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DRAFT REPORT

on alternative dispute resolution in civil, commercial and family matters
(2011/2117(INI))

Committee on Legal Affairs

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(*) Associated committee – Rule 50 of the Rules of Procedure

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on alternative dispute resolution in civil, commercial and family matters (2011/2117(INI))

The European Parliament,

- having regard to Article 3(2) of the Treaty on European Union, as well as Articles 67 and 81(2)(g) of the Treaty on the Functioning of the European Union,
- having regard to the Commission’s consultation paper entitled ‘On the use of Alternative Dispute Resolution as a means to resolve disputes related to commercial transactions and practices in the European Union’ of 18 January 2011 and the document entitled ‘Summary of the responses received’ published in April 2011,
- having regard to the Commission’s consultation document entitled ‘Alternative dispute resolution in the area of financial services’ of 11 December 2008 and the document entitled ‘Summary of the responses to the public consultation on alternative dispute resolution in the area of financial services’ of 14 September 2009,
- having regard to the Green Paper on alternative dispute resolution in civil and commercial law of 19 April 2002 (COM(2002)0196),
- having regard to the Commission’s recommendations of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes¹ and of 4 April 2001 on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes²,
- having regard to the Communication from the Commission of 13 April 2011 entitled ‘Single Market Act – Twelve levers to boost growth and strengthen confidence “Working together to create new growth”’ (COM(2011)0206),
- having regard to the Council Resolution of 25 May 2000 on a Community-wide network of national bodies for the extra-judicial settlement of consumer disputes³ and to the European Extra-Judicial Network (EEJ-Net) launched on 16 October 2001,
- having regard to the Memorandum of Understanding on a Cross-Border Out-of-Court Complaints Network for Financial Services in the European Economic Area of 30 March 1998 and to FIN-NET,
- having regard to Council Decision 2001/470/EC of 28 May 2001 establishing a European Judicial Network in civil and commercial matters⁴,
- having regard to the European Code of Conduct for Mediators (hereinafter: ‘Code of Conduct’) launched in 2004,

¹ OJ L 115, 17.4.1998, p. 31.

² OJ L 109, 19.4.2001, p. 56.

³ OJ C 155, 6.6.2000, p.1.

⁴ OJ L 174, 27.6.2001, p. 25.

- having regard to Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters¹,
 - having regard to the study entitled ‘The Cost of Non ADR – Surveying and Showing the Actual Costs of Intra-Community Commercial Litigation’, dated 9 June 2010, by the ADR Center, Rome, Italy,
 - having regard to the findings of the European Business Test Panel (EBTP) on ‘Alternative Dispute Resolution’, covering the period from 17 December 2010 to 17 January 2011,
 - having regard to its resolution of 12 March 2003 on the Commission’s Green Paper on alternative dispute resolution in civil and commercial law²,
 - having regard to its recommendation of 19 June 2007 based on the report of the Committee of Inquiry into the crisis of the Equitable Life Assurance Society³,
 - having regard to its resolution of 25 November 2009 on the Communication from the Commission to the European Parliament and the Council – An area of freedom, security and justice serving the citizen – Stockholm programme⁴,
 - having regard to its resolution of XXX on the implementation of the directive on mediation in the Member States, its impact on mediation and its take-up by the courts⁵,
 - having regard to Rule 48 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the opinion of the Committee on the Internal Market and Consumer Protection (A7-0000/2011),
- A. whereas access to justice is a fundamental right,
- B. whereas an area of freedom, security and justice, as laid down in the Treaties, must meet the needs of citizens and businesses, for example by creating simpler and clearer procedures, whilst enhancing access to justice,
- C. whereas alternative dispute resolution (ADR), which helps parties avoid traditional adjudicative procedures, usually by calling upon a neutral third party, is capable of constituting a quick and cost-effective alternative to litigation, in particular online,
- D. whereas by strengthening citizens’ confidence in the internal market, trust in the enforcement of rights in cross-border disputes can make a contribution towards stimulating the EU economy,
- E. whereas Parliament has repeatedly called for further efforts to develop ADR,

¹ OJ L 136, 24.5.2008, p. 3.

² OJ C 61 E, 10.3.2004, p. 256.

³ OJ C 146 E, 12.6.2008, p. 110.

⁴ OJ C 285E, 21.10.2010, p. 12.

⁵ Texts adopted, P7_TA(2011)0000..

- F. whereas the Commission has included, in its Work Programme 2011 and its Single Market Act, a legislative proposal on ADR, with the aim of consumer empowerment,
- G. whereas the deadline for the implementation of Directive 2008/52/EC expired on 21 May 2011,

Horizontal approach to ADR

- 1. Welcomes the recent Commission consultation on ADR which, despite its wide-ranging title, is exclusively targeted at consumer transactions;
- 2. Believes, however, that ADR forms part of a general ‘justice-for-growth’ agenda across sectors; takes the view that any approach to ADR should go beyond consumer disputes so as to include business-to-business (B2B) civil and commercial transactions, family disputes and defamation cases;
- 3. Welcomes the fact that Directive 2008/52/EC has harmonised some standards for mediation; emphasises that common terms need to be defined and procedural guarantees maintained in all areas of ADR; feels the need to revisit the 1998 and 2001 Commission recommendations and the Code of Conduct;
- 4. Considers that, whilst self-regulation remains important, legislative action is necessary in order to provide a framework for ADR within Member States’ legal orders, as shown by the example of Directive 2008/52/EC;

Common standards for ADR

- 5. Believes that ADR standards should include: adherence to/agreement on ADR; independence, impartiality and confidentiality; effects on limitation and prescription; enforceability of agreements resulting from ADR; qualification of third parties;
- 6. In order not to prejudice access to justice, counsels caution in making recourse to ADR mandatory at EU level, whilst advocating voluntary adherence to ADR schemes by businesses;
- 7. Considers that any ADR clause should not hamper access to justice, in particular on the part of the weaker party, which, in certain circumstances, may also be an SME;
- 8. Takes the view that an obligation to disclose circumstances that affect the third party’s independence or that give rise to a conflict of interests and a duty to serve all parties equally, as laid down in the Code of Conduct, should apply to ADR in general;
- 9. Calls for an obligation for the third party, as contained in the Code of Conduct, to keep ADR information confidential; is also considering more far-reaching measures, such as creating a professional privilege, in parallel with that provided for in Article 7 of Directive 2008/52/EC;
- 10. Believes that not only mediation but ADR in general (Article 8 of Directive 2008/52/EC) should have an effect on limitation and prescription periods; acknowledges the risk posed by the many forms of ADR and the risk of abusive delay of court proceedings; notes that

the feasibility study on European Contract Law¹ provides for a suspension of prescription in the case of arbitration and mediation proceedings, and in certain other ADR situations; calls upon the Commission to continue work on this;

11. Is convinced that speedy and inexpensive enforcement of agreements resulting from ADR is indispensable, including cross-border; calls for legislative measures to this end;
12. Recalls that specific training for third-party neutrals is essential; calls on the Commission to assemble data on the required type and extent of training, and to assist the sectors in developing training and quality-control schemes;

ADR in different areas

13. Recalls that ADR is of particular interest to SMEs; reiterates its call upon the Commission to consider synergies between ADR and an instrument in EU contract law; would also welcome guidance on ADR clauses in standard contracts;
14. Acknowledges the achievements of FIN-NET, but believes that, as regards information to parties and funding, there is still room for improvement;
15. Sees great potential for online ADR, in particular for smaller claims; notes that traditional ADR procedures exist online alongside others that seek to prevent disputes or to facilitate their resolution; emphasises that, where traditional ADR is carried out online, procedural standards should not be lowered, and that issues such as the enforceability of awards should also be resolved; sees a particular benefit in online trustmark systems; points to the work of the UNICTRAL Working Group on Online Dispute Resolution², intended for B2B and business-to-consumer (B2C) transactions;
16. Believes that, especially online, a ‘hierarchy’ of settlement – comprising, firstly, an in-house complaint scheme, secondly, ADR and, only as last resort, litigation – will reduce time and cost; calls upon the Commission to assist the sectors in promoting such systems;
17. Emphasises the crucial role of ADR in family disputes, where it may reduce psychological harm, can help the parties to start talking again and thereby, in particular, help ensure the protection of children; sees potential in cross-border ADR in terms of its flexibility in particular; points also to the work of the European Parliament Mediator for International Parental Child Abduction;
18. Sees potential for ADR within the ongoing discussion on collective redress, in particular as a preliminary stage to any collective redress action; encourages the Commission to explore this issue thoroughly;
19. Sees a need at EU level for ADR in the area of freedom of the press and rights of personality, given that in cases of defamation and breaches of rights of personality in particular, costs of legal proceedings, especially in some Member States, can be ruinous,

¹ See

http://ec.europa.eu/justice/policies/consumer/docs/explanatory_note_results_feasibility_study_05_2011_en.pdf.

² See http://www.uncitral.org/uncitral/commission/working_groups/3Online_Dispute_Resolution.html.

and that ADR could help to improve the existing situation;

Next steps

20. Notes that there needs to be an improvement in general information about rights and their enforcement and specific information on ADR schemes (existence, functioning, location), targeted in particular at citizens and SMEs; believes that ADR is most effectively provided in a network close to citizens and on the basis of joint work with Member States;
21. Calls on the Commission, on the basis of the data collected and a solid impact assessment, to explore providing a harmonised legal framework for some aspects of ADR across sectors, while developing existing schemes and encouraging Member States to increase funding, bearing in mind that ADR, while providing parties with a low-cost alternative, must not be 'justice on the cheap';

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22. Instructs its President to forward this resolution to the Council and the Commission.