

Kluwer Mediation Blog

Consumer Disputes, a New Market for (Young) French Mediators?

Anne Mahaut Caudrillier (ICC International Court of Arbitration) · Thursday, September 10th, 2015 · Young Mediators Initiative (YMI)

At long last, on 20 August 2015, the French Government transposed a 2013 EU directive regulating mediation for consumer disputes. This new piece of legislation, which aims at increasing the use of mediation in sales and service consumer contracts, could create new business opportunities for mediators.

The big picture : the idea behind the Directive

The Directive on consumer ADR (Directive 2013/11/EU of 21 May 2013 on alternative dispute resolution for consumer disputes, to be more specific), laid out basic principles giving each member some leeway as to the practicalities of how to implement the Directive. One might wonder why the EU would want Member States to legislate and align their positions in consumer ADR. The big idea behind the Directive is pretty simple; if cheap, reliable and simple mechanisms are put in place to tackle consumer disputes in the EU; better access to justice will be provided to EU citizens, and consumers will be better protected. This in turn will create a climate in which consumers are encouraged to buy (more) goods and services within their own and other Member States, and facilitate the free movement of goods and services (which in itself is one of the central pillars of the EU).

The small print: interesting dispositions in the French transposition of the Directive

French transposition of the Directive was long overdue. The time limit for Member States to implement it was 9 July 2015. Due to be issued in July, after a government reshuffle, *Ordonnance n° 2015-1033 relative au règlement extrajudiciaire des litiges de consommation* (thereafter, the “Ordonnance”) was in the end released on 20 August 2015. The Ordonnance is fairly short (7 pages long) and composed of 8 articles which will be inserted into 6 different Codes such as the Consumer Code -as one would expect- or the Insurance Code.

Buyers and businesses, beware!

Some dispositions are worth flagging, forewarned is forearmed!

- The mediation process must be free for consumers;
- Before resorting to mediation, the consumer must have tried to address the problem directly with the company that he or she bought the goods or services from. In particular, the consumer must explain, in writing, the nature of his or her grievance against the business;
- If the negotiation attempt with the business was unsuccessful, the consumer must seize a mediator within a maximum of one year after having written to the business;
- However, if the parties do not manage to settle their dispute amicably, businesses have a duty to pass on the relevant mediator's contact details to their customers. If businesses fail to do so, they run the risk of being fined up to EUR 15 000;
- Businesses cannot insert clauses in their Terms and Conditions that impose mediation upon consumers before seizing local courts; and
- Businesses have two months to conform to and to implement the Ordonnance's dispositions.

New market shares for mediators?

Some practical information is worth knowing for professionals willing to mediate consumption disputes in France. In particular,

- Mediators must have a website explaining how they operate. Consumers must be able to lodge their mediation requests online and also by post;
- Mediators must be appointed for a minimum of three years;
- Mediators must be registered and approved by a national commission that evaluates and monitors mediators;
- Lastly and as one would expect, the Ordonnance requires mediators to be independent, impartial and have some sound mediation and legal knowledge. In addition, mediators must ensure that they conduct proceedings in a transparent, efficient and fair fashion.

The Ordonnance also addresses an interesting point. Some companies already have an in-house mediation service. For example, JC Decaux already had an in-house mediation service dealing with Vélib's (Paris' self-service bicycle service) claims and feared that the Directive's transposition would render these departments illegal. However, instead of forbidding them, the Government has decided to regulate such mediation services, for instance by explicitly requesting that the in-house mediator be independent from the company employing them. That is to say that they cannot be hierarchically reporting to the company they work for. In addition, the process for designating in-house mediators must be transparent and amongst the persons nominating them, there must be some consumer association representatives.

In conclusion, by imposing minimum standards for mediators, this Ordonnance shows a first attempt at regulating the profession in France. Mediation will remain an option for consumers. However, by extending the obligation for businesses to inform their customers that mediation is available to them, this new piece of legislation aims at broadening the use of ADR and to fill in the gaps for sectors not consistently offering mediation to resolve disputes. In theory, the standardisation, broadening and the duty to inform customers about mediation services should increase the use of it and in turn, generate more work for mediators. However, it remains to be seen to whom these disputes will be referred. Will they remain the exclusive domain of a few appointed

mediators already practising or will it provide a chance for new mediators to try their hand at new, often small cases?

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