

Committee on the Internal Market and Consumer Protection
- Secretariat -

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COMPROMISE AMENDMENTS

on the Draft Report of L.s Grech

**on Alternative dispute resolution for consumer disputes and amending
Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer
ADR)**

2011/0373(COD)

Compromise amendments

CA 1

Covering AMs 14, 136-141 and JURI 4 (for Recital 7)
Covering AMs 44, 217-221 and JURI 18 (for Article 1)

Recital 7

This Directive should apply to contractual disputes between consumers 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 relation 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.***

Article 1

This Directive is to contribute, ***by achieving a high level of consumer protection***, to the ***proper*** functioning of the internal market by ensuring that ***in the event of contractual disputes arising from the sale of goods or the provision of services, consumers can, on a voluntary basis, submit complaints against traders*** to entities offering impartial, transparent, effective, ***independent, fast*** and fair alternative dispute resolution procedures.

CA 2

Covering AMs 45, 222-225 and JURI 19

Recital 11 a (new)

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 ADR procedures take in the Member States.

Article 2 – paragraph 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.

Article 2 – paragraph 2 d (new)

This Directive acknowledges Member States' competence to determine whether ADR entities established on their territories should have the possibility to impose a solution.

CA 3

Covering AMs 147-151 and JURI 5 (for Recital 12 and 12 a (new))

Covering AMs 46, 228-232, 284, 288, 390 and JURI 20 (for Article 2(2)a and Article 2(2) a (new) and b (new))

Recital 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 these 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) of this Directive. 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.**

Recital 12 a (new)

The Directive should not apply to procedures before consumer complaint handling systems operated by the trader **nor** 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.

Article 2 – paragraph 2 – point a

(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 are met:**

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

(2) the natural persons in charge of the dispute resolution shall be granted a period of office of sufficient duration to ensure the independence of their action and shall not be liable to relieved from their duties without just cause;

(3) the natural persons in charge of the dispute resolution cannot be subject to any instructions from the trader or the trader's representatives and have no link with the management or operational services of the trader or professional or business association of which the trader is a member;

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

(5) 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 and transparency of ADR procedures.

(6) Member States shall 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, the professional organisation or business association.

Article 2 – paragraph 2 a (new)

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

Article 2 – paragraph 2 b (new)

Where Member States decide to allow procedures referred to in paragraph 2(a), they shall ensure that ADR entities applying such procedures, in addition to the information and statements referred to in Article 16(1), notify to the competent authority the information necessary to asses their compliance with the specific additional requirements set out in paragraph 2(a).

CA 4

Covering AMs 3, 6, 132 and 134 (for Recital 3a new)
Covering AMs 48, 219, 240 and 241 (for Article 2(2)c new)

Recital 3 a (new)

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 consumer from buying 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, which should guarantee 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.

Article 2 – paragraph 2 c (new)

This Directive establishes a harmonised minimum standard of 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 what is provided for within the scope of this Directive to ensure a higher level of consumer protection.

CA 5

Covering AMs 245 and 247

Article 4 – paragraph 1 – point c a (new)

'contractual dispute' means a dispute arising from the sale of goods or provision of services between the consumer and the trader and/or service provider.

CA 6

Covering AMs 16 and 146 (for Recital 11)

Covering AMs 51, 246 and JURI 22 (for Article 4(1)d c (new))

Covering AMs 52, 248 and 249 (for Article 4(1)e)

Recital 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 ***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.

Article 4 – paragraph 1 – point d c (new)

'ADR procedure' means a procedure as referred to in Article 2, which complies with this Directive and is carried out by an ADR entity.

Article 4 – paragraph 1 – point e

'ADR entity' means any entity, however named or referred to, that seeks 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).

CA 7

Covering AMs 54 and 250- 255

Article 5 – paragraph 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.

CA 8

Covering AMs 55, 257, 258 and JURI 24

Article 5 – paragraph 2 – point 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 enable consumers to submit a complaint and the requisite supporting documents online via e-mail or by other electronic means.

CA 9

Covering AMs 60, 61, 259, 264-266, 270-273 and 322

Article 5 – paragraph 3 a (new)

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 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, in the legal acts of the Member State allowing the parties to initiate legal proceedings,*
- d) the consumer declares that he has not tried to contact the entrepreneur or service-provider 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 reasonable justification 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.

CA 10

Covering AMs 65, 291-293 and JURI 27

Article 7 – paragraph 1 – introductory part

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

CA 11

Covering AMs 26 and 175-180 (for Recital 20)
Covering AMs 32, 159, 192 and 260 (for Recital 21 e (new))
Covering AMs 77 and 308-312 (for Article 8(1)c)

Recital 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 at a low cost 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.*

Recital 21 e (new)

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 whether ADR entities are publicly or privately funded or are funded through a combination of public and private funding. However, ADR entities should be encouraged to specifically consider private forms of funding and utilise public funds only at Member States' discretion.

Article 8 – paragraph 1 – point c

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

CA 12

Covering AMs 25, 171-173 and JURI 10 (for Recital 19)
Covering AMs 78, 314- 319, and JURI 38 (for Article 8(1)d)

Recital 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 in which the ADR entity has received the complete complaint file until the date on which a decision is taken. The ADR entity should notify the complaint to the parties after receiving all the documents necessary to carry out the ADR procedure. For some exceptional cases of a technical or highly complex nature, the ADR entities should be able to extend the timeframe for the purpose of objective examination of certain aspects of the case in question in order to guarantee high-quality dispute resolution. Parties should be informed of any such extension, as well as of the expected approximate length of time for the conclusion of the dispute.

Article 8 – paragraph 1 – point d

disputes are resolved within *a timeframe of 90 calendar* from the date on which the ADR entity has received the *complete* complaint file. *Only, in the case 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 should be informed of any extension, as well as of the expected approximate length for the conclusion of the dispute.*

CA 13

Covering AMs 29,182-184 and JURI 12 (for Recital 21 b (new))
Covering AMs 89, 226, 327, 352-354, 356, 357 and JURI 43 (for Article 9 a (new))

Recital 21 b (new)

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 of their binding nature in advance and the parties specifically accepted this. Specific acceptance by the trader should not be required if national rules provide that solutions are binding on traders.

Article 9 a (new)

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 has materialised and if it has the effect of depriving the consumer of his right to bring an action before the courts for the settlement 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 is not required if national rules provide that solutions are binding on traders.*

CA 14

Covering AMs 30,188 and 189 (for Recital 21 c (new))
Covering AMs 90, 290, 358, 359 and JURI 46 (for Article 9 b (new))

Recital 21 c (new)

In the case of ADR procedures which impose binding solution 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. A solution imposed by the 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 applying under the law of the Member State in which he is habitually resident in the instances where such protection is provided for in Article 6 of Regulation (EC) No 593/2008.

Article 9 b (new)

Member States shall ensure that, in ADR procedures which aim at resolving the dispute by imposing a solution, 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 the instances where such protection is provided for in Article 6 of Regulation (EC) No 593/2008.

CA 15

Covering AMs 361-365 and JURI 49

Article 10 – paragraph 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.

CA 16

Covering AMs 34,194 and 195 (for Recital 22)

Covering AMs 92, 366-370 and JURI 50 (for Article 10(2))

Recital 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 to resolve disputes with consumers. The information should be mentioned in a clear, comprehensible and easily accessible way*** on the traders' ***website***, where they have ***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 them by a consumer. Where appropriate, this information should also be stated in other relevant documents, for instance pre-contractual documents, invoices and receipts.***

Article 10 – paragraph 2

The information referred to in paragraph 1 shall be mentioned in ***a clear, comprehensible***, 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 them by a consumer. It shall specify how further information on the ADR entity concerned and on the conditions for using it can be accessed.

CA 17

Covering AMs 97 and 380-382

Article 14 – paragraph 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*.

CA 18

Covering AMs 99, 383-385 and JURI 53

Article 15 – paragraph 1

Each Member State shall designate a competent authority, *which shall carry out the functions set out 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 one of the competent authorities designated is 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.

CA 19

Covering AMs 18, 209 and JURI 16

Recital 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 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.*

CA 20

Covering AMs 20, 162, 190 and JURI 13

Recital 16 a (new)

Confidentiality and privacy should always be guaranteed throughout the ADR procedure. However, it should be permitted 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 and commercial judicial proceedings or arbitration.

CA 21

Covering AMs 38, 127, 142, 200 and JURI 11

Recital 23 c (new)

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 consumer, before referring complaints to an ADR entity or court, contacts 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.