

Fiche de procédure

Basic information		
COS - Procedure on a strategy paper (historic)	2002/2144(COS)	Procedure completed
Civil and commercial law: access to justice, alternative dispute resolution ADRs. Green paper		
Subject 7.40.02 Judicial cooperation in civil and commercial matters		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	JURI Legal Affairs and Internal Market		22/05/2002
		ELDR WALLIS Diana	
	Committee for opinion	Rapporteur for opinion	Appointed
	LIBE Citizens' Freedoms and Rights, Justice and Home Affairs		02/10/2002
Council of the European Union European Commission		PSE MARINHO Luís	
	EMPL Employment and Social Affairs	The committee decided not to give an opinion.	
	ENVI Environment, Public Health, Consumer Policy		
	Commission DG Justice and Consumers	Commissioner	

Key events			
19/04/2002	Non-legislative basic document published	COM(2002)0196	Summary
01/07/2002	Committee referral announced in Parliament		
20/02/2003	Vote in committee		Summary
20/02/2003	Committee report tabled for plenary	A5-0058/2003	
12/03/2003	Decision by Parliament	T5-0084/2003	Summary
12/03/2003	End of procedure in Parliament		
10/03/2004	Final act published in Official Journal		

Technical information	
Procedure reference	2002/2144(COS)
Procedure type	COS - Procedure on a strategy paper (historic)

Procedure subtype	Commission strategy paper
Legal basis	Rules of Procedure EP 142
Stage reached in procedure	Procedure completed
Committee dossier	JURI/5/16362

Documentation gateway

Non-legislative basic document		COM(2002)0196	19/04/2002	EC	Summary
Economic and Social Committee: opinion, report		CES1349/2002 OJ C 085 08.04.2003, p. 0008-0012	11/12/2002	ESC	
Committee report tabled for plenary, single reading		A5-0058/2003	20/02/2003	EP	
Text adopted by Parliament, single reading		T5-0084/2003 OJ C 061 10.03.2004, p. 0150-0256 E	12/03/2003	EP	Summary

Civil and commercial law: access to justice, alternative dispute resolution ADRs. Green paper

PURPOSE : Green Paper on Alternative Dispute Resolution (ADR). **CONTENT :** Growing interest is being shown in ADR in the EU for three main reasons: - there has been the increasing awareness of ADR as a means of improving general access to justice in everyday life; -ADR has received close attention from the Member States, many of which have passed legislation encouraging it. -ADR is a political priority. This was specifically asserted in the context of the information society, where the role of new on-line dispute resolution (ODR) services has been recognised as a form of web-based cross-border dispute resolution. This specific context explains the background to the political mandate for the preparation of the Green Paper. The Council asked the Commission to prepare the Paper taking stock of the current situation and launching broad consultations on the measures to be taken. The paper is an opportunity to familiarise the broadest possible public with ADR facilities and also to make the initiatives taken by Member States and the Community more highly visible. There are twenty-one questions to which people are asked to react by 15 October 2002. The questions put by the Paper are primarily legal and concern the salient features of ADR processes such as ADR clauses in contracts, limitation periods, confidentiality constraints, the validity of consent given, the effectiveness of agreements generated by ADR processes, the training of third parties, their accreditation and the rules governing their liability. The Green Paper also asks whether the initiatives to be taken should be confined to defining the principles applicable to one single field, such as commercial or family law) - field by field - and in this way discriminate between these different fields or whether they should extend to all fields governed by civil and commercial law. The Paper looks at initiatives already taken in the fields of consumer protection and family law and asks how they might be developed. Since ADRs are already a key component of dispute settlement in industrial relations, the Paper considers boosting the development of ADR in the labour relations area by setting up European mechanisms. Finally, the Commission asks whether Member States' legislation in regulated areas such as family law should be harmonised so that common questions may be laid down with regard to procedural guarantees. ?

Civil and commercial law: access to justice, alternative dispute resolution ADRs. Green paper

The committee unanimously adopted the report by Diana WALLIS (ELDR, UK) welcoming the Commission's Green Paper. It gave broad backing to alternative dispute resolution (ADR) in civil and commercial law as a potentially cheaper, quicker and less stressful option for litigants than traditional legal services. The committee therefore felt that ADRs should be encouraged as a non-binding option, although the Member States should retain the right to propose ADR to both parties as a preliminary option to access to courts, whilst not undermining parties' rights to take action through the courts if necessary. The committee nevertheless warned the Commission that it should be cautious and undertake in-depth analysis and wide-ranging consultations before it considered proposing any legislative initiatives, given that the Member States did not have detailed framework legislation on ADRs and that their legal systems differed greatly in this area. The Commission was therefore asked to prepare a follow-up Green Paper concentrating on building capacity in ADR, developing standards for ADR and improving quality and benchmarking so as to achieve both coherence and consumer confidence in the use of ADR. Moreover, MEPs pointed out that the follow-up Green Paper should consider a future Europe-wide model code guaranteeing at least that the use of ADR in cross-border disputes should not prejudice access to justice in any way and that both parties, in particular when they come from different Member States, should recognise the dispute-settlement procedure. It added that formalities should be kept to a minimum and legal jargon eschewed. The Commission and the Member States were urged to raise public awareness and promote the use of ADR through information campaigns and by involving consumer organisations. Lastly, the report called on the Commission to improve and reinforce the European Extra-Judicial Network (EEJ-Net) to encourage Member States to make proper provision for good quality ADR and fill the gaps in existing ADR provision.?

Civil and commercial law: access to justice, alternative dispute resolution ADRs. Green paper

The European Parliament adopted a resolution drafted by Diana WALLIS (ELDR, UK) on ADR. (Please refer to the document dated 20/03/02.)

To expand, Parliament stated that the Commission's follow-up Green Paper should consider a future Europe-wide model code encompassing at least the following minimum procedural guarantees: - the use of ADR in cross-border disputes should not prejudice access to justice in any way; - both parties, in particular where they come from different Member States, should recognise the dispute-settlement procedure; - the third party conciliator or mediator should be independent and impartial; it should be established that the neutral third party has a duty to assist the parties where necessary, while maintaining his or her impartiality; - there should be a duty of confidentiality in so far as matters disclosed by party A to the dispute to the mediator/conciliator should be disclosed to party B or a third party only with party A's consent; - the principles of natural justice must be sacrosanct; - ADR should be consensual and the parties should be fully informed of the scope of the ADR and of the enforceability of decisions. In certain cases, the parties should be guaranteed a minimum cooling-off or reflection period before agreeing to the results of mediation; expiry of a time limit for recourse to ADR should not result in a denial of access to the courts; - in general, consumers should always be able to go to court if they are dissatisfied with the result of - even mandatory - ADR, even if only to have the legality of the ADR clause reviewed; - formalities should be kept to a minimum and legal jargon eschewed; - records should be kept of ADR decisions and, in principle, published, provided that the parties agree and having due regard to the protection of personal data; - there should be no penalties in the form of costs orders for parties reasonably refusing to have recourse to ADR.?