



Workshop I: Out-of-court dispute resolution

Jérôme Chauvin
BUSINESSEUROPE

BUSINESSEUROPE views:

- keen to engage in a constructive discussion
- consumer satisfaction is key for companies
- effective and easy access to justice for consumers
- companies have to compensate for prejudice caused



Methodology

- **Do not rush to conclusions;**
- **Before taking action at EU level, it is essential to**
 - identify problems and provide sufficient evidence
 - pinpoint their causes
 - assess whether any EU action is needed and justified and if this is the case, assess what is the most appropriate type of action
 - assess the impact of the action on the basis of a competitiveness test
 - dialogue with representative stakeholders (provide enough time for input)

To date the case for EU action has not been made and it is too early to discuss the legal basis for EU action in this field!



Current legal environment

• At EU level:

- Injunctions directive (transposition by 2001)
- Regulation on small claims (in force as from 1 Jan 2009)
- Regulation on consumer protection cooperation to strengthen effectiveness of consumer protection directives (in force since 29 Dec 2005 and provisions on mutual assistance since 29 Dec 2006)
- Brussels I Regulation (in force since 1 March 2002)
- SOLVIT (European free-of-charge online problem-solving network);
- European Consumers Centres Network (ECC-Net)
- Commission Recommendation on the principles for out-of-court bodies involved in the consensual resolution of consumers disputes (2001)
- Commission Recommendation on the principles applicable to the bodies responsible for out-of court settlement of consumer disputes (1998)
- Soon to be adopted: Directive on mediation in civil and commercial matters



Current legal environment

- **At national level:**

- Various means of collective redress exist in many EU Member States, adapted to national reality
- Collective judicial actions have only been very recently adopted in some Member States and more time is needed to verify whether this system proves effective



Today's objective: questions to be answered

1. Are ADR schemes, both national and cross-border, necessary if there are efficient court proceedings?
2. Can collective ADR proceedings provide an efficient means of redress, for both national and cross-border disputes?
3. How to ensure that ADR mechanisms are of good quality?
4. How to encourage businesses to sign up to ADR?
5. How to fill in the geographical and sectoral gaps?



Questions to be answered

Are ADR schemes, both national and cross-border, necessary if there are efficient court proceedings?

- Non-judicial collective means of redress should be the first option
- More effective:
 - make it possible to reach a solution acceptable for both parties more rapidly
 - at a lesser cost
 - help to maintain a less confrontational atmosphere
 - provide case-by-case solutions: better suited to specific circumstances of each situation



“Consumers and business should first attempt to resolve their disputes directly before seeking recourse through third-party mechanisms”.

OECD recommendation on consumer resolution and redress, 12 July 2007



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- Only 17% of European consumers believe in litigation to solve problems
 - 42% of European citizens consider alternative means of dispute resolution to be more efficient
 - more than 90% of consumer-related disputes are settled out of court between the parties involved

What consumers expect is to obtain satisfaction quickly and at no or minor cost!



Questions to be answered

- **Can collective ADR proceedings provide an efficient means of redress, for both national and cross-border disputes?**
- IT: Cirio and Parmalat cases
 - the main banking groups undertook conciliation procedures in agreement with the main consumer associations
 - out-of-court collective actions that have proved very successful
 - volume of claims after conciliation was 1%: approximately 150 cases for 14,000 examined



- Germany - Motor trade and repair sector:
 - 130 arbitration boards handled 11,550 cases, 9,951 of which were settled in preliminary proceedings
 - Only 1,600 cases had to be handled by the board itself:
 - about 50% of those cases were settled without a ruling by the arbitration board



- **NL**
 - umbrella ADR system operates in 36 sectors of the economy and receives over 12,000 consumer complaints per year
 - It is operated by both business and consumer organisations, and is partly co-financed by the Dutch government
 - two sets of rules:
 - (i) before starting collective action, representative organisation obliged to attempt to resolve the mass dispute out of court first
 - (ii) if the parties agree to settle the dispute out of court, they can apply to court to declare the settlement fair and binding even on non-parties to the agreement on an opt-out basis



Questions to be answered

- **How to ensure that ADR mechanisms are of good quality?**
- **How to fill in the geographical and sectoral gaps?**
- **ADRs are adopted at national level taking into account national features:**
 - Organisation and effectiveness of proceedings
 - Consumers organisations
 - Effectiveness of market surveillance
 - Historic, political and socio-economic, educational, culture, etc.
- **No particular system can be pointed out as the best choice**



- **Exchange of best practices between competent authorities**
 - ECC-Net
- **Education and information**
 - Dialogue between consumers and enterprises
 - Public authorities should invest more in consumer education and information on mechanisms available, in addition to initiatives between professional and consumer organisations
- **Enforcement**
 - Member States to play a decisive role for efficient enforcement of existing rules/recommendations
 - Essential for confidence of citizens and companies in the internal market
 - Legislation often not properly enforced



Questions to be answered

- **How to encourage businesses to sign up to ADR?**
 - Interest of both consumers and business that disputes are settled via ADR
 - Make possible to reach a solution more rapidly, at a lesser cost, with a less confrontational atmosphere and is best suited to each specific situation
 - Dutch Royal Shell settlement finalised on Shell's initiative
 - Portugal: "Consumer conflicts arbitration centre": of a total of 10,435 cases, 10,231 were sorted out with collaboration from companies
 - Finland: "Consumer Complaint Board" - compliance with the Board's recommendations is not compulsory, but businesses comply with them in approximately 80% of cases – it handles cases free of charge and faster than cases would be handled in court proceedings.
 - BUSINESSEUROPE committed to dissemination of best practices and cooperation with entities on the promotion of ADRs



Summary

- BUSINESSEUROPE supports easy and effective access to justice
- ADRs should be the first option to be considered, since they are more efficient and effective
- ADRs are efficient means of redress, for both national and cross-border disputes but their existence and success need to be further disseminated
- More emphasis needed on promotion and reinforcement of ADRs (various forms of ADRs in Member States – discussions at that level – exchanges of best practices)
- Only 17% of European consumers believe in litigation to solve problems
- Only 13% consider collective actions to be the best system
- What consumers expect is to obtain satisfaction quickly and at no or minor cost



Thank you for your attention!

**For more information:
www.businessseurope.eu**

