

ADR and ODR for EU consumers: Proposals for new Directive and Regulation

Kluwer Mediation Blog
December 9, 2011

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Please refer to this post as: Rafal Morek, 'ADR and ODR for EU consumers: Proposals for new Directive and Regulation', Kluwer Mediation Blog, December 9, 2011, <http://mediationblog.kluwerarbitration.com/2011/12/09/adr-and-odr-for-eu-consumers-proposals-for-new-directive-and-regulation/>

On November 29, 2011, the European Commission announced (MEMO/11/840) its proposals for a new Directive on consumer ADR and a new Regulation on consumer ODR. With some countries in the Eurozone in deeper financial trouble than ever, and the future of the EU uncertain, the Commission has just sent a clear signal that the promotion of out-of-court resolution of consumer disputes is still one of its priorities. The Commission also reminded that the European Parliament and the Council had already expressed their commitment to adopting the legislative package on ADR and ODR by the end of 2012, as part of the "Europe 2020 strategy" and efforts to "re-launch the Single Market". Thus far only some issues related to ADR and ODR for consumers have been "softly regulated" by two recommendations issued by the European Commission in 1998 (98/257/EC) and 2001 (2001/310/EC). These recommendations laid down some basic and limited common ground rules for ADR and ODR in consumer disputes in the EU. For some specific sectors (e.g. telecommunications, energy, consumer credit, or payment services) EU laws oblige Member States to set up ADR mechanisms. For some other sectors (e.g. e-commerce directive, postal services) they merely encourage it.

The EU Commission co-finances the European Consumer Centres' Network (ECC-Net) to help consumers to access the appropriate ADR entity in another Member State in case of cross-border disputes. Another EU-wide network, FIN-NET, brings together ADR entities which handle cross-border disputes between consumers and financial service providers.

At present, however, national regulations and practices in the field of ADR for consumers are highly diversified. With regard to ODR, the situation is much worse. Very few providers in the EU offer the option of handling the entire dispute resolution process online. As a result, the availability and practical usefulness of the existing mechanisms is limited. The state of play in the EU countries, presented in the Commission's release, is as follows:

→ In 2010, **one in five consumers** in the EU encountered problems when buying goods or services in the single market, leading to consumer **losses estimated at 0.4% of the EU's GDP**. This includes the detriment suffered by European consumers in relation to cross-border shopping, which is estimated between **€500 million and €1 billion**. Only a small fraction of consumers seek and get effective redress.

→ The number of consumer disputes submitted to ADR, including ODR, has increased in the EU **from 410,000 in 2006 to 530,000 in 2008**. However, only **5% of European consumers took their case to an ADR entity** in 2010 and only **9% of businesses report ever having used ADR**.

→ The number of cross-border complaints received by the **ECC-Net** totaled **35,000** in 2009, an increase of 55% compared with 2005. The share of **complaints relating to e-commerce transactions** amounted to more than 55% in 2009 and 2010 and this share has doubled since 2006. In 2009, 38 **FIN-NET** members reported having handled **1542 disputes** while in 2010, 32 members reported 1800 disputes.

→ There are currently more than **750 ADR entities in the EU**. They are highly diverse not only across the EU but even within countries. Only about half of the existing ADR entities are notified to the European Commission by national authorities as meeting the quality criteria set out in the two Commission Recommendations. The Commission keeps a database of such 'notified' ADR entities.

→ ADR entities are set up by **public authorities, by industry or in cooperation** between the public sector, industry and consumer organizations. Funding is private (e.g. by industry), public or a combination of both. Some ADR entities are sector-specific, whereas others accept cases concerning any business sector.

→ The **level of access to out-of-court resolution** across the EU is differentiated. In some countries (e.g. Slovakia and Slovenia) no recognized ADR entities appear to exist, or the access is very limited (e.g. in Cyprus and Romania).

→ For **64% of ADR entities** in the EU, **participation by the industry is voluntary**.

What may cause some concern is the Commission's understanding of "the nature of ADR outcomes". To quote: "it may vary from non-binding recommendations to decisions which can be binding on the trader or on both parties." It is not clear why a settlement agreement reached as a result of facilitative mediation was omitted by the drafters.

The Commission believes that "well-functioning ADR across the EU will boost consumer confidence to seize the opportunities that the Single Market offers them in terms of choice and better prices. This also includes buying online from other EU countries. More cross-border commerce in the EU will also open up new opportunities for businesses and help drive economic growth."

The draft 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 is to ensure that "quality out-of-court entities exist to deal with any contractual dispute between a consumer and a business. Consumers will be able to submit their consumer contractual disputes to an ADR, wherever they shop in the EU (i.e. whether in their home country or in another EU country), whatever they buy, and however they buy it (online or offline)."

Even more ambitious goals are related to the draft Regulation of the European Parliament and of the Council on online dispute resolution for consumer disputes. It is to create "a single EU-wide online platform for online shoppers buying from another EU country and traders to resolve their contractual disputes online." The proposed European ODR platform would serve as "a single point of entry" for filing individual e-commerce related claims. The platform will be a user-friendly interactive website, accessible in all official languages of the EU and free of charge. It will be linked electronically to the national ADR entities responsible for handling the disputes.

According to the Commission's estimates, the new regulations may bring **consumers savings of around €22.5 billion**, corresponding to 0.19% of EU GDP, while **EU businesses may save up to €3 billion**.

It seems that, while the financial crisis is still ongoing, the economical dimension of ADR has become more important than ever. In the age of austerity, everyone is looking for some savings. Increasingly ADR is seen primarily as a cost-cutting tool (see my two earlier posts on [kluwermediationblog \[1\]](#) and [\[2\]](#)). What may be considered unprecedented in this case is the scale. A figure of more than €25 billion is impressive. It will be interesting to learn more details on the methodology applied to the figures estimated by the Commission...