28.03.2011

NOTICE TO MEMBERS

(001/2011)

Summit on Alternative Dispute Resolution for Consumers in the Internal Market

On 16 March 2011 the European Commission, DG SANCO, and the IMCO Committee organised a Summit on Alternative Dispute Resolution (ADR). Key-speakers included Commissioner John Dalli, Minister Zoltan Cséfalvay from the Hungarian Presidency, MEPs from the IMCO and Legal Affairs Committee, and consumer and business representatives.

Commissioner Dalli underlined that the development of ADR - as a cost-effective, flexible and successful means for consumer redress - is a key priority in the Single Market Act. He announced the publication of a legislative proposal by end 2011. Minister Cséfalvay stressed the importance of ADR as a complement to litigation. The EU should accommodate the Member States in developing such schemes in partnership with business associations.

Members expressed their full support for the development of ADR, also to enhance consumer confidence when shopping cross border. While they agreed that there is no one-size-fits-all approach, they warned for too many different schemes which may confuse the consumer and deliver mixed results. Many speakers stressed the lack of awareness of existing ADR schemes, both on the consumer and the business side.

Examples given from Italy, the Netherlands and Denmark showed that companies not only take part in ADR schemes to boost their image, but also use the data on solved complaints to improve their products, services and - as a result - consumer satisfaction. However speakers also stressed that businesses do not always engage in ADR proceedings and that some consumer complaints cannot be dealt with due to the lack of ADR schemes. The Commission was urged to come forward with a proposal to provide clarity on the conditions in order to ensure high quality ADR schemes in all consumer markets, and particularly for e-commerce.

The IMCO Chair Malcolm Harbour chaired the event, which was well visited with around 200 participants from 26 Member States, Norway and the USA. Members will find a summary of the debate attached.
I. Keynote speeches

Commissioner DALLI

The Commissioner for Health and Consumers, stressed that consumers should be able to resolve their disputes with a trader out-of-court in a low-cost way. This would boost the confidence of consumers and foster demand for goods and services both off and on-line. Currently the losses incurred by European consumers due to problems with purchased goods or services are estimated at 0.4% of Europe’s GDP. 46% of Consumers do not act when something goes wrong.

There is a clear progress in developing ADR schemes - already more than 700 EU-wide - but they have not yet reached their full potential. The Public Consultation, which ended on 15 March 2011, identified three main shortcomings that hinder the effectiveness of ADR in the EU:

1. Important gaps, both sector-specific and geographical, persist in most Member States. Moreover, only 62% of the consumer ADR schemes deal with claims from consumers residing in another Member State, which is too little considering the growing importance of e-commerce.
2. There is very little awareness from citizens, and access to ADR is not always easy for consumers as there are many different schemes. Also a recent Eurobarometer survey showed that 40% of retailers were unaware of ADR.
3. Traders are reluctant to sign up for ADR. At present, 64% of ADR schemes are voluntary and only 6% of European traders are members of such a scheme.

The commissioner announced the presentation of a legislative proposal on ADR by end 2011.

Mr CSÉFALVAY, Hungarian Presidency

Mr. Zoltan Cséfalvay, Junior Minister for Strategic Affairs at the Ministry for National Economy, also highlighted the impressive growth of ADR systems within the EU. He would welcome a more cooperative view on ADR in particular to fill the e-commerce gap. This would prevent the long, time and resource consuming procedures held at the national courts.

However, he also pointed at autonomy as a key concept for ADR. The EU should therefore not regulate, but create a common framework that would include assistance to existing ADR systems by setting common standards and the creation of a Code of best practices to ensure quality and consistency. ADR should be presented as beneficial for both consumer and business, and more funds should be dedicated to it. He also noted that the Hungarian presidency is committed to raise awareness among traders and consumers.
Mrs TESTORI COGGI, Director General for Health and Consumers

In a short intervention Mrs Paola Testori Coggi, DG SANCO, underlined the important issues that need to be addressed in order to increase the confidence of Consumers, such as raising the awareness of consumers (and traders) on ADR, promoting ADR as an alternative step before going to court, and the issue of financing ADR systems.

II. ADR at the service of the Internal Market and Consumers

Moderator: Professor Evelyne TERRYN, University of Leuven

Andreas SCHWAB, MEP (IMCO, EPP, DE) emphasised that markets are about trust, especially in the field of e-commerce. A proposal for ADR discussion should focus on its main features: non-bureaucratic, flexible, avoiding accusative litigation and ability to work in cross-border situations. ADR should be low-cost and quick. A "one size fits all" approach should be avoided, however ADR should always be impartial and the interest of consumers should be put first.

Monique GOYENS, Director General of BEUC stressed the need to better understand why ADR has not reached its full potential. ADR is seen as a prominent tool for consumer organisations. Consumers are often confused because of the number of different ADR schemes. "Médiateurs" provided by customer services of companies also contribute to this confusion. It would thus be useful to have a template for ADR schemes. ADR should be promoted as an alternative to court proceedings offering win-win situation for consumers and traders. Traders currently do not use ADR and have no real incentives to do so. In general she noticed a lack of compliance by businesses: only few ADR decisions are binding. Its effectiveness depends on a company's goodwill, as there is no enforcement mechanism.

Ms Goyens emphasised that ADR should be an alternative, and not a replacement of access to courts. Therefore, improvement of courts mechanisms also has to be ensured. Furthermore, ADR should be articulated in relation to collective redress mechanisms.

Louis GRECH, MEP (S&D, MT, IMCO) regretted the low knowledge that citizens have of ADR systems. Mr Grech's report A Single market for consumers and citizens calls for the EC to provide with better mechanisms to review the exercise of consumer rights and the problems they face in cross-border situation. An ideal ADR system should provide citizens with security and confidence, and surpass all the current cross-border difficulties. Together with the proposed ADR package (end 2011), there should be a proposal for an EU-wide collective redress system.

Francis FRIZON, mediator and member of FIN-NET, explained that FIN-NET groups several different ADR systems. The main idea was to avoid court proceedings in financial controversies. In Mr Frizon's view, the EU should not harmonize ADR systems, but only foster their coordination respecting their flexibility and voluntary character. Following these principles, 50 members of 22 countries have already joined FIN-NET.
The main principles that should guide the EC's activities in this field are quality, respect to the consumer's trust, transparency, respect for the legal framework, promotion of equity in arrangements and conflict resolutions, respect for confidentiality of the procedure and no (or low) costs.

**Diana WALLIS, MEP** (JURI, ALDE, UK) highlighted the fact that she already drafted a report on ADR back in 2001. However she welcomed the (renewed) efforts and pointed at the main issues to be tackled:
1. Awareness-raising: the EU should offer a coherent roadmap or signposting on ADR. Furthermore ADR has to be properly funded.
2. Businesses should be encouraged to participate by pointing at ADR as "good business conduct".
3. The EC should acknowledge that proper access to redress in the internal market requires both ADR and a good system of collective redress, as both are complementary.

**Tiziana POMPEI, UnionCamere**, Vice-president of the Italian Chamber of Commerce presented the state of play in Italy. Mediation/ADR is compulsory in certain areas such as house renting and insurance. In all, results are satisfactory as 50% of queries are solved within 2 months, and there is an increased use of voluntary ADR. In her view, ADR should be fast as this is a very good incentive for companies to comply as they otherwise will have great legal costs due to lengthy court procedures. Confidentiality and informality during the procedure should be ensured.

**Interventions from the floor**

Questions and comments were made as regards:
- the use of languages in case of cross-border disputes.
- the funding of ADR schemes and, related, the fees for consumers
- the idea to introduce ADR as a quality label
- the need to make the application of ADR compulsory or voluntary
- the confidentiality or transparency of the procedure and the decisions
- the quality of the decisions and whether they should be binding
- the setting of a benchmark to measure the effectiveness of ADR schemes
- the principle of impartiality of ADR schemes
III Which way forward for the development of ADR in the EU

Moderator: Jacqueline MINOR, Director for Consumer Affairs, DG SANCO

Sandra KALNIETE, MEP (IMCO, EPP, LV), Rapporteur for the IMCO report on Governance and Partnership in the Single Market, indicated that ADR is one of the top 5 priorities regarding Single Market Governance. Businesses should be required to make reasonable efforts to inform their consumers when they are/are not part of an ADR scheme. Online tools, such as a EU online database, could help the consumer to find the right ADR mechanism. She mentioned that a better European Framework for ADR should also be available for small enterprises. SMEs often find themselves in the same position vis-à-vis large suppliers of goods or services as individual consumers do. The EC should draft a legislative proposal and promote its quick adoption.

Loic ARMAND, MEDEF, mentioned that mediation is very successful in France. In 2009 a practical guide was published by MEDEF and an internet portal on mediation procedures was launched in October 2010. He underlined that the best way to convince consumers is to publicize the benefits of ADR, charging no fee for using ADR schemes and ensuring confidentiality for the companies. ADR should also be voluntary for companies and consumers, and once initiated it should be possible to withdraw from it at any time. Finally he stressed that in France businesses are committed to make ADR work.

Raffaelle BALDASSARRE, MEP (Vice-Chair JURI, EPP, IT) stressed that, since ADR offers an alternative to court proceedings, mediators and referees should be carefully chosen, educated and monitored. Consumer associations are key players in raising awareness, especially ECC-Net, which should have an ADR database. Regarding e-commerce, quick, cheap and online "e-DR" could play a key role in enhancing consumer trust.

Collective redress is the third pillar in guaranteeing a high protection of consumer rights, even though it is not yet a reality in the EU. Amicable conflict resolution should always be prioritized via agreements between consumer associations and companies, especially regarding similar or mass cases,
Peter FOGH KNUDSEN, Director of the Danish European Consumer Centre (ECC), said that in 2010, ECC-Net received 32000 cross-border cases, 60% of which had to do with e-commerce. 14000 of them were solved thanks to the cooperation between the ECC centres in the country of the consumer and in that of the traders. 21% of the problems had to do with delivery of products, what affects consumer trust.

Nonetheless, ECC centres have no enforcement powers, and many problems remain unsolved due to lack of commitment from traders. The EU should close these gaps; in cross-border cases, only 5% of complaints received can be transferred to operative ADR schemes in other Member States. As a result consumers get thus frustrated and e-commerce gets bad reputation. Similarly, the participation to ADR by the traders when it comes to cross-boarder issues should be compulsory; if the EU really wants to make a difference for consumers, voluntary ADR is not an option, according to Mr. Fogh Knudsen.

Jürgen CREUTZMANN, MEP (IMCO, ALDE, DE), explained that the IMCO Committee has commissioned a study on cross-boarder ADR systems. He proposed to add a reference to ADR schemes in all contracts, both e-contracts and paper ones. Consumers have to know in advance where and how to act when they need redress. Also the consumers should be able to proceed in his/her own language and should bear no costs for ADR.

Peter MOERKENS, De Geschillencommissie, provided a presentation on the organisation of ADR in the Netherlands. An umbrella organisation has been set up overlooking 50 sectorial ADR schemes in 3 pillars: consumer protection, businesses, public authorities. The schemes are self-regulatory and voluntary, but if the consumer chooses ADR instead of a court, this decision is compulsory for the company in question. Everything is internet-based; after having submitted the complaint the consumer is able to follow of their case on the internet. On average the time for finding a solution is 4 months.

As regards funding, the government funds the general infrastructure, companies pay the procedural costs (so fewer complaints mean minor costs) and consumers pay €25 to €125. If the outcome is favourable to the consumer, the fees paid are reimbursed.
Mr Jorge PEGADO LIZ, Head of the Consumer Committee of the Economic and Social Committee (EESC), reminded the audience of the communications of the European Commission (98/1998 and 91/2001), the Green paper from April 2002, the recommendations of the Council and several EJC and ECHR. EU action is needed, but subsidiarity and proportionality are essential principles that must be applied. However common parameters for all the EU Member States should be set as regards: independence, impartiality, transparency, efficacy, legality, etcera. At the same time, Member States should allocate more resources to ADR systems and companies will have to be more involved.

Interventions from the floor

Questions and comments were made as regards:
– the important role courts can play in raising awareness
– the need of lawyers informing their clients of ADR before filing a lawsuit.
– the costs of ADR and the quality of ADR outcomes
– the resources required and the exploration of public/private ADR funding
– the possibility of co-funding ADR schemes by insurers
– the online dimension of ADR
– the publication of annual reports on ADR schemes with yearly evaluations

IV. Closing remarks

Malcolm HARBOUR, MEP (IMCO, ECR, UK)

The IMCO Chair concluded the Summit by saying that the EU should work on the impressive expertise on ADR already available. Any EU initiative should not interfere with what is already working. The EU should also concentrate on cross-border controversies and offer accessible information, so consumers will know which direction to follow when a dispute had arisen.

Business should be encouraged to participate in good ADR practices, as they created satisfied loyal consumers. Confidentiality should be kept, but the outcome of the cases should be transparent and later used for feedback and improvement of goods and services.

-o-o-o-
SUMMIT ON ALTERNATIVE DISPUTE RESOLUTION
FOR INTERNAL MARKET AND CONSUMERS

16 March 2011, 15:00 – 18:30
European Parliament (room JAN 6Q2)

Chairperson: Malcolm Harbour, MEP, Chair IMCO

15:00-15:20 Keynote speeches
John Dalli, Commissioner for Health and Consumers
Zoltán Cséfalvay, Hungarian Presidency

15:20-15:30 Introductory remarks
Paola Testori Coggi, Director General for Health and Consumers

15:30- 16:45 ADR at the service of the Internal Market and Consumers
Moderator: Professor Evelyne Terryn, University of Leuven
Statements:
- Andreas Schwab, MEP (EPP, DE, IMCO)
- Monique Goyens, Director General of BEUC
- Louis Grech, MEP (S&D, MT, IMCO)
- Francis Frizon, FIN-NET
- Danna Wallis, MEP (ALDE, UK, JURI)
- Tiziana Pompei, UnionCamere

Interventions from the floor and discussion

16:45 – 17:00 Coffee break

17:00 – 18:20 Which way forward for the development of ADR in the EU?
Moderator: Jacqueline Minor, Director for Consumer Affairs, DG SANCO
Statements:
- Sandra Kalniete, MEP (EPP, LV, IMCO)
- Loic Armand, MEDEF (Mouvement des entreprises de France)
- Raffaele Baldassarre, MEP (EPP, IT, JURI)
- Peter Fogh Knudsen, Director of ECC Denmark
- Juergen Creutzmann, MEP (ALDE, DE, IMCO)
- Peter Moerkens, De Geschillencommissie NL
- Jorge Pegado Liz, European Economic and Social Committee

Interventions from the floor and discussion

18:20-18:30 Concluding remarks by Malcolm Harbour, Chair IMCO