

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

March 2011

Eurofinas is entered into the EC Register of Interest Representatives with ID N° 83211441580-56

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 2009 with outstandings reaching 720 billion euros at the end of the year.

For further information about this Eurofinas consultation response, please contact:
a.giraud@eurofinas.org

INTRODUCTORY OBSERVATIONS

Eurofinas welcomes the opportunity to respond to the European Commission's public consultation on *the use of Alternative Dispute Resolution related to commercial transactions and practices in the European Union*.

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.

We recognize that consumers can face difficulties in accessing effective and affordable means to resolve disputes and obtain compensations (especially for small value claims). Therefore, we strongly support the introduction and the promotion of out-of-court settlement mechanisms in general that comply with the principles of impartiality, transparency, effectiveness and fairness.

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) (1). The CCD is a sector specific legislation that takes into account the particularities of the consumer credit lending sector. We believe that any general initiative on alternative dispute resolutions should therefore be consistent with the specificities of the legislation in force.

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. Though a small number of Member States are late in the Directive's transposition, what is key is that all European countries have/will soon have an ADR system in place for consumer credit agreements. The Federation's response to the Commission's questions shall therefore be read in light of this pre-existing regulatory framework.

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 long-term client relationship. To achieve this, a high number of self-regulatory codes of good practice have been implemented by Eurofinas members in various European countries in recent years. 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:

- Eurofinas believes that in the field of ADR, **self-regulation provides a flexible means** that can be adapted quickly to national market conditions, geographical needs and current sector-specific legislation in force. The added-value of such flexibility should not be under-estimated by the European regulator.
- As far as out-of-court mechanisms are concerned we believe that **cooperation and commitment of businesses, consumer bodies, and both National and European regulators are key** to ensure higher awareness, transparency, coverage and compliance.
- Regarding the involvement of parties, **the decisions of ADR schemes should be binding on both parties** in order to ensure effectiveness. This should only be done in so far as a right of appeal is established in parallel.

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

- On the other hand, Eurofinas takes the view that **adherence by the industry to out-of-court mechanisms should be optional in order to guarantee a voluntary commitment from both parties to reach an agreement**. To the same extent, ADR should not become a first mandatory step before going to court. A mandatory approach in this regard would narrow the difference between going to court and ADR schemes and could face serious fundamental right breaches.
- We appreciate the need to ensure that ADR schemes are accessible, well-known by consumers and that proceedings are easily understandable. However, we firmly believe that **all litigations are different, not only across sectors but also within one sector**. Given that the level of development of ADR schemes across Europe remains for the time being limited (as evidenced by sectoral and coverage gaps reported in the 2009 study on the use of ADR in the EU) (2), we think it would be premature to envisage collective out-of-court settlements. **The first priority should be to ensure that ADR schemes are provided for all sectors and cover the whole of the EU.**
- A different level of protection is needed when dealing with consumers and with SMEs. Consumers should therefore benefit from a specific mechanism in all cases.

Consumer and business awareness of ADR

1. What are the most efficient ways to raise the awareness of national consumers and consumers from other Member States about ADR schemes?

The provision of information through campaigns, websites, correspondence, local leaflets etc. is the most efficient way to raise awareness among consumers.

In order to ensure a high-level of consumer coverage, cooperation between businesses, consumer bodies, and both National and European regulators is essential.

2. What should be the role of the European Consumer Centres Network, national authorities (including regulators) and NGOs in raising consumer and business awareness of ADR?

The European Consumer Centres Network should act as a hub in order to direct consumers to the relevant out-of-court mechanism when this is necessary considering the high amount of schemes across Europe and across sectors.

Regarding the promotion of information dedicated to raise awareness on the schemes, the Federation is convinced that the European Consumer Centres Network, national authorities and NGOs have an essential role to play. Information campaigns could be launched locally to inform consumers on the systems in place and their rights.

3. Should businesses be required to inform consumers when they are part of an ADR scheme? If so, what would be the most efficient ways?

Businesses which are members of ADR schemes should inform their customers about the mechanism in place and its main characteristics. This would without a doubt considerably raise awareness.

However, it should be strongly emphasized that the provision of this information should not add administrative burden on businesses and therefore this information should only be provided through general correspondence and on websites.

From the experience gathered with existing ADR schemes, it is key to remember that a consumer will generally pay attention to the existence of such schemes when he is confronted with a specific

2 Study on the use of Alternative Dispute Resolution in the European Union, Civic Consulting of the Consumer Policy Evaluation Consortium (CPEC) Framework Contract Lot 2 – DG SANCO, 16 October 2009

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 are encountered.

4. How should ADR schemes inform their users about their main features?

Main features of ADR schemes should be described on relevant websites and documentations. Information should be easily understandable.

The existence of an ADR scheme should be highlighted by all involved parties. Main features of an ADR scheme should however only be described by the relevant organization in charge of settlement.

Involvement of traders/suppliers

5. What means could be effective in persuading consumers and traders to use ADR for individual or multiple claims and to comply with ADR decisions?

If information on ADR schemes is properly provided to all parties and considering the benefits of these mechanisms, consumers and traders should be willing to use ADR. Better promotion of these mechanisms is, in this respect, necessary.

In order to ensure compliance with ADR decisions, Eurofinas supports a binding approach on both parties. On the other hand, it is believed that the introduction of a right to appeal is necessary in order to ensure fairness of the procedures.

6. Should adherence by the industry to an ADR scheme be made mandatory? If so, under what conditions? In which sectors?

The Federation strongly opposes a mandatory approach regarding membership to ADR schemes in all sectors. 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 consumers and professionals. Compared to going to court, these schemes are cheaper, quicker and more informal which means they are an attractive means for consumers seeking redress. Voluntary adherence shows commitment by the industry in finding an alternative solution.

Eurofinas would fail to understand which features would be different between going to court and ADR schemes if mandatory membership was introduced.

7. Should an attempt to resolve a dispute via individual or collective ADR be a mandatory first step before going to court? If so, under what conditions? In which sectors?

Eurofinas would like to raise serious concerns regarding the European Commission's intentions to introduce mandatory steps before going to court. We believe that in many Member States this approach would simply be in breach of constitutional provisions.

8. Should ADR decisions be binding on the trader? On both parties? If so, under what conditions? In which sectors?

In order to ensure compliance with ADR decisions, Eurofinas supports a binding approach on both parties in every sector. If the decisions are non-binding, schemes in any sectors will be ineffective in resolving disputes between consumers and traders.

On the other hand, it is believed that the introduction of a right to appeal is necessary in order to ensure fairness of the procedures.

ADR Coverage

9. What are the most efficient ways of improving consumer ADR coverage? Would it be feasible to run an ADR scheme which is open for consumer disputes as well as for disputes of SMEs?

Eurofinas recognizes the important gaps, both sector-specific and geographical, which exist in most Member States and encourages the European Commission to take action in the unregulated sectors in that regard. ADR schemes represent a flexible alternative to going to court and should be accessible by consumers for every sector and all across Europe.

However, a differentiated approach should be taken regarding consumers and SMEs. A “one-size-fits-all” approach should be avoided. It is indeed considered that a different level of protection is needed when dealing with consumers and with SMEs. Consumers should benefit from a specific mechanism in all cases.

10. How could ADR coverage for e-commerce transactions be improved? Do you think that a centralized ODR scheme for cross-border e-commerce transactions would help consumers to resolve disputes and obtain compensations?

It is doubtful that the absence of ADR would actually be one of the reasons for SMEs not to engage in cross-border e-commerce. Though we recognise that dispute resolution is an important element, such a strategic decision to trade cross-border goes far beyond such type of consideration.

On the other hand, it is widely acknowledged that consumers’ activities are increasingly taking place outside their own countries (travel and e-commerce) and that most existing ADR schemes do not make a distinction between the purchase of goods or services by distance selling methods, such as e-commerce or direct selling methods.

We believe that out-of-court settlement mechanisms should provide consumers with the possibility to resolve a dispute at distance whether or not the initial transaction was done on the Internet.

We see no added-value in the establishment of a centralised on-line dispute resolution scheme in general.

11. Do you think that the existence of a “single entry point” or “umbrella organizations” could improve consumers’ access to ADR? Should their role be limited to providing information or should they also deal with disputes when no specific ADR scheme exists?

A “single entry point” or “umbrella organization” could improve consumers’ access to ADR. The European Consumer Centres Network should act as a hub in this respect to direct consumers to the relevant ADR scheme depending on their situation.

Eurofinas strongly believe that ADR schemes will be successful if they remain specific. Granting these “umbrella organization” with powers of resolving disputes when no specific ADR scheme exists should be avoided at all costs. It is widely recognised that expertise is needed in all cases and that such a double function would undermine the effectiveness and fairness of the systems.

12. Which particular features should ADR schemes include to deal with collective claims?

Once again, the Federation would like to warn the European Commission against a “one-size-fits-all” approach. Each case is different and deserves to be treated individually.

13. What are the most efficient ways to improve the resolution of cross-border disputes via ADR? Are there any particular forms of ADR that are more suitable for cross-border disputes?

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 recent 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 credit (3).

Cross-border disputes are not a significant issue in our sector.

Funding

14. What is the most efficient way to fund an ADR scheme?

15. How best to maintain independence, when the ADR scheme is totally or partially funded by the industry?

The most efficient way to fund ADR scheme is by the industry through adherence to ADR schemes. Eurofinas strongly supports the introduction and the promotion of out-of-court settlement mechanisms that comply with the principles of impartiality, transparency, effectiveness and fairness. The funding methods are irrelevant as long as these bodies comply with the above-mentioned principles.

16. What should be the cost of ADR for consumers?

The European Commission should ensure that accessibility to ADR schemes is maintained for consumers. We therefore recommend that, in all cases, the cost of ADR is set at a level that does not prevent consumers from accessing out-of-court settlement mechanisms.

It seems 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 could discourage abusive practices.

3 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