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Committee on Legal Affairs

2011/0373(COD)

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

PA_Legam

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.

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 matters², 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.

¹P7_TA(2011)0449.

² OJ L 136, 24.5.2008, p. 3.

- 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 disputes¹ and of 4 April 2001 on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes². 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.

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

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***

¹ OJ L 115, 17.4.1998, p. 31.

² OJ L 109, 19.4.2001, p. 56.

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.

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

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

(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.

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 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.

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 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

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, 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

(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.***

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.

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

Amendment

(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,

(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,**

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.

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

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

Amendment

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

Amendment

– 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;

– 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 mandate;

Amendment

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

(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 30

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 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 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 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

Amendment

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

(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

(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;

Amendment

(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.***

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

Amendment

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.***

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

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.

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 disputes between consumers and traders;

Amendment

(f) any recurrent problems leading to 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

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. 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		