OPINION

of the Committee on the Internal Market and Consumer Protection

for the Committee on Legal Affairs

on alternative dispute resolution in civil, commercial and family matters (2011/2117(INI))

Rapporteur (*): Robert Rochefort

(*) Associated committee - Rule 50 of the Rules of Procedure
SUGGESTIONS

The Committee on the Internal Market and Consumer Protection calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

A. whereas alternative dispute resolution (ADR) is a mechanism for reaching out-of-court settlements by helping consumers and traders to resolve conflicts through the intervention of a third party (mediator or arbitrator),

B. whereas the EU citizen’s knowledge and understanding of ADR schemes throughout Europe is low and confused, with only a small percentage of citizens knowing how to file a claim with an ADR body,

C. whereas it is important to assure better publicising of the existence of ADR mechanisms and to do more to encourage consumers and professionals to use them as an alternative to court proceedings, in order to make it possible to avoid a confrontational approach and offer the prospect of a win-win situation,

D. having regard to its resolution of 6 April 2011 on ‘Governance and Partnership in the Single Market’¹, in which it called on the Commission to submit a legislative proposal on the use of alternative dispute resolution in the EU by the end of 2011,

E. whereas the development of legislation on ADR is one of the twelve levers to boost growth and strengthen confidence in the context of the Single Market Act, as set out in the communication adopted by the Commission on 13 April 2011,

F. whereas the legislative proposal on ADR in the EU is mentioned in the Commission’s work programme as a strategic initiative,

1. Calls on the Commission to submit a legislative proposal on the use of alternative dispute resolution for consumer matters in the EU by the end of 2011 and emphasises the importance of its swift adoption;

2. Calls on the Commission, at the same time, to take immediate steps to ensure that consumers and businesses are made more aware of existing legislative instruments, such as Regulation (EC) No 861/2007 establishing a European Small Claims Procedure, Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters and Regulation (EC) No 805/2004 creating a European Enforcement Order for uncontested claims; with that aim in view, proposes that national authorities, courts, bar associations and chambers of commerce, consumer advice bureaux, legal expenses insurers and other competent organisations should be involved in a comprehensive information campaign; calls for financial support to be provided for European and national campaigns of this kind; calls for support to be provided for the implementation of just such a campaign concerning the ADR procedure, to coincide with the introduction of that procedure;

3. Stresses that any proposal from the Commission must be accompanied by a full impact

¹ P7_TA-PROV(2011)0144.
assessment, in compliance with the better regulation rules;

4. Supports the Commission’s intention of encouraging the use of alternative means of dispute resolution that are accessible, swift, effective and cheap and apt to enable the establishment and maintenance of quality and trust-based commercial, economic, social and neighbourhood relations and to contribute to a high level of consumer protection in a ‘win-win’ situation, with benefits for both sides as compared to current judicial practice;

5. Agrees with the Commission that appropriate access to reparation in the internal market requires both the possibility of easy recourse to ADR and the existence of an effective system for collective claims, the two being complementary and not mutually exclusive;

6. Stresses the need to ensure that European consumers can access ADR systems for transnational as well as national disputes, especially on the on-line market, which is growing rapidly in the EU; notes that the use of ADR systems affords a higher level of consumer rights protection and boosts consumer confidence in the market, businesses and consumer rights protection institutions by making them more attractive, as well as promoting cross-border trade and increasing the prosperity of all operators in the EU market;

7. Stresses that, although there are numerous ADR systems operating effectively in Europe at present, one of the main obstacles to their use is the lack of even development of such systems throughout the EU, both in geographical and sectoral terms; suggests, therefore, that existing shortcomings with regard to the geographical coverage of ADR in Europe be rectified rapidly, and calls for an effective out-of-court dispute settlement system for consumer matters which is operational across the EU; decries the major sectoral deficiencies that persist in most Member States, while promoting the improvement of a sector by sector coverage that would involve people who understand the way in which a given sector works; encourages the Member States to consider introducing single points of contact for each sector, to provide information on how to initiate ADR;

8. Notes that the usage of small claims tribunals in some Member States remains significantly low and that more needs to be done in terms of legal certainty, language barriers and transparency of proceedings; calls on the Commission to devote particular attention to these legal bodies when formulating its legislative proposal on the use of ADR for consumer matters in the EU;

9. Suggests that the Commission’s future legislative proposal on the use of ADR in the EU incorporate the guidelines to be followed in relation to ADR systems established in Europe, these being the following:

   – independence, impartiality and confidentiality: when mediators are being designated, the possibility of conflicts of interest arising should be avoided; the principle of joint participation by members of consumer associations and organisations representing companies could serve as a useful basis for ensuring the impartiality of the outcome;

   – competence: the professionals in charge must have the specialist ability, training and experience to perform their role and must be impartial, independent and competent;

   – efficiency and speed: mediators must have adequate means at their disposal
(appropriate human, material and financial resources) and be able meet the short deadlines between referral and decision;

- **equity** between consumers and professionals, in terms of information as well as conceptually and procedurally, and two-way exchanges, i.e. the two parties being able to express their position and to familiarise themselves with the position and the facts stated by the other;

- **funding**: the issue of the cost of ADR should be resolved in order to ensure that such an option is attractive to the parties concerned; with this in mind, the system should be free, if a case is won, or offered at a very moderate cost to the consumer;

- **freedom of choice** and **out-of-court nature**: ADR must be optional and based on respect for the parties’ freedom of choice throughout the process, allowing them the possibility of choosing, at any time, to settle their dispute before the courts; at the same time, guarantees must be provided that genuine efforts are being made to achieve successful mediation; it must not under any circumstances constitute an initial compulsory step prior to the initiation of legal proceedings, and the decision stemming from it can be binding only if the parties have been informed to that effect beforehand and expressly agree to it; despite such a decision, it must still be possible for the parties to opt for a court hearing;

- **proportionality** of the procedures, decisions and costs, to avoid their impact exceeding the objective and content of the dispute; the costs borne must be in proportion to the damage incurred;

- **transparency**: besides providing general information (types of lawsuit, rules on referral, decision-taking arrangements, etc.), any person acting as a mediator must be obliged to publish an annual report;

10. Calls on the Commission to look into the wording of the designation ‘alternative dispute settlement as a means to resolve disputes related to commercial transactions and practices in the EU’, as it is somewhat impenetrable and does not lend itself to effective communication; recommends that the designation be simplified in order to create a clearer distinction between this concept and that of recourse to the courts, and to clarify that it concerns in particular disputes relating to consumer matters;

11. Calls on the Commission to make provision for coordination in respect of transnational consumer disputes in order to facilitate access to, and the coordination of, national and business-led ADR systems; encourages the Commission also to provide, on the home page of SOLVIT, in all the official European Union languages, an overview of the relevant procedures and to publish a single European phone number to facilitate access for the public to the ADR systems in their Member State and in other Member States, and to issue clear guidelines on their use;

12. Calls on the Commission to support and strengthen, and enhance the capabilities of, existing bodies operating in this area which have demonstrated their effectiveness and value, such as SOLVIT, Europe Direct, ECC-NET and FIN-NET;

13. Calls on the Commission, in the context of cross-border e-commerce consumer disputes,
to make arrangements for the rapid introduction of a multilingual platform enabling consumers to resolve their disputes entirely on line, bearing in mind that this platform must meet quality standards and be based on existing ADR systems in the Member States;

14. Takes the view that the provision of information to consumers is a responsibility shared by public authorities, information and advisory networks, regulators and consumer groups, and recommends that they each, at their respective level, conduct awareness-raising campaigns and pilot projects on the subject;

15. Takes the view that the provision of information to professionals is a responsibility shared by public authorities and representative organisations, and recommends that they each, at their respective level, conduct awareness-raising campaigns and pilot projects on the subject;

16. Criticises the confusing nature of the Commission’s current ADR database; suggests that the Commission create a multilingual European internet ADR portal, where any consumer may access information on how ADR works, what it involves and about their rights and obligations, building on existing databases and networks; emphasises that, in the interests of consumers, emphasis must be placed on the user-friendliness and clarity of the on-line portal;

17. Emphasises that consumers must be able to obtain all relevant on-line information about ADR, properly translated into their own languages, by using readily accessible, user-friendly on-line translation machines;

18. Emphasises that it is crucial to raise consumer awareness of the existence and benefits of ADR prior to the initiation of a consumer dispute; insists on the necessity to reinforce the sense of responsibility of businesses and business organisations in this regard; considers that businesses and businesses federations have a duty to inform consumers on available ADR mechanisms; proposes that this ‘upstream’ information should include a reference in all contractual documents drawn up by professionals to the possibility of recourse to ADR, along with contact details and referral procedures for the relevant ADR systems; however, this requirement should avoid extra costs and bureaucracy;

19. Calls on the Commission, in cooperation with the Member States, to undertake information campaigns aimed at educating, and raising the awareness of, both consumers and businesses with regard to the benefits of using this institution;

20. Acknowledges that one of the main obstacles to the use of ADR systems is the reluctance of businesses to engage in such mechanisms; proposes that chambers of commerce, umbrella organisations at both national and EU level, and other professional bodies be required to inform enterprises of the existence of ADR and of the potential benefits of its use, not least in terms of: pre-empting lawsuits; corporate image; and, lastly, the possibilities offered by ADR, unlike an arbitration or court ruling, for the re-establishment of trust-based commercial relations between the parties;

21. Recommends, as a potential incentive for enterprises, that a quality label for mediation be introduced in relation to mediation in consumer disputes, which would be associated with guidelines recognising best practices, so that consumers can rapidly identify businesses that have opted into ADR systems; takes the view that a cost-benefit analysis should be
carried out first on this proposal; stresses that the Commission should ensure that the label is properly used and enforced;
RESULT OF FINAL VOTE IN COMMITTEE

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<th>31.8.2011</th>
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| **Result of final vote** | +: 34  
   -: 0  
   0: 1 |
| **Members present for the final vote** | Adam Bielan, Lara Comi, Anna Maria Corazza Bildt, António Fernando Correia De Campos, Jürgen Creutzmann, Christian Engström, Małgorzata Handzlik, Malcolm Harbour, Iliana Ivanova, Philippe Juvin, Sandra Kalniete, Eija-Riitta Korhola, Edvard Kožušník, Kurt Lechner, Toine Manders, Hans-Peter Mayer, Gianni Pittella, Phil Prendergast, Robert Rochefort, Zuzana Roithová, Heide Rühle, Matteo Salvini, Christel Schaldemose, Andreas Schwab, Catherine Stihler, Róza Gräfin von Thun und Hohenstein, Kyriacos Triantaphyllides, Emilie Turunen, Bernadette Vergnaud, Barbara Weiler |
| **Substitute(s) present for the final vote** | Ashley Fox, Anna Hedh, Pier Antonio Panzeri, Søren Bo Søndergaard, Marc Tarabella |