

Position Paper

UEAPME¹ position on the consultation paper on the use of the alternative dispute resolutions (ADR) as a means to resolve disputes related to commercial transactions and practices in the EU

Introduction

As already stated in our position papers and contributions, UEAPME considers that the methods of alternative dispute resolution (ADR) as very helpful for the enterprises. Costs are lower than in normal court cases and the procedure is faster.

Even if the instrument can be very profitable in the relationships between business and consumers, UEAPME wants to underline that it is meant to be used in all kind of relations: B2B, B2C and others.

As a general principle, UEAPME strongly recommends that the application of ADR has to be strictly voluntary and an additional option. It also must be ensured that safeguards are introduced to prevent frivolous claims from being permitted to the ADR system.

UEAPME is absolutely opposed to ADR in collective dispute resolutions. In our opinion ADR should only be used in conflicts on individual basis. In the same framework, UEAPME is opposed to considering ADR at the same level of collective redress and to linking these two instruments, which are very different in their conception and mechanism.

The possibility of choosing ADR should, in our opinion, be foreseen in the contract, but none of the parties should be obliged to participate.

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

In our opinion, the knowledge of consumers and also businesses of available ADR schemes must be raised in order to increase their use. Both consumers and business are not well informed on the ADR system, how it works, what are the obligations and the costs. Therefore they are not aware of the value of the system.

A way to ensure wide publicity capable of reaching all stakeholders should be found.

Information on existing systems of ADR should be kept readily available and digital channels could be used in making such information available. Organisations that offer ADR schemes could also present themselves and their work on the internet or via commercial campaigns.

¹ UEAPME subscribes to the European Commission's Register of Interest Representatives and to the related code of conduct as requested by the European Transparency Initiative. Our ID number is [55820581197-35](https://ec.europa.eu/transparency/adr/initiative/representatives/ueapme).

“Classical” means such as information campaign, introducing the informative clause on ADR into the contracts, general conditions of sales, articles in magazines and newspapers, “white lists” should also be introduced.

The public administration should also participate to such a campaign as the use of ADR would reduce the public judiciary costs.

(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?

See answer to question no 1. The above mentioned institutions should contribute to ensure better cooperation and best practices sharing.

(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?

Information requirements for consumers are not helpful. The use of ADR schemes is voluntary for good reasons. Information about it should therefore be voluntary too. If an obligation is introduced there will be a system to impose sanctions on traders to guarantee the compliance of these obligations. Such a system will not be helpful to boost the willingness to use an ADR scheme.

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

The most efficient way to inform people about the features of a scheme will be information via internet. Especially cross-border business deals are in almost every case online transaction. Consumers who buy products online will primarily take notice of the information if it is posted on the internet.

Consequently, it would be highly useful to create a single portal that would explain the rights and all possible tools in a simple way (plus contacts) country by country.

(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?

The main factors for contracting parties to choose an ADR scheme are the interest of the method in terms of costs and time. Ordinary court procedures mostly take a long time and generate high costs. In comparison, ADR schemes are normally cheaper and run faster.

Those elements should be efficiently explained to consumers and traders to persuade them to use ADR via information campaigns and also by developing a fair action to both parties, not only at the advantage of consumers. The Points of Single Contact of the Services Directive could also give information on ADR schemes.

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

No, an ADR scheme should always be voluntary both at the first stage, as decision to try it, and at the stage of the conclusion of the agreement at the end of the process.

(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?

It should be up to the parties to decide whether they are interested in trying to use ADR. There are many cases in which an ADR has no chance to be successful. For instance sometimes there is an unbalanced power among

parties that could oblige one party to accept the condition of the other. In such cases an ADR procedure could be dangerous for the weaker party and the useless attempt would have the only result of making the process too long.

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

In the case of mediation, whether the parties agreed contractually that they use an ADR scheme to solve all or just special breaches of the contract, the agreement signed at the end of mediation has to be binding. If it is not binding there is no real reason to spend efforts on such a procedure and to find a compromise.

When the parties attempt an ADR process but do not reach an agreement, they should be able to forward their dispute to the competent court.

(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?

In our opinion, ADR schemes perfectly fit to both B2C and B2B transactions, in the same way as it is used also in family relations, neighbourhood litigation etc.

(10) How could ADR coverage for e-commerce transactions be improved? Do you think that a centralised ADR scheme for cross-border e-commerce transactions would help consumers to resolve disputes and obtain compensation?

There is a need for better information, no one system for all. However it could be at the portal suggested above.

(11) Do you think that the existence of a "single entry point" or "umbrella organisations" 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?

The diversity of different ADR schemes is an advantage for users. If there is only one single entry point or just one umbrella organisation, this will – from our point of view - lead to a single ADR scheme. Furthermore if there is just one single organisation it bears the risk of a "claim industry" because such an organisation's only issue and target would be to claim. We do not support such a system. It is necessary to foresee independent instances to address to for the introduction of an ADR process.

On the other hand, we believe that the representative SMEs organisations could have a role in the information and implementation of ADR schemes, as those organisations are able to take into account the specificities of enterprises, which is useful for the success of the method

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

We do not support the idea of collective claims. It would be necessary to examine the opportunity of creating a collective ADR scheme organising an impact assessment.

(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?

If ADR schemes are not limited concerning the used languages, they are open and practicable for everyone. Besides the matter of language problems, it might be useful if ADR schemes could be done in a written procedure, otherwise parties would be forced to go individually to where the ADR tribunal is placed. Regarding cross border matters this generates costs and efforts.

As for the scope of ADR schemes, we would like to point out the advantage of it being applicable regardless of whether the dispute concerns domestic or cross-border trade, traditional commerce or electronic commerce. A better cooperation of ADR bodies and better exchange of information would also be very useful.

In our opinion, a European ADR scheme should be built up for the cross-border dispute, remaining an alternative for cases where a national ADR system is not foreseen by contract

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

As ADR schemes are created in the general interest of consumers and businesses, we think they should be supported in part by public authority, for instance the judiciary system.

Regardless of the financial sources, it is necessary that the ADR scheme is not free of charge for the claiming party. Otherwise, there is no useful barrier for someone to claim. This is important because people could claim "just for fun" or without any serious reason.

It would be beneficial if the parties' procedural costs are set as low as possible.

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

The independence of ADR schemes is fundamental for the whole ADR system. If the independence is not sufficiently guaranteed by an ADR scheme, it will not be accepted even by industry, because ADR schemes do not run only in B2C relations but are also especially successful concerning B2B matters.

(16) What should be the cost of ADR for consumers?

Consumers and businesses should sustain the same costs, being the fees of the mediator. The price should be appropriate and cheaper than traditional court fees.

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