

21 March 2012

ALTERNATIVE DISPUTE RESOLUTION

KEY MESSAGES

- 1 Consumer protection and confidence are key for the further development of the single market. They will stimulate more consumption which is a driver for job creation and a strong economy.
- 2 As a key tool to boost consumer confidence in the single market, BUSINESSEUROPE welcomes the adoption by the European Commission of two proposals on alternative dispute resolution mechanisms (ADRs) and on the creation of an EU-wide platform for online disputes.
- 3 Out-of-court settlement procedures represent simple, fast and affordable ways to solve disputes for both online and offline transactions.

WHAT DOES BUSINESSEUROPE AIM FOR?

- Help tackle the main challenges facing ADRs, namely awareness, sectoral coverage and quality in order to ensure that these proposals deliver their full potential.
- Preserve voluntary nature and diversity as the two basic principles for the ADRs functioning in Europe. There are no one-size-fits-all solutions in this area.
- Avoid that the Commission's proposals impose unnecessary burdens on companies.

KEY FACTS AND FIGURES

<p>Less than 10% of consumers buy online across borders</p>	<p>There are 750 ADR schemes across Europe</p>	<p>The development of the digital single market could represent an increase of 4% of EU GDP by 2020</p>
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COMMISSION PROPOSALS ON ALTERNATIVE DISPUTE RESOLUTION

A *win win* solution for businesses and consumers

As a key tool to boost consumer confidence in the internal market, BUSINESSEUROPE welcomes the adoption by the European Commission of two proposals on alternative dispute resolution mechanisms (ADRs) and on the creation of an EU-wide platform for online disputes.

These initiatives should help grant consumers and businesses better access to out-of-court settlement procedures which represent simple, fast and affordable ways to solve disputes for both online and offline transactions.

Multiple best practices identified in different sectors across Member States have already proved the added value of these instruments in terms of rapidity, low cost, simplicity and efficiency for both consumers and businesses. Alternative dispute resolution can play an important role in boosting consumer confidence which is a driver for growth and jobs.

The Commission has rightly identified awareness, sectoral coverage and quality as the main challenges to ensure that these proposals deliver their full potential.

In BUSINESSEUROPE's view, it is key not to lose sight of the following elements when tackling these challenges:

- A one-size-fits-all solution must be avoided. The diversity and adaptability of ADR systems should be preserved.
- The voluntary nature of ADRs should be preserved. Compulsory adherence to ADRs should not be the general rule, rather the exception.
- Impartiality is key for the well functioning of ADRs, however it should not be confused with financial independence.
- ADRs schemes should essentially be free of charge. However, it should not be excluded to request a fee in order to prevent the filing of unfounded complaints.

After careful analysis, BUSINESSEUROPE believes that the Commission proposals require a number of adjustments and clarifications.

Directive on alternative dispute resolution

1. Hierarchy of settlement

Consumer redress is key to boost consumer confidence in the single market. Out-of-court means of solving disputes should be favoured because they offer a low-cost and fast alternative of solving disputes. This is why BUSINESSEUROPE, alongside the European Parliament, is a strong supporter of a certain hierarchy of settlement:

- **First:** in-house complaints schemes;
- **Second:** ADR schemes appropriate to solve the dispute;
- **Third:** and as a last resort, the judicial route.

ADR should only arrive at the second stage when the consumer has already contacted the trader, in particular its customer service and the latter is unable to provide satisfactory solution.

Action required

This hierarchy of settlement should be reflected in the directive. For example, a new recital could be included in the draft directive making reference to this 'hierarchy' and emphasising that before addressing their concerns to an ADR entity, consumers should first contact the company.

2. Scope of the directive (Article 2)

The directive clearly indicates that '*procedures before entities where the natural persons in charge are employed exclusively by the trader*' are excluded from its scope.

It is essential to note that many ADR best practices which fulfil the directive's quality criteria are either financed by a company, a group of companies, the company's business organisation or by the latter jointly with national consumer associations. Companies and business organisations have invested considerable resources to set up such schemes either on a voluntary basis or in part to follow national and European legislation. ADR schemes resulting from the implementation of EU legislation in the electronic communications and financial services are a clear example of this.

Impartiality and independence should not be confused with funding. In this difficult economic context, Member States' budgets alone will not be able to provide an extension of ADR systems to more areas. To pursue this challenging goal, the contribution of civil society, in particular that of companies is key and should not be hindered. On the contrary, it should be encouraged.

Action required

BUSINESSEUROPE advocates for an amendment of Recitals 12 and 17 and the removal or clarification of Article 2, paragraph 2 (a) of the draft Directive, so as to ensure that successful ADR systems in conformity with the quality criteria are included in the scope of the proposal.

3. **Effectiveness: time-frame requirement (Article 8(d))**

The proposed directive requires Member States to ensure that a dispute 'is resolved within 90 days from the date on which the ADR entity has received the complaint'.

Regardless of how appropriate the proposed time-frame is, we believe that the draft directive should clarify the exact moment when this period begins. The draft directive foresees an extension for more complex cases; however, for simpler cases there might also be delays, for example related to the parties involved in the case.

In our view, any period should start when the ADR entity receives the complete complaint with all the necessary documents allowing it to work towards a satisfactory solution.

Action required

As a consequence, the exact start of the any time frame should be clarified, and we propose to make the 90-day time-frame indicative rather than binding.

4. **Information obligations for the trader (Article 10(2))**

BUSINESSEUROPE acknowledges the need to raise awareness about ADR systems among both businesses and consumers. EU institutions, Member States' public entities, consumer associations and businesses have an important role in informing consumers about the existing redress mechanisms and the way they function. European Consumer Centres (ECC) and FIN-net or any other national contact points could play an important role in informing consumers about ADRs able to deal with cross-border cases.

It is in the interest of business to advertise a particular ADR scheme if it is available and if it provides clear benefits for both businesses and consumers. However, information requirements addressed to businesses should not impose unnecessary burdens.

In BUSINESSEUROPE's view the draft directive seems too stringent in this regard. The obligation for the trader, established in Article 10(2) of the directive, to make information available in the company's website and in any other physical contractual support (terms and conditions, invoices and receipts) seems disproportionate. It seems impractical to add in each receipt (e.g. metro ticket, sandwich bought in a kiosk) information about available ADRs or whether the trader commits to use them. This particular information obligation risks confusing the consumer and defeats the principle according to which the first stop to settle a dispute must be the trader's own customer service (see comments on hierarchy of settlement).

Action required

BUSINESSEUROPE believes that Article 10 should be re-drafted in a way that does not impose unnecessary burden on companies. With regard information on ADRs, a mention in the trader's website, in the business premises or in the terms and conditions of the contract should suffice.

There should be no obligation on traders to inform consumers about ADR entities of which they are not member (Article 10(1) of the ADR Directive).

Apart from changing the abovementioned article, a possible additional solution to avoid imposing too much unnecessary burdens on traders could be to create a minimum threshold based on the value of the good or service under which the information obligations of the directive would not be applicable. This should not preclude of course ADR entities being able to continue to deal with low-value complaints and disputes.

Regulation on online dispute resolution

BUSINESSEUROPE welcomes the objective of the Commission's proposed regulation. However, it is essential that the link between the proposed platform and existing national and European platforms is clarified. It should function in tandem with existing systems rather than in parallel. Only then can this platform fulfil its objective of becoming a reference for cross-border online alternative dispute resolution.

In addition, BUSINESSEUROPE would like to highlight some concerns about the following specific elements of the regulation:

1. Definition of cross-border online sale of goods or provision of services

The proposal only covers disputes which have arisen from a cross-border e-commerce transaction. The definition of such a transaction requires the consumer to be resident in a Member State other than the trader at the time the consumer places his order (Article 4). From the trader's point of view this definition could give rise to legal uncertainty. The trader may have profound difficulties in determining the consumer's state of residence at the time he places his order.

2. Information obligation of Article 13 is too stringent

Informing consumers about the ODR platform in all textual messages sent to the consumer by electronic means seems burdensome for companies and confusing for consumers.

3. Time-frame requirement of 30-day should be more indicative

For the same reasons presented earlier for the draft directive, this time-frame should preferably be indicative. In addition, we should not forget that the proposed ODR referral platform would be built around existing national ADR schemes benefitting from longer time-frames.
