



## ***In support of voluntary alternative solutions for B2C disputes***

**Position Paper 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**

**Position Paper on the proposal for a Regulation of the European Parliament and of the Council on online dispute resolution for consumer disputes**

### ***Summary of ESBA's recommendations to the institutions:***

- *It is essential that the use of ADR schemes remains voluntary at all times;*
- *ADR schemes should never interfere with the right of the consumer or the trader to go to court;*
- *Member States have to ensure that businesses are provided with information on the existing ADR entities, and inform them of their obligations under the new legislation;*
- *ADR schemes should come at low cost for both parties;*
- *Traders should only have to inform consumers about the specific ADR entities they agree to have recourse to;*
- *The information obligation of businesses should be limited to the website and the general terms and conditions of the contract between the trader and consumers; it would be unnecessarily burdensome to provide information on invoices and receipts;*
- *The role and function of the ODR platform is not sufficiently clear in the proposal by the European Commission: Will the ODR platform offer complete online dispute resolution or will it serve primarily as a signposting and information service towards ADR?*

### **Background**

In November 2011 the Commission unveiled two proposals whose purpose is to spread Alternative Dispute Resolution schemes at European level. The proposal for a Directive on ADR aims to ensure that European consumers always have the possibility to rely on an ADR scheme in their disputes with traders. The proposal for a regulation on ODR aims at creating a European online platform providing information on available ADR schemes, and through which ADR procedures could be conducted for disputes arisen during online cross-border sales.

After the presentation of the proposals in the European Parliament Committee on Internal market and Consumer Protection (IMCO) on 20 December 2011 and a public hearing in that same Committee on 29 February 2012, the draft reports of Louis Grech (S&D, Mal) on ADR and Róża Thun (EPP, Pol) on ODR were presented to the IMCO Committee on 8 May 2012. Two draft opinions from Cristian Silviu Buşoi (ALDE, Rom) on ADR and Luigi Berlinguer (S&D, Ita) on ODR had previously been presented to the European Parliament Committee on Legal Affairs (JURI) on 25 April 2012.

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Today there are gaps between existing ADR systems and difficulties when it comes to solving cross-border disputes. There is little awareness among businesses and consumer of the availability of such schemes. The Commission's initiative aims to tackle these shortcomings by ensuring that ADR is available for all disputes arising from cross border sales of goods and services, and increasing awareness of consumers and traders.

### **Content of the proposals**

The proposal for a directive on ADR applies to complaints filed by consumers against traders and to complaints filed by traders against consumers. Its main elements are:

- Member States have to ensure that consumers have the possibility to settle disputes with companies by out-of-court settlements in any transaction. Member States must have an authority in charge of monitoring the functioning of ADR entities.
- The proposal leaves Member States free to decide whether participation of traders in ADR is mandatory when a complaint is lodged against them, or whether the outcome of the procedure is binding on traders.
- Traders have to inform consumers about the ADR entities by which they are covered, including the addresses of the ADR entities websites. Traders must specify whether or not they commit to use these entities to resolve disputes. This information should be mentioned on the company's website, in the general terms and conditions of contracts, and in invoices and receipts.
- ADR schemes should be cheap and preferably free for consumers. The decision of who should bear the costs for the operation of ADR schemes is left to Member States.
- The dispute must be resolved within 90 days from the day on which the complaint was received by the ADR entity; that delay can be extended for complex cases.

The proposal for a regulation on ODR:

- Applies only to disputes arising from online cross-border sales and from online cross-border provision of services
- Establishes an EU-based web-portal, or 'ODR platform'. It should display the ADR available in Member States, allow traders and consumers to fill in electronic complaints form and offer the possibility to conduct the dispute resolution procedure via the online platform.
- Requires businesses engaged in cross-border online transactions to inform consumers about the ODR platform. That information must be included on the trader's website and in offers made by e-mail or any other electronic means, including an electronic link to the ODR platform. Traders must also inform consumers about the ODR platform when they receive a complaint from consumers.

### **Advantages of voluntary ADR schemes:**

- ADR could enhance trust of consumers, especially when buying online.
- ADR offers faster and cheaper solutions to consumer complaints. ADR could boost resolution of conflicts, especially for low-value cases.

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- Many SMEs renounce to go to court because of the costs and burdensome procedures. The possibility for SMEs to resort to ADR in conflicts with consumers could increase settlement of disputes.
- Providing traders' participation stays voluntary, the availability of ADR would enhance the functioning of the internal market by removing obstacles to cross-border transactions (intervention of a foreign judicial system in case of conflict, language barriers).

### **Recommendations to ensure an effective ADR and ODR system without burdening Micro and Small Enterprises**

ESBA urges the institutions to ensure that using ADR schemes is a voluntary decision by both traders and consumers. ESBA welcomes the position adopted by Rapporteur Louis Grech that the outcome of ADR procedures can only be binding on the parties if they specifically agreed to it beforehand;

ESBA emphasises that ADR is intended to provide an alternative solution to going to court and should not interfere with the rights of either party to go to court in case of a persisting dispute;

ESBA points out that it is going to be difficult for SMEs to research and identify the ADR entities applicable to them, because of time constraints and of a lack of access to that information. Member States should inform businesses of the relevant ADR entities and of the new obligations.

Traders should also only have to inform consumers about the specific ADR entities they agree to have recourse to;

ESBA warns that the obligation for businesses to provide this information in every invoice and receipt is burdensome for businesses. The mention of this information on the website and in general terms and conditions of contracts is sufficient.

ESBA warns that the wording 'or other appropriate documents, for instance pre-contractual documents, invoices and receipts'<sup>1</sup> instead of 'and in invoices and receipts relating to such contracts' proposed by Rapporteur Louis Grech will decrease legal certainty for businesses, and will result in different interpretations by courts and Member States.

ESBA warns the Member States that the costs of ADR schemes should remain low and not fall solely on businesses. High costs would prevent SMEs to use ADR as an alternative to dispute settlement in court;

ESBA emphasises that the proposal of the European Commission on ODR is not sufficiently detailed. It is not clear whether the website would allow parties to resolve disputes fully online or whether the website will purely inform parties of the dispute resolution schemes they could resort to. ESBA welcomes the description of the functioning of the ODR platform presented in Rapporteur Róža Thun's draft report as it provides more clarity.

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<sup>1</sup> Amendment 92 of Louis Grech's 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)