

Eurofinas observations on the European Commission's Proposals for a Directive on Alternative Dispute Resolution (ADR) & Regulation on Online Dispute Resolution (ODR)

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ABOUT EUROFINAS

Eurofinas, the European Federation of Finance House Associations, is the voice of the specialised consumer credit providers in the EU. As a Federation, Eurofinas brings together associations throughout Europe that represent finance houses, specialised banks, captive finance companies of car, equipment, etc. manufacturers and universal banks. The scope of products covered by Eurofinas members includes all forms of consumer credit products such as personal loans, linked credit, credit cards and store cards. Consumer credit facilitates access to assets and services as diverse as cars, studies, furniture, electronic appliances, etc. It is estimated that together Eurofinas members financed over 320 billion Euros worth of new loans during 2010 with outstandings reaching 820 billion Euros at the end of the year.

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Summary of concerns

Eurofinas, the voice of consumer credit providers at European level welcomes the publication by the European Commission of the Proposal for a Directive on Alternative Dispute Resolution and the Proposal for a Regulation on Online Dispute Resolution. For the consumer credit sector, the existence of adequate and effective out-of-court resolution procedures is mandatory under the Consumer Credit Directive.

Proposal for a Directive on Alternative Dispute Resolution (ADR)

1. Scope

The proposed Directive should specify that those ADR entities set-up by national associations/group of firms and, which constitute a different legal entity from an individual trader, should fall within scope.

2. Framework

Should national regulators wish to make the outcome of ADR procedures binding on traders, the introduction of a right to appeal is necessary to ensure fairness of the procedures.

3. Operational Principles

Expertise and Impartiality

What qualifies as “appropriate expertise” should be at the discretion of the national scheme itself.

The highest level of flexibility should be provided as to the composition and functioning of collegial bodies. What is critical is to ensure that all those natural persons involved in the handling of disputes commit to a fair, transparent and impartial treatment of complaints.

Effectiveness

It is important to recognise that disputes resolution may require different levels of time/resources. The proposed Directive should be amended to allow complaints to be resolved within a reasonable period of time.

Cost of procedure

The payment of a minimum fee can discourage abusive practices. It is therefore important to retain the possibility of charging a moderate fee for the use of the ADR mechanism.

Terminating the procedure

Under exceptional circumstances, the management body of an ADR scheme may decide that due to the dispute’s characteristics and/or technicalities, it should be addressed in court proceedings. In such case, the ADR entity should be allowed to terminate the procedure.

4. Information Requirements

Information to be provided by traders to consumers

The national transposition of information requirements should not add administrative burden on businesses. This information should only be provided through general correspondence and on websites.



Information to be notified to competent authorities by ADR entities

The content/format of the reasoned statement to be provided by ADR entities to their competent national authorities should be clarified.

We warn against the introduction of particularly invasive disclosures for those natural persons in charge of handling disputes.

5. Collective ADR procedures

Collective out-of-court settlements are premature. Member States should not be encouraged to set-up these specific procedures as no impact assessment has been conducted so far in this field.

Regulation Proposal on Online Dispute Resolution (ODR)

The proposed online dispute resolution platform will have a limited impact for the consumer credit sector.

The centralised ODR platform should not be responsible for the admissibility of complaints. This should be the responsibility of the relevant national ADR entity. The proposed Regulation should be clarified to avoid any misinterpretation.



INTRODUCTORY OBSERVATIONS

Eurofinas, the voice of consumer credit providers at European level welcomes the publication by the European Commission of the Directive Proposal on Alternative Dispute Resolution and Regulation Proposal on Online Dispute Resolution¹.

We agree that access to efficient alternative means to resolve disputes and obtain compensations promotes consumer confidence in the market and improves market performance. Moreover, the flexibility of Alternative Dispute Resolution (ADR) schemes offers advantages of a tailored and targeted approach to dispute settlements. In the field of consumer credit, a major step towards a high level of consumer protection across the EU was achieved with the adoption of Directive 2008/48/EC on credit agreements for consumers (the Consumer Credit Directive – CCD)². The CCD is a sector specific piece of legislation that takes into account the particularities of the consumer credit lending sector.

Article 24 of the CCD provides that “Member States shall ensure that adequate and effective out-of-court dispute resolution procedures for the settlement of consumer disputes concerning credit agreements are put in place, using existing bodies where appropriate”. Additionally, “Member States shall encourage those bodies to cooperate in order to also resolve cross-border disputes concerning credit agreements”. These provisions were applicable as of 11 June 2010.

Eurofinas contributed to the Commission’s March 2011 consultation on the use of Alternative Dispute Resolution as a means to resolve disputes related to commercial transactions and practices in the European Union³. The document in hand should be read in conjunction with the existing Eurofinas position on ADR mechanisms.

Responsible lending is a guiding principle for the specialised consumer credit providers that Eurofinas represents. A key aspect to lending responsibly is to ensure that the credit provider’s actions are geared towards a long-term client relationship. To achieve this, easy, efficient and consumer-friendly resolution of disputes is key. Eurofinas therefore always supported the promotion of out-of-court settlement mechanisms that comply with the principles of impartiality, transparency, effectiveness and fairness, in line with the Commission’s 1998 and 2001 Recommendations⁴.

A high number of self-regulatory codes of good practice have been implemented by Eurofinas members in various European countries in recent years⁵. In this context and in addition to the CCD provisions, a number of Eurofinas member associations have set-up internal complaint system mechanisms matching the specificities of national market characteristics.

Against this backdrop, the Federation wishes to highlight a number of key concerns for the consumer credit industry.

1 See European Commission’s Directive Proposal on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (COM(2011) 793/2), and European Commission’s Regulation Proposal on online dispute resolution for consumer disputes (COM(2011) 794/2).

2 See Directive 2008/48/EC on credit agreements for consumers, OJEU L133/66.

3 See Eurofinas Response to the European Commission’s consultation on the use of Alternative Dispute Resolution as a means to resolve disputes related to commercial transactions and practices in the European Union, available [here](#).

4 See European Commission’s Recommendation of 30 March 1998 (98/257/EC) on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes (OJEC L 115), and European Commission Recommendation of 4 April 2001 (2001/310/EC) on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes (OJEC L 109/56).

5 See Eurofinas publication on national codes of conduct for consumer lending, available [here](#).



SPECIFIC OBSERVATIONS

Proposal for a Directive on Alternative Dispute Resolution (ADR)

1. Scope

The proposed Directive applies to procedures for the out-of-court resolution of contractual disputes arising from the sale of goods or provision of services by a trader established in the Union to a consumer resident in the Union through the intervention of a dispute resolution entity which proposes or imposes a solution or brings the parties together with the aim of facilitating an amicable solution⁶.

As previously mentioned, the CCD provides that “Member States shall ensure that adequate and effective out-of-court dispute resolution procedures for the settlement of consumer disputes concerning credit agreements are put in place, using existing bodies where appropriate”.

Eurofinas therefore strongly supports the introduction and the promotion of out-of-court settlement mechanisms for all sectors. Nevertheless, in designing such mechanisms, there must be recognition that ADR schemes vary significantly in size and scale. Therefore a proportionate approach should be applied to some of the operational requirements.

However, we understand that the proposed Directive would not apply to i) procedures before dispute resolution entities where the natural persons in charge of dispute resolution are employed exclusively by the trader, ii) procedures before consumer complaint handling systems operated by the trader and iii), direct negotiation between the consumer and the trader, whether represented or not⁷.

We agree with the scope as proposed but believe that further clarity is required. Misinterpretation could lead to the potential exclusion of existing systems set-up by the industry. We understand that one of the Commission’s objectives is to build upon existing mechanisms.

We believe that the proposed Directive should therefore specify that those ADR entities set-up by national associations/group of firms and, which constitute a different legal entity from an individual trader, should fall within scope.

These complaint handling mechanisms are a very efficient way of resolving consumer disputes. Failing to clarify the scope of the Proposal would inevitably lead to divergences in the transposition/implementation of the Directive and be counter-productive for all parties.

2. Framework

A. Mandatory adherence to ADR mechanisms

According to the Directive Proposal, Member States shall ensure that all consumer disputes can be submitted to an ADR entity which complies with the requirements set out in the Directive⁸.

We understand that adherence by the industry to an ADR scheme is not made mandatory under the Directive⁹. This is consistent with the Eurofinas position. ADR schemes are *per se* a voluntary and informal alternative. The advantage of ADR is that it offers more flexibility than going to court and can better meet the needs of both

⁶ Article 2.1, Proposal for a Directive on alternative dispute resolution for consumer disputes (COM 2011 (793/2).

⁷ Article 2.2, *Op.cit.*

⁸ Article 5, *Op.cit.*

⁹ Recital 23, *Op.cit.*



consumers and professionals. Compared to going to court, these schemes are cheaper, quicker and more informal. They are an attractive means for consumers seeking redress. Voluntary adherence shows commitment by the industry in finding an alternative solution.

B. Binding effect of ADR decisions

The Directive Proposal is without prejudice to any national rules making the outcome of ADR procedures binding on traders¹⁰.

We support the Commission's approach in this field. This is particularly important as ADR schemes may not deliver any decision *per se* but act as conciliation bodies between parties.

Should national regulators wish however to make the outcome of these procedures binding on traders, Eurofinas takes the view that the introduction of a right to appeal is necessary to ensure fairness of the procedures. We believe this should be clarified in the Directive's Recitals.

3. Operational Principles

The Directive Proposal provides for several operational principles for those ADR systems covered by its scope¹¹. Eurofinas generally supports these operational principles, which are consistent with the Commission's 1998 and 2001 Recommendations.

However, we wish to draw your attention to a number of key concerns for the consumer credit industry.

– Expertise and Impartiality

We support the Commission's view that natural persons in charge of alternative dispute resolution should be impartial¹². Nevertheless, what qualifies as "appropriate expertise" should be at the discretion of the national scheme itself.

We also believe that clarifications are needed as regards the composition and functioning of collegial bodies.

For those ADR entities where a collegial body is responsible for the resolution of disputes (either directly or as a coordination/administration body), we believe that the highest level of flexibility should be provided as to its composition and functioning.

The background/functions of representatives within a collegial coordination/administration body of an ADR entity do not impact the treatment and outcome of a dispute resolution mechanism. We therefore see no valid reason to impose a fixed proportion of representatives of consumers or traders within the collegial coordination/administration body of an ADR entity.

What is critical is to ensure that all those natural persons involved in the handling of disputes commit to a fair, transparent and impartial treatment of complaints. This should be clarified in the proposed Directive.

– Effectiveness

We support the Commission's view that ADR procedures should be effective and fulfill the requirements set out in the Directive Proposal¹³.

10 Recital 23, *Op.cit.*

11 Article 6, 7, 8, 9, *Op.cit.*

12 Article 6, *Op.cit.*

13 Article 8, *Op.cit.*



90 days standard period for complaints resolution

According to the proposed Directive, complaints should be resolved within 90 days from the date on which the ADR entity has received the complaint.

It is important to recognise here that disputes resolution may require different levels of time/resources. Eurofinas therefore opposes the introduction of a 90 days period for ADR entities to resolve complaints. In addition, this requirement would not fit the operational reality of mechanisms in several Member States with a longstanding tradition of alternative complaints resolution. While providing common standards for all, the Directive should provide sufficient flexibility to encompass all local characteristics.

The proposed Directive should therefore be amended to allow complaints to be resolved within a reasonable period of time.

Cost of procedure

According to the Directive Proposal, the ADR procedure should either be free of charge or at moderate costs for consumers.

We support this provision that aims at maximizing consumers' access to ADR entities.

It seems however that in the past, ADR schemes have been used by consumers in trivial cases which should not have deserved the attention of these mechanisms. We believe that payment of a minimum fee can discourage abusive practices. It is therefore important to retain the possibility of charging a moderate fee for the use of the ADR mechanism. This should be clarified in the proposed Directive.

Terminating the procedure

Under exceptional circumstances, the management body of an ADR scheme may decide that due to the dispute's characteristics and/or technicalities, it should be addressed in court proceedings. In such case, the ADR entity should be allowed to terminate the procedure.

4. Information Requirements

A. Information to be provided by traders to consumers

According to the proposed Directive, traders shall inform consumers about the ADR entities by which they are covered and which are competent to deal with potential disputes between themselves and consumers.

We agree with the Commission that traders should provide consumers with the relevant information on the existence and characteristics of ADR schemes. This in line with the CCD and the codes of conduct implemented by many Eurofinas members.

However, it should be strongly emphasised in the Directive Recitals that the national transposition of this provision should not add administrative burden on businesses. This information should only be provided through general correspondence and on websites.

Our experience of existing ADR schemes demonstrates that a consumer will generally pay attention to the existence of such schemes when confronted with a specific problem with a trader. It is pointless to provide in depth information on ADR schemes to consumers when entering into a contract. What is key however is that this information is available as soon as difficulties arise.



B. Information to be notified to competent authorities by ADR entities

Member States shall ensure that ADR entities notify to their competent authority a high selection of key information.

This notification includes information on the structure and funding of the ADR entities, including information on the natural persons in charge of dispute resolution, their funding and by whom they are employed¹⁴.

We believe that clarifications are required as regards the content/format of the reasoned statement to be provided by ADR entities to their competent national authorities. In addition, we warn against the introduction of particularly invasive disclosures for those natural persons in charge of handling disputes.

C. Information campaigns

We understand from the Commission's Communication published in parallel of the proposed Directive that information campaigns should be organised by the Commission in coordination with national consumer organisations¹⁵.

Eurofinas reiterates its support for any EU-wide information/promotion media campaign on the use of ADR entities.

5. Collective ADR procedures

The Directive Proposal is without prejudice to the introduction of ADR procedures dealing jointly with identical or similar disputes between a trader and several consumers (so-called collective ADR procedures)¹⁶.

We strongly believe that collective out-of-court settlements are premature. Member States should not be encouraged to set-up these specific procedures. We would reiterate that no impact assessment has been conducted so far in this field.

We strongly recommend instead assessing the impact of the existing European legislation, such as the Small Claims Regulation, on mass claims¹⁷.

Regulation Proposal on Online Dispute Resolution (ODR)

According to the proposed Regulation, consumers and traders will be able to submit their complaints through an electronic complaint form¹⁸. The platform will analyse whether a complaint can be processed and seek the agreement of the parties to transmit it to the national ADR scheme which is competent to deal with the dispute.

In the field of consumer credit, direct cross-border lending is insignificant in the EU and where it exists, it is mainly restricted to border areas. As evidenced by a study carried out for DG SANCO, direct cross-border lending concerns a limited number of institutions and, in all cases, an extremely small proportion of overall outstanding consumer credit¹⁹.

The proposed online dispute resolution platform will therefore have a limited impact for our sector.

¹⁴ Article 16.b, *Op.cit.*

¹⁵ See European Commission's Communication on alternative dispute resolution for consumer disputes in the Single Market (COM (2011) 791/2).

¹⁶ Recital 15, Proposal for a Directive on alternative dispute resolution for consumer disputes, *op.cit.*

¹⁷ Regulation (EC) No 861/2007 establishing a European Small Claims Procedure.

¹⁸ See European Commission's Regulation Proposal on online dispute resolution for consumer disputes, *op. cit.*

¹⁹ See DG SANCO, Establishment of a Benchmark on the Economic Impact of the Consumer Credit Directive on the Functioning of the Internal Market in this Sector and on the Level of Consumer Protection (Submitted by GHK, 5 November 2009).



In all cases, we firmly believe that the centralised ODR platform should not be responsible for the admissibility of complaints. This should be the responsibility of the relevant national ADR entity. The proposed Regulation should be clarified to avoid any misinterpretation.