



Financial Services User Group's (FSUG)

Recommendations on the use of Alternative Dispute Resolution to resolve disputes related to commercial transactions and practices in the EU



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FSUG Recommendations on the use of Alternative Dispute Resolution

FSUG Recommendations on the use of Alternative Dispute Resolution (here: ADR schemes in financial services) to resolve disputes related to commercial transactions and practices in the EU

In late November 2011 the college of commissioners is supposed to decide on a regulation and a framework directive on the use of ODR and ADR schemes. FSUG – being the European expert body of consumers and users of financial services consulting the Commission – has therefore formulated the following recommendations (based on the FSUG opinion paper of 8 April 2011¹):

- The Commission recommendations of 1998 and 2001 must be turned into a binding directive which clearly sets out the rules and terms of reference that a professional ADR scheme has to follow.
- FIN-NET principles must be adapted accordingly.
- The independence, transparency and quality of ADR schemes will be strong incentives for consumers to make use of them.
- Main principles for ADR schemes must be:
 - Provider membership in ADR schemes should be as complete as possible; it should be mandatory for providers to take part in an ADR scheme.
 - In the area of financial services, especially with regard to banks and payment services institutions, it makes sense to have as few ADR schemes as possible which can help reduce confusion among consumers, allowing for an easier, more direct 'one stop' access. Fewer schemes will tend to limit unnecessary complaint referrals among different schemes and can contribute to a more professional, standardised processing of complaints.
 - The independence and neutrality of the ADR scheme must be guaranteed: negative in this respect can be the organisation of the scheme under the roof of and dependent from a professional association, a filtering function of the association not allowing certain complaints to be treated by the Ombudsmen and the lacking of any consumer involvement in the scheme.
 - Consumer involvement in the scheme including board representation is important und indispensable; there are several ways to realise it.
 - ADR schemes must come to decisions that are – at least to a certain sum of money – binding on providers (not on consumers).
 - Consumers must be able to take recourse to court action at any time, and they must not be obliged to first go into an ADR procedure.
 - Consumer complaints must be decided without undue delay and within a certain timeframe.
 - SMEs can have problems similar to consumers at least in sub-segments such as banking services. Where this is the case it would be fundamentally feasible running an ADR scheme open to both SMEs and consumers.
 - During the time of the dispute resolution the limitation period has to be suspended.

¹ http://ec.europa.eu/internal_market/finservices-retail/docs/fsug/opinions/adr-2011_04_08_en.pdf

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- A continuous evaluation and independent monitoring of the work of the ADR scheme is important for a consistently high quality process.
- Sanctions have to be foreseen if either the ADR scheme is clearly not obeying high quality standards or if providers do not follow the binding Ombudsman decisions.
- With regard to the funding of ADR schemes, various options should remain possible allowing differences in Member States; preferably ADR should be free of costs to consumers.
- Consumers should not only be informed generally by an information campaign and by pre-contractual information about the possibilities, the procedure and the financial and judicial consequences of a complaint, but also by the provider in the case of a bilateral dispute.
- An reliable periodical report is one additional element providing for transparency and trust in the scheme; it must, among other things, list examples of cases, the number of complaints, initiated proceedings and include the number and outcome of completed proceedings.
- There should also be ODR complaint procedures, mainly for cross-border e-commerce complaints. In this case, a European platform should be installed as a single entry point that informs about the further procedure, passes the complaint on to a suitable national ADR scheme, including an ECC, and takes care that one ADR scheme declares its responsibility. There also has to be mechanisms for a cross-border exchange of information. Last but not least, the consumer must get the relevant information in his/her language.
- The Commission approach in the area of redress has to be consistent and also has to contain work on collective redress. Whereas also collective ADR procedures have to be developed, it has to be born in mind that ADR and collective redress cannot be mixed or exchanged in many cases as collective claims are quite different from individual redress cases.