



**To the members of the
European Federation of Building Societies**

Brussels, 9 May 2012
WM

Draft report by the European Parliament's Committee on Internal Market and Consumer Protection on the European Commission's proposal for a directive on alternative dispute resolution and for a regulation on online dispute resolution

Dear Member,

We informed you on 16 December 2011 by a circular letter on the proposals for a directive on alternative dispute resolution (ADR) and for a regulation on online dispute resolution (ODR) for consumer disputes. The leading committee on Internal Market and Consumer Protection (IMCO) now published its draft reports on the above mentioned proposals.

1) Proposal for a directive on alternative dispute resolution

The IMCO committee has fortunately taken over a multitude of the requirements made by the EFBS in a position paper on 14 February 2012.

Voluntary instrument

The clarification in article 1, stating that the alternative dispute resolution is offered on a voluntary basis, is very much welcomed. Correspondingly article 5 of the draft report provides that the consumer and the trader agree with the reference to the ADR entity.

Application on domestic disputes

According to article 2 paragraph 1 of the draft report the directive shall apply to domestic disputes as well, because of the high level of consumer protection. Referring to the opinion of 14 February 2012 the EFBS has considerable doubts concerning the compatibility of this regulation with European law. The EFBS will therefore continue to advocate for restriction of the European regulation for alternative dispute resolution in cross-border disputes.

Proceedings of traders against consumers

As required in the EFBS' position paper on 14 February 2012, procedures initiated by traders against consumers are explicitly excluded from the scope of the directive (article 2 paragraph 2 da). There is no practical need to regulate the procedures of traders against consumers as there are sufficient (legal) means for traders to prosecute their claims. This has also been recognised by the rapporteur.

Minimum harmonisation

The rapporteur adds in Article 2 paragraph 2 a) a sentence according to which the directive establishes a harmonised minimum standard. This is generally appreciated as Member States may revert to already existing alternative dispute mechanisms while implementing this directive.

Definitions

„Service“ has been newly defined in article 4 db). It has been made clear that the service which is subject to the ADR procedure has to be for remuneration. Article 4 dc) defines the ADR procedure as

an out-of-court procedure to solve contractual disputes while complying with the quality requirements of this directive.

Access to the ADR entities

Article 5 paragraph 2 a) of the draft report specifies the requirements concerning the websites offered by the ADR entities. It is new that the ADR entity has to offer the informations required on the website to the parties on a durable medium if requested by them. If needed, the consumer shall be able to transmit the complaint in written form. It is made clear in article 5 paragraph 2 a) that an ADR entity may not refuse to proceed with a specific dispute for the reason that the dispute is frivolous or that the dispute has previously been considered by another ADR entity, without providing reasonable justification. Besides, Member States may implement deadlines for complaints according to Article 5 paragraph 2 b), if they are not shorter than the deadlines for a prosecution of an action at court. Finally, the Member States shall assure according to Article 5 paragraph 2 c) that the limitation of the parties' claims is interrupted during the out-of-court procedure in order to not hinder the parties to prosecute their claims at court.

Independence of the ADR entities

Article 6 a) (new) of the draft report regulates the independence of the ADR entities. They have to be independent from the parties' interests and have to act transparently (including safeguards). Therefore, decisions by a collegial body shall be taken by representing equally consumer organisations as well as professional associations. When the decision is taken by a natural person who is employed or remunerated by a professional association, the criteria set out in Article 6 a paragraph 3) have to be fulfilled to guarantee the independence. Hence, this natural person has to be nominated by a collegial body considering both, consumers' and traders' interests. Besides, the ADR entity shall have an adequate budget which is separated from the professional association's general budget.

Transparency

According to Article 7 paragraph 1 j) ADR entities have to inform on their website about the average length of the ADR procedure, not any more about the approximate length. This provision is more favorable for the Bausparkassen in comparison to the Commission's proposal. But there are serious concerns about Article 7 paragraph 2 b), according to which ADR entities have to make publicly available any systematic problems that occur frequently and give recommendations on how such problems can be avoided or resolved. Besides, decisions shall be made public exemplarily on the websites to improve the traders' practice. From the EFBS' view this regulation interferes with the principle of separation of powers. Finally the reasons for discontinuation of the ADR procedure shall be displayed according to Article 7 paragraph 2 c). This is as well problematic as the reasons for the discontinuation of the procedure are seldom known.

Effectiveness

Article 8 paragraph 1 d) generally sticks to the 90-days-duration of the procedures, adding that disputes shall normally be resolved within this period. In addition, the 90-days-period begins when the ADR entity officially opens the procedure and not when the ADR entity receives the complaint. The EFBS has successfully advocated the extension of the 90-days-period in more complex cases in order to guarantee a high quality of the ADR procedures. Thus, the person in charge of the dispute resolution can extend the limitation discretionarily.

Competent authorities

According to Article 15 paragraph 1) Member States may designate more than one competent authority. In this case it shall be determined which of those competent authorities is the single liaison office for the European Commission. Hereby, it is possible to have sectoral supervision. The EFBS welcomes this provision.

List

While Article 17 paragraph 3) already provides that the European Commission establishes a list of notified ADR entities fulfilling the requirements of the Directive the European Commission shall provide the listed ADR entities with a quality label, Article 17 paragraph 3 a (new). If an ADR entity is removed from the list, the quality label is no longer applicable.

Miscellaneous

The aim of Article 9 c) is unclear as hereafter the European Commission, after consulting the European Parliament, the Council and relevant stakeholders shall draw up guidelines for the implementation. They shall in particular focus on the quality criteria set out in Chapter II, on cross-border cases and on the relationship between this Directive and other Union legislation.

2) Proposal for a regulation on online dispute resolution

The essential change in the proposal for a regulation is the extension on domestic online disputes. To the rapporteurs' opinion the resolution shall not only apply to cross-border but also to domestic disputes of online contracts.

The EFBS will observe the following process critically. If you have any suggestions or questions, please do not hesitate to contact us. The Parliamentarians of the Committee can provide amendments till 31 May 2012.

Yours sincerely,



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Annex:

Draft reports of the Committee on the Internal Market and Consumer Protection on the proposals for a directive on alternative dispute resolution and for a regulation on online dispute resolution