

Telephone: 020 7066 9346

Email: enquiries@fs-cp.org.uk

European Commission
Health & Consumers Directorate-General
B – 1049 Brussels
Belgium

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Response to the Consultation Paper on use of Alternative Dispute resolution as a means to resolve dispute related to commercial transactions and practices in the European Union

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

It is important that consumers are aware of the availability of ADR if they are to feel confident about shopping for financial services cross-border. However while we see some value in pre-sale/point of sale information, the best way to promote ADR schemes is to provide consumers with information about them when it is needed, ie when a dispute arises. We do not think that there is a need for schemes such as FIN-NET themselves to be promoted, other than to those working in ombudsmen, regulatory, enforcement and advice bodies in the Member States, but rather the existence of ADR schemes themselves.

(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?

We see the prime responsibility for promoting awareness of ADR schemes as resting with financial service providers, and have proposed an appropriate obligation under Q6 below.

In our view, the establishment of the European Supervisory Authorities strengthens the case for EU-wide obligations on Member States in relation to their national financial services regulators in areas such as their independence, impartiality, transparency and mutual co-operation: a model might be the provisions that cover national regulators in the telecommunications sector (Directive 2002/21/EC). In addition, obligations on national financial services regulators should include a duty to protect consumers, including through the promotion of ADR schemes and awareness of them.

In the UK, consumer NGOs already actively promote awareness of ADR schemes including in the financial services sector.

(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 about access to an ADR scheme should be provided at the point at which it is needed – when a dispute arises. That is when a consumer is most likely to retain and make use of the information. Generally, it would be helpful if information could also be provided in the pre-sale and/or point-of-sale documentation, but we do have concerns about consumers being overwhelmed with information at this point and consequently not paying sufficient attention to it. This should not be an alternative to providing the information at the dispute stage.

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

Information about the availability of ADR schemes should be made available by financial service providers in all the means of communication that they use to promote their products. This information should include contact details of the scheme.

Information from ADR schemes should be publicly available in all media normally used by consumers to purchase financial services.

(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?

For consumers, it is important that the ADR process is independent, transparent, simple, speedy and free of charge. The principles previously set out in relevant Commission Recommendations could usefully be applied on a statutory basis.

As good ADR schemes should look at the individual circumstances of each claim, they may not in all cases be suitable for claims made jointly by groups of consumers. We are not opposed to multiple claims by ADR but do not see such a process as a substitute for legislation providing for group actions.

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

There should be binding action at EU level requiring mandatory adherence to an ADR scheme for all significant financial services providers. This should apply to schemes in all Member States both in and from which the firm provides services. We hope that the forthcoming draft directive on responsible lending and borrowing in the mortgage sector will include an obligation on Member States to ensure that there are appropriate ADR schemes. We are supportive of the UK Financial Services Ombudsman scheme in the UK and the role it plays in FIN-NET. We believe that all financial services ADR schemes should be required to meet the minimum standards necessary for membership of FIN-NET, and that they should be members of it.

(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?

No. Consumers should be free to choose whether or not to use ADR.

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

We believe that the UK Financial Ombudsman Service model is a good model for the sector. If the consumer accepts the Ombudsman's decision it is binding on both parties, if the consumer does not accept the decision the consumer is free to take the matter to court.

The drawback of the Financial Ombudsman Service model is that the FOS can not enforce its own decision and so if a business refuses to pay then it is up to the consumer to take legal action to enforce the decision. We believe the consumer is at a disadvantage in trying to enforce a decision against a recalcitrant business and the regulator should have the powers to pursue enforcement action on behalf of the individual consumers, or where the issue constitutes a practice by that business, on behalf of a group of consumers.

(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?

Our focus is on the interests of consumers. We have no objection to the inclusion of SMEs in schemes provided that there is no dilution for consumers of the principles discussed in response to Q5 above.

The UK Financial Ombudsman Service covers small businesses as long as they have an annual turnover of less than two million euros and fewer than ten employees. The Panel have called for the consideration of an extension of these protections in the area of credit agreements.

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

We think that this is an interesting idea but would not want to see such a scheme as an alternative to a strengthened FIN-NET with ADR available on an EU-wide basis: in the event of a cross-border dispute, consumers should be free to choose whether to go (under FIN-NET) to their own national ADR scheme, or to the ADR scheme in the country of the provider, or to a central ODR scheme.

(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?

We support the provision of information on ADR through the outlets with which consumers are most familiar in their own Member State. As discussed under Q6 above, we do not think there should be any gaps in ADR coverage for financial services.

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

Cost should not be a barrier to consumers wishing to join or pursue a collective claim and a representative action by consumer groups and other bodies should be permitted.

(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?

Please see our response to Q5. We would welcome the strengthening of FIN-NET with peer group reviews of national schemes and the publication of regular reports on the standard of ADR schemes in the EU27.

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

ADR schemes should be funded by a levy and/or case fees from the firms which they cover.

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

The levy for the Financial Ombudsman Service is collected by the regulator at that same time it collects its own fees and fees for the Financial Services Compensation Scheme. The fees are administered by the FOS scheme operator, a separate legal entity, and so the use of funding is at arms length from its collection.

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

The use of ADR should be free to consumers. Ultimately, the cost of ADR schemes will be borne by all consumers in the price that they pay for financial services. This provides a public good in that ADR benefits consumers and providers who trade fairly by discouraging unfair practices, and helps to promote fair competition.