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Committee on the Internal Market and Consumer Protection

2011/0373(COD)

18.4.2012

*****I**

DRAFT REPORT

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(2012)0793 – C7-0454/2011– 2011/0373(COD))

Committee on the Internal Market and Consumer Protection

Rapporteur: Louis Grech

Rapporteurs for the opinion (*):

Cristian Silviu Buşoi, Committee on Legal Affairs

(*) Associated committee – Rule 50 of the Rules of Procedure

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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DRAFT EUROPEAN PARLIAMENT 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) (COM(2012)0793 – C7-0454/2011– 2011/0373(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2012)0793),
 - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0454/2011),
 - having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Senate of the Kingdom of the Netherlands and by the Bundesrat of the Federal Republic of Germany asserting that the draft legislative act does not comply with the principle of subsidiarity,
 - having regard to the opinion of the European Economic and Social Committee of 28 March 2012¹,
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on the Internal Market and Consumer Protection and the opinion of the Committee on Legal Affairs (A7-0000/2012),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ Not yet published in the Official Journal.

Amendment 1
Proposal for a directive
Recital 2

Text proposed by the Commission

(2) In accordance with Article 26(2) TFEU, the internal market is to comprise an area without internal frontiers in which the free movement of goods and services is ensured. ***In order for consumers to have confidence in and benefit from the internal market, it is necessary that they have access to simple and low-cost ways of resolving disputes which arise from the sale of goods or the provision of services. This applies to offline as well as to online transactions, and is particularly important when consumers shop across borders.***

Amendment

(2) In accordance with Article 26(2) TFEU, the internal market is to comprise an area without internal frontiers in which the free movement of goods and services is ensured. ***The internal market should provide consumers with added value in the form of better quality, greater variety, reasonable prices and high safety standards for goods and services, which should promote a high level of consumer protection.***

Or. en

Justification

Clarifies the tangible benefits that the internal market should offer to consumers.

Amendment 2
Proposal for a directive
Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) Fragmentation of the internal market is detrimental to Union competitiveness, growth and job creation. Eliminating the direct and indirect obstacles to the proper functioning of the internal market and improving citizens' trust is essential for the completion of the internal market.

Or. en

Justification

The internal market is intended to constitute a space across national boundaries where citizens and businesses can move and exercise their rights, but the high level of fragmentation leads to shortcomings which frustrate citizens.

Amendment 3 **Proposal for a directive** **Recital 2 b (new)**

Text proposed by the Commission

Amendment

(2b) The remaining obstacles and gaps, such as a lack of information, uneven geographical and sectoral development of alternative dispute resolution (ADR) systems, and fragmented and uncoordinated regulation hinder the consumer buying with confidence, especially across borders. For the same reasons, traders abstain from selling across borders, which puts them at a competitive disadvantage compared to traders in Member States where such procedures are available.

Or. en

Justification

The large legislative, implementation and information gaps within the Market mean that it is not fully realising its potential. In particular, the fact that ADR is so unevenly developed necessitates action at the European level to ensure consumers have equal access to quality ADR procedures.

Amendment 4 **Proposal for a directive** **Recital 2 c (new)**

Text proposed by the Commission

Amendment

(2c) Guaranteeing access to simple, efficient, expedient and low-cost ways of resolving domestic and cross-border disputes which arise from the sale of goods or the provision of services should

benefit consumers and therefore boost their confidence in the market. That access should apply to offline as well as to online transactions, and is particularly important when consumers shop across borders.

Or. en

Justification

Improving citizens' confidence that they can obtain redress across the Union would increase their participation in the market, providing them with access to a wider range of products and spurring economic growth.

Amendment 5 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 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

(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 ***and consistently*** developed across the ***Member States. It is regrettable that, despite the Commission Recommendations 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for the out-of-court settlement of consumer disputes¹ and 2001/310/EC of 4 April 2001 on the principles for out-of-court bodies involved in the consensual resolution of consumer ADR², alternative dispute resolution mechanisms have not been correctly established and are not running satisfactorily in all geographical areas or business sectors in the Union. Consumers and traders are still not aware of the existing alternative redress mechanisms, with only a small percentage of citizens knowing how to file a complaint with an ADR entity.***

¹ OJ L 115, 17.4.1998

² OJ L 109, 19.4.2001, p. 56.

Or. en

Amendment 6
Proposal for a directive
Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) The inconsistent coverage, quality and awareness of ADR mechanisms in Member States requires action at Union level. This Directive should establish quality standards for ADR entities by setting up a minimum level of harmonisation of the different ADR systems in the Union which should guarantee the same equal level of protection and rights for consumers in both domestic and cross-border disputes.

Or. en

Amendment 7
Proposal for a directive
Recital 3 b (new)

Text proposed by the Commission

Amendment

(3b) In order for consumers to fully exploit the potential of the internal market, ADR should be available for all types of domestic and cross-border disputes covered by this Directive, ADR procedures should adhere to consistent minimum quality standards throughout the Union, and consumers and traders should be aware of the existence of such procedures. Due to increased cross-border trade and movement of persons, it is also

important that ADR entities handle cross-border disputes effectively.

Or. en

Amendment 8
Proposal for a directive
Recital 3 c (new)

Text proposed by the Commission

Amendment

(3c) As advocated by the European Parliament in its resolution of 25 October 2011 on alternative dispute resolution in civil, commercial and family matters¹ and its resolution of 20 May 2010 on Delivering a Single Market to Consumers and Citizens², any holistic approach to the Single Market which delivers for its citizens should as a priority develop simple, affordable, expedient and accessible system of redress.

¹ *Texts adopted, P7_TA(2011)0449.*

² *OJ C 161 E, 31.5.2011.*

Or. en

Justification

The European Parliament has consistently called for legislative action to guarantee access to consumer Alternative Dispute Resolution.

Amendment 9
Proposal for a directive
Recital 4

Text proposed by the Commission

Amendment

(4) In its Single Market Act, the Commission has identified legislation on alternative dispute resolution which includes an electronic commerce

(4) In its Single Market Act, the Commission has identified legislation on alternative dispute resolution which includes an electronic commerce

dimension as one of the twelve levers to boost growth **and** strengthen confidence **in** the Single Market.

dimension as one of the twelve levers to boost growth, strengthen confidence, **and make progress towards completing** the Single Market.

Or. en

Amendment 10
Proposal for a directive
Recital 5

Text proposed by the Commission

(5) The European Council has invited the Parliament and the Council to adopt, by the end of 2012, a first set of priority measures to bring a new impetus to the Single Market.

Amendment

(5) The European Council has invited the Parliament and the Council to adopt, by the end of 2012, a first set of priority measures to bring a new impetus to the Single Market. ***The Council has highlighted the importance of e-commerce and agreed that consumer ADR scheme should be able to offer low-cost, simple and quick redress for both consumers and traders. Successful implementation of that scheme requires sustained political commitment and support from all actors, without compromising the affordability, transparency, flexibility, speed and quality of decision-making by the ADR entities falling within the scope of this Directive;***

Or. en

Justification

Fulfilling the potential of ADR will require full commitment and ownership on the part of the Commission, Parliament and Council. The Member States in particular must oversee the proper implementation of the Directive.

Amendment 11
Proposal for a directive
Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) Given the increasing importance of online commerce and in particular cross-border trade as a pillar of Union economic activity, a well functioning ADR system and a properly integrated online dispute resolution framework for online contractual disputes are necessary in order to achieve the Single Market Act's aim of boosting citizens' confidence in the internal market.

Or. en

Justification

Online trade has become an important pillar of economic activity within the EU, but many consumers and traders are hesitant to shop and sell online because they fear they will not have access to redress in the event of a dispute.

Amendment 12
Proposal for a directive
Recital 5 b (new)

Text proposed by the Commission

Amendment

(5b) This Directive and the Regulation ...^{*} of the European Parliament and of the Council of ...^{**} on online dispute resolution for consumer disputes (ODR Regulation) are two interlinked and complementary proposals. The ODR platform is a tool which should offer consumers and traders a single point of entry for the out-of-court resolution of online disputes, supported by the availability of quality ADR entities across the Union. Proper functioning of the ODR platform should be possible only if full ADR coverage is achieved.

^{*} *OJ: please insert the reference number.*

^{**} *OJ: please insert the date of adoption.*

Amendment 13
Proposal for a directive
Recital 6

Text proposed by the Commission

(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.

Amendment

(6) The development within the Union of well-functioning alternative dispute resolution is necessary to strengthen consumers' confidence in the internal market, including in the area of e-commerce, ***and to realise the potential and opportunities of cross-border and online trade***. Such development should build on existing ADR procedures in the Member States and respect their legal traditions. ***Both existing and newly established well-functioning dispute resolution entities that comply with the minimum quality criteria set out in this Directive should be referred to as "ADR entities"***.

Or. en

Justification

In order to have a level playing field, ADR entities as defined in this Directive may be newly established or may be previously existing dispute resolution entities that are adapted to meet the requirements of this Directive.

Amendment 14
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***

Amendment

(7) This Directive should apply to contractual disputes ***initiated by*** consumers ***against*** traders that are arising from the sale of goods or provision of services, ***both offline and online***, in all economic sectors. This ***Directive*** should ***not apply to any disputes or*** complaints submitted by

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.

traders against consumers, **or** to disputes between traders; however, *this Directive* should not prevent Member States from adopting or maintaining in force provisions on procedures for the out-of-court resolution of such disputes.

Or. en

Justification

Traders taking cases against consumers should be excluded from the scope of this Directive because traders already have sufficient means to remedy such disputes.

Amendment 15 **Proposal for a directive** **Recital 10**

Text proposed by the Commission

(10) This Directive should prevail over Union legislation which contains provisions aimed at encouraging the setting up of ADR entities in a specific sector. Where sector-specific legislation mandates the setting up of *such* entities, this Directive should prevail only to the extent that *such* legislation does not ensure at least an equivalent degree of consumer protection.

Amendment

(10) This Directive should prevail over Union legislation which contains provisions aimed at encouraging the setting up of ADR entities in a specific sector. Where sector-specific legislation mandates the setting up of **ADR** entities, this Directive should prevail only to the extent that **the sector-specific** legislation does not ensure at least an equivalent degree of consumer protection.

Or. en

Amendment 16 **Proposal for a directive** **Recital 11**

Text proposed by the Commission

(11) ADR entities are highly diverse across the Union but also within the Member States. This Directive should cover any entity that is *established on a durable*

Amendment

(11) ADR entities are highly diverse across the Union but also within the Member States. This Directive should cover any entity that is **in complete conformity with**

basis and offers the resolution of a dispute through an ADR procedure. An arbitration procedure which is created outside the framework of an ADR entity on an ad hoc basis for a single dispute between a consumer and a trader should not be considered as an ADR procedure.

the provisions of this Directive, is notified to the Commission and the Member States, and offers the resolution of a dispute through an ADR procedure. An arbitration procedure which is created outside the framework of an ADR entity on an ad hoc basis for a single dispute between a consumer and a trader should not be considered as an ADR procedure.

Or. en

Amendment 17
Proposal for a directive
Recital 13

Text proposed by the Commission

(13) Member States should ensure that disputes covered by this Directive can be submitted to an ADR entity *fulfilling the requirements* set out in this Directive. Member States *should have the possibility to* fulfil this obligation by *relying* on existing ADR entities and adjusting their scope of application, if needed, or by providing for the creation of new ADR entities. This Directive should not oblige Member States to create a specific ADR entity in each retail sector. Member States should *have the possibility to* provide for the creation of a residual ADR entity that deals with disputes for the resolution of which no specific entity is competent.

Amendment

(13) Member States should ensure that *the contractual* disputes covered by this Directive can be submitted to an ADR entity *complying with the quality criteria* set out in this Directive. Member States *could also* fulfil this obligation by *building* on existing *well-functioning* ADR entities and adjusting their scope of application, *complying with this Directive's provisions* if needed, or by providing for the creation of new ADR entities. This Directive should not oblige Member States to create a specific ADR entity in each retail sector. Member States should provide for the creation of a residual ADR entity that deals with disputes for the resolution of which no specific entity is competent.

Or. en

Amendment 18
Proposal for a directive
Recital 14

Text proposed by the Commission

(14) This Directive should be without prejudice to traders established in a Member State being covered by an ADR entity which is located in another Member State. Member States should encourage the development of such *entities*.

Amendment

(14) This Directive should be without prejudice to traders established in a Member State being covered by an ADR entity which is located in another Member State. Member States should encourage the development of such *transnational and pan-European dispute resolution schemes where traders from different Member States are part of the same ADR scheme*.

Or. en

Amendment 19
Proposal for a directive
Recital 15

Text proposed by the Commission

(15) This Directive should be without prejudice to Member States maintaining or introducing ADR procedures dealing jointly with identical or similar disputes between a trader and several consumers. Such procedures can be seen as a preliminary step to further developing collective ADR procedures within the Union.

Amendment

(15) This Directive should be without prejudice to Member States maintaining or introducing ADR procedures dealing jointly with identical or similar disputes between a trader and several consumers. Such procedures can be seen as a preliminary step to further developing collective ADR procedures within the Union. *The existence of an effective system for collective claims and easy recourse to ADR should be complementary and they should not be mutually exclusive procedures*.

Or. en

Amendment 20
Proposal for a directive
Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) Confidentiality and privacy should

be respected at all times during the ADR procedure. However, it should be permitted for final decisions of an exemplary nature to be published subject to any legal obligation of confidentiality.

Or. en

Justification

ADR should, as far as possible, try to raise the standard for good practice among industry, by publishing the “exemplary decisions” of particularly important disputes, which will facilitate exchange of information and best practices on consumer rights in specific fields.

Amendment 21
Proposal for a directive
Recital 16 b (new)

Text proposed by the Commission

Amendment

(16b) Member States should ensure that ADR entities resolve disputes in a manner that is fair, practical and proportionate to both the consumer and the trader, on the basis of an objective assessment of the circumstances in which the complaint is made and with due regard to the rights of the parties.

Or. en

Justification

In order to be a credible and trusted by citizens and traders, ADR entities need to be seen to resolve disputes in a fair, objective way.

Amendment 22
Proposal for a directive
Recital 16 c (new)

Text proposed by the Commission

Amendment

(16c) The independence and integrity of ADR entities is crucial to gain Union citizens' trust that ADR mechanisms will

offer them a fair and independent outcome. The person or collegial body in charge of the ADR should be independent of all those who might have an interest in the outcome and should have no conflict of interest which could impede him or it from reaching a decision in a fair, impartial and independent manner.

Or. en

Justification

It is vital for consumers to trust that ADR entities are completely independent and not influenced by any of the parties to the dispute. Therefore, it is of the utmost importance that the principle of independence is included in this Directive.

Amendment 23 **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. ***Therefore procedures where the natural person in charge of the dispute resolution is employed by or receives other forms of remuneration exclusively from the trader should not be regarded as ADR procedures within the meaning of this Directive and hence should be excluded from its scope of application. However, this Directive should not affect the possibility for business associations to fund an ADR entity.***

Or. en

Amendment 24
Proposal for a directive
Recital 18

Text proposed by the Commission

(18) In order to ensure the transparency of ADR entities and of ADR procedures it is necessary that the parties receive **all** the information they need to take an informed decision before engaging in an ADR procedure.

Amendment

(18) **ADR entities should be accessible and transparent.** In order to ensure the transparency of ADR entities and of ADR procedures it is necessary that the parties receive the **clear and accessible** information they need **in order** to take an informed decision before engaging in an ADR procedure.

Or. en

Amendment 25
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) **A well-functioning ADR entity should resolve online and offline dispute proceedings expediently within a timeframe of 90 calendar days from the time when the ADR entity officially opens the procedure. For some technical or highly complex disputes, the ADR entity may need more time to give objective consideration to all aspects of the case and should be permitted, at its discretion, to extend the 90-day timeframe in order to guarantee high-quality dispute resolution.**

Or. en

Justification

ADR entities are intended to be a quick, informal and low cost alternative to the courts. Therefore, ADR shall take all the steps necessary to ensure the dispute is resolved at the earliest possible stage within a time frame of 90 calendar days which may be extended with

appropriate justification.

Amendment 26
Proposal for a directive
Recital 20

Text proposed by the Commission

(20) ADR procedures should be free of charge *or of moderate costs for consumers so that it remains economically* reasonable for consumers *to use such procedures.*

Amendment

(20) ADR procedures should be free of charge. *In the event that costs are applied, they should be reasonable, proportionate and modest to ensure that the ADR procedure is accessible, attractive and at a low cost* for consumers.

Or. en

Justification

In order to provide an accessible alternative to court proceedings, ADR procedures should generally be free of charge for consumers. However in the event that this is not the case, costs charged should be realistically and proportionately modest.

Amendment 27
Proposal for a directive
Recital 21

Text proposed by the Commission

(21) ADR procedures should be fair so that the parties to a dispute are fully informed about their rights and the consequences of the choices they make in the context of an ADR procedure.

Amendment

(21) ADR procedures should be fair so that the parties to a dispute are fully informed about their rights and the consequences of the choices they make in the context of an ADR procedure. *Both parties should also be able to submit their information and evidence without being physically present.*

Or. en

Amendment 28
Proposal for a directive
Recital 21 a (new)

Text proposed by the Commission

Amendment

(21a) The right to an effective remedy and the right to a fair trial are fundamental rights guaranteed in Article 47 of the Charter of Fundamental Rights of the European Union. Therefore 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. Nothing in this Directive should prevent parties from exercising their right of access to the judicial system.

Or. en

Amendment 29
Proposal for a directive
Recital 21 b (new)

Text proposed by the Commission

Amendment

(21b) An agreement between a consumer and a trader to submit complaints to an ADR entity should not be binding on the consumer if it was concluded before the dispute arises and if it deprives the consumer of his right to bring an action before the courts for the resolution of the dispute. In the case of ADR entities which impose solutions, the solutions should only be binding on the parties if they were informed of binding nature in advance and specifically accepted this.

Or. en

Justification

ADR procedures must not prevent citizens from accessing justice through exercising their right to go to court. The principle of liberty will ensure that ADR procedures do not impinge upon these rights.

Amendment 30
Proposal for a directive
Recital 21 c (new)

Text proposed by the Commission

Amendment

(21c) In the case of ADR procedures which impose binding solutions, consumers should be afforded at least the same level of protection as the one laid down by the mandatory provisions applicable under the law of the Member State in the territory of which the ADR entity is established. In the case of cross-border disputes, the solution imposed by the ADR entity should not result in the consumer being deprived of the protection afforded by the mandatory provisions applicable under the law of the Member State in which the consumer has his habitual residence.

Or. en

Justification

The legality principle has to be introduced for disputes imposing solution on the parties, to ensure that citizens should not be deprived of the protection of the mandatory provisions of the law.

Amendment 31
Proposal for a directive
Recital 21 d (new)

Text proposed by the Commission

Amendment

(21d) Member States should ensure that parties who choose to apply ADR procedures are not subsequently prevented from pursuing their right to judicial proceedings by the expiry of the limitation or prescription periods during the ADR procedure. Therefore the judicial prescription and limitation periods should be suspended for the duration of the ADR procedure.

Justification

Consumers utilising ADR procedures should not be prevented from initiating judicial proceedings in relation to the same dispute as a result of the expiry of limitation or prescription periods while their ADR case is ongoing.

Amendment 32
Proposal for a directive
Recital 21 e (new)

Text proposed by the Commission

Amendment

(21e) In order to be sustainable and function efficiently, ADR entities should receive appropriate funding to carry out their activities. They may be either funded by public or private funds or by a combination of both.

Or. en

Amendment 33
Proposal for a directive
Recital 21 f (new)

Text proposed by the Commission

Amendment

(21f) The Commission should whenever possible allocate the necessary funds from the Consumer Programme 2014-2020 to provide funding for the setting up of new bodies, training mediators or other support staff, and providing information and assistance for consumers among others. Existing resources and contact points should be organised more effectively to make information accessible to citizens.

Or. en

Justification

In light of the forthcoming Consumer Programme 2014-2020, the Commission should allocate the requisite funds for the implementation of this Directive and the establishment of an ADR system across the Union.

Amendment 34 **Proposal for a directive** **Recital 22**

Text proposed by the Commission

(22) When a dispute arises it is necessary that consumers are able to identify quickly which ADR entities are competent to deal with their complaint and to know whether or not the trader concerned will participate in proceedings submitted to an ADR entity. Traders *should therefore provide such information on their main commercial documents and, where they have a website, on their websites. This obligation should be without prejudice to Articles 6(1)(t), 7(1) and 8 of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights. Article 6(1)(t) of Directive 2011/83/EU stipulates for consumer contracts concluded at a distance or off premises that the trader has to inform the consumer about the possibility of having recourse to an out-of-court complaint and redress mechanism to which the trader is subject, and the methods for having access to it, before the consumer is bound by the contract. Article 7(1) of Directive 2011/83/EU provides that, in the case of off-premises contracts, this information must be provided on paper or, if the consumer agrees, on another durable medium.*

Amendment

(22) When a dispute arises it is necessary that consumers are able to identify quickly which ADR entities are competent to deal with their complaint and to know whether or not the trader concerned will participate in proceedings submitted to an ADR entity. Traders *who commit to use ADR entities should inform consumers about the address or website of the relevant ADR entity or entities by which they are covered. The information should be mentioned in a clear, comprehensible and easily and permanently accessible way on their website, where they have one, and in general terms and conditions applicable to contracts for the sale of goods or provision of services between the trader and a consumer, or in other appropriate documents, for instance pre-contractual documents, invoices and receipts.*

Or. en

Amendment 35
Proposal for a directive
Recital 22 a (new)

Text proposed by the Commission

Amendment

(22a) The information obligation in the preceding recital should be without prejudice to Article 6(1)(t), Article 7(1) and Article 8 of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights¹. Article 6(1)(t) of that Directive provides for consumer contracts concluded at a distance or off premises that the trader is to inform the consumer about the possibility of having recourse to an out-of-court complaint and redress mechanism to which the trader is subject, and the methods for having access to it, before the consumer is bound by the contract. Article 7(1) of Directive 2011/83/EU provides that, in the case of off-premises contracts, that information is to be provided on paper or, if the consumer agrees, on another durable medium.

¹ OJ L 304, 22.11.2011, p. 64.

Or. en

Amendment 36
Proposal for a directive
Recital 23 a (new)

Text proposed by the Commission

Amendment

(23a) Member States should be able, at their discretion, to allow ADR entities to introduce or maintain procedural rules which enable ADR entities to operate more effectively and efficiently provided that the provisions of this Directive are complied with.

Amendment 37
Proposal for a directive
Recital 23 b (new)

Text proposed by the Commission

Amendment

(23b) Member States should be able to adopt or maintain in force national provisions which provide for higher quality standards than the harmonised minimum standards established by this Directive.

Or. en

Amendment 38
Proposal for a directive
Recital 23 c (new)

Text proposed by the Commission

Amendment

(23c) In order to reduce unnecessary burdens on ADR schemes, all stakeholders should encourage consumers to attempt to resolve the dispute amicably with the trader before referring their complaints to an ADR entity or courts. Individual companies' in-house complaint schemes can be effective in resolving complaints and avoiding escalation of disputes at a later stage.

Or. en

Justification

All stakeholders should encourage consumers to voluntarily contact the trader and use in-house complaint schemes as a first step in a hierarchical system. This may lead to a speedy solution to a dispute and, if a mutually agreeable outcome is reached, can avoid the need to pursue a case with an ADR entity.

Amendment 39
Proposal for a directive
Recital 23 d (new)

Text proposed by the Commission

Amendment

(23d) Member States should involve consumer and business organisations' representatives when establishing the ADR system and in the governance of the scheme, in particular in relation to the principles of impartiality and independence.

Or. en

Justification

Involving consumer and business representatives in the establishment and governance of ADR will give the system more credibility for both consumers and traders, and support the fulfilment of the impartiality and independence criteria.

Amendment 40
Proposal for a directive
Recital 26

Text proposed by the Commission

Amendment

(26) Close cooperation between ADR entities and national authorities entrusted with the enforcement of Union legislation on consumer protection should strengthen the effective application of such Union legislation.

(26) Close cooperation between ***the Commission***, ADR entities and national authorities entrusted with the enforcement of Union legislation on consumer protection should strengthen the effective application of such Union legislation. ***The Commission should facilitate administrative cooperation between the Member States and the ADR entities by holding regular meetings with the different stakeholders to exchange best practice and technical expertise between ADR entities and discuss any problems arising from the operation of ADR schemes.***

Or. en

Amendment 41
Proposal for a directive
Recital 27

Text proposed by the Commission

(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, 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.

Amendment

(27) In order to ensure that ADR entities function properly and effectively, **Member States** should **designate a competent authority or authorities which should** closely **monitor and supervise those entities**. 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, 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 **in their Member States, which will be monitored and assessed on a regular basis by the Commission**. 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.

Or. en

Amendment 42
Proposal for a directive
Recital 27 a (new)

Text proposed by the Commission

Amendment

(27a) Providing ADR entities with a European quality label should increase

European citizens' trust and confidence in the quality of the ADR system, especially when buying across borders. An easily recognisable European quality label should guarantee consumers that the relevant ADR entity complies with the quality criteria set out in this Directive.

Or. en

Amendment 43
Proposal for a directive
Recital 27 b (new)

Text proposed by the Commission

Amendment

(27b) In order to ensure the effective co-ordinated implementation of this Directive, the Commission, after consulting the European Parliament, the Council and relevant stakeholders, should draw up guidelines on the quality criteria with the aim of improving the overall efficiency of ADR entities.

Or. en

Amendment 44
Proposal for a directive
Article 1

Text proposed by the Commission

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 submitted to *entities offering* impartial, transparent, effective and fair alternative dispute resolution procedures.

This Directive *aims* to contribute to the functioning of the internal market and to the achievement of a high level of consumer protection by ensuring that disputes can be submitted *on a voluntary basis by consumers against traders* to impartial, transparent, *and independent ADR entities offering fast*, effective and fair alternative dispute resolution procedures.

Justification

The availability of ADR is generally designed to redress the imbalance that exists between a trader and a consumer, and offer a means by which the consumer can seek to have his complaints resolved in a manner that is quicker and cheaper than going to court. As a consumer-focused initiative, the proposed ADR systems should be available solely to consumers, since traders already have sufficient (legal) means at their disposal to pursue and enforce their rights.

Amendment 45
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 **domestic and cross-border** 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.

Justification

In order to achieve a high level of consumer protection it is important that the proposed Directive applies to cross-border and domestic disputes. If its scope were restricted to cross-border situations, the disparities in the Member States regarding the existence, quality and awareness of alternative dispute resolution procedures would continue to exist for all domestic disputes.

Amendment 46
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

(a) procedures before dispute resolution entities where the natural persons in charge of dispute resolution are employed by *or receive any form of remuneration exclusively from* the trader.

Or. en

Amendment 47
Proposal for a directive
Article 2 – paragraph 2 – point d a (new)

Text proposed by the Commission

Amendment

(da) procedures initiated by a trader against a consumer.

Or. en

Amendment 48
Proposal for a directive
Article 2 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. This Directive establishes a harmonised minimum standard of alternative dispute resolution procedure in order to ensure that after its implementation, consumers have access to a high-quality, transparent, effective and fair redress mechanisms no matter where they reside in the Union. Member States may adopt or maintain in force more stringent provisions, compatible with TFEU, in the field covered by this Directive to ensure a higher level of consumer protection.

Or. en

Justification

It should be noted, furthermore, that the proposed Directive is a framework directive that builds on existing ADR systems in the Member States. It intends to establish minimum quality standards for ADR entities and procedures and hence pursues a minimum harmonisation approach.

Amendment 49
Proposal for a directive
Article 4 – point d a (new)

Text proposed by the Commission

Amendment

(da) 'sale of goods' means any contract under which a trader transfers or undertakes to transfer the ownership of goods to a consumer and the consumer pays or undertakes to pay the price thereof, including any contract having as its object both goods and services;

Or. en

Justification

In relation to Article 2.1, the Directive shall apply to disputes arising from the sale of goods or provision of services, therefore it is necessary to identify the contracts for the sale of goods which will fall under the scope of the Directive.

Amendment 50
Proposal for a directive
Article 4 – point d b (new)

Text proposed by the Commission

Amendment

(db) 'provision of services' means any contract other than a contract for sale of goods under which the trader supplies or undertakes to supply a service to the consumer and the consumer pays or undertakes to pay the price;

Or. en

Justification

In relation to Article 2.1, the Directive shall apply to disputes arising from the sale of goods or provision of services, therefore it is necessary to identify the contracts for the provision of services which will fall under the scope of the Directive.

Amendment 51 **Proposal for a directive** **Article 4 – point d c (new)**

Text proposed by the Commission

Amendment

(dc) "ADR procedure" means a procedure, as referred to in Article 2(1) for the out-of-court resolution of contractual disputes through the intervention of a dispute resolution entity which complies with the quality criteria set out in this Directive;

Or. en

Amendment 52 **Proposal for a directive** **Article 4 – point e**

Text proposed by the Commission

Amendment

(e) ‘ADR entity’ means any entity, however named or referred to, which is established on a durable basis and offers the resolution of a dispute through an ADR procedure;

(e) ‘ADR entity’ means any entity that seeks the out-of-court resolution of a dispute, which is established on a durable basis, complies with the quality criteria set out in Chapter II of this Directive and has been notified to the Commission in accordance with Article 17 (2)

Or. en

Amendment 53 **Proposal for a directive** **Article 4 – point f a (new)**

Text proposed by the Commission

Amendment

(fa) "competent authority" means any public authority designated by a Member State established at national, regional or local level with specific responsibilities to enforce the laws that protect consumer interests;

Or. en

Justification

Clarification needed in accordance with changes made to Article 15.

Amendment 54
Proposal for a directive
Article 5 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall ensure that disputes covered by this Directive can be submitted to *an ADR entity* which *complies* with the *requirements* set out in this Directive.

1. Member States shall **facilitate access by consumers to ADR procedures and shall** ensure that disputes covered by this Directive can be submitted to ADR **entities** which **comply** with the **quality criteria** set out in this Directive **if both the trader and the consumer agree to do so.**

Or. en

Justification

Member States shall ensure and do their utmost to facilitate easy access by consumers to ADR procedures in order for consumers to have a high level of consumer protection.

Amendment 55
Proposal for a directive
Article 5 – paragraph 2 – point a

Text proposed by the Commission

Amendment

(a) **have** a website **enabling** the parties to

(a) **maintain** a website **which provides** the parties **with all necessary information**

submit a complaint online;

about the ADR procedure in a clear and comprehensible manner, and which enables the consumer to submit a complaint online via email or other electronic means, as defined in Regulation (EU) No...;*

**** OJ: please insert the number of Regulation of the European Parliament and of the Council on online dispute resolution for consumer disputes (Regulation on consumer ODR)***

Or. en

Amendment 56
Proposal for a directive
Article 5 – paragraph 2 – point a a (new)

Text proposed by the Commission

Amendment

(aa) provide the parties with the information referred to in point (a) on a durable medium upon their request;

Or. en

Justification

It is necessary that the information on the ADR procedure is available and easy accessible in appropriate formats.

Amendment 57
Proposal for a directive
Article 5 – paragraph 2 – point a b (new)

Text proposed by the Commission

Amendment

(ab) enable the consumer to submit a complaint through a written procedure, if necessary;

Or. en

Amendment 58
Proposal for a directive
Article 5 – paragraph 2 – point b

Text proposed by the Commission

(b) **enable** the *parties to* exchange information **with them** via electronic means;

Amendment

(b) **assist** the exchange **of** information **between the parties** via electronic means;

Or. en

Amendment 59
Proposal for a directive
Article 5 – paragraph 2 – point d

Text proposed by the Commission

(d) when dealing with disputes covered by this Directive **take the necessary measures to ensure that** the processing of personal data complies with the rules on the protection of personal data laid down in the national legislation implementing Directive 95/46/EC.

Amendment

(d) **take the necessary measures to ensure that** when dealing with disputes covered by this Directive, the processing of personal data complies with the rules on the protection of personal data laid down in the national legislation implementing Directive 95/46/EC.

Or. en

Amendment 60
Proposal for a directive
Article 5 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. An ADR entity may not refuse to proceed with a specific dispute on the grounds that the dispute is frivolous or vexatious, or that the dispute has previously been considered by another ADR entity, without providing the parties with reasonable justification for its decision.

Amendment 61
Proposal for a directive
Article 5 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. Member States may set a time limit by which the consumer can submit a complaint to an ADR entity, which shall not be shorter than the time limit, where such a limit exists, in the legal acts of the Member State allowing the parties to initiate judicial proceedings.

Or. en

Justification

Member States may set time limits for submitting a complaint to an ADR procedure in order to align them with its own legal system and not to deprive the consumer of their legal rights.

Amendment 62
Proposal for a directive
Article 5 – paragraph 2 c (new)

Text proposed by the Commission

Amendment

2c. Member States shall ensure that parties who choose to apply ADR procedures are not subsequently prevented from initiating judicial proceedings in relation to the dispute by the expiry of limitation or prescription periods during the out-of-court settlement process. Therefore, the prescription and limitation periods shall be suspended for the duration of the ADR procedure.

Or. en

Amendment 63
Proposal for a directive
Article 5 – paragraph 3

Text proposed by the Commission

3. Member States may fulfil their obligation under paragraph 1 by ensuring the existence of a residual ADR entity which is competent to deal with disputes as referred to in paragraph 1 for the resolution of which no existing ADR entity is competent.

Amendment

3. Member States may fulfil their obligation under paragraph 1 by ensuring the ***setting up and*** existence of a residual ADR entity which is competent to deal with disputes as referred to in paragraph 1 for the resolution of which no existing ADR entity is competent.

Or. en

Amendment 64
Proposal for a directive
Article 6 a (new)

Text proposed by the Commission

Amendment

Article 6a

Independence

1. Member States shall ensure that ADR entities are organised in such a way as to ensure that they are independent from the interests of the parties and that they act in a transparent manner, with adequate institutional safeguards.

2. When the decision is taken by a collegial body, the independence of the body responsible for taking the decision shall be ensured by giving equal representation to consumer organisations and professional associations or by complying with the criteria set out in paragraph 3;

3. When the decision is taken by a natural person who is employed or remunerated by a professional association, that person shall fulfil the following criteria in order to ensure the independence of their action:

(i) be nominated by a collegial body consisting of an equal number of representatives of both consumers' and traders' interests;

(ii) be granted a period of office of sufficient duration to ensure the independence of his action and shall not be liable to be relieved of his duties without just cause;

(iii) not be subject to any instructions from the trader or the trader's representatives and not have any hierarchical or functional link with the party involved in the dispute.

In addition, the ADR entity shall have at its disposal an adequate budget which is separate from the professional association's general budget.

Or. en

Justification

The principle of independence is not equivalent to the principle of impartiality. Therefore, it is of the utmost importance that the principle of independence is included separately in this Directive. ADR entities will have to fulfil certain criteria to ensure their independence.

Amendment 65

Proposal for a directive

Article 7 – paragraph 1 – introductory part

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 on their websites and ***upon request on a durable medium*** information on:

Or. en

Justification

ADR entities are required to make specific information available, not only on their websites but also at their premises. In some cases, no publicly accessible premises exist. It should

therefore be sufficient for the relevant information to be made available, upon request on a durable medium.

Amendment 66
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) the natural persons in charge of alternative dispute resolution, ***their qualifications, fields of expertise***, the method of their appointment and the length of their mandate;

Or. en

Amendment 67
Proposal for a directive
Article 7 – paragraph 1 – point c

Text proposed by the Commission

(c) ***where appropriate***, their membership in networks of ADR entities facilitating cross-border dispute resolution;

Amendment

(c) their membership in networks of ADR entities facilitating cross-border dispute resolution, ***if applicable***;

Or. en

Amendment 68
Proposal for a directive
Article 7 – paragraph 1 – point j

Text proposed by the Commission

(j) the ***approximate*** length of the ADR procedure;

Amendment

(j) the ***average*** length of the ADR procedure;

Or. en

Amendment 69
Proposal for a directive
Article 7 – paragraph 1 – point k a (new)

Text proposed by the Commission

Amendment

(ka) the enforceability of the ADR decision, if relevant.

Or. en

Amendment 70
Proposal for a directive
Article 7 – paragraph 2 – introductory part

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 on a durable medium*** annual activity reports. These reports shall include the following information relating to both domestic and cross-border disputes:

Or. en

Amendment 71
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 ***systematic*** problems ***that occur frequently and lead*** to disputes between consumers and traders, ***and recommendations on how such problems can be avoided or resolved;***

Or. en

Justification

ADR entities are in a unique position, not only to identify the problems systematically occurring in a particular area or sector, but also to suggest solutions.

Amendment 72
Proposal for a directive
Article 7 – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(ba) "exemplary decisions" based on the outcomes of important disputes, which shall raise traders' standards and shall facilitate the exchange of information and best practices;

Or. en

Justification

ADR must deliver a wider impact on the market than mere resolution of individual disputes. For this aim to be reached, ADR should try to raise the standard for good practice among industry, by publishing the "exemplary decisions" on specific disputes.

Amendment 73
Proposal for a directive
Article 7 – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) the rate of dispute resolution procedures which were discontinued *before an outcome was reached*;

(c) the rate of dispute resolution procedures which were discontinued *and the reasons for their discontinuation*;

Or. en

Justification

The rate of dispute resolution procedures which were discontinued before an outcome was reached is not sufficiently clear unless we have the information on the grounds for termination of the ADR procedure. Furthermore the discontinuation of an ADR procedure does not necessarily mean that no outcome was reached.

Amendment 74
Proposal for a directive
Article 7 – paragraph 2 – point f

Text proposed by the Commission

(f) **where appropriate**, their cooperation within networks of ADR entities facilitating the resolution of cross-border disputes.

Amendment

(f) their cooperation within networks of ADR entities facilitating the resolution of cross-border disputes, **if applicable**.

Or. en

Amendment 75
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;

Or. en

Amendment 76
Proposal for a directive
Article 8 – paragraph 1 – point b

Text proposed by the Commission

(b) the parties have access to the procedure without being obliged to use a legal representative; **nonetheless** parties **may** be represented or assisted by a third party at any stage of the procedure;

Amendment

(b) the parties have access to the procedure without being obliged to use a legal representative. **The procedure shall not deprive the parties of their right to independent advice or to** be represented or assisted by a third party at any stage of the procedure;

Or. en

Justification

The principle of representation should be maintained in the Directive by making a clear reference to the possibilities of the parties to seek independent advice or the possibility of representation by a third party.

Amendment 77
Proposal for a directive
Article 8 – paragraph 1 – point c

Text proposed by the Commission

(c) the ADR procedure is free of charge or at ***moderate costs*** for consumers;

Amendment

(c) the ADR procedure is ***preferably*** free of charge or, ***if not***, at a ***nominal*** cost for consumers;

Or. en

Justification

ADR entities are intended to be a quick, informal and low cost alternative to the courts. Therefore, ADR procedure should be free of charge. However in the event that this is not the case costs charged should be realistically and proportionately modest to ensure proper utilization and accessibility by consumers of ADR

Amendment 78
Proposal for a directive
Article 8 – paragraph 1 – point d

Text proposed by the Commission

(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***.

Amendment

(d) ***disputes are normally*** resolved within ***a timeframe of 90 calendar*** days from the ***time when*** the ADR entity ***officially opens*** the ***procedure, however, in certain*** ***disputes, especially those of a highly*** complex ***or technical nature, the person*** or ***collegial body in charge*** may, ***at their discretion***, extend ***the 90 day timeframe in order to guarantee high-quality dispute resolution***;

Or. en

Amendment 79
Proposal for a directive
Article 9 – paragraph 1 – introductory part

Text proposed by the Commission

1. Member States shall ensure that *in* ADR procedures:

Amendment

1. Member States shall ensure that ADR procedures:

Or. en

Amendment 80
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) *allow* the parties to express their point of view, *to be provided with* and *comment upon* the arguments, *evidence, documents* and facts put forward by the other party, *including* any statements *and opinions given by experts*;

Or. en

Justification

The Directive should not preclude procedures that are conducted wholly in writing or electronically by imposing an obligation that the parties may 'hear' arguments. Moreover the parties shall be able to comment upon arguments and facts put forward by the other party, including any statements and opinions given by experts.

Amendment 81
Proposal for a directive
Article 9 – paragraph 1 – point b

Text proposed by the Commission

(b) the outcome of the ADR procedure *is made available to both parties* in writing or on a durable medium, stating the grounds on which the outcome is based.

Amendment

(b) *notify* the *parties of the* outcome of the ADR procedure in writing or on a durable medium, stating the grounds on which the outcome is based.

Amendment 82
Proposal for a directive
Article 9 – paragraph 2 – introductory part

Text proposed by the Commission

2. **Member States shall ensure that in** ADR procedures which aim at resolving the dispute by **suggesting** a solution

Amendment

2. **In** ADR procedures which aim at resolving the dispute by **proposing** a solution, **Member States shall ensure that:**

Or. en

Amendment 83
Proposal for a directive
Article 9 – paragraph 2 – point a – introductory part

Text proposed by the Commission

(a) the **consumer**, before agreeing to a **suggested** solution, **is** informed that:

Amendment

(a) the **parties**, before agreeing to a **proposed** solution, **are** informed **of the rights they are entitled to under applicable legal provisions and** that **they:**

Or. en

Amendment 84
Proposal for a directive
Article 9 – paragraph 2 – point a – point i

Text proposed by the Commission

(i) **he has** the choice as to whether or not to agree to **a suggested** solution;

Amendment

(i) **have** the choice as to whether or not to agree to **the proposed** solution;

Or. en

Amendment 85
Proposal for a directive
Article 9 – paragraph 2 – point a – point ii

Text proposed by the Commission

(ii) the *suggested* solution *may* be *less favourable than* an outcome determined by a court applying legal rules;

Amendment

(ii) *are informed that* the *proposed* solution *could* be *different from* an outcome determined by a court applying legal rules;

Or. en

Amendment 86
Proposal for a directive
Article 9 – paragraph 2 – point a – point iii

Text proposed by the Commission

(iii) *before agreeing or rejecting* the *suggested solution he has the* right to seek independent advice;

Amendment

(iii) *have* the right to seek independent advice *before agreeing, rejecting or following the proposed solution*;

Or. en

Amendment 87
Proposal for a directive
Article 9 – paragraph 2 – point b

Text proposed by the Commission

(b) the parties, before agreeing to a *suggested* solution, are informed of the legal effect of such agreement;

Amendment

(b) the parties, before agreeing to a *proposed* solution, are informed of the legal effect of such agreement;

Or. en

Amendment 88
Proposal for a directive
Article 9 – paragraph 2 – point c

Text proposed by the Commission

(c) the parties, before **expressing** their consent to a **suggested** solution or amicable agreement, are allowed a reasonable period of time to reflect.

Amendment

(c) the parties, before **giving** their consent to a **proposed** solution or amicable agreement, are allowed a reasonable period of time to reflect.

Or. en

Amendment 89
Proposal for a directive
Article 9 a (new)

Text proposed by the Commission

Amendment

Article 9a

Liberty

1. Member States shall ensure that the decision taken by the ADR entity shall be binding on the parties only if they were informed of its binding nature in advance and specifically accepted this.

2. Member States shall ensure that 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 arises and if it deprives the consumer of his right to bring an action before the courts for the resolution of the dispute.

Or. en

Justification

It is of fundamental importance that the ADR procedure does not prevent consumers from accessing justice through exercising their right to go to court. The principle of liberty will ensure that ADR procedures do not impinge upon these rights.

Amendment 90
Proposal for a directive
Article 9 b (new)

Text proposed by the Commission

Amendment

Article 9b

Legality

Member States shall ensure that in ADR procedures which aim at resolving the dispute by imposing a solution, the solution imposed shall not result in the consumer being deprived of the protection afforded by the mandatory provisions applicable under the law of the Member State in the territory of which the ADR entity is established. In the case of cross-border disputes, the solution imposed by the ADR entity shall not result in the consumer being deprived of the protection afforded by the mandatory provisions applicable under the law of the Member State where the consumer has his habitual residence as defined in Article 6 of Regulation (EC) No 593/2008.

Or. en

Justification

The proposed Directive does not include the important principle of legality which ensures that consumers are always protected by the mandatory legal provisions in their country of residence. Therefore the legality principle has to be introduced for disputes imposing solution on the parties, in order to guarantee that consumers are not deprived of the protection afforded by mandatory provisions of the law.

Amendment 91
Proposal for a directive
Article 9 c (new)

Text proposed by the Commission

Amendment

Article 9c

Guidelines

1. The Commission, after consulting the European Parliament, the Council and relevant stakeholders, shall draw up guidelines for the implementation of this

Directive. These guidelines shall in particular focus on the quality criteria set out in Chapter II, cooperation between ADR entities in cross-border cases, between ADR entities and national authorities as set out in Articles 13 and 14, and the relationship between this Directive and other Union legislation. To that end, the Commission shall draw up those guidelines on the basis of the established practice in Member States, voluntary codes of conduct, quality standards and any other relevant data.

2. The Commission shall transmit the guidelines to the Member States and make them publicly available.

Or. en

Justification

Taking into account the minimum harmonisation approach of this Directive and the diversity of the ADR procedures among the Member States, the European Commission shall adopt guidelines which will provide Member States with supplementary rules to facilitate and clarify the implementation of this Directive.

Amendment 92 **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 clear, comprehensible and*** easily 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 ***or other appropriate documents, for instance pre-contractual documents***, invoices and receipts. It shall specify how further information on the ADR entity concerned and on the conditions for using it can be

accessed.

Or. en

Justification

The provision of such information in all receipts and invoices would not always be practical for micro and small enterprises.

Amendment 93
Proposal for a directive
Article 11 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure **that consumers can obtain assistance** with regard to **their** disputes arising from cross-border sales of goods or provision of services. **Such** assistance **shall in particular aim at helping consumers** to access the ADR entity operating in another Member State which is competent to deal with their cross-border dispute.

Amendment

1. Member States shall ensure, with regard to disputes arising from cross-border sales of goods or provision of services, **that consumers can obtain** assistance to access the ADR entity operating in another Member State which is competent to deal with their cross-border dispute.

Or. en

Amendment 94
Proposal for a directive
Article 11 – paragraph 2

Text proposed by the Commission

2. Member States **may** confer responsibility for the task referred to in paragraph 1 on their centres of the European Consumer Centre Network, **on consumer associations or on any other body**.

Amendment

2. Member States **shall** confer responsibility for the task referred to in paragraph 1 on their centres of the European Consumer Centre Network.

Or. en

Justification

Assistance for consumers pursuing cross-border disputes must be provided through a formalised structured network set up by the Commission, the European Consumer Centre Network.

Amendment 95
Proposal for a directive
Article 12 – paragraph 1

Text proposed by the Commission

Member States shall ensure that ADR entities, *consumer associations, business associations*, the centres of the European Consumer Centre Network *and, where appropriate, the bodies designated in accordance with Article 11(2)* make publicly available *at their premises* and on their *websites* the list of ADR entities referred to in Article 17(3).

Amendment

Member States shall ensure that ADR entities *and* the centres of the European Consumer Centre Network make publicly available *on* their *websites* and *whenever possible, on a durable medium at their premises* the list of ADR entities referred to in Article 17(3).

Or. en

Amendment 96
Proposal for a directive
Article 12 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Member States shall encourage consumer associations and traders to make publicly available on their websites and, by any other means they consider appropriate, the list of ADR entities referred to in Article 17(3).

Or. en

Justification

Alignment with Articles 11 and 12.

Amendment 97
Proposal for a directive
Article 14 – paragraph 2

Text proposed by the Commission

2. This cooperation shall include mutual exchange of information on **business** practices **by traders** about which consumers have lodged complaints. It shall also include the provision of technical assessment and information by such national authorities to ADR entities where such assessment or information is necessary for the handling of individual disputes.

Amendment

2. This cooperation shall include mutual exchange of information on practices **in specific business sectors** about which consumers have lodged complaints. It shall also include the provision of technical assessment and information by such national authorities to ADR entities where such assessment or information is necessary for the handling of individual disputes.

Or. en

Amendment 98
Proposal for a directive
Article 14 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. This Article shall be without prejudice to provisions on professional and commercial secrecy which apply to the national authorities referred to in paragraph 1.

Or. en

Amendment 99
Proposal for a directive
Article 15 – paragraph 1

Text proposed by 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. Each Member State shall

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 may***

communicate the authority it has designated to the Commission.

designate more than one competent authority; in that case it shall determine which of those competent authorities is the single liaison office for the Commission. Each Member State shall communicate the *competent* authority *or, where appropriate, authorities, including the single liaison office*, it has designated to the Commission.

Or. en

Justification

The possibility of each Member State having more than one competent authority must be recognised in the Directive. Where this is the case, Member States will authorise a particular competent authority as a liaison office which will coordinate information between the designated competent authorities and the European Commission.

Amendment 100 **Proposal for a directive** **Article 15 – paragraph 2**

Text proposed by the Commission

2. The Commission shall establish a list of the competent authorities communicated to it in accordance with paragraph 1 and publish that list in the Official Journal of the European Union.

Amendment

2. The Commission shall establish a list of the competent authorities *including, where appropriate, the single liaison office*, communicated to it in accordance with paragraph 1 and publish that list in the *Official Journal of the European Union*.

Or. en

Amendment 101 **Proposal for a directive** **Article 16 – paragraph 1 – subparagraph 1 – point f a (new)**

Text proposed by the Commission

Amendment

(fa) a statement on the types of disputes covered by ADR procedures;

Or. en

Amendment 102
Proposal for a directive
Article 16 – paragraph 1 – subparagraph 1 – point g

Text proposed by the Commission

Amendment

(g) *a statement on the elements necessary to establish their competence;* **deleted**

Or. en

Amendment 103
Proposal for a directive
Article 16 – paragraph 1 – subparagraph 1 – point h

Text proposed by the Commission

Amendment

(h) a reasoned statement, *based on a self-assessment by the ADR entity, on whether it* qualifies as an ADR entity falling within the scope of this Directive and complies with the *requirements* set out in *chapter II*.

(h) a reasoned statement on *whether* the entity qualifies as an ADR entity falling within the scope of this Directive and complies with the *quality criteria* set out in *Chapter II*.

Or. en

Amendment 104
Proposal for a directive
Article 16 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

2. Member States shall ensure that ADR entities communicate to the competent authorities *at least once a year the following* information:

2. Member States shall ensure that ADR entities communicate to the competent authorities *every two years* information *on*:

Or. en

Amendment 105
Proposal for a directive
Article 16 – paragraph 2 – point e

Text proposed by the Commission

(e) *relevant statistics demonstrating* the way in which traders use *alternative dispute resolution* for their disputes with consumers;

Amendment

(e) the *number of* traders *that* use *ADR* for their disputes with consumers;

Or. en

Amendment 106
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 *systematic* problems *that occur frequently and lead* to disputes between consumers and traders;

Or. en

Amendment 107
Proposal for a directive
Article 16 – paragraph 2 – point g

Text proposed by the Commission

(g) *where applicable*, an assessment of the effectiveness of their cooperation within networks of ADR entities facilitating the resolution of cross-border disputes;

Amendment

(g) an assessment of the effectiveness of their cooperation within networks of ADR entities facilitating the resolution of cross-border disputes, *where applicable*;

Or. en

Amendment 108
Proposal for a directive
Article 16 – paragraph 2 – point h

Text proposed by the Commission

(h) **a self-assessment** of the effectiveness of the ADR procedure offered by the entity and of possible ways of improving its performance.

Amendment

(h) **an evaluation** of the effectiveness of the ADR procedure offered by the entity and of possible ways of improving its performance.

Or. en

Amendment 109
Proposal for a directive
Article 17 – paragraph 1

Text proposed by the Commission

1. Each competent authority shall assess, on the basis of the information it has received in accordance with Article 16(1), whether the ADR entities notified to it qualify as ADR entities falling within the scope of this Directive and comply with the **requirements** set out in *chapter II*.

Amendment

1. Each competent authority shall assess, on the basis of **an objective independent evaluation and of** the information it has received in accordance with Article 16(1), whether the ADR entities notified to it qualify as ADR entities falling within the scope of this Directive and comply with the **quality criteria** set out in *Chapter II*.

Or. en

Amendment 110
Proposal for a directive
Article 17 – paragraph 2 – subparagraph 1

Text proposed by the Commission

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

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. **The competent authority shall not refuse to notify and list an ADR entity if it complies with the requirements set out in this Directive.**

Or. en

Amendment 111
Proposal for a directive
Article 17 – paragraph 2 – subparagraph 2 – point d

Text proposed by the Commission

Amendment

(d) the elements necessary to establish their competence;

deleted

Or. en

Amendment 112
Proposal for a directive
Article 17 – paragraph 2 – subparagraph 2 – point d a (new)

Text proposed by the Commission

Amendment

(da) the sectors and categories of disputes covered by each ADR entity;

Or. en

Amendment 113
Proposal for a directive
Article 17 – paragraph 2 – subparagraph 2 – point e

Text proposed by the Commission

Amendment

(e) the need for the physical presence of the parties or of their representatives, if applicable; and

(e) the need for the physical presence of the parties or of their representatives, if applicable, including a statement by the ADR entity on whether the ADR procedure is or can be conducted as an oral or a written procedure;

Or. en

Amendment 114
Proposal for a directive
Article 17 – paragraph 2 – subparagraph 3

Text proposed by the Commission

Each competent authority shall notify the list to the Commission. In ***the event that any changes are notified to the competent authority in*** accordance with the second subparagraph of Article 16(1), the list shall be updated immediately and the relevant information notified to the Commission.

Amendment

Each competent authority shall notify the list to the Commission. In accordance with the second subparagraph of Article 16(1), ***if any changes are notified to the competent authority***, the list shall be updated immediately and the relevant information notified to the Commission. ***If an ADR entity no longer complies with the requirements set out in this Directive, the competent authority shall remove it from the list.***

Or. en

Justification

It is necessary to ensure that the Member States shall register and regularly update information on any changes with regards to the ADR entities.

Amendment 115
Proposal for a directive
Article 17 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. If a Member State has designated more than one competent authority, the list and its updates referred to in paragraph 2 shall be notified to the Commission by the single liaison office.

Or. en

Justification

In order to avoid administrative burden and red tape, it is essential in the situation when more than one competent authorities are designated in the Member States, that the liaison office will provide the Commission of the list and any relevant updates.

Amendment 116
Proposal for a directive
Article 17 – paragraph 3

Text proposed by the Commission

3. The Commission shall establish a list of the ADR entities communicated to it in accordance with paragraph 2 and update this list whenever changes are notified to the Commission in accordance with the second sentence of the third subparagraph of paragraph 2. The Commission shall publish this list and its updates and transmit it to the competent authorities and the Member States.

Amendment

3. The Commission shall establish a list of the ***notified*** ADR entities communicated to it in accordance with paragraph 2 and update this list whenever changes are notified to the Commission in accordance with the second sentence of the third subparagraph of paragraph 2. The Commission shall publish this list and its updates and transmit it to the competent authorities and the Member States, ***consumers and trade organisations and the European Consumer Centre Network.***

Or. en

Amendment 117
Proposal for a directive
Article 17 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Notified ADR entities published on the Commission list shall be provided with an easily recognisable European quality label which guarantees consumers that the relevant ADR entity complies with the quality criteria set out in this Directive. In the event that an ADR entity is removed from the Commission list, the European quality label will no longer be applicable.

Or. en

Justification

In order to remove any doubt and increase consumer trust in the system, an easily recognisable European quality label will be created which will guarantee that the ADR entities meet the quality standards required by this Directive. This quality label should be immediately removed in the event that the entity is no longer on the Commission list.

Amendment 118
Proposal for a directive
Article 17 – paragraph 4

Text proposed by the Commission

4. Each competent authority shall publish the consolidated list of ADR entities referred to in paragraph 3 on its website and *by any other means it considers* appropriate.

Amendment

4. Each competent authority shall publish the consolidated list of ADR entities referred to in paragraph 3 on its website and *on a durable medium where* appropriate.

Or. en

Amendment 119
Proposal for a directive
Article 17 – paragraph 5 – introductory part

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. *By 31 December 2015 and every three* years *thereafter*, each competent authority shall publish a report on the development and functioning of ADR entities. The report shall in particular:

Or. en

Amendment 120
Proposal for a directive
Article 17 – paragraph 5 – point a

Text proposed by the Commission

(a) identify areas, if any, where ADR procedures do not yet deal with disputes covered by this Directive;

Amendment

(a) identify areas *and sectors*, if any, where ADR procedures do not yet deal with disputes covered by this Directive;

Or. en

Amendment 121
Proposal for a directive
Article 17 – paragraph 5 – point d

Text proposed by the Commission

(d) make recommendations on how to improve the functioning of ADR entities, where appropriate.

Amendment

(d) make recommendations on how to improve the ***effective and efficient*** functioning of ADR entities, where appropriate.

Or. en

Amendment 122
Proposal for a directive
Article 17 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. If a Member State has designated more than one competent authority, the report shall be published by the single liaison office. That report shall include all ADR entities established in that Member State.

Or. en

Amendment 123
Proposal for a directive
Article 23

Text proposed by the Commission

No later than [Office of Publications insert date: five years after the entry into force], and every ***three*** years thereafter, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Directive. *The* report shall consider the development and the use of ADR entities and the impact of this Directive on consumers and traders.

Amendment

Not later than ...* and every ***four*** years thereafter, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Directive. *That* report shall consider the development and the use of ADR entities and the impact of this Directive on consumers and traders. The report shall be accompanied, where appropriate, by

The report shall be accompanied, where appropriate, by proposals for amendment of this Directive.

proposals for amendment of this Directive.

** OJ: please insert the date: five years after the entry into force of this Directive.*

Or. en

EXPLANATORY STATEMENT

Introduction

The Commission proposal for a Directive on consumer Alternative Dispute Resolution (ADR) aims to provide a simple, expedient and low-cost way of resolving disputes involving the sale of goods or provision of services across the European Union. Once implemented, this directive will allow any consumer resident in the EU to have access to a quality ADR entity if they have problems arising from the purchase of goods or services - whether domestic or cross-border - from a trader established in an EU Member State.

Context

Despite the improvements in consumer protection since the inception of the Single Market, "gaps" which make life difficult for citizens, and in particular consumers and SMEs, remain. As advocated in the Parliament resolution of 25 October 2011 on alternative dispute resolution in civil, commercial and family matters¹ and the Parliament Resolution of 20 May 2010 on Delivering a Single Market to Consumers and Citizens², and also in the Single Market Act, all European citizens should be able to move and exercise their rights, including being able to purchase goods or services from traders based in other Member States, across the whole of the Single Market.

The Treaty on the Functioning of the European Union and the Charter of Fundamental Rights of the European Union both commit the EU to provide a high level of consumer protection. The TFEU further states that the internal market is to comprise an area without internal frontiers in which the free movement of goods and services are ensured.

The Commission issued its first Recommendation on consumer ADR schemes 14 years ago. However, measures adopted at national level have proven wholly insufficient, as many citizens remain unable to access an effective ADR scheme in the necessary sector or region. Therefore action needs to be taken at the European level to provide a level of minimum harmonisation and to ensure that consumers across the Union benefit from the same high level of protection.

ADR and the Internal Market

At present, the lack of a simple, low-cost and expedient means of resolving disputes for many citizens constitutes a barrier within the Single Market. Consumers lose an estimated 0.4% of European GDP to such problems, but only 5% of consumers took their case to an ADR entity in 2010, and a mere 9% of businesses report ever having used ADR. Consumers will only shop across borders if they have confidence that they can obtain redress if they encounter problems with the goods or services they have purchased. Traders, particularly SMEs, are similarly deterred from conducting business across borders due to hesitance to deal with other Member States' legal systems. As such, it is of fundamental importance that the Directive

¹ Texts adopted, P7_TA(2011)0449.

² OJ C 161 E, 31.5.2011.

covers not only cross-border disputes, but also domestic ones.

Furthermore, online trade has become an important pillar of economic activity within the EU, but many consumers and traders are hesitant to shop and sell online because they fear they will not have access to redress in the event of a dispute. A well integrated alternative and online dispute resolution mechanism will provide citizens with the necessary confidence to reap the full benefits of e-commerce. The accompanying Online Dispute Resolution platform will serve as a tool which will offer consumers and traders a single point of entry for the out of court resolution of online disputes, based on the availability of quality ADR entities across the Union.

Moreover, the need for decisive legislative action in this area is all the more pressing because strengthening and empowering consumers is vital to revitalise the Single Market, and therefore to spur growth and job creation. As such, implementing ADR for consumers is also in line with the Europe 2020 strategy and will form part of a holistic approach to the relaunch of the Single Market.

Aims

In essence, the directive aims to address the three most significant and persistent barriers hindering consumers and traders from accessing a well-functioning Alternative Dispute Resolution entity. Firstly, ADR coverage continues to be patchy at both the sectoral and geographical level. Secondly, many consumers and traders are simply unaware or have insufficient information on the advantages of using Alternative Dispute Resolution mechanisms. Finally, even where ADR systems exist, they vary greatly in quality and often do not meet the quality principles laid down by the Commission's Recommendations.

The draft report

The Rapporteur welcomes the Commission's proposal as a strong initial framework for achieving full ADR coverage for citizens. However, your Rapporteur has made an effort to clarify a number of measures in the proposal, as outlined below, with the aim of achieving a balanced system which offers strong protection for the independence and quality of ADR entities, whilst also ensuring they operate in a practical, efficient and transparent way.

Scope

Articles 1 and 2 outline the scope and subject matter of the directive. Here, an effort has been made to ensure the aim of complete coverage for consumer disputes is achieved, while offering consumers a high-quality, transparent, effective and fair redress mechanism. Both existing and newly established dispute resolution mechanisms that comply with the minimum quality standards established by this directive will be called "ADR entities" and will subsequently be provided with a European quality label that will boost consumers' confidence and trust. The possibility of traders submitting disputes against consumers has been excluded, as traders already have sufficient means to resolve these claims without being included in the scope of ADR.

Accessibility

Article 5 is chiefly concerned with how ADR entities are made accessible. ADR should be available to all consumers resident in the EU. The draft report therefore proposes that consumers should be able to access information and submit a dispute both offline and online. Furthermore, your rapporteur has added a clause that does not allow for a case to be refused on the grounds that it is frivolous, vexatious, or has been heard before another ADR entity, unless a reasonable justification is provided to all parties.

Independence

When it comes to ADR, credibility is of key importance. In addition to the requirement that the persons in charge of ADR are impartial, your Rapporteur also proposes to introduce the requirement that they must also be independent of all parties to the dispute, which will ensure that the outcomes are not biased and are fair to both parties. The draft also report proposes a new Article on independence which creates robust institutional safeguards to ensure that consumer and professional associations are equally involved in the governance of ADRs. In order to reinforce the independence of ADRs in which the person or persons in charge of the procedure are employed by a professional association, the draft report proposes that they must be nominated by a collegial body, must have a set period of office and will not be subject to any instructions from the trader or the trader's representatives.

Transparency

Article 7 establishes minimum requirements of transparency that ADR entities must meet. A high level of transparency will improve the credibility of ADR entities among consumers and businesses, but will also provide data that would help to continually improve the functioning of the entities. This should include publishing "exemplary decisions" which would facilitate the exchange of best practices and encourage traders to raise standards.

Effectiveness

In terms of orientation, ADRs should be simple, fast, affordable and not overly bureaucratic. In other words, they must have obvious advantages over conventional dispute resolution structures such as courts, or else consumers won't use them. As such, your rapporteur proposes that well functioning ADR entities should be expected to have normally resolved disputes within 90 days from the time they officially open proceedings. This timeframe can only be exceeded at the discretion of the persons in charge of the ADR procedure where an extension is necessary to guarantee good quality dispute resolution in a particularly complex or technical dispute.

Liberty and Legality

It is critical that citizens' legal rights are protected, above all when ADR entities impose binding solutions. Member States should be able, at their discretion, to permit ADRs to issue decisions that are binding on one or all parties to the dispute. However, your rapporteur has proposed an additional Article in order to protect the right of both parties to be informed of and choose whether to accept a binding decision. Furthermore, consumers cannot be subject to a binding decision if it was agreed before the dispute arises and if it deprives the consumer of their right to bring an action before the courts. The additional Article would also reinforce

citizens' rights in ADR procedures which aim to resolve disputes by imposing decisions, by ensuring that the consumer may not be deprived of the protection of the mandatory provisions of the law of the Member State in which the ADR is established.

Information

The final significant shortcoming of the present dispute resolution landscape is that few citizens are aware of such procedures and the benefits they offer. Article 10 aims to remedy this by requiring traders to inform consumers of the ADR entities by which they are covered on their website, in the terms and conditions of contracts or other appropriate documents. In the view of your rapporteur, providing citizens with accurate and clear information on how they may access ADR is of the utmost importance to the success of this initiative. Therefore the draft report calls for traders to provide such information in a wide range of documentation, but without introducing requirements that would be excessively burdensome, especially for micro entities and SMEs.

Conclusion

The draft report takes a three-pronged approach. Firstly, the currently patchy coverage of ADR is remedied by providing a robust framework for the development of consumer ADR entities which will ensure full coverage. Secondly, the fact that many consumers and traders are presently unaware of ADR procedures is addressed by requiring traders to provide adequate information on ADR on their websites and in their documents. Finally, the harmonisation of quality criteria will mean that, wherever consumers buy from across the Union, they will have access to a high quality, impartial, independent, fair and transparent ADR procedure.