and to know whether or not the trader concerned will participate in proceedings submitted to an ADR entity. 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. The information should be provided in a clear, comprehensible and easily accessible way on the trader's website, where the trader has one, and in general terms and conditions applicable to contracts for the sale of goods or provision of services between the trader and a consumer and whenever the trader rejects a complaint submitted directly to it by a consumer. Where appropriate, that information should also be stated in other relevant documents, for instance pre-contractual***

off-premises contracts, this information must be provided on paper or, if the consumer agrees, on another durable medium.

Amendment 40
Proposal for a directive
Recital 22 a (new)

Text proposed by the Commission

documents, invoices and receipts.

Amendment

(22a) The information obligation referred to in the preceding recital should be without prejudice to point (t) of Article 6(1), Article 7(1) and Article 8 of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights¹.

¹ OJ L 304, 22.11.2011, p. 64.

Amendment 41

Proposal for a directive
Recital 23

Text proposed by the Commission

(23) This Directive does not prescribe that participation of traders in ADR procedures be mandatory or that the outcome of such procedures be binding on traders, when a consumer has lodged a complaint against them. However, this Directive is without prejudice to any national rules making the participation of traders in such procedures mandatory or their outcome binding on traders, provided that such legislation does not prevent the parties from exercising their right of access to the judicial system as guaranteed in Article 47 of the Charter of Fundamental Rights of the European Union.

Amendment

(23) This Directive does not prescribe that participation of traders in ADR procedures be mandatory or that the outcome of such procedures be binding on traders, when a consumer has lodged a complaint against them. However, ***in order to ensure that consumers have access to redress and that they are not forced to forego their claims, traders should be encouraged as far as possible to participate in ADR procedures. Therefore,*** this Directive is without prejudice to any national rules making the participation of traders in such procedures mandatory ***or subject to incentives or sanctions*** or their outcome binding on traders, provided that such legislation does not prevent the parties from exercising

their right of access to the judicial system as guaranteed in Article 47 of the Charter of Fundamental Rights of the European Union. ***If the outcome of an ADR procedure is binding on a trader under domestic law, a right to judicial review should be guaranteed.***

Amendment 42
Proposal for a directive
Recital 23 a (new)

Text proposed by the Commission

Amendment

(23a) Member States should be able, at their discretion, to allow ADR entities to introduce or maintain procedural rules which enable ADR entities to operate more effectively and efficiently, provided that the provisions of this Directive are complied with.

Amendment 43
Proposal for a directive
Recital 23 b (new)

Text proposed by the Commission

Amendment

(23b) Member States should be able to adopt or maintain in force national provisions which provide for higher quality standards than the harmonised minimum standards established by this Directive.

Amendment 44
Proposal for a directive
Recital 23 c (new)

Text proposed by the Commission

Amendment

(23c) In order to reduce unnecessary burdens on ADR entities, in the event of a

complaint arising from the sale of goods or provision of services, Member States should encourage customers, before referring complaints to an ADR entity or court, to contact the trader or service provider at the initial stage in an effort to solve the problem bilaterally. In many cases, that procedure could represent a swift way of resolving consumer disputes in advance.

Justification

This preliminary obligation is absolutely essential in order to reduce the workload of ADR entities.

Amendment 45
Proposal for a directive
Recital 23 d (new)

Text proposed by the Commission

Amendment

(23d) Member States should involve consumer and business organisations' representatives when establishing the ADR system and in the governance of the scheme, in particular in relation to the principles of impartiality and independence.

Justification

Involving consumer and business representatives in the establishment and governance of ADR will give the system more credibility for both consumers and traders, and support the fulfilment of the impartiality and independence criteria.

Amendment 46

Proposal for a directive
Recital 25

Text proposed by the Commission

Amendment

*(25) Networks of ADR entities **which facilitate the resolution of cross-border disputes**, such as FIN-NET in the area of*

(25) Networks of ADR entities, such as FIN-NET in the area of financial services, should be strengthened within the Union.

financial services, should be strengthened within the Union. Member States should encourage ADR entities to become part of such networks.

Member States should encourage ADR entities to become part of such networks.

Justification

FIN-NET is a network through which best practice and knowledge can be shared but it is not involved in resolving specific disputes.

Amendment 47
Proposal for a directive
Recital 26

Text proposed by the Commission

(26) Close cooperation between ADR entities and national authorities entrusted with the enforcement of Union legislation on consumer protection should strengthen the effective application of such Union legislation.

Amendment

(26) Close cooperation between ***the Commission***, ADR entities and national authorities entrusted with the enforcement of Union legislation on consumer protection should strengthen the effective application of such Union legislation. ***The Commission should facilitate administrative cooperation between the Member States and the ADR entities by holding regular meetings with the different stakeholders to exchange best practice and technical expertise between ADR entities and to discuss any problems arising from the operation of ADR schemes.***

Justification

It is important to ensure ADR entities are independent from regulators/enforcement otherwise this could deter traders from using ADR.

Amendment 48
Proposal for a directive
Recital 27

Text proposed by the Commission

(27) In order to ensure that ADR entities function properly and effectively, ***they*** should ***be*** closely ***monitored***. The

Amendment

(27) In order to ensure that ADR entities function properly and effectively, ***Member States*** should ***designate a competent***

Commission and competent authorities under this Directive should publish and update a list of ADR entities that comply with this Directive. Other bodies, such as ADR entities, consumer associations, business associations and the European Consumer Centre Network, should also publish this list. In addition, competent authorities should publish regular reports on the development and functioning of ADR entities. ADR entities should notify to competent authorities specific information on which those reports should be based. Member States should encourage ADR entities to provide such information using Commission Recommendation 2010/304/EU on the use of a harmonised methodology for classifying and reporting consumer complaints and enquiries.

authority or authorities which should closely monitor and supervise those entities. The Commission and competent authorities under this Directive should publish and update a list of ADR entities that comply with this Directive. Other bodies, such as ADR entities, consumer associations, business associations and the European Consumer Centre Network, should also publish this list. In addition, competent authorities should publish regular reports on the development and functioning of ADR entities ***in their Member States***. ADR entities should notify to competent authorities specific information on which those reports should be based. Member States should encourage ADR entities to provide such information using Commission Recommendation 2010/304/EU on the use of a harmonised methodology for classifying and reporting consumer complaints and enquiries.

Amendment 49

Proposal for a directive Recital 27 a (new)

Text proposed by the Commission

Amendment

(27a) Providing ADR entities with a European quality label should increase European citizens' trust and confidence in the quality of the ADR system, especially when buying across borders. An easily recognisable European quality label, regularly monitored and supervised by the Member States and the Commission, should serve as a guarantee to consumers that the relevant ADR entity complies with the quality criteria set out in this Directive.

Amendment 50
Proposal for a directive
Recital 27 b (new)

Text proposed by the Commission

Amendment

(27b) In order to ensure the effective co-ordinated implementation of this Directive, the Commission, after consulting the European Parliament, the Council and relevant stakeholders, should draw up guidelines on the quality criteria with the aim of improving the overall efficiency of ADR entities.

Amendment 51

Proposal for a directive
Recital 31

Text proposed by the Commission

Amendment

(31) Since the objective of this Directive, namely to contribute to the proper functioning of the internal market ***by ensuring a high level of consumer protection***, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(31) Since the objective of this Directive, namely to contribute, ***by achieving a high level of consumer protection***, to the proper functioning of the internal market, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

Amendment 52

Proposal for a directive
Article 1

Text proposed by the Commission

Amendment

This Directive is to contribute to the

This Directive is to contribute, ***by***

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.

achieving a high level of consumer protection, to the *proper* functioning of the internal market by ensuring, *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.

Amendment 53
Proposal for a directive
Article 2 – paragraph 1

Text proposed by the Commission

1. This Directive shall apply 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 through the intervention of a dispute resolution entity which proposes or imposes a solution or brings the parties together with the aim of facilitating an amicable solution, *hereinafter ‘ADR procedures’*.

Amendment

1. This Directive shall apply to procedures for the out-of-court resolution of *domestic and cross-border* 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 through the intervention of a dispute resolution entity which proposes or imposes a solution or brings the parties together with the aim of facilitating an amicable solution.

Justification

In order to achieve a high level of consumer protection it is important that the proposed Directive applies to cross-border and domestic disputes. If its scope were restricted to cross-border situations, the disparities in the Member States regarding the existence, quality and awareness of alternative dispute resolution procedures would continue to exist for all domestic disputes.

Amendment 54
Proposal for a directive
Article 2 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. 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.

Justification

Failing to clarify the scope of the Directive would inevitably lead to divergences in its transposition and implementation, and be counter-productive for all parties.

Amendment 55

Proposal for a directive

Article 2 – paragraph 2 – point a

Text proposed by the Commission

(a) procedures before dispute resolution entities where the natural persons in charge of dispute resolution are employed *exclusively* by the trader;

Amendment

(a) procedures before dispute resolution entities where the natural persons in charge of dispute resolution are employed by, *or receive any form of remuneration exclusively from*, the trader *or professional or business association of which the trader is a member unless Member States decide to allow such procedures, in which case, in addition to the requirements set out in Chapter II, the following specific additional requirements of independence and transparency must be met:*

(i) the natural persons in charge of dispute resolution must, whenever applicable, be appointed by a collegial body consisting of an equal number of representatives of consumers' and traders' interests. The appointment of the natural persons in charge of dispute resolution shall be the result of a transparent procedure;

(ii) the natural persons in charge of the dispute resolution must be appointed for a term of office of sufficient duration to ensure the independence of their action and may not be liable to be relieved from their duties without just cause;

(iii) the natural persons in charge of the dispute resolution may not be subject to

any instructions from the trader or the trader's representatives and may not have any link with the management or operational services of the trader or professional or business association of which the trader is a member;

(iv) the remuneration of the natural persons in charge of the dispute resolution may not be linked to the outcome of the procedures;

(v) their autonomy must be guaranteed through a dedicated budget separate from the trader's general budget, or, where appropriate, the general budget of the professional organisation or business association, providing the appropriate resources to ensure the effectiveness and transparency of ADR procedures;

(vi) Member States must ensure that, unless those natural persons comply with these specific additional requirements, they are part of a collegial body composed of an equal number of representatives of consumer organisations and of representatives of the trader or, where appropriate, of the professional organisation or business association of which the trader is a member;

Amendment 56

Proposal for a directive

Article 2 – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(ba) the sale of goods or provision of services which are provided as non-economic services of general interest, irrespective of the legal relationship between the trader and the consumer;

Amendment 57

Proposal for a directive
Article 2 – paragraph 2 – point b b (new)

Text proposed by the Commission

Amendment

(bb) disputes between traders;

Amendment 58
Proposal for a directive
Article 2 – paragraph 2 – point d a (new)

Text proposed by the Commission

Amendment

***(da) procedures initiated by a trader
against a consumer.***

Amendment 59
Proposal for a directive
Article 2 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

***2a. Where Member States decide to allow
procedures as referred to in point (a) of
paragraph 2, competent authorities shall
carry out the assessment referred to in
Article 17(1). In their assessment,
competent authorities shall also verify
compliance with the specific additional
requirements of independence and
transparency.***

Amendment 60
Proposal for a directive
Article 2 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

***2b. Where Member States decide to allow
procedures as referred to in point (a) of
paragraph 2, they shall ensure that ADR
entities applying such procedures notify to***

the competent authority, in addition to the information and statements referred to in Article 16(1), the information necessary to assess their compliance with the specific additional requirements set out in point (a) of paragraph 2.

Amendment 61
Proposal for a directive
Article 2 – paragraph 2 c (new)

Text proposed by the Commission

Amendment

2c. This Directive establishes a harmonised minimum standard for ADR entities in order to ensure that, after its implementation, consumers have access to high-quality, transparent, effective and fair redress mechanisms no matter where they reside in the Union. Member States may adopt or maintain rules that go beyond those laid down by this Directive, in order to ensure a higher level of consumer protection.

Justification

It should be noted, furthermore, that the proposed Directive is a framework directive that builds on existing ADR systems in the Member States. It intends to establish minimum quality standards for ADR entities and procedures and hence pursues a minimum harmonisation approach.

Amendment 62
Proposal for a directive
Article 2 – paragraph 2 d (new)

Text proposed by the Commission

Amendment

2d. This Directive acknowledges the Member States' competence to determine whether ADR entities established on their territories should be able to impose a solution.

Amendment 63

Proposal for a directive Article 3 – paragraph 2

Text proposed by the Commission

2. *Article 5(1)* of this Directive shall prevail *over the provisions referred* to in the *Annex*.

Amendment

2. *If any provision* of this Directive *conflicts with a provision of another Union act governing specific sectors, the provision of that other Union act* shall prevail *and shall apply to those specific sectors. However, if the provision of that other Union act is aimed at encouraging the setting-up of ADR entities in a specific sector, the relevant provisions of this Directive shall prevail and apply.*

Justification

It would be difficult to implement a requirement to compare the level of consumer protection ensured by different Union legislation. In addition, this Directive should prevail over specific provisions of other Union legislation, not that legislation in its entirety.

Amendment 64

Proposal for a directive Article 3 – paragraph 3

Text proposed by the Commission

3. *This Directive shall prevail over mandatory provisions contained in sector-specific Union legislation which relate to alternative dispute resolution only to the extent that such provisions do not ensure at least an equivalent degree of consumer protection.*

Amendment

deleted

Amendment 65

Proposal for a directive Article 4 – point a

Text proposed by the Commission

(a) "consumer" means any natural person who is acting for purposes which are outside his trade, business, craft or profession;

Amendment

(a) "consumer" means any natural person who is acting for purposes which are outside his trade, business, craft or profession ***or who concludes a contract for purposes that are partly inside and partly outside that person's trade (dual purpose agreements), where the trade purpose is so limited as not to be predominant in the overall context of the supply;***

Amendment 66

**Proposal for a directive
Article 4 – point c a (new)**

Text proposed by the Commission

Amendment

(ca) "contractual dispute" means a dispute arising from the sale of goods or provision of services pursuant to a contract between the consumer and the trader and/or service provider;

Amendment 67

**Proposal for a directive
Article 4 – point d a (new)**

Text proposed by the Commission

Amendment

(da) 'sale of goods' means a sale pursuant to any contract under which a trader transfers or undertakes to transfer the ownership of goods to a consumer and the consumer pays or undertakes to pay the price thereof, including any contract having as its object both goods and services;

Justification

In relation to Article 2.1, the Directive shall apply to disputes arising from the sale of goods or provision of services, therefore it is necessary to identify the contracts for the sale of goods

which will fall under the scope of the Directive.

Amendment 68

Proposal for a directive

Article 4 – point d b (new)

Text proposed by the Commission

Amendment

(db) 'provision of services' means a provision of services pursuant to any contract, other than a contract for the sale of goods, under which the trader supplies or undertakes to supply a service to the consumer and the consumer pays or undertakes to pay the price thereof;

Justification

In relation to Article 2.1, the Directive shall apply to disputes arising from the sale of goods or provision of services, therefore it is necessary to identify the contracts for the provision of services which will fall under the scope of the Directive.

Amendment 69

Proposal for a directive

Article 4 – point d a (new)

Text proposed by the Commission

Amendment

(da) "ADR procedure" means a procedure as referred to in Article 2 which complies with this Directive and is carried out by an ADR entity;

Justification

It is important to be clear that this Directive applies only to ADR procedures carried out by ADR providers that choose to become ADR entities under this Directive.

Amendment 70

Proposal for a directive

Article 4 – point e

Text proposed by the Commission

(e) ‘ADR entity’ means any entity, however named or referred to, ***which is established on a durable basis and offers*** the resolution of a dispute through an ADR procedure;

Amendment

(e) ‘ADR entity’ means any entity, however named or referred to, ***that seeks to achieve the out-of-court*** resolution of a dispute through an ADR procedure, ***which is established on a durable basis, has been notified to the Commission and the Member States, and is listed in accordance with Article 17(2);***

Amendment 71

Proposal for a directive

Article 4 – point f – indent 2

Text proposed by the Commission

– if the entity is operated by a legal person or association of natural or legal persons, at the place where that legal person or association of natural or legal persons carries out alternative dispute resolution activities or has its statutory seat;

Amendment

– if the entity is operated by a legal person or association of natural or legal persons, ***including in the form of a collegial body as referred to in Article 2(2)***, at the place where that legal person or association of natural or legal persons carries out alternative dispute resolution activities or has its statutory seat;

Amendment 72

Proposal for a directive

Article 4 – point f a (new)

Text proposed by the Commission

Amendment

(fa) "competent authority" means any public authority designated by a Member State established at national, regional or local level with specific responsibilities for enforcing the laws that protect consumer interests.

Justification

Clarification needed in accordance with changes made to Article 15.

Amendment 73

Proposal for a directive Article 5 – paragraph 1

Text proposed by the Commission

1. Member *States* shall ensure that disputes covered by this Directive can be submitted to an ADR entity which *complies* with *the requirements set out in* this Directive.

Amendment

1. *Each* Member *State* shall *facilitate access by consumers to ADR procedures and shall* ensure that disputes covered by this Directive *which involve a trader established on its territory* can be submitted to an ADR entity *or ADR entities* which *comply* with this Directive.

Amendment 74

Proposal for a directive Article 5 – paragraph 2 – introductory wording

Text proposed by the Commission

2. Member States shall ensure that ADR entities:

Amendment

2. Member States shall ensure that, *in relation to disputes covered by this Directive*, ADR entities:

Amendment 75

Proposal for a directive Article 5 – paragraph 2 – point a

Text proposed by the Commission

(a) *have a* website *enabling* the parties to submit a complaint online;

Amendment

(a) *maintain an up-to-date* website *which provides* the parties *with easy access to information concerning the ADR procedure in a clear and comprehensible manner, and which also enables consumers* to submit a complaint *and the requisite supporting documents* online *via e-mail or by other electronic means*;

Amendment 76

Proposal for a directive Article 5 – paragraph 2 – point a a (new)

Text proposed by the Commission

Amendment

(aa) provide the parties, at their request, with the information referred to in point (a) on a durable medium;

Justification

It is necessary that the information on the ADR procedure is available and easy accessible in appropriate formats.

Amendment 77

Proposal for a directive

Article 5 – paragraph 2 – point a b (new)

Text proposed by the Commission

Amendment

(ab) enable the consumer to submit a complaint through a written procedure, if necessary;

Amendment 78

Proposal for a directive

Article 5 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) ***enable*** the ***parties to*** exchange information ***with them*** via electronic means;

(b) ***assist*** the exchange ***of*** information ***between the parties*** via electronic means ***or by post***;

Amendment 79

Proposal for a directive

Article 5 – paragraph 2 – point d

Text proposed by the Commission

Amendment

(d) ***when dealing with disputes covered by this Directive*** take the necessary measures to ensure that the processing of personal data complies with the rules on the protection of personal data laid down in the national legislation implementing Directive

(d) take the necessary measures to ensure that the processing of personal data complies with the rules on the protection of personal data laid down in the national legislation implementing Directive 95/46/EC ***in the Member State in which***

Amendment 80

Proposal for a directive

Article 5 – paragraph 3

Text proposed by the Commission

3. Member States may fulfil their obligation under paragraph 1 by ensuring the existence of a residual ADR entity which is competent to deal with disputes as referred to in paragraph 1 for the resolution of which no existing ADR entity is competent.

Amendment

3. Member States may fulfil their obligation under paragraph 1 by ensuring the ***setting-up and*** existence of a residual ADR entity which is competent to deal with disputes as referred to in paragraph 1 for the resolution of which no existing ADR entity is competent. ***Member States may also fulfil this obligation by using sectoral ADR entities established in another Member State.***

Justification

For proper functioning of the alternative and online dispute resolution, it is necessary to ensure maximum coverage of the ADR entities throughout the sectors. However, this can be done on European level. There is no need for all Member States to establish sectoral ADR entities.

Amendment 81

Proposal for a directive

Article 5 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Member States may, at their discretion, permit ADR entities to introduce or retain procedural rules which enable ADR entities to operate more effectively and efficiently, provided that they comply with this Directive. Member States, when so required by their legal provisions, may allow ADR entities to refuse to deal with a given dispute on the grounds that, inter alia:

- (a) the dispute is frivolous or vexatious;*
- (b) the dispute has previously been considered by another ADR entity or any court;*
- (c) the time-limit within which the consumer can submit a complaint has expired. Such time-limits may not be shorter than the time-limit, where one exists, provided for in the legislation of the Member State allowing the parties to initiate legal proceedings;*
- (d) the consumer declares that he has not attempted to contact the trader concerned in order to discuss his complaint and seek, as a first step, to solve the problem bilaterally.*

In all cases of refusal on the grounds of procedural rules, ADR entities shall provide the parties with a statement of reasons for their decision within 14 calendar days of receiving the application for ADR. Such procedural rules must not appreciably impair consumers' access to ADR procedures.

Amendment 82

Proposal for a directive Article 5– paragraph 3 b (new)

Text proposed by the Commission

Amendment

3b. 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.

Justification

It may be useful for Member States to set minimum thresholds for the value of the claim in order to avoid unreasonable cases being brought to ADR.

Amendment 83

Proposal for a directive Article 5a (new)

Text proposed by the Commission

Amendment

Article 5a

Recourse to ADR procedures

1. 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. The court may also invite the parties to attend an information session on the use of ADR procedures if such sessions are held and easily available, and may provide the parties with information on the online dispute resolution platform established pursuant to Regulation (EU) No [Office of Publications insert reference number] of the European Parliament and of the Council of [Office of Publications insert date of adoption] on online dispute resolution for consumer disputes (Regulation on consumer ODR).

2. This Directive is without prejudice to Member States' legislation making the use of ADR compulsory or subject to incentives or applying sanctions where ADR is refused, whether before or after judicial proceedings have started, provided that such legislation does not prevent the parties from exercising their right of access to the judicial system.

Amendment 84

Proposal for a directive

Article 6 – title and paragraphs 1 to 1c (new)

Text proposed by the Commission

Expertise and impartiality

1. Member States shall ensure that the natural persons in charge of alternative dispute resolution possess the necessary expertise and are impartial. This shall be guaranteed by ensuring that they:

(a) possess the necessary knowledge, skills **and experience** in the field of alternative **dispute** resolution;

(b) are not liable to be relieved from their duties without just cause;

(c) have no conflict of interest with either party to the dispute.

Amendment

Expertise, **independence** and impartiality

1. Member States shall ensure that all natural persons in charge of alternative dispute resolution possess the necessary expertise and are **operationally independent and** impartial. This shall be guaranteed by ensuring that they:

(a) possess the necessary knowledge **and** skills in the field of alternative **or judicial** resolution **of consumer disputes, as well as an understanding of law**;

(b) **are appointed for a fixed term and** are not liable to be relieved from their duties without just cause;

(c) have no conflict of interest with either party to the dispute.

1a. For the purposes of point (a) of paragraph 1, Member States shall ensure that specific training schemes for natural persons in charge of alternative dispute resolution are available. The Commission shall assist Member States in developing such training schemes and quality-control mechanisms.

1b. For the purposes of point (c) of paragraph 1, Member States shall ensure that the natural persons in charge of alternative dispute resolution disclose any circumstances that may, or may be seen to, affect their independence or give rise to a conflict of interest.

Member States shall ensure that, in such circumstances, the person concerned only agrees to act or continue to act if the parties explicitly consent and he or she is certain of being able to carry out the ADR procedure in full independence in order to ensure complete impartiality.

Member States shall ensure that the disclosure obligation laid down by this paragraph is a continuing obligation throughout the ADR procedure.

1c. Where the natural persons in charge of alternative dispute resolution are independent third parties, the circumstances to be disclosed in accordance with paragraph 1b shall include:

(a) any personal or business relationship with one or more of the parties during the three years prior to the person concerned taking up the post;

(b) any financial or other interest, direct or indirect, in the outcome of the ADR procedure;

(c) the person concerned having acted, during the three years prior to his or her taking up the post, in any capacity other than for the purposes of ADR for one or more of the parties, for a professional organisation or a business association of which one of the parties is a member, or for any other member thereof.

Amendment 85
Proposal for a directive
Article 7 – paragraph 1 – introductory wording

Text proposed by the Commission

1. Member States shall ensure that ADR entities make publicly available on their websites *and in printed form at their premises* information on:

Amendment

1. Member States shall ensure that ADR entities make publicly available on their websites, *on a durable medium upon request and by any other means they consider appropriate, clear and easily understandable*, information on:

Justification

ADR entities are required to make specific information available, not only on their websites but also at their premises. In some cases, no publicly accessible premises exist. It should therefore be sufficient for the relevant information to be made available, upon request on a

durable medium.

Amendment 86

Proposal for a directive

Article 7 – paragraph 1 – point c

Text proposed by the Commission

(c) ***where appropriate***, their membership in networks of ADR entities facilitating cross-border dispute resolution;

Amendment

(c) their membership in networks of ADR entities facilitating cross-border dispute resolution, ***if applicable***;

Amendment 87

Proposal for a directive

Article 7 – paragraph 1 – point d

Text proposed by the Commission

(d) the types of disputes they are competent to deal with;

Amendment

(d) the types of disputes they are competent to deal with, ***including the minimum value of the claim, where applicable***;

Amendment 88

Proposal for a directive

Article 7 – paragraph 1 – point e

Text proposed by the Commission

(e) the rules of procedure governing the resolution of a dispute;

Amendment

(e) the rules of procedure governing the resolution of a dispute ***and the reasons for which an entity may refuse to deal with a dispute***;

Amendment 89

Proposal for a directive

Article 7 – paragraph 1 – point h

Text proposed by the Commission

(h) any preliminary requirements the parties may have to meet before an ADR

Amendment

(h) any preliminary requirements the parties may have to meet before an ADR

procedure can be instituted;

procedure can be instituted, *including the requirement that an attempt be made by the consumer to reach an amicable resolution of the matter directly with the trader*;

Justification

The trader should be contacted first and only if the attempt fails, the dispute should be brought before an ADR body. The aim of this provision is to increase the efficiency of ADR bodies by allowing them to focus on relevant cases only.

Amendment 90

Proposal for a directive

Article 7 – paragraph 1 – point i

Text proposed by the Commission

(i) the costs, if any, to be borne by the parties;

Amendment

(i) the costs, if any, to be borne by the parties, *including rules on awarding costs at the end of the procedure*;

Amendment 91

Proposal for a directive

Article 7 – paragraph 1 – point j

Text proposed by the Commission

(j) the *approximate* length of the ADR procedure;

Amendment

(j) the *average* length of the ADR procedure;

Amendment 92

Proposal for a directive

Article 7 – paragraph 1 – point k a (new)

Text proposed by the Commission

Amendment

(ka) the enforceability of the ADR decision, if relevant;

Amendment 93

Proposal for a directive

Article 7 – paragraph 1 – point k b (new)

Text proposed by the Commission

Amendment

(kb) the penalties for non-compliance in the case of a decision having binding effect on the parties.

Amendment 94

Proposal for a directive

Article 7 – paragraph 2 – introductory wording

Text proposed by the Commission

Amendment

2. Member States shall ensure that ADR entities make publicly available on their websites and ***in printed form at their premises*** annual activity reports. These reports shall include the following information relating to both domestic and cross-border disputes:

2. Member States shall ensure that ADR entities make publicly available on their websites, ***on a durable medium upon request and by any other means they consider appropriate***, annual activity reports. These reports shall include the following information relating to both domestic and cross-border disputes:

Justification

It is helpful to be clear that ADR entities only have to provide reports in relation to disputes covered by this Directive. In addition, it may not always be appropriate to have printed versions available and ADR entities may incur significant costs in doing so and in keeping them up-to-date.

Amendment 95

Proposal for a directive

Article 7 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) any ***recurrent*** problems ***leading*** to disputes between consumers and traders;

(b) any ***systematic*** problems ***that occur frequently and lead*** to disputes between consumers and traders. ***The information communicated in this regard may be accompanied by recommendations as to***

how such problems can be avoided or resolved in future;

Amendment 96

Proposal for a directive

Article 7 – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(ba) with due regard for data protection, "exemplary decisions" reflecting the outcomes of significant disputes, in order to raise traders' standards and to facilitate the exchange of information and best practices;

Justification

ADR must deliver a wider impact on the market than mere resolution of individual disputes. For this aim to be reached, ADR should try to raise the standard for good practice among industry, by publishing the “exemplary decisions” on specific disputes.

Amendment 97

Proposal for a directive

Article 7 – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) the **rate** of dispute resolution procedures which were discontinued **before an outcome was reached**;

(c) the **number** of dispute resolution procedures which were discontinued **and the reasons for their discontinuation**;

Justification

The rate of dispute resolution procedures which were discontinued before an outcome was reached is not sufficiently clear unless we have the information on the grounds for termination of the ADR procedure. Furthermore the discontinuation of an ADR procedure does not necessarily mean that no outcome was reached. This information is provided in an annual activity report and therefore it is more appropriate to refer to number than rate.

Amendment 98

Proposal for a directive

Article 7 – paragraph 2 – point e

Text proposed by the Commission

(e) the rate of compliance, ***if known***, with the outcomes of the ADR procedures;

Amendment

(e) the rate of compliance with the outcomes of the ADR procedures;

Amendment 99

Proposal for a directive

Article 7 – paragraph 2 – point f

Text proposed by the Commission

(f) ***where appropriate***, their cooperation within networks of ADR entities facilitating the resolution of cross-border disputes.

Amendment

(f) their cooperation within networks of ADR entities facilitating the resolution of cross-border disputes, ***if applicable***.

Amendment 100

Proposal for a directive

Article 8 – paragraph 1 – point a

Text proposed by the Commission

(a) the ADR procedure is ***easily*** accessible ***to*** both ***parties*** irrespective of where the ***party is*** situated;

Amendment

(a) the ADR procedure is ***available and*** accessible both ***online and offline*** irrespective of where the ***parties are*** situated;

Amendment 101

Proposal for a directive

Article 8 – paragraph 1 – point b

Text proposed by the Commission

(b) the parties have access to the procedure without being obliged to use a legal representative; ***nonetheless*** parties ***may*** be represented or assisted by a third party at any stage of the procedure;

Amendment

(b) the parties have access to the procedure without being obliged to use a legal representative. ***The procedure shall not deprive the parties of their right to receive independent advice or to*** be represented or assisted by a third party at any stage of the procedure;

Justification

The principle of representation should be maintained in the Directive by making a clear reference to the possibilities of the parties to seek independent advice or the possibility of representation by a third party.

Amendment 102

Proposal for a directive

Article 8 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) an ADR procedure can only be initiated by the consumer;

Justification

The purpose of ADR schemes is to ensure greater access to justice for weaker parties - often the consumer - by providing them with a means of initiating redress. Traders should not be able to use ADR schemes against consumers for debt collection.

Amendment 103

Proposal for a directive

Article 8 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) the ADR procedure is free of charge or at ***moderate costs*** for consumers;

(c) the ADR procedure is free of charge or ***available at a nominal fee*** for consumers.
Member States shall decide on an appropriate form of funding for ADR procedures on their territories;

Justification

Consumers will be deterred from using ADR if costs are associated with the procedure. Procedural rules on frivolous or vexatious claims will restrict claims to those that are necessary. In the current economic climate we must be clear that the taxpayer must not fund ADR procedures, this must be industry-led.

Amendment 104

Proposal for a directive

Article 8 – paragraph 1 – point c a (new)

Text proposed by the Commission

Amendment

(ca) the ADR entity which has received a complaint notifies the parties of the dispute as soon as it has received all the documents containing the relevant information relating to the complaint;

Amendment 105

Proposal for a directive

Article 8 – paragraph 1 – point d

Text proposed by the Commission

Amendment

(d) ***the dispute is*** resolved within 90 days from the date on which the ADR entity has received the complaint. ***In*** the case of complex ***disputes***, the ***ADR entity*** may extend ***this time period***.

(d) ***disputes are*** resolved within ***a timeframe of 90 calendar*** days from the date on which ADR entity has received the ***complete*** complaint ***file***. ***In*** the case of ***disputes of a highly complex or technical nature, the person or collegial body in charge*** may, ***at its own discretion***, extend the 90-day timeframe. ***Parties shall be informed of any extension of that period and of the expected approximate length of time that will be needed for the conclusion of the dispute;***

Amendment 106

Proposal for a directive

Article 9 – paragraph 1 – introductory wording

Text proposed by the Commission

Amendment

1. Member States shall ensure that ***in*** ADR ***procedures***:

1. Member States shall ensure that ADR ***entities***:

Amendment 107

Proposal for a directive

Article 9 – paragraph 1 – point -a (new)

Text proposed by the Commission

Amendment

(-a) allow the parties to withdraw from the procedure at any stage if they are dissatisfied with the performance or the operation of the procedure. They shall be informed of this right before the procedure commences. Where national rules provide for mandatory participation by the trader in ADR procedures, this provision shall apply only to the consumer;

Amendment 108

Proposal for a directive

Article 9 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) the parties *have the possibility* to express their point of view and *hear* the arguments and facts put forward by the other party *and* any *experts'* statements;

(a) *allow* the parties 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;*

Justification

The Directive should not preclude procedures that are conducted wholly in writing or electronically by imposing an obligation that the parties may 'hear' arguments. Moreover the parties shall be able to comment upon arguments and facts put forward by the other party, including any statements and opinions given by experts.

Amendment 109

Proposal for a directive

Article 9 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) the outcome of the ADR procedure *is*

(b) *notify* the *parties of the* outcome of the

made available to both parties in writing or on a durable medium, *stating* the grounds on which the outcome is based.

ADR procedure in writing or on a durable medium, *and are given a statement of the* the grounds on which the outcome is based.

Amendment 110

Proposal for a directive

Article 9 – paragraph 2 – introductory wording

Text proposed by the Commission

Amendment

2. *Member States shall ensure that in* ADR procedures which aim at resolving the dispute by *suggesting* a solution

2. *In* ADR procedures which aim at resolving the dispute by *proposing* a solution, *Member States shall ensure that:*

Amendment 111

Proposal for a directive

Article 9 – paragraph 2 – point a – introductory wording

Text proposed by the Commission

Amendment

(a) the *consumer*, before agreeing to a *suggested* solution, *is* informed that:

(a) *the parties*, before agreeing to a *proposed* solution, *are* informed *of their rights under existing legislation and* that:

Amendment 112

Proposal for a directive

Article 9 – paragraph 2 – point a – point i

Text proposed by the Commission

Amendment

(i) *he has* the choice as to whether or not to agree to *a suggested* solution;

(i) *they have* the choice as to whether or not to agree to *the proposed* solution;

Amendment 113

Proposal for a directive

Article 9 – paragraph 2 – point a – point i a (new)

Text proposed by the Commission

Amendment

(ia) participation in the procedure does

not preclude the possibility of seeking redress through normal court proceedings;

Amendment 114

Proposal for a directive

Article 9 – paragraph 2 – point a – point ii

Text proposed by the Commission

(ii) the *suggested* solution *may* be *less favourable than* an outcome determined by a court applying legal rules;

Amendment

(ii) the *proposed* solution *could* be *different from* an outcome determined by a court applying legal rules;

Amendment 115

Proposal for a directive

Article 9 – paragraph 2 – point a – point iii

Text proposed by the Commission

(iii) *before agreeing or rejecting the suggested solution he has* the right to seek independent advice;

Amendment

(iii) *they have* the right to seek independent advice;

Amendment 116

Proposal for a directive

Article 9 – paragraph 2 – point a – point iii a (new)

Text proposed by the Commission

Amendment

(iiia) a proposed solution will have a certain legal effect;

Amendment 117

Proposal for a directive

Article 9 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) the parties, before agreeing to a suggested solution, are informed of the legal effect of such agreement;

deleted

Amendment 118

Proposal for a directive

Article 9 – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) the parties, before ***expressing*** their consent to a ***suggested*** solution or amicable agreement, are allowed a reasonable period of time to reflect.

(c) the parties, before ***giving*** their consent to a ***proposed*** solution or amicable agreement, are allowed a reasonable period of time to reflect;

Amendment 119

Proposal for a directive

Article 9 – paragraph 2 – point c a (new)

Text proposed by the Commission

Amendment

(ca) if the parties decide to reject the proposed solution, the ADR entity may publish that solution.

Amendment 120

Proposal for a directive

Article 9 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Where ADR procedures are established which aim at resolving the dispute by proposing a solution, Member States may specify that such proposed solutions are, at the election of the consumer, to be binding on the trader.

In such cases Article 9(2) shall be read as applying only to the consumer.

Justification

Member States should be able to continue with and implement new ADR schemes so that where a consumer opts to accept the outcome of a procedure, the trader is bound by that decision.

Amendment 121

**Proposal for a directive
Article 9 a (new)**

Text proposed by the Commission

Amendment

Article 9a

Liberty

1. Member States shall ensure that an agreement between a consumer and a trader to submit complaints to an ADR entity is not binding on the consumer if it was concluded before the dispute materialised and if it has the effect of depriving the consumer of his right to bring an action before the courts for the determination of the dispute.

2. Member States shall ensure that, in ADR procedures which aim at resolving the dispute by imposing a solution, the solution imposed may be binding on the parties only if they were informed of its binding nature in advance and specifically accepted this. Specific acceptance by the trader shall not be required if national rules provide that solutions are to be binding on traders.

Justification

As a general rule where ADR procedures impose a binding solution on the parties, those parties should have given prior acceptance. The exception to this is where national rules provide that the solutions are binding on traders. These schemes operate very effectively for consumers and they should not be undermined.

Amendment 122
Proposal for a directive
Article 9 b (new)

Text proposed by the Commission

Amendment

Article 9b

Legality

Member States shall ensure that, in ADR procedures which aim at resolving the dispute by imposing a solution on the consumer, the solution imposed does not result in the consumer being deprived of the protection afforded by the mandatory provisions of the law of the Member State in the territory of which the ADR entity is established. In the case of cross-border disputes, the solution imposed by the ADR entity shall not result in the consumer being deprived of the protection afforded by the mandatory provisions applying under the law of the Member State in which he is habitually resident in instances where such protection is provided for by Article 6 of Regulation (EC) No 593/2008.

Justification

The proposed Directive does not include the important principle of legality which ensures that consumers are always protected by the mandatory legal provisions in their country of residence. Therefore the legality principle has to be introduced for disputes imposing solution on the parties, in order to guarantee that consumers are not deprived of the protection afforded by mandatory provisions of the law.

Amendment 123

Proposal for a directive
Article 9 c (new)

Text proposed by the Commission

Amendment

Article 9c

Effect of ADR procedures on limitation and prescription periods

1. Member States shall ensure that parties who have recourse to ADR in an attempt to settle a dispute are not subsequently prevented from initiating judicial proceedings in relation to that dispute as a result of the expiry of limitation or prescription periods during the ADR procedure.

2. Paragraph 1 shall be without prejudice to provisions on limitation or prescription contained in international agreements to which Member States are party.

Amendment 124
Proposal for a directive
Article 9 d (new)

Text proposed by the Commission

Amendment

Article 9d

Guidelines

1. The Commission, after consulting the European Parliament, the Council and relevant stakeholders, shall draw up guidelines for the implementation of this Directive. Those guidelines shall in particular focus on the quality criteria set out in Chapter II, cooperation between ADR entities in cross-border cases and between ADR entities and national authorities as provided for in Articles 13 and 14, and the relationship between this Directive and other Union legislation. To that end, the Commission shall draw up those guidelines on the basis of the established practice in Member States, voluntary codes of conduct, quality standards and any other relevant data.

2. The Commission shall transmit the guidelines to the Member States and make them publicly available.

Justification

Taking into account the minimum harmonisation approach of this Directive and the diversity

of the ADR procedures among the Member States, the European Commission shall adopt guidelines which will provide Member States with supplementary rules to facilitate and clarify the implementation of this Directive.

Amendment 125

Proposal for a directive Article 10 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that traders established on their territories inform consumers about the ADR entities by which they are covered and which are competent to deal with potential disputes between themselves and consumers. ***Such information shall include the addresses of the relevant ADR entities' websites and specify whether or not the trader commits to use these entities to resolve disputes with consumers.***

Amendment

1. Member States shall ensure that traders established on their territories inform consumers about the ***name, address and website address of the*** ADR entities by which they are covered and which are competent to deal with potential disputes between themselves and consumers. ***Traders shall also specify whether or not they commit or are obliged to use these entities to resolve disputes with consumers.***

Amendment 126

Proposal for a directive Article 10 – paragraph 2

Text proposed by the Commission

2. The information referred to in paragraph 1 shall be mentioned in ***an*** easily, ***directly, prominently*** and permanently accessible way on the trader's website, where one exists, in the general terms and conditions of contracts for the sale of goods or provision of services between the trader and a consumer and ***in invoices and receipts relating to such contracts***. It shall specify how further information on the ADR entity concerned and on the conditions for using it can be accessed.

Amendment

2. The information referred to in paragraph 1 shall be mentioned in ***a clear, comprehensible and*** easily and permanently accessible way on the trader's website, where one exists, in the general terms and conditions of contracts for the sale of goods or provision of services between the trader and a consumer and ***whenever the trader rejects a complaint submitted directly to it by a consumer***. It shall specify how further information on the ADR entity concerned and on the conditions for using it can be accessed.

Amendment 127

Proposal for a directive
Article 10 – paragraph 3

Text proposed by the Commission

3. The provisions in this Article shall be without prejudice to the provisions in Articles 6, 7 and 8 of Directive 2011/83/EU concerning consumer information for distance and off-premises contracts.

Amendment

3. The provisions in this Article shall be without prejudice to the provisions in Articles 6, 7 and 8 of Directive 2011/83/EU concerning consumer information for distance and off-premises contracts, ***in Article 3 of Directive 2002/65/EU of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services¹ and Article 185 of Directive 2009/138/EU of the European Parliament and of the Council of 25 November 2008 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)².***

¹ OJ L 271, 9.10.2002, p. 16.

² OJ L 335, 17.12.2008, p. 1.

Amendment 128
Proposal for a directive
Article 11 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure ***that consumers can obtain assistance*** with regard to ***their*** disputes arising from cross-border sales of goods or provision of services. ***Such*** assistance ***shall in particular aim at helping consumers*** to access the ADR entity operating in another Member State which is competent to deal with their cross-border dispute.

Amendment

1. Member States shall ensure, with regard to disputes arising from cross-border sales of goods or provision of services, ***that consumers can obtain*** assistance to access the ADR entity operating in another Member State which is competent to deal with their cross-border dispute.

Amendment 129
Proposal for a directive
Article 11 – paragraph 2

Text proposed by the Commission

2. Member States **may** confer responsibility for the task referred to in paragraph 1 on their centres of the European Consumer Centre Network, **on consumer associations or on any other body**.

Amendment

2. Member States **shall** confer responsibility for the task referred to in paragraph 1 on their centres of the European Consumer Centre Network.

Justification

Assistance for consumers pursuing cross-border disputes must be provided through a formalised structured network set up by the Commission, the European Consumer Centre Network.

Amendment 130

Proposal for a directive

Article 12 – paragraph 1

Text proposed by the Commission

Member States shall ensure that ADR entities, **consumer associations, business associations**, the centres of the European Consumer Centre Network **and, where appropriate, the bodies designated in accordance with Article 11(2)** make publicly available **at** their **premises** and on their **websites** the list of ADR entities referred to in Article 17(3).

Amendment

Member States shall ensure that ADR entities **and** the centres of the European Consumer Centre Network make publicly available **on** their **websites** and **whenever possible, on a durable medium at** their **premises**, the list of ADR entities referred to in Article 17(3).

Amendment 131

Proposal for a directive

Article 12 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Member States shall encourage consumer associations and traders to make publicly available on their websites, and by any other means they consider appropriate, the list of ADR entities referred to in Article 17(3).

Amendment 132

Proposal for a directive

Article 12 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. The Commission and the Member States shall ensure appropriate disclosure of information as to how consumers may access the ADR procedure in the event of contractual disputes as referred to in Article 2(1) in relation to a particular trader.

Amendment 133

Proposal for a directive

Article 13 – title

Text proposed by the Commission

Amendment

Cooperation between ADR entities ***on the resolution of cross-border disputes***

Cooperation ***and exchanges of experience*** between ADR entities

Amendment 134

Proposal for a directive

Article 13 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall ensure that ADR entities cooperate on the resolution of cross-border disputes.

1. Member States shall ensure that ADR entities cooperate on the resolution of cross-border disputes ***and that they conduct regular exchanges of good practice as regards the settlement of both cross-border and domestic disputes.***

Amendment 135

Proposal for a directive

Article 13 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The Commission shall support and facilitate exchanges of experience between ADR entities in order to encourage the use of best practices, in particular through the Consumer Programme.

Amendment 136

Proposal for a directive Article 13 – paragraph 3

Text proposed by the Commission

Amendment

3. The Commission shall publish a list containing the names and contact details of the networks referred to in paragraph 1. The Commission shall, ***if necessary***, update this list every two years.

3. The Commission shall publish a list containing the names and contact details of the networks referred to in paragraph 2. The Commission shall update this list every two years.

Amendment 137

Proposal for a directive Article 14 – paragraph 2

Text proposed by the Commission

Amendment

2. This cooperation shall include mutual exchange of information on ***business*** practices by traders about which consumers have lodged complaints. It shall also include the provision of technical assessment and information by such national authorities to ADR entities where such assessment or information is necessary for the handling of individual disputes.

2. This cooperation shall include mutual exchange of information on practices ***in specific business sectors*** by traders about which consumers have ***repeatedly*** lodged complaints. It shall also include the provision of technical assessment and information by such national authorities to ADR entities where such assessment or information is necessary for the handling of individual disputes ***and is already available***.

Justification

Undertakings' business practices should not be publicised en masse: this information also includes confidential data and business secrets which should not be passed on the public.

Moreover, an ADR entity cannot compel State agencies to provide assessments by means of European law. This particularly applies in relation to financing.

Amendment 138

Proposal for a directive

Article 14 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. This Article shall be without prejudice to provisions on professional and commercial secrecy which apply to the national authorities referred to in paragraph 1.

Amendment 139

Proposal for a directive

Article 15 – paragraph 1

Text proposed by the Commission

Amendment

1. Each Member State shall designate ***a*** competent authority in ***charge of monitoring the functioning and development of ADR entities established on its territory.*** Each Member State shall communicate the authority it has designated to the Commission.

1. Each Member State shall designate ***a*** competent authority ***to perform the functions referred to in Articles 16 and 17.*** ***Each Member State may designate more than one competent authority. If a Member State does so, it shall determine which of the competent authorities designated is to be the single point of contact for the Commission.*** Each Member State shall communicate the ***competent*** authority ***or, where appropriate, the competent authorities, including the single point of contact,*** it has designated to the Commission.

Justification

In order to reflect different sectoral or geographical approaches to ADR, it is necessary to allow Member States to designate more than one competent authority.

Amendment 140

Proposal for a directive
Article 15 – paragraph 2

Text proposed by the Commission

2. The Commission shall establish a list of the competent authorities communicated to it in accordance with paragraph 1 and publish that list in the *Official Journal of the European Union*.

Amendment

2. The Commission shall establish a list of the competent authorities ***including, where appropriate, those acting as a single point of contact***, communicated to it in accordance with paragraph 1 and publish that list in the *Official Journal of the European Union*.

Amendment 141

Proposal for a directive

Article 16 – paragraph 1 – subparagraph 1 – point f a (new)

Text proposed by the Commission

Amendment

(fa) a statement on the types of disputes covered by ADR procedures;

Amendment 142

Proposal for a directive

Article 16 – paragraph 1 – subparagraph 1 – point g

Text proposed by the Commission

Amendment

(g) a statement on the elements necessary to establish their competence;

deleted

Amendment 143

Proposal for a directive

Article 16 – paragraph 1 – subparagraph 1 – point h

Text proposed by the Commission

Amendment

(h) a reasoned statement, ***based on a self-assessment by the ADR entity, on whether it*** qualifies as an ADR entity falling within the scope of this Directive and complies with the ***requirements*** set out in *chapter II*.

(h) a reasoned statement on ***whether*** the entity qualifies as an ADR entity falling within the scope of this Directive and complies with the ***quality criteria*** set out in *Chapter II*.

Amendment 144

Proposal for a directive

Article 16 – paragraph 2 – introductory wording

Text proposed by the Commission

2. Member States shall ensure that ADR entities communicate to the competent authorities ***at least once a year the following*** information:

Amendment

2. Member States shall ensure that ADR entities communicate to the competent authorities ***every two years*** information ***on:***

Amendment 145

Proposal for a directive

Article 16 – paragraph 2 – point d

Text proposed by the Commission

(d) the rate of compliance, ***if known***, with the outcomes of the ADR procedures;

Amendment

(d) the rate of compliance with the outcomes of the ADR procedures ***where the decisions are binding and, if the relevant information is available, for non-binding decisions;***

Justification

ADR entities should have a duty to monitor compliance with the outcomes. This is an important indicator for the efficiency of ADR schemes and also helps consumers and businesses in deciding whether engaging in an ADR procedure is worthwhile.

Amendment 146

Proposal for a directive

Article 16 – paragraph 2 – point e

Text proposed by the Commission

(e) ***relevant statistics demonstrating the way in which traders use alternative dispute resolution for their disputes with consumers;***

Amendment

deleted

Justification

The information which ADR entities are required to provide to the competent authorities should be practicable, manageable and not associated with unnecessary administrative burden.

Amendment 147

Proposal for a directive

Article 16 – paragraph 2 – point f

Text proposed by the Commission

(f) any **recurrent** problems **leading** to disputes between consumers and traders;

Amendment

(f) any **systematic** problems **that occur frequently and lead** to disputes between consumers and traders. **The information communicated in this regard may be accompanied by recommendations as to how such problems can be avoided or resolved in future;**

Justification

To facilitate exchange of best practices, it may be useful that ADR entities provide guiding solutions to the cases they have solved, while preserving confidentiality.

Amendment 148

Proposal for a directive

Article 16 – paragraph 2 – point g

Text proposed by the Commission

(g) **where applicable, an assessment of the effectiveness of their cooperation within networks of ADR entities facilitating the resolution of cross-border disputes;**

Amendment

deleted

Justification

The information which ADR entities are required to provide to the competent authorities should be practicable, manageable and not associated with unnecessary administrative burden.

Amendment 149

Proposal for a directive

Article 16 – paragraph 2 – point h

Text proposed by the Commission

Amendment

(h) a self-assessment of the effectiveness of the ADR procedure offered by the entity and of possible ways of improving its performance.

deleted

Justification

The information which ADR entities are required to provide to the competent authorities should be practicable, manageable and not associated with unnecessary administrative burden.

Amendment 150

Proposal for a directive

Article 17 – paragraph 1

Text proposed by the Commission

Amendment

1. Each competent authority shall assess, on the basis of the information it has received in accordance with Article 16(1), whether the ADR entities notified to it qualify as ADR entities falling within the scope of this Directive and comply with the ***requirements*** set out in *chapter II*.

1. Each competent authority shall assess, on the basis of ***an objective independent evaluation and of*** the information it has received in accordance with Article 16(1), whether the ADR entities notified to it qualify as ADR entities falling within the scope of this Directive and comply with the ***quality criteria*** set out in *Chapter II*.

Amendment 151

Proposal for a directive

Article 17 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Amendment

2. Each competent authority shall, on the basis of the assessment referred to in paragraph 1, establish a list of the ADR entities that fulfil the conditions set out in paragraph 1.

2. Each competent authority shall, on the basis of the assessment referred to in paragraph 1, establish a list of all the ADR entities that ***have been notified to it and*** fulfil the conditions set out in paragraph 1. ***The competent authority shall not refuse to list an ADR entity if it complies with the requirements set out in this Directive.***

Justification

It should be clear that authorities have no discretionary power to refuse inclusion in the list as long as the assessment shows that the ADR scheme respects the provisions in Chapter II.

Amendment 152

Proposal for a directive

Article 17 – paragraph 2 – subparagraph 2 – point d

Text proposed by the Commission

Amendment

(d) the elements necessary to establish their competence;

deleted

Amendment 153

Proposal for a directive

Article 17 – paragraph 2 – subparagraph 2 – point d a (new)

Text proposed by the Commission

Amendment

(da) the sectors and categories of disputes covered by each ADR entity;

Amendment 154

Proposal for a directive

Article 17 – paragraph 2 – subparagraph 2 – point e

Text proposed by the Commission

Amendment

(e) the need for the physical presence of the parties or of their representatives, if applicable; and

(e) the need for the physical presence of the parties or of their representatives, if applicable, including a statement by the ADR entity on whether the ADR procedure is or can be conducted as an oral or a written procedure;

Amendment 155

Proposal for a directive

Article 17 – paragraph 2 – subparagraph 3

Text proposed by the Commission

Amendment

*Each competent authority shall notify the list to the Commission. In **the event that any changes are notified to the competent***

Each competent authority shall notify the list to the Commission. In accordance with the second subparagraph of Article 16(1),

authority in accordance with the second subparagraph of Article 16(1), the list shall be updated immediately and the relevant information notified to the Commission.

if any changes are notified to the competent authority, the list shall be updated immediately and the relevant information notified to the Commission. *If an ADR entity no longer complies with the requirements set out in this Directive, the competent authority shall remove it from the list.*

Justification

It is necessary to ensure that the Member States shall register and regularly update information on any changes with regards to the ADR entities.

Amendment 156

Proposal for a directive

Article 17 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. If a Member State has designated more than one competent authority, the list and its updates referred to in paragraph 2 shall be notified to the Commission by the single point of contact. The list and the updates shall relate to all ADR entities established in that Member State.

Justification

In order to avoid administrative burden and red tape, it is essential that in the situation when more than one competent authority is designated in a Member State, the single point of contact will provide the Commission with the list and its updates.

Amendment 157

Proposal for a directive

Article 17 – paragraph 3

Text proposed by the Commission

Amendment

3. The Commission shall establish a list of the ADR entities communicated to it in accordance with paragraph 2 and update this list whenever changes are notified to the Commission in accordance with the

3. The Commission shall establish a list of the **notified** ADR entities communicated to it in accordance with paragraph 2 and update this list whenever changes are notified to the Commission in accordance

second sentence of the third subparagraph of paragraph 2. The Commission shall publish this list and its updates and transmit it to the competent authorities and the Member States.

with the second sentence of the third subparagraph of paragraph 2. The Commission shall publish this list and its updates and transmit it to the competent authorities and the Member States, ***consumers and trade organisations and the European Consumer Centre Network.***

Amendment 158

Proposal for a directive

Article 17 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Notified ADR entities published on the Commission list shall be provided with an easily recognisable European quality label which serves as a guarantee to consumers that the relevant ADR entity complies with the quality criteria set out in this Directive. In the event that an ADR entity is removed from the Commission list, the European quality label shall no longer be applicable.

Justification

In order to remove any doubt and increase consumer trust in the system, an easily recognisable European quality label will be created which will guarantee that the ADR entities meet the quality standards required by this Directive. This quality label should be immediately removed in the event that the entity is no longer on the Commission list.

Amendment 159

Proposal for a directive

Article 17 – paragraph 4

Text proposed by the Commission

Amendment

4. Each competent authority shall publish the consolidated list of ADR entities referred to in paragraph 3 on its website and ***by any other means it considers*** appropriate.

4. Each competent authority shall publish the consolidated list of ADR entities referred to in paragraph 3 on its website and ***on a durable medium where*** appropriate.

Amendment 160

Proposal for a directive

Article 17 – paragraph 5 – introductory wording

Text proposed by the Commission

5. **Every two** years, each competent authority shall publish a report on the development and functioning of ADR entities. The report shall in particular:

Amendment

5. **By 31 December 2015 and every three** years **thereafter**, each competent authority shall publish **and send to the Commission** a report on the development and functioning of ADR entities. The report shall in particular:

Justification

As a matter of good cooperation between the Commission and national competent authorities, it is desirable that the latter send their reports to the Commission who would centralize the information, as this facilitates the Commission's information gathering.

Amendment 161

Proposal for a directive

Article 17 – paragraph 5 – point a

Text proposed by the Commission

(a) identify areas, if any, where ADR procedures do not yet deal with disputes covered by this Directive;

Amendment

(a) identify areas **and sectors**, if any, where ADR procedures do not yet deal with disputes covered by this Directive;

Amendment 162

Proposal for a directive

Article 17 – paragraph 5 – point d

Text proposed by the Commission

(d) make recommendations on how to improve the functioning of ADR entities, where appropriate.

Amendment

(d) make recommendations on how to improve the **effective and efficient** functioning of ADR entities, where appropriate.

Amendment 163

Proposal for a directive

Article 17 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. If a Member State has designated more than one competent authority, the report shall be published by the single point of contact. The report shall include all ADR entities established in that Member State.

Amendment 164

Proposal for a directive Article 18

Text proposed by the Commission

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to Article 10 and Article 16(1) and (2) of this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

Amendment

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to Article 10 and Article 16(1) and (2) of this Directive ***in the event that a mandatory initial warning has been issued but not heeded***, and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

Amendment 165

Proposal for a directive Article 22 – paragraph 1 – subparagraph 1

Text proposed by the Commission

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [Office of Publications insert date: 18 months after entry into force] at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this

Amendment

1. Member States shall bring into force the laws, regulations and administrative provisions, ***or self-regulation arrangements***, necessary to comply with this Directive by [Office of Publications insert date: 18 months after entry into force] at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this

Directive.

Directive.

Justification

In some Member States, e.g. in the Netherlands, ADR is well developed, while there is no legislation. In these Member States there is ample room for business to introduce ADR through self regulation. Many businesses see ADR as a good mechanism for providing consumers with an additional mechanism to solve disputes. This may happen on a basis where also the government takes its (financial) part in such cooperative mechanisms. It is considered appropriate to explicitly lay down in article 22 that the ADR directive can be implemented through self regulation.

Amendment 166

Proposal for a directive

Article 23

Text proposed by the Commission

No later than [Office of Publications insert date: **five** years after the entry into force], and every **three** years thereafter, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Directive. **The** report shall consider the development and the use of ADR entities and the impact of this Directive on consumers and traders. The report shall be accompanied, where appropriate, by proposals for amendment of this Directive.

Amendment

No later than [Office of Publications insert date: **four** years after the entry into force], and every **five** years thereafter, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Directive. **That** report shall consider the development and the use of ADR entities and the impact of this Directive on consumers and traders. The report shall be accompanied, where appropriate, by proposals for amendment of this Directive.

EXPLANATORY STATEMENT

Introduction

The Commission proposal for a Directive on consumer Alternative Dispute Resolution (ADR) aims to provide a simple, expedient and low-cost way of resolving disputes involving the sale of goods or provision of services across the European Union. Once implemented, this directive will allow any consumer resident in the EU to have access to a quality ADR entity if they have problems arising from the purchase of goods or services - whether domestic or cross-border - from a trader established in an EU Member State.

Context

Despite the improvements in consumer protection since the inception of the Single Market, "gaps" which make life difficult for citizens, and in particular consumers and SMEs, remain. As advocated in the Parliament resolution of 25 October 2011 on alternative dispute resolution in civil, commercial and family matters¹ and the Parliament Resolution of 20 May 2010 on Delivering a Single Market to Consumers and Citizens², and also in the Single Market Act, all European citizens should be able to move and exercise their rights, including being able to purchase goods or services from traders based in other Member States, across the whole of the Single Market.

The Treaty on the Functioning of the European Union and the Charter of Fundamental Rights of the European Union both commit the EU to provide a high level of consumer protection. The TFEU further states that the internal market is to comprise an area without internal frontiers in which the free movement of goods and services are ensured.

The Commission issued its first Recommendation on consumer ADR schemes 14 years ago. However, measures adopted at national level have proven wholly insufficient, as many citizens remain unable to access an effective ADR scheme in the necessary sector or region. Therefore action needs to be taken at the European level to provide a level of minimum harmonisation and to ensure that consumers across the Union benefit from the same high level of protection.

ADR and the Internal Market

At present, the lack of a simple, low-cost and expedient means of resolving disputes for many citizens constitutes a barrier within the Single Market. Consumers lose an estimated 0.4% of European GDP to such problems, but only 5% of consumers took their case to an ADR entity in 2010, and a mere 9% of businesses report ever having used ADR. Consumers will only shop across borders if they have confidence that they can obtain redress if they encounter problems with the goods or services they have purchased. Traders, particularly SMEs, are similarly deterred from conducting business across borders due to hesitance to deal with other Member States' legal systems. As such, it is of fundamental importance that the Directive

¹ Texts adopted, P7_TA(2011)0449.

² OJ C 161 E, 31.5.2011.

covers not only cross-border disputes, but also domestic ones.

Furthermore, online trade has become an important pillar of economic activity within the EU, but many consumers and traders are hesitant to shop and sell online because they fear they will not have access to redress in the event of a dispute. A well integrated alternative and online dispute resolution mechanism will provide citizens with the necessary confidence to reap the full benefits of e-commerce. The accompanying Online Dispute Resolution platform will serve as a tool which will offer consumers and traders a single point of entry for the out of court resolution of online disputes, based on the availability of quality ADR entities across the Union.

Moreover, the need for decisive legislative action in this area is all the more pressing because strengthening and empowering consumers is vital to revitalise the Single Market, and therefore to spur growth and job creation. As such, implementing ADR for consumers is also in line with the Europe 2020 strategy and will form part of a holistic approach to the relaunch of the Single Market.

Aims

In essence, the directive aims to address the three most significant and persistent barriers hindering consumers and traders from accessing a well-functioning Alternative Dispute Resolution entity. Firstly, ADR coverage continues to be patchy at both the sectoral and geographical level. Secondly, many consumers and traders are simply unaware or have insufficient information on the advantages of using Alternative Dispute Resolution mechanisms. Finally, even where ADR systems exist, they vary greatly in quality and often do not meet the quality principles laid down by the Commission's Recommendations.

The draft report

The Rapporteur welcomes the Commission's proposal as a strong initial framework for achieving full ADR coverage for citizens. However, your Rapporteur has made an effort to clarify a number of measures in the proposal, as outlined below, with the aim of achieving a balanced system which offers strong protection for the independence and quality of ADR entities, whilst also ensuring they operate in a practical, efficient and transparent way.

Scope

Articles 1 and 2 outline the scope and subject matter of the directive. Here, an effort has been made to ensure the aim of complete coverage for consumer disputes is achieved, while offering consumers a high-quality, transparent, effective and fair redress mechanism. Both existing and newly established dispute resolution mechanisms that comply with the minimum quality standards established by this directive will be called “ADR entities” and will subsequently be provided with a European quality label that will boost consumers’ confidence and trust. The possibility of traders submitting disputes against consumers has been excluded, as traders already have sufficient means to resolve these claims without being included in the scope of ADR.

Accessibility

Article 5 is chiefly concerned with how ADR entities are made accessible. ADR should be available to all consumers resident in the EU. The draft report therefore proposes that consumers should be able to access information and submit a dispute both offline and online. Furthermore, your rapporteur has added a clause that does not allow for a case to be refused on the grounds that it is frivolous, vexatious, or has been heard before another ADR entity, unless a reasonable justification is provided to all parties.

Independence

When it comes to ADR, credibility is of key importance. In addition to the requirement that the persons in charge of ADR are impartial, your Rapporteur also proposes to introduce the requirement that they must also be independent of all parties to the dispute, which will ensure that the outcomes are not biased and are fair to both parties. The draft also report proposes a new Article on independence which creates robust institutional safeguards to ensure that consumer and professional associations are equally involved in the governance of ADRs. In order to reinforce the independence of ADRs in which the person or persons in charge of the procedure are employed by a professional association, the draft report proposes that they must be nominated by a collegial body, must have a set period of office and will not be subject to any instructions from the trader or the trader's representatives.

Transparency

Article 7 establishes minimum requirements of transparency that ADR entities must meet. A high level of transparency will improve the credibility of ADR entities among consumers and businesses, but will also provide data that would help to continually improve the functioning of the entities. This should include publishing "exemplary decisions" which would facilitate the exchange of best practices and encourage traders to raise standards.

Effectiveness

In terms of orientation, ADRs should be simple, fast, affordable and not overly bureaucratic. In other words, they must have obvious advantages over conventional dispute resolution structures such as courts, or else consumers won't use them. As such, your rapporteur proposes that well functioning ADR entities should be expected to have normally resolved disputes within 90 days from the time they officially open proceedings. This timeframe can only be exceeded 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.

Liberty and Legality

It is critical that citizens' legal rights are protected, above all when ADR entities impose binding solutions. Member States should be able, at their discretion, to permit ADRs to issue decisions that are binding on one or all parties to the dispute. However, your rapporteur has proposed an additional Article in order 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. The additional Article would also reinforce

citizens' rights in ADR procedures which aim to resolve disputes by imposing decisions, by ensuring that the consumer may not be deprived of the protection of the mandatory provisions of the law of the Member State in which the ADR is established.

Information

The final significant shortcoming of the present dispute resolution landscape is that few citizens are aware of such procedures and the benefits they offer. Article 10 aims to remedy this by requiring traders to inform consumers of the ADR entities by which they are covered on their website, in the terms and conditions of contracts or other appropriate documents. In the view of your rapporteur, providing citizens with accurate and clear information on how they may access ADR is of the utmost importance to the success of this initiative. Therefore the draft report calls for traders to provide such information in a wide range of documentation, but without introducing requirements that would be excessively burdensome, especially for micro entities and SMEs.

Conclusion

The draft report takes a three-pronged approach. Firstly, the currently patchy coverage of ADR is remedied by providing a robust framework for the development of consumer ADR entities which will ensure full coverage. Secondly, the fact that many consumers and traders are presently unaware of ADR procedures is addressed by requiring traders to provide adequate information on ADR on their websites and in their documents. Finally, the harmonisation of quality criteria will mean that, wherever consumers buy from across the Union, they will have access to a high quality, impartial, independent, fair and transparent ADR procedure.

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS ON THE LEGAL BASIS

Mr Malcolm Harbour
Chair
Committee on the Internal Market and Consumer Protection
BRUSSELS

Subject: Opinion on the legal basis for 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) (COM(2011)0793 – C7 - 0454/2011 – 2011/0373(COD))

Dear Mr Chair,

By letter of 16 July 2012 you asked the Committee on Legal Affairs, pursuant to Rule 37 of the Rules of Procedure, to give its opinion on the appropriateness of adding Article 169 to Article 114 TFEU as the legal basis of the proposal for a directive of the European Parliament and of the Council on alternative dispute resolution.

The proposal for a directive on alternative dispute resolution for consumer disputes (COM(2011)0793) was presented by the Commission on the basis of Article 114 TFEU and was accordingly submitted to Parliament under the ordinary legislative procedure. The Committee on the Internal Market and Consumer Protection (IMCO) adopted its report on 10 July 2012. The Legal Affairs Committee, associated with IMCO under Rule 50, adopted its opinion on 19 June 2012.

Parliament's Legal Service has stated in a note dated 13 September 2012 that the appropriate legal basis for the proposed Directive as amended in IMCO is Article 114 TFEU alone.

Background

The main elements of the proposal are: Member States are required to ensure that ADR procedures exist for all – domestic and cross-border (Article 2) – disputes covered by the proposal (Article 5). Furthermore, the proposed Directive establishes general principles which all ADR entities are required to respect, including suitable qualifications, impartiality, transparency, effectiveness, and fairness (Articles 6 to 9). Compliance with these principles will be monitored by national authorities (Articles 15 to 17). Finally, traders are required to provide consumers with relevant and complete information about the relevant ADR entities available (Article 10).

2. The report adopted in IMCO

The report adopted in IMCO exhibits a number of differences compared with the Commission

proposal. The main new features are as follows:

- The subject-matter is reformulated: instead of "contribute to the functioning of the internal market and to the achievement of a high level of consumer protection", the relevant text now reads "contribute, by achieving a high level of consumer protection, to the proper functioning of the internal market" (AM 52). A parallel amendment has been adopted to the recital on subsidiarity (AM 51).
- The scope as regards ADR entities employed or remunerated by the trader is redefined: whereas the COM proposal excludes these from the scope, the IMCO text leaves it to the Member States to include them, provided that a number of safeguards on independence and transparency are met (AM 55).
- Disputes between traders and procedures initiated by a trader against a consumer are excluded from the scope (AMs 57, 58).
- It is specified that the Directive establishes a minimum harmonisation standard (AM 61).
- A number of provisions further specifying access to ADR are inserted, for instance options for Member States to allow ADR entities to refuse to deal with a dispute in certain cases and if required by national legislation (AM 81), or an option for Member States to introduce minimum thresholds (AM 82).
- The text contains a provision on encouraging recourse to ADR procedures (AM 83).
- The principle of impartiality already contained in the COM proposal is further defined as including independence, whilst a number of criteria in order to ensure the absence of conflicts of interest are introduced (AM 84).
- A number of modifications are made to the provisions on transparency (Article 7, AMs 85-99), effectiveness (Article 8, AMs 100-105) and fairness (Article 9, AMs 106-120).
- Provisions on liberty (AM 121), legality (AM 122) and the effect of ADR procedures on limitation and prescription periods (AM 123) are added.

3. The legal bases in question

a. Legal basis of the proposal

The proposal is based on Article 114 TFEU, which reads as follows:

"Article 114

1. Save where otherwise provided in the Treaties, the following provisions shall apply for the achievement of the objectives set out in Article 26. The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.

2. [...]

3. The Commission, in its proposals envisaged in paragraph 1 concerning health, safety, environmental protection and consumer protection, will take as a base a high level of protection, taking account in particular of any new development based on scientific facts. Within their respective powers, the European Parliament and the Council will also seek to achieve this objective."

Article 26 TFEU that is referred to in Article 114 TFEU reads:

- "1. The Union shall adopt measures with the aim of establishing or ensuring the functioning of the internal market, in accordance with the relevant provisions of the Treaties.
2. The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties."

b. Proposed change in the legal basis

IMCO has requested the opinion of the Legal Affairs Committee on the appropriateness of adding Article 169 TFEU to Article 114 TFEU, given that an amendment (AM 1) adding Article 169 TFEU to the legal basis was adopted in IMCO. IMCO further refers to another amendment (AM 2) which adds to the text proposed by the Commission in the first recital "Article 169(1) and Article 169(2)(a) TFEU provide that the Union is to contribute to the attainment of a high level of consumer protection through the measures adopted pursuant to Article 114 thereof" the expression "inter alia", so that the last half sentence now reads "inter alia through the measures adopted pursuant to Article 114 thereof".

Article 169 TFEU reads as follows:

- "1. In order to promote the interests of consumers and to ensure a high level of consumer protection, the Union shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organise themselves in order to safeguard their interests.
2. The Union shall contribute to the attainment of the objectives referred to in paragraph 1 through:
 - a) measures adopted pursuant to Article 114 in the context of the completion of the internal market;
 - b) measures which support, supplement and monitor the policy pursued by the Member States.
3. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, shall adopt the measures referred to in paragraph 2(b).
4. Measures adopted pursuant to paragraph 3 shall not prevent any Member State from maintaining or introducing more stringent protective measures. Such measures must be compatible with other Treaties. The Commission shall be notified of them."

III. Analysis

Certain principles emerge from the case law of the Court as regards the choice of legal basis. First, in view of the consequences of the legal basis in terms of substantive competence and procedure, the choice of the correct legal basis is of constitutional importance¹. Secondly, under Article 13(2) TEU, each institution is to act within the limits of the powers conferred upon it by the Treaty². Thirdly, according to the case-law of the Court of Justice, "the choice of legal basis for a Community measure must rest on objective factors amenable to judicial review, including in particular the aim and the content of the measure"³. Finally, as regards multiple legal bases, if examination of a EU measure reveals that it pursues a twofold purpose or that it has a twofold component and if one of those is identifiable as the main or predominant purpose or component, whereas the other is merely incidental, the act must be based on a single legal basis, namely that required by the main or predominant purpose or component⁴. On the other hand, where a measure has several contemporaneous objectives or components which are indissolubly linked with each other without one being secondary and indirect in respect of the others, the measure must be based on the various relevant Treaty provisions⁵.

1. Article 114 TFEU

Article 114 TFEU provides the legal basis for approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and the functioning of the internal market. In the judgment by which the Court of Justice annulled the tobacco advertising directive⁶, it held that the then Article 100a EC (now Article 114 TFEU) does not "vest in the Community legislature a general power to regulate the internal market"⁷. It further held that "a measure adopted on the basis of Article 100a of the Treaty must genuinely have as its object the improvement of the conditions for the establishment and the functioning of the internal market"⁸.

The Commission presents the proposed ADR Directive clearly as an internal market initiative: it had undertaken to propose measures on ADR as a "Europe 2020 flagship initiative"⁹ in the

¹ Opinion 2/00 *Carthagna Protocol* [2001] E.C.R. I-9713, para. 5; Case C-370/07 *Commission v Council* [2009] E.C.R. I-8917, paras 46-49; Opinion 1/08, *General Agreement on Trade in Services* [2009] ECR I-11129, para. 110.

² Case C-403/05 *Parliament v Commission* [2007] E.C.R. I-9045, para. 49, and the case-law cited therein.

³ See most recently Case C-411/06 *Commission v Parliament and Council* [2009] E.C.R. I-7585.

⁴ Case C-42/97 *Parliament v Council* [1999] E.C.R. I-868, paras 39-40; Case-C 36/98 *Spain v Council* [2001] E.C.R. I-779, para. 59; Case C-211/01 *Commission v Council* [2003] E.C.R. I-8913, para. 39.

⁵ Case C-165/87 *Commission v Council* [1988] E.C.R. 5545, para. 11; Case C-178/03 *Commission v. European Parliament and Council* [2006] E.C.R. I-107, paras 43-56.

⁶ Case C-376/98 *Germany v European Parliament and Council* [2000] E.C.R. I-8419.

⁷ Case C-376/98 *Germany v European Parliament and Council* [2000] E.C.R. I-8419, para. 83.

⁸ Case C-376/98 *Germany v European Parliament and Council* [2000] E.C.R. I-8419, para. 84.

⁹ COM(2011)0793, Explanatory memorandum, p. 3.

context of the "Digital agenda for Europe"¹ and the "Single Market Act"². Recitals 1 and 2 in the preamble to the proposed Directive take up the objective of improving the functioning of the internal market. In particular recital 2 explains that "in order for consumers to have confidence in and benefit from the internal market it is necessary that they have access to simple and low-cost ways of resolving disputes which arise from the sale of goods or the provision of services". Recital 6 develops this idea further by stating that "the development within the European Union of well-functioning alternative dispute resolution is necessary to strengthen consumers' confidence in the internal market including in the area of e-commerce." Article 1 repeats, in defining the subject matter of the proposed Directive, that it "is to contribute to the functioning of the internal market".

As to how this objective is to be achieved, the Commission explains that it has identified the following problems: gaps in ADR coverage; lack of consumer and business awareness; variable quality of ADR³. The proposed measure aims at resolving these issues by ensuring that consumers can refer all their domestic and cross-border disputes to ADR schemes, that they receive information on the competent ADR scheme and that ADR entities comply with general quality principles.

It has been argued that Article 114 TFEU does not cover the measures proposed relating to domestic disputes. This argument was raised, for instance, in the reasoned opinion of the German Bundestag⁴. The Dutch Senate, in its reasoned opinion, raises a subsidiarity concern on the grounds that "this goes beyond what is necessary"⁵. The Commission, in its impact assessment, argues that problems identified in the cross-border context are unlikely to be addressed unless they are also tackled at national level⁶ and quantifies savings that can be made also in a domestic context⁷. It further explains that the existing gaps as regards ADR cannot be covered without addressing the (domestic) coverage problems within the Member States⁸. It underlines that "without a well-functioning system of domestic ADR on which cross-border ADR can be based and anchored, the development of an efficient and effective

¹ Communication from the Commission of 28.6.2010 "A digital agenda for Europe" (COM(2010)0245), p. 13

² Communication from the Commission of 13.4.2011 "Single Market Act – Twelve levers to boost growth and strengthen confidence 'Working together to create new growth' " (COM(2011)0206), p. 9

³ Cf. Communication from the Commission of 29.11.2011 "Alternative dispute resolution for consumer disputes in the Single Market", COM(2011)0791, p. 6.

⁴ Reasoned opinion of the Bundesrat of the Federal Republic of Germany of 24.1.2012, PE480.713v01-00.

⁵ Reasoned opinion by the Senate of the Kingdom of the Netherlands of 24.1.2012, PE480.810v01-00.

⁶ Commission Staff Working Paper of 29 November 2011 "Impact assessment accompanying the document "Proposal for a Directive of the European Parliament and of the Council on Alternative Dispute Resolution for consumer disputes (Directive on consumer ADR)" and "Proposal for a Regulation of the European Parliament and of the Council on Online Dispute Resolution for consumer disputes (Regulation on consumer ODR) (SEC(2011)1408), p. 21.

⁷ SEC(2011)1408, p.22.

⁸ SEC(2011)1408, p. 24.

ADR for cross-border disputes will not be achieved"¹.

Indeed, it is plausible that a system which ensures overall coverage of ADR and the compliance with quality criteria cannot be developed for cross-border disputes alone, in particular if it is to be built – as is proposed – on existing ADR in the Member States. The proposed measures – including domestic and cross-border disputes – can therefore be based on Article 114 TFEU.

2. Article 169 TFEU

The question is, now, whether there is room for the addition of Article 169 TFEU to the legal basis. Article 169 TFEU relates to consumer protection. The proposed directive states repeatedly that it aims at ensuring consumer protection. For instance, recital 1 quotes the objectives of Article 169(1) and (2)(a) TFEU (they "contribute to the attainment of a high level of consumer protection"). Recital 31 on the principle of subsidiarity defines as the objective of the directive "to contribute to the proper functioning of the internal market by ensuring a high level of consumer protection". Article 1, in defining the subject-matter, states that the directive contributes "to the achievement of a high level of consumer protection". The question is, however, whether this means that Article 169 TFEU needs to be included in the legal basis.

Article 169(1) TFEU lays down the general principle and objective for the Union to "contribute to protecting the health, safety and economic interests of consumers". Article 169(2) TFEU specifies the means employed to this end: these are harmonising measures adopted pursuant to Article 114 TFEU (Article 169(2)(a) TFEU) and measures supporting, supplementing and monitoring the policy pursued by the Member States, which the European Parliament and the Council are to adopt under the ordinary legislative procedures (Article 169(2)(b) and (3) TFEU).

Thus, Article 169(1) TFEU defines the relevant objective and does not provide for the adoption of measures. Those are addressed in Article 169(2) TFEU. Article 169(2)(a) TFEU however does not confer any powers of its own, but refers to Article 114 which empowers the Parliament and the Council to adopt measures in accordance with the ordinary legislative procedure. It is therefore Article 114, and not Article 169(2)(a) TFEU, which qualifies as a potential legal basis for internal market measures in order to promote the interests of consumers. This is confirmed by Article 114(3) TFEU, which contains a commitment for the Commission, in case it proposes measures concerning, inter alia, consumer protection, to take as its base "a high level of protection, taking account of any new development based on scientific facts".

As regards Article 169(2)(b) TFEU in connection with Article 169(3) TFEU, these provisions provide for measures by the EU in the field of consumer protection taken to "support, supplement and monitor the policy pursued by the Member States". The proposal, however, sets out to establish EU-wide coverage for consumer ADR, with specific quality criteria and complementary monitoring. This cannot be seen as merely supporting the Member States' consumer policy.

¹ SEC (2011)1408, pp. 30, 31.

In the final analysis, it is considered that it is unnecessary for Article 169 TFEU to be included in a citation as forming part of the legal basis. Since that article is not a legal basis it is sufficient for a reference to be made to Article 169 in the first recital in the preamble as Amendment 2 adopted by IMCO proposes: "Article 169(1) and Article 169(2)(a) TFEU provide that the Union is to contribute to the attainment of a high level of consumer protection inter alia through the measures adopted pursuant to Article 114 thereof".

3. Other legal basis?

It remains to be assessed whether the additions adopted in IMCO affect the appropriateness of Article 114 as the legal basis.

Firstly, the IMCO report adds some quality criteria, based on ADR principles such as liberty and legality. These complete the quality criteria proposed by the Commission. The measures remain aimed at enhancing the functioning of the internal market while improving consumer protection.

Secondly, the IMCO report contains provisions which further strengthen ADR, for instance by encouraging recourse to ADR (AM 83) or by providing for ADR to affect limitation and prescription (AM 123). These provisions correspond to parallel rules in Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters¹. Directive 2008/52/EC is based on Articles 61(c) and Article 67(5) EC, i.e. the former legal bases for judicial cooperation in civil matters. The legal basis in this respect following the Lisbon Treaty, Article 81(2)(g) TFEU, now explicitly mentions ADR².

In order for Article 81(2)(g) TFEU to be relevant, the proposed directive would have to be aimed at developing "judicial cooperation in civil matters having cross-border implications"(Article 81(1) TFEU). First of all, it has to be noted that, owing to the reference to "cross-border implications", Article 81(2)(g) TFEU would be unsuited as a legal basis for measures including cross-border and domestic disputes. Secondly, it does not seem possible to combine Article 114 TFEU and Article 81(2) TFEU (which is part of Chapter V of the TFEU on the area of freedom, security and justice) owing to the position of the United Kingdom and Ireland in respect of this Chapter following Protocol No 21 to the TEU and TFEU as well as the position of Denmark following Protocol No 22 to the TEU and TFEU.

¹ OJ L 136, 24.5.2008, p. 3; see Article 5 thereof on "Recourse to mediation" and Article 8 on "Effect of mediation on limitation and prescription periods".

² Article 81 TFEU reads as follows:

"(1) The Union shall develop judicial cooperation in civil matters having cross-border implications, based on the principle of mutual recognition of judgments and of decisions in extrajudicial cases. Such cooperation may include the adoption of measures for the approximation of the laws and regulations of the Member States.

(2) For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures, particularly when necessary for the proper functioning of the internal market, aimed at ensuring: [...]

(g) the development of alternative methods of dispute settlement;"

Finally (and most importantly), an additional objective of judicial cooperation which would require a dual legal basis if it were of equivalent importance to the combined internal market/consumer protection objective cannot be detected. On the contrary, the new elements are proposed in order to complement the measures put forward to the Commission and to pursue the same objective, i.e. enhancing the functioning of the internal market while improving consumer protection.

Legal Affairs Committee recommendation

The Legal Affairs Committee considered the above question at its meeting of 17 September 2012. At this meeting, it accordingly decided, by unanimity¹, to recommend that the appropriate legal basis for 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 should be Article 114 TFEU.

Yours sincerely,

Klaus-Heiner Lehne

¹ The following were present for the final vote: Raffaele Baldassarre (Vice-Chair), Edit Bauer (pursuant to Rule 187(2)), Luigi Berlinguer, Sebastian Valentin Bodu (Vice-Chair), Piotr Borys, Françoise Castex (Vice-Chair), Christian Engström, Marielle Gallo, Eva Lichtenberger (rapporteur), Antonio Masip Hidalgo, Bernhard Rapkay, Evelyn Regner (Vice-Chair), Dagmar Roth-Behrendt, Rebecca Taylor, Alexandra Thein, Axel Voss, Rainer Wieland, Cecilia Wikström, Tadeusz Zwiefka, Charalampos Angourakis (pursuant to Rule 187(2)).

21.6.2012

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS

for the Committee on the Internal Market and Consumer Protection

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)
(COM(2011)0793 – C7-0454/2011 – 2011/0373(COD))

Rapporteur (*): Cristian Silviu Buşoi

(*) Associated committee — Rule 50 of the Rules of Procedure

SHORT JUSTIFICATION

The interest of ADR lies in the basic problem of access to justice faced by European citizens, in particular consumers, owing to lengthy and costly judicial proceedings.

The European Parliament had recently expressed its opinion on the issue in its resolution of 25 October 2011 on alternative dispute resolution in civil, commercial and family matters (2011/2117 (INI))¹, considering that legislative measures adopted at EU level will facilitate the implementation of ADR and encourage natural and legal persons to use it, and calling on the Commission to submit a legislative proposal on the use of alternative dispute resolution for consumer matters in the EU.

The aim of the Directive the Commission has now proposed is to eliminate gaps in ADR coverage and to ensure that quality out-of-court dispute resolution exists to deal with any contractual dispute between a consumer and a business. The proposed Directive takes up general principles which all ADR entities will need to respect, including suitable qualifications, impartiality, transparency, effectiveness and fairness. It is proposed that ensuring respect of these principles be monitored by national authorities. Furthermore, traders will be required, under the proposal, to provide consumers with relevant and complete information about the relevant ADR entities available.

¹P7_TA(2011)0449.

Your rapporteur for opinion welcomes the Commission proposal in the context of efforts to improve the functioning of the internal market and to enhance redress for consumers. However, he sees some areas in which the Commission proposal can be improved for which he has proposed solutions in the draft opinion. They are as follows:

The question whether ADR should be made mandatory for businesses in particular by making their participation in the ADR scheme obligatory or by making the outcome of the ADR scheme binding for them is a difficult one. On the one hand, it is argued that mandatory systems increase consumer confidence as consumers can safely rely on them if something goes wrong. On the other hand, making ADR mandatory raises serious issues connected with the fundamental rights of the parties of access to justice and the right to an effective remedy (Article 47 of the Charter of Fundamental Rights) and is contrary to the voluntary and flexible nature of ADR which defines it and also is the source of its particular usefulness. Your rapporteur for opinion therefore follows the path shown by the Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters¹, viz.: ADR is not made mandatory, but Member States are required to create incentives or impose sanctions while courts should provide concrete information in order to encourage its use. As regards any binding effect of ADR outcome, it is proposed to inform the parties and require their consent to it.

- The Directive should not apply to complaints filed by traders against consumers as ADR is designed as a consumer redress instrument intended to eliminate the imbalance existing between traders and consumers and opening an easy way to consumers for seeking redress. This obviously does not apply to complaints by traders in the same way.

- In order to put in place safeguards for avoiding irrelevant cases being submitted to ADR entities, there should be a requirement that an amicable solution must be found before a dispute is submitted to the ADR entity. Member States should also be able to set minimum thresholds for the value of the claim in order to avoid dealing with cases where the claim is disproportionately lower than the actual cost of the ADR procedure.

- In general, the principles for ADR procedures have to be spelt out in a more comprehensive and complete way, drawing on Directive 2008/52/EC, the European Code of Conduct for Mediators and the Commission's recommendations of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes² and of 4 April 2001 on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes³. It is therefore proposed to include in the Directive concrete provisions in particular as regards the principles of independence, legality and confidentiality.

- Training of natural persons involved in ADR procedures is paramount, also in order to ensure trust in ADR procedures and their outcome, and should be jointly assured by the Commission and the Member States.

- ADR procedures should not hinder the parties in accessing normal judicial procedures via the application of limitation and prescription periods. Therefore the Directive should, in parallel with the corresponding provision in Directive 2008/52/EC (Article 8) provide for ADR in general having a suspensive effect on limitation and prescription periods.

¹ OJ L 136, 24.5.2008, p. 3.

² OJ L 115, 17.4.1998, p. 31.

³ OJ L 109, 19.4.2001, p. 56.

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive

Recital 3

Text proposed by the Commission

(3) Alternative dispute resolution offers a simple, fast and low-cost out-of-court solution to disputes between consumers and traders. However, alternative dispute resolution is not yet sufficiently developed across the European Union. In order for consumers to fully exploit its potential, it is necessary that alternative dispute resolution is available for all types of consumer disputes, quality levels of ADR procedures are even and consumers and traders are aware of such procedures. It is also necessary that ADR entities handle cross-border disputes effectively.

Amendment

(3) Alternative dispute resolution offers a simple, fast and low-cost out-of-court solution to disputes between consumers and traders. However, alternative dispute resolution is not yet sufficiently developed across the European Union. ***Moreover, ADR procedures are currently not available in all Member States or business sectors and quality levels and standards still vary across the Union.*** In order for consumers to fully exploit its potential, it is necessary that alternative dispute resolution is available for all types of consumer disputes, quality levels of ADR procedures are even and consumers and traders are aware of such procedures. It is also necessary that ADR entities handle cross-border disputes effectively.

Amendment 2

Proposal for a directive

Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) The Member States whose national legislation goes beyond the basic requirements of the Mediation Directive appear to have achieved important results in promoting the non-judicial treatment of disputes in civil and commercial matters;

the results achieved, in particular in Italy, Bulgaria and Romania, show that mediation can help to provide a convenient and swift out-of-court settlement of disputes through procedures that are tailored to the parties' requirements and the need to protect consumers.

Amendment 3

Proposal for a directive Recital 6

Text proposed by the Commission

(6) The development within the European Union of well-functioning alternative dispute resolution is necessary to strengthen consumers' confidence in the internal market, including in the area of e-commerce. Such development should build on existing ADR procedures in the Member States and respect their legal traditions.

Amendment

(6) The development within the European Union of well-functioning alternative dispute resolution is necessary to strengthen consumers' confidence in the internal market, including in the area of e-commerce. Such development should build on existing ADR procedures in the Member States and respect their legal traditions. *The dissemination of ADR can also prove to be important in those countries in which there is a substantial backlog of cases pending before the courts, which does not enable EU citizens to exercise their right to a fair trial within a reasonable time.*

Amendment 4

Proposal for a directive Recital 7

Text proposed by the Commission

(7) This Directive should apply to contractual disputes between consumers and traders that are arising from the sale of goods or provision of services in all economic sectors. *This should include complaints submitted by consumers against traders but also complaints*

Amendment

(7) This Directive should apply to contractual disputes between consumers and traders that are arising from the sale of goods or provision of services in all economic sectors. This Directive should not apply to disputes between traders *or to complaints submitted by traders against*

submitted by traders against consumers.
This Directive should not apply to disputes between traders; however, it should not prevent Member States from adopting or maintaining in force provisions on procedures for the out-of-court resolution of such disputes.

consumers; however, it should not prevent Member States from adopting or maintaining in force provisions on procedures for the out-of-court resolution of such disputes.

Justification

ADR has been designed as a consumer redress instrument intended to eliminate the imbalance existing between traders who have a higher ability to sustain financial loss and to pay for legal redress and consumers who would not otherwise seek redress before a court due to financial cost, which in some cases may be higher than the claim itself.

Amendment 5

Proposal for a directive Recital 12

Text proposed by the Commission

(12) This Directive should not apply *to procedures before dispute resolution entities where the natural persons in charge of dispute resolution are employed exclusively by the trader nor* to procedures before consumer *compliant* handling systems operated by the trader. It should not apply to direct negotiations between the parties. Furthermore, it should not apply to attempts made by a judge to settle a dispute in the course of a judicial proceeding concerning that dispute.

Amendment

(12) This Directive should not apply to procedures before consumer *complaint* handling systems operated by the trader. It should not apply to direct negotiations between the parties. Furthermore, it should not apply to attempts made by a judge to settle a dispute in the course of a judicial proceeding concerning that dispute.

Amendment 6

Proposal for a directive Recital 12a (new)

Text proposed by the Commission

Amendment

(12a) Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of

mediation in civil and commercial matters already sets a framework for systems of mediation at Union level, especially for cross-border disputes, without preventing its application to internal mediation systems. This Directive complements this system as regards other alternative dispute resolution procedures.

Amendment 7

Proposal for a directive Recital 17

Text proposed by the Commission

(17) The natural persons in charge of alternative dispute resolution should only be considered impartial if they cannot be subject to pressure that potentially influences their attitude towards the dispute. There is a particular need to ensure the absence of such pressure where ADR entities are financed by one of the parties to the dispute or an organisation of which one of the parties is a member.

Amendment

(17) The natural persons in charge of alternative dispute resolution should only be considered impartial if they cannot be subject to pressure that potentially influences their attitude towards the dispute. There is a particular need to ensure the absence of such pressure where ADR entities are financed by one of the parties to the dispute or an organisation of which one of the parties is a member. ***In order to ensure the absence of any conflict of interest, natural persons in charge of alternative dispute resolution should disclose any circumstances that might hamper their independence or give rise to a conflict of interest. Specific requirements should apply to persons exclusively employed by the trader or by a professional organisation or business association of which the trader is a member and should be regularly monitored by the competent authorities.***

Amendment 8

Proposal for a directive Recital 17 a (new)

Text proposed by the Commission

Amendment

(17a) It is essential for the success of ADR, in particular in order to ensure the necessary trust in the ADR procedures, that the natural persons in charge of alternative dispute resolution possess the necessary expertise. Therefore specific training schemes should be provided in co-operation between Member States and the Commission.

Amendment 9

Proposal for a directive Recital 17 b (new)

Text proposed by the Commission

Amendment

(17b) Though the solutions elaborated by ADR entities and the outcome of ADR procedures may, apart from legal rules, also have their basis in equity and codes of conduct, this flexibility should not lead to a reduction in the level of consumer protection by comparison with the protection consumers would enjoy through the application of the law by the courts. Therefore, this Directive should lay down the principle of legality which will apply to ADR procedures whereby the ADR entity imposes a solution which is binding on the consumer, including those carried out by natural persons employed exclusively by the trader or by professional organisations or a business association of which the trader is a member. In particular, Member States should ensure that consumers are not deprived of the protection afforded by the mandatory provisions of the law of the State in whose territory the body is

established. In case of cross-border disputes, Member States should ensure that consumers are not deprived of the protection afforded by the mandatory provisions applying under the law of the Member State in which they are normally resident in the instances provided for under Article 6 of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)¹.

¹ OJ L 177, 4.7.2008, p.6.

Amendment 10

Proposal for a directive Recital 19

Text proposed by the Commission

(19) ADR procedures should be effective. They should provide for a simple and fast procedure whose duration generally does not exceed 90 days. The ADR entity should be able to extend this time period *when the complexity of the dispute in question so demands*.

Amendment

(19) ADR procedures should be effective. They should provide for a simple and fast procedure whose duration generally does not exceed 90 days *from the date when the parties have been notified that a complaint has been filed. The ADR entity should notify the complaint to the parties after receiving all the documents necessary to carry out the ADR procedure.* The ADR entity should be able to extend this time period *where disputes are of a complex or highly technical nature. Parties should be informed of any extension, as well as of the expected approximate length for the conclusion of the dispute.*

Amendment 11

Proposal for a directive Recital 20 a (new)

Text proposed by the Commission

Amendment

(20a) In order to ensure their efficiency, it is necessary to lay down provisions to ensure that ADR entities deal with relevant cases only. It should therefore be required that consumers make an attempt to find an amicable solution to the dispute with the trader, before submitting it to an ADR entity. Such internal complaint handling systems can constitute an effective means for resolving consumer disputes at an early stage. Member States should be allowed to maintain or introduce national provisions with regard to procedures concerning internal complaint procedures. They should further be able to allow ADR entities to require evidence that an attempt for an amicable solution has been made and to rule the complaint inadmissible if the consumer fails to provide such evidence. Member States should also be able to set minimum thresholds for the value of the claim in order to avoid dealing with cases where the claim is disproportionately lower than the actual cost of the ADR procedure.

Amendment 12

Proposal for a directive Recital 21 a (new)

Text proposed by the Commission

Amendment

(21a) In order to comply with the recognised principle of liberty, the outcome of ADR procedures should not be binding for the parties unless they are informed before the commencement of the

procedure about the binding nature of the outcome and explicitly state their consent to it. Where national rules provide that solutions are binding on the trader, only the consumer should be required to explicitly state his consent.

Amendment 13

Proposal for a directive Recital 21 b (new)

Text proposed by the Commission

Amendment

(21b) Confidentiality in ADR procedures is important and this Directive should therefore provide for a minimum degree of compatibility of civil procedural rules with regard to how to protect the confidentiality of ADR procedures in any subsequent civil and commercial judicial proceedings or arbitration.

Amendment 14

Proposal for a directive Recital 21 c (new)

Text proposed by the Commission

Amendment

(21c) In order to encourage the parties to use ADR, Member States should ensure that their rules on limitation and prescription periods do not prevent the parties from going to court or to arbitration if their attempt to find a solution through an ADR procedure fails. Member States should make sure that this result is achieved even though this Directive does not harmonise national rules on limitation and prescription periods. Provisions on limitation and prescription periods in international agreements as implemented in the Member States, for instance in the area of transport law, should not be affected by

this Directive.

Amendment 15

Proposal for a directive

Recital 23

Text proposed by the Commission

(23) This Directive does not prescribe that participation of traders in ADR procedures be mandatory or that the outcome of such procedures be binding on traders, when a consumer has lodged a complaint against them. However, this Directive is without prejudice to any national rules making the participation of traders in such procedures mandatory or their outcome binding on traders, provided that such legislation does not prevent the parties from exercising their right of access to the judicial system as guaranteed in Article 47 of the Charter of Fundamental Rights of the European Union.

Amendment

(23) This Directive does not prescribe that participation of traders in ADR procedures be mandatory or that the outcome of such procedures be binding on traders, when a consumer has lodged a complaint against them. However, ***in order to ensure that consumers have access to redress and that they are not forced to forego their claims, traders should be encouraged as far as possible to participate in ADR procedures.*** ***Therefore,*** this Directive is without prejudice to any national rules making the participation of traders in such procedures mandatory ***or subject to incentives or sanctions*** or their outcome binding on traders, provided that such legislation does not prevent the parties from exercising their right of access to the judicial system as guaranteed in Article 47 of the Charter of Fundamental Rights of the European Union.

Amendment 16

Proposal for a directive

Recital 26 a (new)

Text proposed by the Commission

Amendment

(26a) In order to improve the coverage of ADR across the EU, the development of pan-European ADR entities should be encouraged. For the purposes of this directive, an ADR entity should be considered as pan-European if it is

common to two or more Member States or if it is set up by a European umbrella association. Such entities could be set up under European law, for instance, as European Economic Interest Groupings.

Amendment 17

Proposal for a directive Recital 27

Text proposed by the Commission

(27) In order to ensure that ADR entities function properly and effectively, they should be closely monitored. The Commission and competent authorities under this Directive should publish and update a list of ADR entities that comply with this Directive. ***Other bodies, such as*** ADR entities, consumer associations, business associations and the European Consumer Centre Network, ***should*** also publish this list. In addition, competent authorities should publish regular reports on the development and functioning of ADR entities. ADR entities should notify to competent authorities specific information on which those reports should be based. Member States should encourage ADR entities to provide such information using Commission Recommendation 2010/304/EU on the use of a harmonised methodology for classifying and reporting consumer complaints and enquiries.

Amendment

(27) In order to ensure that ADR entities function properly and effectively, they should be closely monitored. ***For this purpose, Member States should designate a competent authority. As it might be difficult in the case of sectoral ADR to entrust the monitoring tasks to only one authority, Member States, in this case, should be able to designate a competent authority for each sector.*** The Commission and competent authorities under this Directive should publish and update a list of ADR entities that comply with this Directive. ***Member States should ensure that*** ADR entities, consumer associations, business associations and the European Consumer Centre Network, also publish this list. In addition, competent authorities should publish regular reports on the development and functioning of ADR entities. ADR entities should notify to competent authorities specific information on which those reports should be based. Member States should encourage ADR entities to provide such information using Commission Recommendation 2010/304/EU on the use of a harmonised methodology for classifying and reporting consumer complaints and enquiries.

Amendment 18

Proposal for a directive Article 1

Text proposed by the Commission

This Directive is 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.

Amendment

This Directive is 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 **referred by consumers** to entities offering impartial, **operationally independent**, transparent, effective and fair alternative dispute resolution procedures.

Justification

ADR has been designed as a consumer redress instrument intended to eliminate the imbalance existing between traders who have a higher ability to sustain financial loss and to pay for legal redress and consumers who would not otherwise seek redress before a court due to financial cost, which in some cases may be higher than the claim itself.

Amendment 19

Proposal for a directive Article 2 – paragraph 1

Text proposed by the Commission

1. This Directive shall apply 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 through the intervention of **a dispute resolution** entity **which proposes or imposes a solution or brings the parties together with the aim of facilitating an amicable solution, hereinafter ‘ADR procedures’**.

Amendment

1. This Directive shall apply 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 through the intervention of **an ADR** entity.

Justification

The definition of ADR should be clearly established in Article 4 on definitions.

Amendment 20

Proposal for a directive

Article 2 – paragraph 2 – point a

Text proposed by the Commission

Amendment

***(a) procedures before dispute resolution
entities where the natural persons in
charge of dispute resolution are employed
exclusively by the trader;*** ***deleted***

Justification

Some internal ADR schemes work very well, are well known by consumers who seem to be satisfied by their functioning and results. As long as long as these internal schemes abide by the same quality criteria namely impartiality, transparency, effectiveness and fairness, there should not be any discrimination between internal schemes and third parties.

Amendment 21

Proposal for a directive

Article 2 – paragraph 2 – point d a (new)

Text proposed by the Commission

Amendment

***(da) complaints submitted by traders
against consumers.***

Amendment 22

Proposal for a directive

Article 4 – point d a (new)

Text proposed by the Commission

Amendment

***(da) "Alternative dispute resolution
procedure" means a procedure for the
out-of-court resolution of a dispute
whereby the parties involved attempt to
solve their conflict through the
intervention of a dispute resolution entity
which proposes or imposes a solution or
brings the parties together with the aim of
facilitating an amicable solution;***

Justification

Clarification needed to establish clearly the object and scope of the directive.

Amendment 23

Proposal for a directive

Article 4 – point f – indent 2

Text proposed by the Commission

– if the entity is operated by a legal person or association of natural or legal persons, at the place where that legal person or association of natural or legal persons carries out alternative dispute resolution activities or has its statutory seat;

Amendment

– if the entity is operated by a legal person or association of natural or legal persons, ***including in the form of a collegial body as referred to in article 6(2)***, at the place where that legal person or association of natural or legal persons carries out alternative dispute resolution activities or has its statutory seat;

Amendment 24

Proposal for a directive

Article 5 – paragraph 2 – point a

Text proposed by the Commission

(a) ***have a*** website enabling the parties to submit a complaint online;

Amendment

(a) ***maintain an up-to-date*** website enabling the parties to ***get information about ADR procedures and to*** submit a complaint online, ***and that website shall be functionally linked to the European online dispute resolution platform in accordance with Regulation (EU) No [...]/2012 of the European Parliament and of the Council of [...] [on online dispute resolution for consumer disputes];***

Amendment 25

Proposal for a directive Article 5a (new)

Text proposed by the Commission

Amendment

Article 5a

Recourse to ADR procedures

1. 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. The court may also invite the parties to attend an information session on the use of ADR procedures if such sessions are held and easily available, and provide the parties with information on the ODR platform established in accordance with Regulation (EU) No [Office of Publications insert reference number] of the European Parliament and of the Council of [Office of Publications insert date of adoption] on online dispute resolution for consumer disputes (Regulation on consumer ODR).

2. This Directive is without prejudice to national legislation making the use of ADR compulsory or subject to incentives or applying sanctions where ADR is refused, whether before or after judicial proceedings have started, provided that such legislation does not prevent the parties from exercising their right of access to the judicial system.

Amendment 26

Proposal for a directive

Article 6 – title and paragraphs 1 to 1e (new)

Text proposed by the Commission

Expertise and impartiality

1. Member States shall ensure that the natural persons in charge of alternative dispute resolution possess the necessary expertise and are impartial. This shall be guaranteed by ensuring that they:

(a) possess the necessary knowledge, skills **and experience** in the field of alternative **dispute** resolution;

(b) are not liable to be relieved from their duties without just cause;

(c) have no conflict of interest with either party to the dispute.

Amendment

Expertise, **independence** and impartiality

1. Member States shall ensure that all natural persons in charge of alternative dispute resolution possess the necessary expertise and are **operationally independent and** impartial. This shall be guaranteed by ensuring that they:

(a) possess the necessary knowledge **and** skills in the field of alternative **or judicial** resolution **of consumer disputes, as well as an understanding of law**;

(b) **are appointed for a fixed term and** are not liable to be relieved from their duties without just cause;

(c) have no conflict of interest with either party to the dispute.

1a. For the purposes of paragraph 1, point (a), Member States shall ensure that specific training schemes for natural persons in charge of alternative dispute resolution are available. The Commission shall assist Member States in developing such training schemes and quality-control mechanisms.

1b. For the purposes of paragraph 1, point (c), Member States shall ensure that the natural persons in charge of alternative dispute resolution disclose any circumstances that may, or may be seen to, affect their independence or give rise to a conflict of interest.

Member States shall ensure that, in such circumstances the person concerned only agrees to act or continue to act if the parties explicitly consent and he or she is certain of being able to carry out the ADR procedure in full independence in order to ensure complete impartiality.

Member States shall ensure that the obligation to disclose in accordance with this paragraph is a continuing obligation throughout the ADR procedure.

1c. Where the natural persons in charge of alternative dispute resolution are independent third parties, the circumstances to be disclosed in accordance with paragraph 1b include:

(a) any personal or business relationship with one or more of the parties during the last three years prior assuming the post;

(b) any financial or other interest, direct or indirect, in the outcome of the ADR procedure;

(c) the person concerned having acted during the last three years prior assuming the post in any capacity other than for the purposes of ADR for one or more of the parties, for a professional organisation or a business association of which one of the parties is a member or for any other member thereof.

1d. For the purposes of paragraph 1, point (c), where the natural persons in charge of dispute resolution are employed exclusively by the trader or by a professional organisation or a business association of which the trader is a member, Member States shall ensure that, unless those natural persons comply with the requirements in paragraph 1e, they are part of a collegial body composed of an equal number of representatives of consumer organisations and of representatives of the trader or, where appropriate, the professional organisation or business association:

1e. Where the natural persons in charge of the dispute resolution are employed exclusively by the trader or by a professional organisation or a business association of which the trader is a member, and are not part of a collegial body as referred to paragraph 1d, Member

States shall ensure that they comply with following requirements:

(a) they are appointed for a sufficient duration to ensure the independence of their action;

(b) they cannot receive any instructions from the trader either directly or indirectly;

(c) their remuneration is entirely independent from the results of the ADR procedure;

(d) their autonomy is guaranteed through a dedicated budget separate from the trader's general budget, or, where appropriate, the general budget of the professional organisation or business association, providing the appropriate resources to ensure the effectiveness of ADR procedures.

Amendment 27

Proposal for a directive

Article 7 – paragraph 1 – introductory wording

Text proposed by the Commission

1. Member States shall ensure that ADR entities make publicly available on their websites and in printed form at their premises information on:

Amendment

1. Member States shall ensure that ADR entities make publicly available ***in plain and easily understandable language*** on their websites and, ***upon request***, in printed form at their premises information on:

Amendment 28

Proposal for a directive

Article 7 – paragraph 1 – point a

Text proposed by the Commission

(a) ***the*** natural persons in charge of alternative dispute resolution, the method of their appointment and the length of their

Amendment

(a) ***a list of*** natural persons in charge of alternative dispute resolution ***and their CVs, including their field(s) of expertise,***

mandate;

the method of their appointment and the length of their mandate;

Amendment 29

Proposal for a directive

Article 7 – paragraph 1 – point d

Text proposed by the Commission

Amendment

(d) the types of disputes they are competent to deal with;

(d) the types of disputes they are competent to deal with, ***including the minimum value of the claim where applicable;***

Amendment 30

Proposal for a directive

Article 7 – paragraph 1 - point i

Text proposed by the Commission

Amendment

(i) the costs, if any, to be borne by the parties;

(i) the costs, if any, to be borne by the parties, ***including rules on award of costs at the end of the procedure;***

Amendment 31

Proposal for a directive

Article 7 – paragraph 1 - point ka (new)

Text proposed by the Commission

Amendment

(ka) the penalties for non-compliance in case of a decision with binding effect on the parties.

Amendment 32

Proposal for a directive

Article 7 – paragraph 2 – introductory wording

Text proposed by the Commission

Amendment

2. Member States shall ensure that ADR

2. Member States shall ensure that ADR

entities make publicly available on their websites and in printed form at their premises annual activity reports. These reports shall include the following information relating to both domestic and cross-border disputes:

entities make publicly available on their websites and, ***upon request***, in printed form at their premises annual activity reports. These reports shall include the following information relating to both domestic and cross-border disputes:

Amendment 33

Proposal for a directive

Article 7 – paragraph 2 – point b

Text proposed by the Commission

(b) any recurrent problems leading to disputes between consumers and traders;

Amendment

(b) any recurrent problems leading to disputes between consumers and traders, ***which may be accompanied by recommendations as to how similar problems can be avoided or solved in future;***

Amendment 34

Proposal for a directive

Article 7 – paragraph 2 – point e

Text proposed by the Commission

(e) the rate of compliance, ***if known***, with the outcomes of the ADR procedures;

Amendment

(e) the rate of compliance with the outcomes of the ADR procedures;

Amendment 35

Proposal for a directive

Article 8 – paragraph 1 – point a

Text proposed by the Commission

(a) the ADR procedure is ***easily*** accessible ***to*** both ***parties*** irrespective of where the ***party is*** situated;

Amendment

(a) the ADR procedure is ***available and*** accessible both ***online and offline*** irrespective of where the ***parties are*** situated;

Amendment 36

Proposal for a directive

Article 8 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) an ADR procedure can only be initiated by the consumer;

Justification

The purpose of ADR schemes is to ensure greater access to justice for weaker parties - often the consumer - by providing them with a means of initiating redress. Traders should not be able to use ADR schemes against consumers for debt collection.

Amendment 37

Proposal for a directive

Article 8 – paragraph 1 – point c a (new)

Text proposed by the Commission

Amendment

(ca) the ADR entity, which has received a complaint, notifies the parties of the dispute as soon as it has received all the documents containing the relevant information related to the complaint;

Amendment 38

Proposal for a directive

Article 8 – paragraph 1 – point d

Text proposed by the Commission

Amendment

(d) the dispute is resolved within 90 days from the date on which the ***ADR entity has received the*** complaint. ***In the case*** of complex ***disputes***, the ADR entity may extend this time period.

(d) the dispute is resolved within 90 days from the date on which the ***parties have been notified that a complaint has been filed. Member States shall ensure that where disputes are of a complex or highly technical nature*** the ADR entity may extend this time period. ***Any extension shall be notified to the parties, together with an expected approximate length for the conclusion of the dispute.***

Amendment 39

Proposal for a directive Article 8 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. In order to safeguard effectiveness of ADR procedures, Member States shall ensure that consumers are required to seek an amicable solution of the dispute directly with the trader before submitting it to an ADR entity. Member States may enable ADR entities to require evidence that such an attempt has been made and rule the complaint inadmissible if the consumer fails in doing so.

Justification

In order to avoid overburdening ADR entities, only relevant cases should be brought to ADR. It is therefore necessary to limit the admissibility of cases by requiring that consumers first attempt to solve the problem with the trader and only if that attempt fails, go to ADR.

Amendment 40

Proposal for a directive Article 8 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. 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.

Justification

It may be useful for Member States to set minimum thresholds for the value of the claim in order to avoid unreasonable cases being brought to ADR.

Amendment 41

Proposal for a directive

Article 9 – paragraph 1 – point -a (new)

Text proposed by the Commission

Amendment

(-a) the parties have the possibility to withdraw from the procedure at any stage if they are dissatisfied with the performance or the operation of the procedure; they shall be informed about this right before the beginning of the procedure; where national rules provide for mandatory participation in ADR procedures for the trader, this provision shall only apply to the consumer.

Amendment 42

Proposal for a directive

Article 9 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) the parties have the possibility to express their point of view and **hear** the arguments and facts put forward by the other party **and** any **experts'** statements;

(a) the parties have the possibility to express their point of view, **be provided with** and **be able to comment upon** the arguments and facts put forward by the other party, **including** any statements **and opinions given by experts**;

Justification

It is necessary to clarify that not all procedures will be conducted face-to-face and might be wholly or partially initiated in writing. Parties should also be afforded the right to comment on the arguments and facts presented by the other party, including any statement or opinion given by an expert.

Amendment 43

Proposal for a directive

Article 9 – paragraph 1 a(new)

Text proposed by the Commission

Amendment

1a. Member States shall ensure that the principle of liberty is observed by requiring that:

(a) an agreement between a consumer and a trader to submit complaints to an ADR entity is not binding on the consumer if it was concluded before the dispute has materialised and if it has the effect of depriving the consumer of his right to bring action before the courts for the settlement of the dispute;

(b) the outcome of an ADR procedure cannot have any binding effect on the parties involved unless they are informed before the commencement of the procedure about the binding nature of that outcome and explicitly state their consent to it. Where national rules provide that solutions are binding on the trader, explicit consent shall be sought from the consumer only.

Amendment 44

Proposal for a directive

Article 9 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. Where ADR procedures which aim at resolving the dispute by suggesting a solution are established, Member States may specify that suggested solutions of these ADR procedures are binding on a trader at the election of a consumer.

In such cases Article 9(2)(b) and Article 9(2)(c) shall be read as only applying to

the consumer.

Justification

Member States should be able to continue with and implement new ADR schemes so that where a consumer opts to accept the outcome of a procedure, the trader is bound by that decision.

Amendment 45

Proposal for a directive

Article 9 – paragraph 2 – point a – point ia (new)

Text proposed by the Commission

Amendment

(ia) participation in the procedure does not preclude the possibility to seek redress through a normal court procedure;

Amendment 46

Proposal for a directive

Article 9 a (new)

Text proposed by the Commission

Amendment

Article 9a

Legality of ADR decisions

1. Member States shall ensure that the outcome of an ADR procedure, including when operated by natural persons referred to in Article 6 (1d) which aims at resolving the dispute by imposing a solution on the consumer does not result in the consumer being deprived of the protection afforded by the mandatory provisions of the law of the Member State where the ADR entity is established.

2. In the case of cross-border consumer disputes, Member States shall ensure that the outcome of an ADR procedure, including when operated by natural persons referred to in Article 6 (1d) which aims at resolving the dispute by imposing a solution on the consumer does not result

in the consumer being deprived of the protection afforded to him by the provisions that cannot be derogated from by agreement by virtue of the law of the Member State where the consumer has his habitual residence, in the instances provided for in Article 6 of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)¹.

3. In the case of ADR procedures which aim at resolving the dispute by proposing a solution, Member States shall ensure that the proposed solution can be based also on equity and on self-regulatory codes or guidelines, while having due regard to the applicable law.

¹ OJ L 177, 4.7.2008, p.6.

Amendment 47

Proposal for a directive Article 9 b (new)

Text proposed by the Commission

Amendment

Article 9b

Confidentiality of ADR procedures

1. Member States shall ensure that, unless the parties agree otherwise, neither ADR entities nor natural persons in charge of alternative dispute resolution shall be compelled to give evidence in civil and commercial judicial proceedings or arbitration regarding information arising out of or in connection with an ADR procedure, except:

(a) where this is necessary for overriding considerations of public policy of the Member State concerned, in particular when required to ensure the protection of the best interests of children or to prevent harm to the physical or psychological

integrity of a person;

(b) where disclosure of the content of the outcome of an ADR procedure is necessary in order to implement or enforce that outcome.

2. Nothing in paragraph 1 shall preclude Member States from enacting stricter measures to protect the confidentiality of ADR procedures.

Amendment 48

Proposal for a directive

Article 9 c (new)

Text proposed by the Commission

Amendment

Article 9c

Effect of ADR procedures on limitation and prescription periods

1. Member States shall ensure that parties who choose ADR in an attempt to settle a dispute are not subsequently prevented from initiating judicial proceedings or arbitration in relation to that dispute by the expiry of limitation or prescription periods during the ADR procedure.

2. Paragraph 1 shall be without prejudice to provisions on limitation or prescription periods in international agreements to which Member States are party.

Justification

The use of ADR should not hinder access to normal judicial procedures.

Amendment 49

Proposal for a directive

Article 10 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that traders established on their territories inform consumers about the ADR entities ***by which they are covered and which are competent to deal with*** potential disputes between themselves and consumers. Such information shall include the addresses of the relevant ADR entities' websites ***and specify whether or not the trader commits to use these entities to resolve disputes with consumers.***

Amendment

1. Member States shall ensure that traders established on their territories inform consumers about the ADR entities ***that they commit to use to resolve*** potential disputes between themselves and consumers. Such information shall include the addresses of the relevant ADR entities' websites.

Amendment 50

**Proposal for a directive
Article 10 – paragraph 2**

Text proposed by the Commission

2. The information referred to in paragraph 1 shall be mentioned in ***an easily, directly, prominently and permanently*** accessible way on the trader's website, where one exists, in the general terms and conditions of contracts for the sale of goods or provision of services between the trader and a consumer ***and in invoices and receipts relating to such contracts.*** It shall specify how further information on the ADR entity concerned and on the conditions for using it can be accessed.

Amendment

2. The information referred to in paragraph 1 shall be mentioned in ***a comprehensible, clear and easily*** accessible way:

(a) on the trader's website, where one exists;

(b) if applicable, in the general terms and conditions of contracts for the sale of goods or provision of services between the trader and a consumer; ***and***

(c) whenever the trader notifies to the consumer in writing the rejection of a complaint submitted directly to him.

It shall specify how further information on the ADR entity concerned and on the

conditions for using it can be accessed.

Amendment 51

Proposal for a directive Article 10 – paragraph 3

Text proposed by the Commission

3. The provisions in this Article shall be without prejudice to the provisions in Articles 6, 7 and 8 of Directive 2011/83/EU concerning consumer information for distance and off-premises contracts.

Amendment

3. The provisions in this Article shall be without prejudice to the provisions in Articles 6, 7 and 8 of Directive 2011/83/EU concerning consumer information for distance and off-premises contracts, ***in Article 3 of Directive 2002/65/EU of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services¹ and Article 185 of Directive 2009/138/EU of the European Parliament and of the Council of 25 November 2008 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)².***

¹ OJ L 271, 9.10.2002, p.16.

² OJ L 335, 17.12.2008, p.1.

Amendment 52

Proposal for a directive Article 13 – paragraph 3

Text proposed by the Commission

3. The Commission shall publish a list containing the names and contact details of the networks referred to in paragraph 1. The Commission shall, ***if necessary***, update this list every two years.

Amendment

3. The Commission shall publish a list containing the names and contact details of the networks referred to in paragraph 1. The Commission shall update this list every two years.

Amendment 53

Proposal for a directive Article 15 – paragraph 1

Text proposed by the Commission

1. Each Member State shall designate a competent authority in charge of monitoring the functioning and development of ADR entities established on its territory. Each Member State shall communicate the **authority** it has designated to the Commission.

Amendment

1. Each Member State shall designate a competent authority in charge of monitoring the functioning and development of ADR entities established on its territory. ***In the case of sectoral ADR, Member States may designate a competent authority for each sector.*** Each Member State shall communicate the **authorities** it has designated to the Commission.

Justification

Some ADR entities are sectoral. It would be very difficult to entrust the monitoring tasks to only one authority which would cover all sectors and would create a significant burden on this authority. Having a competent authority for each sector should remain an available option for those Member States who do not have a single authority competent for all sectors.

Amendment 54

Proposal for a directive Article 16 – paragraph 2 – point d

Text proposed by the Commission

(d) the rate of compliance, ***if known***, with the outcomes of the ADR procedures;

Amendment

(d) the rate of compliance with the outcomes of the ADR procedures;

Justification

ADR entities should have a duty to monitor compliance with the outcomes. This is an important indicator for the efficiency of ADR schemes and also helps consumers and businesses in deciding whether engaging in an ADR procedure is worthwhile.

Amendment 55

Proposal for a directive Article 16 – paragraph 2 – point f

Text proposed by the Commission

(f) any recurrent problems leading to

Amendment

(f) any recurrent problems leading to

disputes between consumers and traders;

disputes between consumers and traders
which may be accompanied by guiding solutions, including in particular suggestions how those issues should be addressed;

Justification

To facilitate exchange of best practices, it may be useful that ADR entities provide guiding solutions to the cases they have solved, while preserving confidentiality.

Amendment 56

Proposal for a directive

Article 17 – paragraph 2 – subparagraph 1

Text proposed by the Commission

2. Each competent authority shall, on the basis of the assessment referred to in paragraph 1, establish a list of the ADR entities that fulfil the conditions set out in paragraph 1.

Amendment

2. Each competent authority shall, on the basis of the assessment referred to in paragraph 1, establish a list of all the ADR entities that ***have been notified to it and*** fulfil the conditions set out in paragraph 1.

Justification

It should be clear that authorities have no discretionary power to refuse inclusion in the list as long as the assessment shows that the ADR scheme respects the provisions in Chapter II.

Amendment 57

Proposal for a directive

Article 17 – paragraph 2 – subparagraph 2 – point e

Text proposed by the Commission

(e) the need for the physical presence of the parties or of their representatives, if applicable; and

Amendment

(e) the need for the physical presence of the parties or of their representatives, if applicable, ***with an indication of the options for settling the dispute without the physical presence of the parties or of their representatives if they are domiciled or normally resident in different Member States;*** and

Amendment 58

Proposal for a directive

Article 17 – paragraph 2 – subparagraph 3 a (new)

Text proposed by the Commission

Amendment

Competent authorities shall remove an ADR entity from the list if that ADR entity no longer fulfils the requirement set out in paragraph 1. The list shall be updated immediately and the relevant information transmitted to the Commission.

Amendment 59

Proposal for a directive

Article 17 – paragraph 5 – introductory wording

Text proposed by the Commission

Amendment

5. Every two years, each competent authority shall publish a report on the development and functioning of ADR entities. The report shall in particular:

5. Every two years, each competent authority shall publish ***and send to the Commission*** a report on the development and functioning of ADR entities. The report shall in particular:

Justification

As a matter of good cooperation between the Commission and national competent authorities, it is desirable that the latter send their reports to the Commission who would centralize the information, as this facilitates the Commission's information gathering.

PROCEDURE

Title	Alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR)		
References	COM(2011)0793 – C7-0454/2011 – 2011/0373(COD)		
Committee responsible Date announced in plenary	IMCO 13.12.2011		
Opinion by Date announced in plenary	JURI 13.12.2011		
Associated committee(s) - date announced in plenary	20.4.2012		
Rapporteur Date appointed	Cristian Silviu Buşoi 1.2.2012		
Discussed in committee	1.3.2012	25.4.2012	30.5.2012
Date adopted	19.6.2012		
Result of final vote	+: 21 -: 0 0: 0		
Members present for the final vote	Raffaele Baldassarre, Luigi Berlinguer, Sebastian Valentin Bodu, Christian Engström, Marielle Gallo, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Klaus-Heiner Lehne, Antonio Masip Hidalgo, Alajos Mészáros, Evelyn Regner, Francesco Enrico Speroni, Rebecca Taylor, Alexandra Thein, Cecilia Wikström, Tadeusz Zwiefka		
Substitute(s) present for the final vote	Piotr Borys, Cristian Silviu Buşoi, Eva Lichtenberger, Dagmar Roth-Behrendt, Axel Voss		
Substitute(s) under Rule 187(2) present for the final vote	Patrice Tirolien		

PROCEDURE

Title	Alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR)			
References	COM(2011)0793 – C7-0454/2011 – 2011/0373(COD)			
Date submitted to Parliament	29.11.2011			
Committee responsible Date announced in plenary	IMCO 13.12.2011			
Committee(s) asked for opinion(s) Date announced in plenary	JURI 13.12.2011			
Associated committee(s) Date announced in plenary	JURI 20.4.2012			
Rapporteur(s) Date appointed	Louis Grech 30.11.2011			
Legal basis disputed Date of JURI opinion	JURI			
Discussed in committee	20.12.2011	28.2.2012	29.2.2012	8.5.2012
	20.6.2012	9.7.2012		
Date adopted	10.7.2012			
Result of final vote	+: –: 0:	34 1 0		
Members present for the final vote	Pablo Arias Echeverría, Adam Bielan, Cristian Silviu Buşoi, Sergio Gaetano Cofferati, Birgit Collin-Langen, Lara Comi, Anna Maria Corazza Bildt, António Fernando Correia de Campos, Cornelis de Jong, Vicente Miguel Garcés Ramón, Evelyne Gebhardt, Louis Grech, Małgorzata Handzlik, Philippe Juvin, Sandra Kalniete, Edvard Kožušník, Hans-Peter Mayer, Sirpa Pietikäinen, Phil Prendergast, Mitro Repo, Robert Rochefort, Heide Rühle, Christel Schaldemose, Andreas Schwab, Catherine Stihler, Róza Gräfin von Thun und Hohenstein, Emilie Turunen, Barbara Weiler			
Substitute(s) present for the final vote	Raffaele Baldassarre, Jürgen Creutzmann, Ashley Fox, María Irigoyen Pérez, Olle Schmidt, Sabine Verheyen, Anja Weisgerber			