

Alternative dispute resolution for consumer disputes (Directive on consumer ADR)

2011/0373(COD) - 12/03/2013 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 617 votes to 51 with 5 abstentions a legislative resolution 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).

Parliament adopted its position in first reading following the ordinary legislative procedure. The amendments adopted in plenary are the result of a compromise negotiated between Parliament and Council. They amend the Commission proposal as follows:

Purpose and scope: the purpose of the Directive is, through the achievement of a high level of consumer protection, to ensure that consumers might, on a voluntary basis, submit complaints against traders to entities offering independent, impartial, transparent, effective, fast and fair alternative dispute resolution procedures.

The Directive provides that Member States will be permitted to maintain or introduce national provisions with regard to procedures not covered by the Directive. It acknowledges the competence of Member States to determine whether ADR entities established on their territories are to have the power to impose a solution.

The Directive will apply to procedures for the out-of-court resolution of domestic and cross-border disputes concerning contractual obligations stemming from sales contracts or service contracts between a trader established in the Union and a consumer resident in the Union through the intervention of an ADR entity. Confidentiality and privacy should be respected at all times during the ADR procedure.

The Directive will not apply to:

procedures before dispute resolution entities where the natural persons in charge of dispute resolution are employed or remunerated exclusively by the individual trader;

- non-economic services of general interest;
- disputes between traders;
- procedures initiated by a trader against a consumer;
- health services provided by health professionals;
- public providers of further or higher education.

Access to ADR entities and ADR procedures: Member States shall facilitate access by consumers to ADR procedures.

ADR entities must: (i) maintain an up-to-date website which provides the parties with easy access to information concerning the ADR procedure, and which enables consumers to submit a complaint and the requisite supporting documents online; (ii) provide the parties, at their request, with the information on a durable medium; (iii) where applicable, enable the consumer to submit a complaint off-line.

Member States may, at their discretion, permit ADR entities to maintain and introduce procedural rules that allow them to refuse to deal with a given dispute, for example, on the grounds that the dispute is frivolous or vexatious or that the consumer did not attempt to contact the trader concerned in order to discuss his complaint and seek, as a first step, to resolve the matter directly with the trader.

Where an ADR entity is unable to consider a dispute that has been submitted to it, that ADR entity shall provide both parties with a reasoned explanation of the grounds for not considering the dispute within three weeks of receiving the complaint file.

The Directive should allow traders established in a Member State to be covered by an ADR entity, which is established in another Member State.

Expertise, independence and impartiality: persons in charge of ADR must: (i) possess the necessary knowledge and skills in the field of alternative or judicial resolution of consumer disputes, as well as a general understanding of law; (ii) be appointed for a term of office of sufficient duration to ensure the independence of their actions; (iii) be remunerated in a way that is not linked to the outcome of the procedure.

Transparency: ADR entities must make publicly available on their websites, or on a durable medium upon request, clear and easily understandable information on: (i) their contact details, including postal address and e-mail address; (ii) the expertise, impartiality and independence of the natural persons in charge of ADR, if they are employed or remunerated exclusively by the trader; (iii) the procedural rules governing the resolution of a dispute and the grounds on which the ADR entity may refuse to deal with a given dispute; (iv) any preliminary requirements the parties may have to meet before an ADR procedure can be instituted, including the requirement that an attempt be made by the consumer to resolve the matter directly with the trader; (v) whether or not the parties can withdraw from the procedure; (vi) the average length of the ADR procedure; (vii) the legal effect of the outcome of the ADR procedure, including the penalties for non-compliance; (viii) the enforceability of the ADR decision.

Effectiveness: the ADR procedure must be available and easily accessible online and offline to both parties irrespective of where they are. The parties have access to the procedure without being obliged to retain a lawyer or a legal advisor. Furthermore, ADR procedure must be free of charge or available at a nominal fee for consumers. Lastly, the outcome of the ADR procedure must be made available within a period of 90 calendar days from the date on which the ADR entity has received the complete complaint file.

Liberty: Member States shall ensure that in ADR procedures which aim at resolving the dispute by imposing a solution, the solution imposed may be binding on the parties only if they were informed of its binding nature in advance and specifically accepted this.

Legality: in ADR procedures which aim at resolving the dispute by imposing a solution on the consumer, where there is no conflict of laws, the solution imposed shall 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 and the trader are habitually resident.

In a situation involving a conflict of laws, where the law applicable to the sales or service contract is determined in accordance with Regulation (EC) No 593/2008 (Rome I), the solution imposed by the ADR entity shall 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 in which he is habitually resident.

The right to an effective remedy: ADR procedures should not be designed to replace court procedures and should not deprive consumers or traders of their rights to seek redress before the courts.

Information to be given by traders: traders who commit to use ADR entities to resolve disputes with consumers should inform consumers of the address and website of the ADR entity or entities by which they are covered. That information should be provided in a clear, comprehensible and easily accessible way on the trader's website, where one exists, and if applicable in the general terms and conditions of sales or service contracts between the trader and the consumer.

Monitoring of ADR entities: each Member States should designate a competent authority or authorities, which should perform this function. Member States should ensure that ADR entities, the European Consumer Centre Network, and, where appropriate, the bodies designated in accordance with the Directive publish that list on their website by providing a link to the Commission's website, and whenever possible on a durable medium at their premises.