

European Commission Proposes Incentives for Use of Alternative Dispute Resolution



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On 29 November 2011, the European Commission adopted a package of proposals in order to encourage consumers to solve their conflicts through out-of-court proceedings. To this end, the European Commission is taking measures to promote the use of alternative dispute resolution (“ADR”). ADR relates to specific dispute resolution mechanisms that allow consumers to solve their conflicts with businesses without going to court. Such mechanisms are usually faster, cheaper and easier than regular court proceedings.

The European Commission adopted two proposals in its efforts to improve the functioning of the internal retail market and more particularly to enhance redress for consumers. The first aspect of the package proposed by the European Commission concerns a proposal for a Directive on alternative dispute resolution for consumer disputes and amending Regulation (EC) No. 2006/2004 and Directive 2009/22/EC (the “Proposed Directive on consumer ADR”). The second proposal is for a Regulation on online dispute resolution for consumer disputes (the “Proposed Regulation on consumer ODR”).

The goal of the Proposed Directive on consumer ADR is to eliminate the gaps in coverage of ADR entities in the EU. Today, there are more than 750 ADR entities in the EU, however, these are only available in specific regions or particular sectors. European consumers therefore do not enjoy the same access to ADR. The Proposed Directive on consumer ADR seeks to ensure that there are sufficient ADR entities in order to deal with any contractual dispute between a consumer and a business. It will also oblige Member States to make sure that all disputes between a consumer and a business arising from the sale of goods or the provision of services can be submitted to an ADR entity, including through online means.

In addition, the Proposed Directive on consumer ADR provides for mechanisms that should allow consumers to identify quickly which ADR entities are competent to deal with their dispute. The

Proposed Directive also aims to boost consumer confidence in ADR by setting up basic quality criteria that would need to be fulfilled by the ADR entities (transparency, impartiality, fairness...). Similar principles had been laid down already in two Commission Recommendations, but these principles would now be given a binding effect. Under the Proposed Directive on consumer ADR, disputes would have to be resolved within 90 days and the ADR procedures should be free of charge or at a moderate cost for consumers. The Proposed Directive on consumer ADR further provides for mechanisms to monitor the functioning of ADR entities.

With the second aspect of the package, the Proposed Regulation on consumer ODR, the European Commission aims to establish a European online dispute resolution platform that will facilitate the resolution of disputes related to the cross-border online sale of goods or provision of services between a business and a consumer. This would allow parties that are located far from each other to solve their contractual dispute entirely online. Under the Proposed Regulation on consumer ODR, a dispute should be resolved within 30 days from the date of receipt of the complaint.

The package now has to be adopted by the European Parliament and the European Council. This adoption is envisaged by the end of 2012. Upon adoption, the EU Member States will then have an 18-month period to implement the Directive in their domestic laws. Assuming this timing would be complied with, the ADR mechanisms should be in place everywhere in the EU by the end of 2014. The EU-wide platform for online dispute settlement should become operational six months after the deadline for implementation of the Directive, in early 2015.