The Necessity of Alternative Dispute Resolution systems in Romania

Best practices in the Member States. How to build up confidence between consumers and businesses?

Report

BUCHAREST

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Foreword

Alternative Dispute Resolution (ADR) schemes, also known as ‘out-of-court mechanisms’ have been developed across Europe to help citizens engaged in a consumer dispute who have been unable to reach an agreement directly with the trader. ADR schemes usually use a third party such as an arbitrator, mediator or an ombudsman to help the consumer and the trader to reach a solution.

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.

However, these out-of-court mechanisms have been developed differently across the European Union. Some are the fruit of public initiatives both at central level (such as the consumer complaints boards in the Scandinavian countries) and at local level (such as the arbitration courts in Spain), or they may spring from private initiatives (such as the mediators/ombudsmen of the banks or insurance companies). Precisely because of this diversity, the status of the decisions adopted by these bodies differs greatly. Some are merely recommendations (such as in the case of the Scandinavian consumer complaints boards and most of the private ombudsmen), others are only binding for the professional (as in the case of most of the bank ombudsmen); and others are binding for both parties (arbitration).

The conference organized by European Consumer Centre Romania acted as a platform for exchange information, know-how and best practices that will help the Romanian authorities, business associations to establish ADR systems in Romania.

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1. **Introduction**

The continuing expansion of economic activity within the Internal Market means that more and more consumers’ activities are not confined to their own Member State. There is much expectation that this development will accelerate further with the introduction of the EURO, the increase in travel and the use of new technology to facilitate distance selling such as the Internet, mobile communication methods and digital TV home shopping. These means are providing the practical tools to turn national consumers into active cross border consumers.

However if consumers are to utilize these opportunities their direct sustained participation must be guaranteed. Several Community instruments do provide consumers with a set of basic rights. However, if such rights are to have practical value, mechanisms must exist to ensure their effective exercise. If consumers’ are to have sufficient confidence in shopping outside their own Member State and take advantage of the Internal Market, they need assurance that if things go wrong they can obtain redress. The possibility of using alternative mechanisms to the courts can also prevent disputes from arising by providing an incentive for parties to settle before the need to formalize their problems with a third party. Thus the mere presence of these procedures may motivate the prevention of problems. This is not just a question of promoting consumer confidence but also ensuring there is effective competition and access to the Internal Market for business, especially SME’s.

Developing communication technologies have a significant role to play in providing both consumers and business with the facilities to resolve a dispute, especially where the parties are located in different jurisdictions. The experience of traditional methods of dispute resolution will be essential for the deployment of procedures in the electronic environment.

Many new schemes are already emerging which incorporate traditional methods but with the extra advantages provided by new technology. For instance, access is widened, speed is increased and control of the resolution process is placed more firmly in the hands of the parties. Technology will therefore have an increasingly pivotal role in facilitating dispute resolution and should aim to provide a credible alternative to litigation through the courts. This will be a major factor in securing the mutual confidence of consumers and business in the Internal Market.

‘Alternative Dispute Resolution’ (or ‘ADR’) covers a variety of out-of-court bodies that provide an alternative to litigation through the courts. ADR procedures may include, but are not confined to, arbitration, early neutral evaluation, expert determination, mediation and conciliation. Accordingly, the mechanisms for resolving disputes may vary from binding decisions to recommendations or agreements between the parties. Also the organization and the management of ADR procedures may vary; they may be publicly or privately organized and take the form of an ombudsman scheme, consumer complaint board, private mediator, trade association etc. These various procedures have different characteristics and are more or less effective depending on the circumstances. It is often
unhelpful and confusing to group them together under one heading. A useful distinction is
that between procedures in which a neutral third party proposes or makes a decision and
those where the neutral seeks to bring the parties together and assist them in finding an
agreement by common consent. Which of the above procedures is most appropriate will
depend on the nature of the dispute to be resolved.

2. Presentation of the EC Recommendation 257 and 310
regarding the notification of ADR bodies

European Commission Recommendation 1998/257/EC identifies a set of principles which
bodies responsible for out-of-court settlement of consumer disputes should follow in order
to ensure a common minimum standard across the EU. Member States have been asked to
notify the Commission of such procedures meeting the common principles for inclusion in
its database of notified out-of-court bodies (with whom Centres from the European
Consumer Centre Network liaise on behalf of consumers). The European Consumer Centre
Network (ECC) is a network of contact points, established by the European Commission
together with Member States, which, amongst other functions, provides consumers with
information on available Alternate Dispute Resolution schemes, as well as legal advice and
practical help in pursuing a complaint by this means.

The Commission Recommendation 98/257/EC is setting out 7 principles (independence,
transparency, adversarial principle, effectiveness, legality, liberty and representation) that
ADRs in each Member State should offer to their users. Compliance with these principles is
intended to guarantee consumers and traders that their cases will be treated with rigor,
fairness and independence; with the expected advantage, of course, of a simpler and
quicker settlement of their dispute. These principles were important in creating mutual
confidence in these procedures, particularly when the parties were located in different
Member States. All Member States notified the Commission of the out-of-court bodies that
they considered to be in full conformity with the principles and that information has been
placed on the Commission's website. This Communication anticipated the need and
desirability of creating an EU wide network of these bodies with a view to improving
the processing of consumer disputes of a cross-border nature.

Notifying Alternate Dispute Resolution bodies to the European
Commission under EC Recommendation 1998/257/EC on the principles
applicable to the bodies responsible for out-of-court settlement of
consumer disputes

Any out-of-court/ADR body which, having examined the European Commission
Recommendation, considers it could qualify for notification should complete the
application form for Recommendation 98/257/EC and submit same to the ECC Romania

Processing of Applications

In examining an application the Department is seeking to satisfy itself that the body in
question is in conformity with the European Commission’s Recommendation and provides
parties to a dispute with a minimum number of quality guarantees in line with an
Adversarial principle as well as principles of Independence, Transparency, Effectiveness, Legality, Liberty and Representation. To this end, ECC Romania has drawn up a review form which it uses in examining applications.

1. The application form is submitted, in the first instance, to the ECC Romania. The Dispute Resolution Adviser examines the application, using the ECC’s Review form, to check that all the necessary information has been provided. The Dispute Resolution Adviser liaises with the applicant to ensure that sufficient information is provided. When the Dispute Resolution Adviser is satisfied that the body has established that it is in conformity with the Recommendation, she/he forwards the application to the ANPC and recommends notification of the body to the European Commission.

2. An official in the ANPC arranges for acknowledgement of receipt of the application to the ECC Romania and proceeds to notify the body.

3. If the official requires further information or clarification she/he will seek same, in the first instance, from the Dispute Resolution Adviser.

4. The official may decide to seek a meeting with representatives of the body in question.

5. In cases where it is decided to notify a body to the Commission a letter outlining this decision issues to the body and a letter notifying the body issues to the European Commission.

Procedures in place following notification

If there are any changes to the contact details of a notified body or any of the other information pertaining to the body appearing on the European Commission’s Database of Notified Out-of-Court bodies, then the notified body must advise the Dispute Resolution Adviser of these changes as soon as possible so that this information can be forwarded to the European Commission via ANPC.

At any point following notification if any situation arises which might result in a body being, even partially, out of conformity with the Recommendation, then the notified body should contact the Dispute Resolution Adviser providing details of such situation, the body’s perspective on same and remedial actions taken/to be taken, if relevant. The Dispute Resolution Adviser should then appraise the ANPC of the details in this regard and provide a recommendation on appropriate action.

European Commission Recommendation 2001/310/EC identifies a set of principles which out-of-court bodies involved in the consensual resolution of consumer disputes should follow in order to ensure a common minimum standard across the EU. Member States have been asked to notify the Commission of such procedures meeting the common principles for inclusion in its database of notified out-of-court bodies (with whom Centres from the European Consumer Centre Network liaise on behalf of consumers). The European Consumer Centre Network (ECC) is a network of contact points, established by the European Commission together with Member States, which, amongst other functions, provides consumers with information on available Alternate Dispute Resolution schemes, as well as legal advice and practical help in pursuing a complaint by this means.

Recommendation 2001/310/EC lays down principles for any third party body offering procedures that attempt to resolve a dispute by bringing the parties together to convince them to find a solution by common consent. However, the Recommendation is not
intended to cover customer complaint mechanisms operated by a business and conducted directly with the consumer or to such mechanisms carrying out such services operated by or on behalf of the business. The application of the principles should guarantee greater confidence in the operation of such procedures by ensuring transparency of its functioning and reliability of the procedure through its impartiality, transparency, effectiveness and fairness. These basic safeguards will make it considerably easier for such bodies to offer their procedures in all Member States.

**Notifying Alternate Dispute Resolution bodies to the European Commission under EC Recommendation 2001/310/EC on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes**

Any out-of-court/ADR body which, having examined the European Commission Recommendation, considers it could qualify for notification should complete the Department’s application form Recommendation 2001/310/EC and submit same to the Dispute Resolution Adviser, ECC Romania.

**Processing of Applications**

In examining an application the Department is seeking to satisfy itself that the body in question is in conformity with the European Commission’s Recommendation and provides parties to a dispute with a minimum number of quality guarantees in line with an Adversarial principle as well as principles of Independence, Transparency, Effectiveness, Legality, Liberty and Representation. To this end, ECC Romania has drawn up a review form which it uses in examining applications.

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3. **Mediation system in Romania**

According the Law 192/2006 on mediation and the organization of the mediator profession, the mediation is defined as a facultative method to solve disputes by amicable agreement, with the assistance of third parties as mediators, neutral, confidential and impartial.

The mediation is based on the confidence the parties have in the mediator, as a person who is able to facilitate their negotiation and to support them in order to solve their dispute, by obtaining a **solution which is satisfactory for both parties, efficient and durable**.

The parties, natural and/or moral persons, can **voluntary** appeal to mediation, even after they started an action in front of the judicial courts.

The Law states in an express way that it applies also to the consumer disputes when the consumer invokes a prejudice as a result of buying defective products or services, non-respect of contractual terms or guarantees, existence of unfair commercial terms or infringement of other rights established in national or European consumer protection legislation.

The parties may insert in any convention they conclude, a term regarding the mediation.

The mediation is done equally for all persons with no distinction of race, color, nationality, ethnic origin, language, religion, sex, opinion, political opinions, fortune or social origin.

The mediation is a **public interest activity**.

When exercising his attributions, the mediator cannot decide on the agreement content, but he can direct the parties to verify the agreement’s legality.

The mediation can be done between two or more parties.

The parties can choose freely their mediator. The mediation can be done by two or more mediators.

The judicial and arbitration bodies have to inform the parties on the possibility and the advantages of the mediation and can direct them to use this ADR method.
The mediation procedure

Before the conclusion of the mediation contract

The parties present themselves to the mediator. When only one party presents, the mediator will address to the other one a written invitation to accept the mediation and conclude the mediation contract, with a time limit of at most 15 days.

When the other party refuses the mediation or misses two meetings for the contracts' conclusion in a row, the mediation is considered as unaccepted.

The Law interdicts any mediation meeting before the contract's signing.

The mediation contract

The mediation contract is concluded between the mediator and the parties.

The mediation contract must contain the following terms:

- the identity of the parties, or of their representatives;
- the dispute's object;
- the mediator's obligation to give explanations on the mediation principles, effects and applicable rules;
- the parties' declaration for the start of mediation and their decision to cooperate;
- the parties' engagement to respect the mediation rules;
- the parties' obligation to pay the mediator's fee and the expenses he has made during the mediation in the parties interest, the payment methods and the proportions the parties have to pay, by taking into account their social position.
- the language of the mediation.

The mediation contract must be concluded in written and it is signed by the mediator and the parties.

The mediation procedure

The mediation is based on the parties' cooperation and the use, by the mediator, of certain techniques and methods, based on communication and negotiation.

The methods and techniques used by the mediator must serve exclusively to the legal interests and the objectives of the parties.

The mediator cannot impose a solution to the parties.

The mediation takes place at the mediator's location. The parties have the right to be assisted by a lawyer or by other persons, in the conditions set out by common agreement.

The meetings are confidential.
Closing of the mediation procedure

The mediation procedure is closed by:

- conclusion of an agreement as a result of the dispute's resolution;
- finding by the mediator the mediation has failed;
- abdication of the contract by one of the parties.

At the closing of the mediation procedure, the mediator will make a document, signed by the parties and by the mediator.

When the parties have reached a solution, an agreement is written and signed by the parties and the mediator.

The agreement can be verified by a public notary or by a court of justice.

4. Different ADR systems in Europe. Case studies of Denmark, Italy, Poland, France and the Netherlands

Denmark

In Denmark the landscape of consumer redress is dominated by two types of mechanisms both specifically designed for consumer protection purposes:

- the Consumer Complaint Board procedures dealing with individual civil law claims; and
- the injunction procedure according to the Marketing Practices Act offering protection of (inter alia) collective consumer interests.

The Consumer Complaint Board Scheme.

Forbrugerklagenævnet (the Consumer Complaint Board) is a public body established by an Act of Parliament in 1975 in order to offer consumers easy, quick and inexpensive access to justice in cases concerning complaints relating to goods or services. The present rules are found in the Consumer Complaints Act which was passed in 2003 as a result of a general revision of the scheme.

Under the present rules, Forbrugerklagenævnet (the Consumer Complaint Board) can deal with consumer complaints if the price for the goods or service in question exceeds 800 DKK (500 DKK in cases concerning shoes and textiles and 10,000 DKK in cases concerning motor vehicles) but not 100,000 DKK.

Furthermore, complaints falling within the scope of private complaint boards approved by the Minister cannot be brought before Forbrugerklagenævnet (the Consumer Complaint Board). Thus, the Consumer Complaint Board Scheme consists of a number of approved private complaint boards financed by business and the public Forbrugerklagenævnet (the
Consumer Complaint Board) dealing with the residual of complaints which cannot be brought before one of the private complaint boards approved by the Minister.

A privat anke- eller klagenævn (private complaint board) can obtain approval by the Minister only if it comprises a specific trade or other well-defined area and only if the bylaws of the complaint board contain provisions regarding the composition of the board and a review procedure that is satisfactory for the parties, and provisions regarding payment of fees and costs. An approval may be issued for a limited period of time and may be revoked if the preconditions for approval no longer exist.

In recent years approximately 5000 cases a year have been brought before Forbrugerklagenævnet (the Consumer Complaint Board). Following the establishment of Teleankenævnet (the Telecommunications Complaint Board, mentioned above) in 2003 the number of cases brought before Forbrugerklagenævnet (the Consumer Complaint Board) fell to nearly 3700 a year. The proceedings before the Forbrugerklagenævnet (the Consumer Complaint Board) and the approved private complaint boards are in writing.

The decisions made by the the Consumer Complaint Board and the approved private complaint boards are not binding and they are not enforceable.

If a case has been brought before the courts and the consumer wants to bring it before a complaint board, the court will grant an indefinite stay of proceedings and refer the case to the board, unless the consumer is deemed certain to fail in his or her complaint, or if the case is deemed not to be fit for review by the board. While a case is pending before a complaint board, the parties to the case cannot bring a case before the courts regarding the issues involved in the complaint.

Furthermore, contract terms to the effect that a legal dispute shall be dealt with by arbitration or by another special forum of mediation do not bar the complaint from being brought before a complaint board. If a case has been referred to arbitration etc. and the consumer wants to refer it to a complaint board for hearing, proceedings shall be stayed, pending review by the board.

When the board has made a decision, the matter may be brought before the civil courts by either party. If the decision made by a complaint board in favour of the consumer is not complied with, the National Consumer Agency may bring the matter to court at the request, and on behalf of, the consumer.

If the case is brought before the courts the consumer is automatically entitled to free legal aid if his or her income meets the normal financial requirements for legal aid.

A list published on the internet lists business enterprises that have not complied with Consumer Complaint Board decisions. However, if the business enterprise wants the case brought before the courts, its name may not be published until the court proceedings have ended.

The injunction procedure according to the Marketing Practices Act
Violations of the Marketing Practices Act can be met by injunctions prohibiting acts in contravention of the provisions of the Act. As a supplement to an injunction the court may make such orders as it considers necessary to ensure that an injunction is complied with,
including a decision to the effect that agreements concluded in contravention of an injunction shall be void and restoration of the conditions existing prior to the illegal act, including destruction or withdrawal of products and publication of information or correction of indications or statements.

In accordance with the general Danish principles of standing, any person or organization with a sufficient legal interest therein may institute legal proceedings with respect to injunctions. In addition, the Consumer Ombudsman may institute such legal proceedings. Civil proceedings for the decision of which the application of the Marketing Practices Act is of material importance shall be brought before the Copenhagen Maritime and Commercial Court, unless otherwise agreed by the parties. This court consists of 1 professional and 4 expert judges half of whom represent business and consumer interests respectively. Ordinary rules of civil procedure apply in proceedings for injunctions under the Marketing Practices Act. Decisions made by the Copenhagen Maritime and Commercial Court can be appealed to the Supreme Court without special permission.

In practical life, injunction proceedings for the protection of collective consumer interests are not brought before the court by individual consumers or consumer organizations. In practice, the plaintiff in such cases is the Consumer Ombudsman. Under the Marketing Practices Act it is the duty of the Consumer Ombudsman to ensure that the provisions of the act are not contravened, especially taking into account the interests of consumers. The purpose of protecting consumers should, not surprisingly, be the top priority of the Consumer Ombudsman.

The intervention of the Consumer Ombudsman is governed by a general principle of negotiation, according to which s/he shall endeavour by negotiation to induce persons carrying on a trade or business to act in accordance with the principles of good marketing practices and the other provisions of the Marketing Practices Act.

The Consumer Ombudsman has standing to sue in civil cases before the courts (normally the Maritime and Commercial Court of Copenhagen, see above) on injunctions. S/he may him or herself issue orders if an act is in clear contravention of the Marketing Practices Act and cannot be changed by negotiation. The party against whom an order is issued may demand that the Consumer Ombudsman sees to it that the order is brought before the courts. The Consumer Ombudsman is also authorised to issue an interlocutory injunction where there is a reasonable possibility that the objective of an injunction issued by the court may not be achieved if the decision of the court has to be awaited. An action to confirm such an injunction shall be brought not later than the next following weekday. Furthermore, the Consumer Ombudsman may, upon request from each consumer involved, recover the claims of a plurality of consumers collectively if in connection with a contravention of the provisions of the Marketing Practices Act they have uniform claims for damages (Cf. § 28 of the Marketing Practices Act). This rule was introduced in 1994, but has so far not been used in practice.

Italy

A. Judicial devices.
In Italy attention on an effective protection of consumers' rights is a rather recent phenomenon, and the procedural devices enacted in order to implement such a protection
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There are few. They have been introduced in the last few years and, generally speaking, they do not represent an effective and efficient system for the enforcement of consumers' rights and interests. In actually fact, Italian legal scholars have discussed the problem of the so-called collective or supra-individual interests, including those belonging to consumers, at least since the early seventies, but no significant reforms were enacted for a very long time. At present, several proposals for reform are under discussion, mainly as a consequence of some financial scandals that harmed millions of small investors, but so far none of these projects has become a normative reality.

Looking at the present system, some main features should be stressed. The most important one is, in all probability, that there is nothing similar to, or comparable with, the American class action. There is strong resistance to the introduction of this type of action, mainly because of an insufficient knowledge of its real features, and due to what amounts to bad publicity concerning the American experience of class actions. As we shall see in sec. 2, there is only one type of "collective" action that may be initiated by consumers' associations. However, the scope and the possible outcomes of such an action are very limited: it may be aimed at obtaining only an injunction, prohibiting the use of abusive and harmful clauses in consumers' contracts, but no compensation by way of damages can be obtained. Therefore, if consumers suffer damage, they can resort only to individual ordinary judicial proceedings in order to seek individual compensation according to the general rules of the code of civil procedure.

There is a simplified court procedure in civil matters before the justice of the peace for disputes of a value up to EUR 15,493.71 concerning compensation of material damages (not to persons, just to objects) caused by car accidents. The same procedure is applied to all disputes of a value up to EUR 2582.28 concerning movable goods (including monetary credits). This procedure is not aimed specifically at solving consumer disputes, but is used quite frequently by consumers, within the value limits of the justice of the peace. Beyond these limits, consumer must sue in the ordinary courts of first instance, according to the ordinary procedure.

B. Non-judicial devices.

As to arbitration, it has to be stressed that there are no special forms of arbitration concerning consumers' transactions. Arbitration clauses are often included in contracts concerning consumers (such as: bank, insurance, tourism, transportation, etc), but there are no special kinds of arbitration, special arbitration boards or arbitration organizations dealing with those specific matters. Therefore, arbitration may be ad hoc, or it may be administered by arbitration bodies (such as the "arbitration chambers" existing in the Chambers of Commerce and the Camera Arbitrale Nazionale ed Internazionale - National and International Arbitration Chamber - that exists in Milano), but it means that the general rules and practices apply to the consumers' disputes as much as to any other dispute. The arbitration administered by the Arbitration Chambers is regulated by specific sets of rules drafted by the Chamber: such rules regulate the choice and appointment of arbitrators, their impartiality, independence and professional skills, the main aspects of the proceeding such as meetings and hearings, the drafting of the award, the secretariat and the fees. When the parties choose to use this kind of arbitration, they accept the authority of the arbitration body, within the rules of the procedural code concerning arbitration. The same rules apply when the arbitration scheme is used in consumer disputes.
As to mediation (or conciliation) there are two main forms of extra-judicial mediation: 1) the mediation administered by the Chambers of Commerce; and 2) the mediation administered by regional committees (Corecom) in the area of communications.

Some forms of mediation are included in various types of contracts concerning consumers (mainly bank and insurance contracts), but they should be considered as types of "spurious" mediation. The main reason is that in these cases the "mediator" is not an independent and neutral person, but someone who belongs to the organization or the company that is the "strong party" in the transaction, i.e. the bank or the insurance company. It may happen that by resorting to such a device an agreement is reached between the consumer and his or her counterpart, but that does not mean that this is a real mediation: rather, it means that there is a bargain between the parties, and that the consumer obtains something from the other party.

**Poland**

In Poland there are different forms of institutionalized and less formal means of alternative consumer dispute resolution schemes. Most of these are products of the harmonisation of the Polish legal system with Community law. The bodies that have existed for the longest time are local arbitration courts set up by the state trade inspection organs (since 1992). The whole system of consumer redress has little transparency and coherence. The regulations are dispersed in many provisions of law and subject to rules proclaimed by special bodies. There are a few government-run out-of-court consumer redress schemes and bodies that are designed to deal solely with consumer complaints for a particular sector (industry) or particular types of complaints.

Some types of disputes, which have particular significance for the internal market, such as disputes in respect of the provision of tourism services, are not covered by any special ADR scheme. While they might be the object of an action brought to the Permanent Consumer Arbitration Court (see below), in practice this rarely happens.

**A. Out-of-Court Mechanisms**

In Poland there are four arbitration courts and three mediation procedures. Generally, it should be noted that in all available alternative procedures the competent bodies may act also as mediators (conciliation bodies). The most popular amongst consumers, however, are ombudsmen.

1. **Arbitration schemes**

The most comprehensive and widely used schemes are *Stałe Polubowne Sdy Konsumenckie* (Permanent Consumer Arbitration Courts) operating within the Regional Comptroller of Trade Inspection. These were established in 1992. Currently, the network comprises 31 regional arbitration courts. In this scheme a special European complaint form may be used. The consumers will receive substantial help from local consumer ombudsmen to use the scheme. Following its reform in 2001, it is in general cost-free. All pecuniary claims relating to sales of goods and provision of services are subject to the procedure. Therefore, the scheme has a wide scope of practical application. There are also three arbitration schemes that deal only with consumer complaints from a particular industry or sector.
a. S_d Polubowny przy Rzeczniku Ubezpieczonych ( Arbitration Court by the Ombudsman for the Insured), established in 2004, is designed to solve disputes stemming from insurance contracts, open pension funds contracts and employee pension programmes. Polish consumers are particularly vulnerable in the insurance market, hence the court is considered to be a big achievement for the realization of consumer protection. The costs of using the scheme are, however, quite high, coming close to the ordinary civil procedure costs.

b. Stały Polubowny S_d Konsumencki przy Prezesie Urzdu Regulacji Telekomunikacji i Poczty (Permanent Consumer Arbitration Court operating at the Office for the Regulation of Telecommunications and Post) deals with consumer disputes arising within telecommunications and postal services. This arbitration court was established on 1 July 2005, and in the small period of time since then has already become quite popular (over 300 complaints have been filed). It is, however, quite costly (PLN 100) in relation to the average value of a claim.

All of the above arbitration schemes are partly subsidised by the government. The parties submit to the process voluntarily and decisions of the courts are equally binding as the decisions of common courts. In all those schemes there is no right of appeal. However, based on general civil procedure rules, after the award is given but within 3 months, the parties may apply for its annulment if it was issued in violation of the law or is based upon invalid consent.

c. Bankowy Arbitr Konsumencki (the Banking Consumer Arbitration). This scheme deals with consumer disputes with the banks that are members of Zwi_zek Banków Polskich (Alliance of Polish Banks) and 6 co-operative banks who consented to have their consumer disputes settled through the scheme. The sole Banking Arbitrator is appointed by the president of the Alliance of Polish Banks.

The Arbitrator deals with pecuniary claims relating to the non-performance or improper performance by a bank of a banking transaction or other transaction for the benefit of a consumer. The arbitration process might be considered not to lead to optimal, fair and impartial results since the parties may not choose the Arbitrator. Consumers do not necessary have trust in the body designated by the banks to solve disputes with those banks. Thus, although professionalism is guaranteed, impartiality and fairness of the outcomes are not.

General legal grounds for arbitration are contained in the Civil Procedure Code [k.p.c.] and have been substantially revised by the Act of 28 July 2005 on the Revision of the Civil Procedure Code (Dziennik Ustaw later: Dz.U, nr 178, at 1478). This law, which entered into force on 17th October 2005, introduced a new Book V to the Code "Conciliation Court (Arbitration)" - art. 1154 – 1217k.p.c., as well as provisions on in-court mediation (art. 1831 – 18315 k.p.c.). Both sets of new rules are designed after the UNCITRAL model laws on international arbitration and on conciliation.

2. Mediation
Mediation is usually available whenever an arbitration scheme is established. In particular a separate mediation procedure is offered by:
- the Regional Comptroller of Trade Inspection;
- the Ombudsman for the Insured; and
These are all non-judicial public authority organs. Therefore their impartiality is sometimes questioned by those who contract with consumers (consumer's contractor).

The mediation by the first body mentioned above is the least formal and most general in the scope of application, covering disputes arising from improper quality of goods and performance of services.

3. Ombudsmen
In this report, the competence of powiatowy/miejski rzecznik konsumentów (the local consumer ombudsman) will not be elaborated. The ombudsmen operate within the structure of local self-government (in towns and powiats). They may use most of the existing procedures, but no special procedure regarding consumer redress is designed for them.

The local consumer ombudsmen undertake action on behalf of, or in support of, a consumer (1) on a general basis (art. 633 and 634 k.p.c.), (2) on a specific legal basis, such as, e.g., the special judicial procedure for the declaration of abusiveness contractual terms in consumer adhesion contracts (art. 47938 § 1 k.p.c.), and (3) where their position is equated similar to that of a public prosecutor.

Apart from their legal standing in certain ordinary judicial and alternative procedures, as mentioned in different parts of this report, their task is to facilitate the solution of disputes, to advise, to educate, and to exert influence over the practice of entrepreneurs. Prezes Urzedu Ochrony Konkurencji i Konsumentów (the President of the Office for Competition and Consumer Protection – the President of UOKiK) considers that local consumer ombudsmen are major actors in the out-of-court solution of consumer disputes. Businesses accept the ombudsmen’s demands in around 80% of cases. Annually, a few thousand claims are solved out-of-court in this informal way.

The Rzecznik Ubezpieczonych (the Ombudsman for the Insured) actions are based on a special statutory basis. As concerns individual rights and interests, the Ombudsman may try to have the position of the consumer’s contractor changed through an official “intervention”. This procedure could be regarded as an alternative dispute resolution system. The Ombudsman may also refer disputes to mediation or arbitration at the Arbitration Court by the Ombudsman. As an actor, the Ombudsman also has legal standing to commence special injunction procedures designed for the protection of consumers’ collective interests (see below).

Each year, the Ombudsman for the Insured, which has existed since 1995, handles thousands of individual complaints pertaining to commercial and social (retirement) insurance.

France
In France, many possibilities exist to resolve consumer disputes. Some out-of-Court schemes are available in addition to judicial redress mechanisms. Whichever option may be chosen to obtain satisfaction, it must be underlined that individual judicial options seem
preferred by the French legislator and consumers. Generally speaking, judicial procedures appear to be the best way to handle legal problems, mainly because individualism is a very strong French feature.

Though much political attention has been paid to consumer protection, as for instance with the adoption in 1993 of a code (Code de la consommation), efficient procedural rules were not really dedicated to this kind of problem. Therefore, it is still very usual to obtain justice through an individual claim.

Another explanation of the lack of importance of collective methods of regulating business-to-consumer relationships, is the strong competition between operators in the French market. Important companies are quite reluctant to meet and propose self-regulated solutions to consumers and mediation schemes.

**Out-of-Court Mechanisms**
The French legal context of arbitration and mediation will be presented first. Some examples of public and private mediation schemes available to consumers, defined quite broadly, will then be discussed.

**Legal Background to French Arbitration and Mediation**
According to article 2059 of the French Civil Code, the power for every person to compromise is strictly limited to certain narrowly qualified rights ("droits disponibles"). Those rights are in contradistinction to the imperative rights that nobody can abandon by contract, and that are protected on the grounds of the notion of "ordre public". This notion allows a judge to annul any contract or clause which infringes this prohibition. To summarize, one may freely bargain in relation to those rights without impeding the most imperative laws.

This limitation is based on a rather complex notion. For example, a person can fully conclude a transaction to obtain compensation after she or he is injured. In comparison, this would not be allowed should one decide, before any accident, to renounce the right to obtain compensation.

As a consequence, article 2060 of the Civil Code states that it is forbidden to conclude a compromise concerning personal rights or public establishments.

This principle explains why an arbitration clause can only be included in a contract dealing with professional activities (art. 2061 Civil Code). Hence, arbitration is not possible for disputes in which a consumer may be involved. The French Cour de cassation decided an important case (Chambre mixte, 14 février 2003, Bull. N°1) in which it considered that a mediation clause can be binding on the parties, so that they can be forced first to introduce their claims before a mediation scheme. This solution cannot be applied to a consumer, pursuant to the Unfair Contract Terms Commission (Commission des clauses abusives) decision in 1979 (Recommendation 79-02).

Unlike arbitration, mediation or conciliation schemes can be used but only after the dispute has arisen. Similarly, the parties can always come to an agreement (transaction, defined by art. 2044 of the Civil Code) after the proceeding is started. According to article 1134 of the Civil Code, this contract is binding on the parties and the exequatur can be decided by the president of the Tribunal de Grande instance (ordinary civil court) after the introduction of a unilateral request (art. 1441-4 Nouveau Code de procédure civile).
In brief, and unless a law states specifically the contrary, mediation and conciliation are the only options for consumers who live in France. The success of such experiences are founded on the good will of the parties to follow the awards and solutions proposed, which will never be compulsory.

Nevertheless, some legal incentives in favor of mediation and conciliation schemes have been introduced. Some examples, which will not be discussed further, can be given. According to a text adopted in 1985 devoted to road accidents, insurance companies must offer prior compensation to the injured victims (art. L 211-8 Code des assurances). It is then for the victim to decide whether to accept the offer or to approach the courts. In the case of a disagreement on the price of a rent, the 1989 law dealing with rental real estate, obliges the parties to introduce a claim before a conciliation commission. If a party does not comply with the award given, the other party is free to take the matter to the ordinary courts.

More recently, a 2001 law dealing with urgent economic and financial measures (Loi portant mesures urgentes à caractère économique - Loi MURCEF), created a mediation scheme for disputes rising between banks and their customers. It was intended to coordinate the several mediation offices which existed formerly in this area. A 1978 regulation (décret n°78-381 du 20 mars 1978 as amended by décret 96-1091 du 13 décembre 1996) offers the possibility for every person to address a claim to a natural person chosen on a public list which has been determined by the President of each Court of Appeal. Those persons, called Conciliateurs de Justice, must try to facilitate every dispute concerning rights about which the party can bargain (droits disponibles). They must see the parties that can be assisted, and have the obligation to act confidentially. This last obligation prohibits parties who do not reach an agreement from using the statements, offers and evidence from this process in subsequent cases before the ordinary courts. The main problem of those few examples is that the success of a solution wholly depends on the good will of the parties, which is rare when it comes to rogue traders.

Examples of mediation schemes
Some incentives in favor of mediation schemes have been proposed by public bodies to ease their relationship with citizens. Those attempts have been followed by some private business activities organisations to facilitate the solution of the disputes that can occur with customers. Some ombudsmen, called in France ‘Médiateurs’, have been created to resolve problems faced by citizens in relation to public services or administrations: general competence (Médiateur de la République), post offices and mailing problems (La Poste), railways (SNCF), social security affairs (Caisse nationale d’allocations familiales), electricity and gas (EDF-GDF), etc. These out-of-court schemes are good examples of practices in relation to consumers. Their main disadvantage is that they do not compel the parties to solve their problems. The decisions are not compulsory and do not produce any effect in the case of a persistent disagreement. Obtaining justice is often the next step. French people do not always trust the advice given. Often, only the force attached to a judicial decision solves a dispute. Some mediation schemes organised by traders can also be cited. Parties can be assisted or represented by other people as lawyers. Specific areas of activities have their own kind of scheme: consumer or business organisations in areas such as telecommunications, financial services, insurance services, travel agencies, etc.
Like in Belgium, the head of the local bar associations (Bâtonnier de l’ordre des avocats) is competent to solve disputes concerning lawyers’ fees. This preliminary procedure is compulsory and the exequatur of the decision can be obtained by a single request introduced before the president of the ordinary civil court (Tribunal de grande instance). Appeal against the decision is possible before the president of the competent Court of Appeal.

Another relevant example of a co-operation between internet businesses, public services and consumers (Forum des droits sur l’Internet) will be developed here briefly. It was created in 2001, by a non profit organisation partly financed by public funds. One of its aims is to disseminate the rules of a code of conduct dedicated to the internet, when consumers vote, ask for administrative information or shop online. It is an illustration of self-regulation, which is rare in France.

Workshops, composed by experts, members of the organisation, and consumers and business representatives, meet regularly to formulate recommendations which are sent to various public authorities (Government, Parliament, the Independent Telecommunication Authority). In June 2002, this organisation communicated a recommendation which dealt with alternative dispute resolution. It proposed an online scheme in 2004. The claim is first treated by the organisation in charge which, afterwards, will contact the other party. Then it proposes a solution and, in the case the parties do not comply with the award, the staff will send the claim before an independent and skilled ombudsman.

This scheme is very easy and quick to use, since the plaintiff just has to consult the website and to fill out a simple questionnaire. The scheme’s costs are mainly borne by the public funds described above. However, those experiences do not mean that France is a country in which out-of-court schemes satisfactorily respond to consumers’ needs. There are few schemes in restricted areas, and they lack the authority required to solve a dispute against an unfair trader or consumer.

Netherlands

In the Netherlands, a very well developed out-of-court mechanism for consumer redress exists: the commissions under the auspices of the Stichting geschillencommissies consumentenklachten (Foundation for complaints tribunals for consumer complaints).

In-court, no alternative individual procedure specifically designed for solving consumer-to-business disputes exists. There is, however, one court with a general competence within which small claims are dealt with: the kantonrechter (district judge).

Both collective redress to protect a series of individual interests and to protect a collective interest are available in the Netherlands.

Out-of-court mechanisms
(a) Schemes specifically designed for consumer to business disputes
Access to the law does not seem guaranteed in the case of consumer complaints. The judicial procedure allegedly is slow, expensive and formal. That is why a number of jurisdictions such as the Netherlands have increasingly sought alternatives in out-of-court settlement. A visiting card for the Netherlands and its poldermodel of sorting out
differences of opinion by deliberation rather than litigation, is constituted by the consumer complaints tribunals. Most of these tribunals operate under the wings of the Stichting geschillencommissies voor consumentenzaken (Foundation for complaints tribunals for consumers) in The Hague. The foundation is subsidised by trade and industry as well as by the state. The latter is based on the assumption that the consumer complaints tribunals detract cases from government courts. It is doubtful whether this assumption is correct: from studying the reported cases one rather obtains the impression that many of the cases submitted to the complaints tribunals would never have been submitted to a government court.

The complaints boards adhere to the requirements set out in Commission Recommendation 98/257/EC on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes. The number of complaints submitted to the boards has been rising over the years, as has the number of tribunals, at present numbering some thirty-three tribunals. Although the complaints tribunals function well, especially in the Netherlands, there are also some disadvantages. In the Netherlands, the tribunals issue their awards in the form of a ‘binding advice’.

This has the theoretical inconvenience that the award cannot be enforced against an unwilling debtor. However, because trade and industry guarantee the enforcement, the practice is quite different. A more important inconvenience is that not all trades and industries are well organized and that enterprises therefore do not take part in the complaints tribunal system.

The increasing awareness of the competition authorities of intra-trade co-operation also is a negative element - more so than before. The entry into the market of foreign traders who are probably less prone to seek membership of traditional Dutch trade organisations may also be such an element.

(b) Schemes not specifically designed for consumer to business disputes

Mediation schemes
A certain number of the above-mentioned complaints tribunals offer mediation services.

Ombudsmen
There has been a proliferation of ombudsman schemes in the Netherlands, especially in the financial sector.

Disciplinary boards
Disciplinary boards, such as those for real estate brokers, often serve the consumer interest, by providing specifications of the duties of trade and industry.
5. Conclusions

The participants showed great interest in the ADR Conference in Bucharest, especially in regard to the solutions some of the EU Member States found. Unfortunately, one of the most important actors in the field in Romania, namely the Ministry of Justice, declined the invitation to participate to the Conference.

The main questions which remains to be answered is if and which of the systems or at least types of ADR mechanisms can be used in Romania.

a) As it was showed in the Conference, Romania has a law on mediation since 2006, which regulates also who can became a mediator and what are the conditions which must be met. The law focuses more on private ADR schemes. Unfortunately, the law began to effectively apply last year, after the mediators list was approved. There are no statistical data on how many mediations have been conducted until now or on the fields covered by these. As for now, we do not believe there is an interest in setting up a consumer focused ADR body.

b) There have been discussions, for the financial field, between the professionals, having as goal the creation of a financial Ombudsman, which eventually didn’t come to any result. The idea has not been abandoned and there is a great opportunity for the industry to still make something out of it.

c) The experience shows that until now only the institutionalized and/or public ADR mechanisms, like arbitration, have managed to make a viable alternative to justice in Romania and mostly, in this particular example, in the strictly commercial area. Also, to support this affirmation we can bring in the example of the mediation service organized inside the National Authority for Administration and Regulation for the Communications, an institutionalized and public ADR, which is the first ADR body notified to the Commission as respecting the principles set in the Recommendations.

For the moment we believe the solution for Romania would be the focus on sectorial ADR schemes, public, institutionalized.

Also a solution, at least for a very small part of the consumer protection field for starters, would be the creation of an online ADR body, dealing with e-commerce related problems.

According to the European Commission Recommendation 1998/257/EC which identifies a set of principles which bodies responsible for out-of-court settlement of consumer disputes should follow in order to ensure a common minimum standard across the EU and based on the review done by the ECC Romania on the Application Form for notification under Commission recommendation 1998/257/EC submitted by the National Authority for Management and Regulation in Communications of Romania (ANCOM), which it shows that ANCOM is in conformity with the European Commission’s Recommendation and provides parties to a dispute with a minimum number of quality guarantees in line with an Adversarial principle as well as principles of Independence, Transparency, Effectiveness,
Legality, Liberty and Representation, the first notified ADR body in Romania is the National Authority for Management and Regulation in Communications of Romania meets the common principles for inclusion in its database of notified out-of-court bodies.

Contact Data:
National Authority for Management and Regulation in Communications of Romania
2 Delea Noua Street, Bucharest 3, Romania, Postal code 030925
Telephone: +40 372 845 400
Email: international@anrcti.ro
Web: http://www.anrcti.ro

An analysis and evaluation of alternative means of consumer redress other than redress through ordinary judicial proceedings - Final Report, A Study for the European Commission, Health and Consumer Protection Directorate-General Directorate B – Consumer Affairs prepared by The Study Centre for Consumer Law – Centre for European Economic Law Katholieke Universiteit Leuven, Belgium, Prof. Dr. Jules Stuyck, Prof. Dr. Evelyne Terryn, Drs. Veerle Colaert, Drs. Tom Van Dyck, Mr. Neil Peretz, Ms. Nele Hoekx and Dr. Piotr Tereszkiewicz Assisted by Ms. Beatrijs Gielen, Leuven, January 17, 2007 – National Report Denmark

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Necesitatea sistemelor de rezolvare alternativă a disputelor în România

Care sunt cele mai bune practici în statele membre?
Cum să creștem încrederea consumatorilor în piață, în contextul actual?

BUCUREȘTI

14 Mai 2009
Necesitatea sistemelor de rezolvare alternativă a disputelor în România

Care sunt cele mai bune practici în statele membre?  
Cum să creștem încrederea consumatorilor în piață, în contextul actual?

Sistemul de rezolvare alternativă a disputelor (ADR) cunoscut de asemenea și sub denumirea de sistem "extrajudiciar", a fost dezvoltat în Europa, pentru a ajuta cetățenii aflați într-o dispută pe teme de consum și care nu reușeau să ajungă la un acord, direct cu agentul economic. În cadrul sistemului ADR, de obicei se folosește o terță parte, cum ar fi un arbitru, mediator sau un „ombudsman”, pentru a ajuta consumatorul și agentul economic să ajungă la o soluție.

Avantajul sistemului ADR este că oferă o mai mare flexibilitate decât acționarea în instanță și în același timp răspunde mai bine nevoilor atât ale consumatorilor, cât și ale agenților economici și mediului de afaceri. În comparație cu solutionarea disputelor în instanță, aceste sisteme au costuri mai reduse, sunt mai rapide și duc la creșterea încredierii consumatorilor în mecanismele pieței.

Cu toate acestea, sistemele ADR s-au dezvoltat diferit la nivelul Uniunii Europene. Unele sisteme au apărut datorită inițiativei publice atât la nivel național (cum ar fi soluționarea disputelor în țările scandinave), cât și local (cum ar fi organismele ADR din Spania), iar altele datorită inițiativei private (cum ar fi mediatoiri/ombudsman în domeniul serviciilor financiare sau al asigurărilor). Tocmai datorită acestei diversități, deciziile adoptate de către aceste organisme diferă foarte mult. Unele sunt doar recomandări (cum ar fi, în cazul disputelor din țările scandinave sau cea mai mare parte a ombudsman-ilor privați), altele sunt obligatorii numai pentru agenții economici, iar altele sunt obligatorii pentru ambele părți (arbitraj).

Conferința organizată de către Centrul European al Consumatorilor din România dorește să fie o platformă pentru schimbul de informații, know-how și practici din cadrul sistemului ADR, care va ajuta la inițierea procesului de dezvoltare a unor astfel de sisteme și în România.

Participare - Înregistrare

Participarea la conferință este gratuită. Vă rugăm să transmiteți formularul de înregistrare atașat la:

- Email: Irina.chiritoiu@eccromania.ro
- Fax: +40 21 3157149

Locația
Hotel RADISSON SAS, Calea Victoriei 63-81, București
09.00 – 09.30 Înregistrarea participanților

09.30 – 09.45 Deschiderea conferinței prin discursul Domnului Bogdan Marcel PANDELICA, Secretar de Stat, Președinte al Autorității Naționale pentru Protecția Consumatorilor

09.45 – 10.15 Prezentarea celor două Recomandări 257 și 310 cu privire la notificarea organismelor ADR, Răzvan RESMERIȚĂ, Directorul Centrului European al Consumatorilor din România

10.15 – 10.45 Necesitatea dezvoltării sistemelor ADR în România, Silvia ZAHARIA, Expert

10.45 – 11.00 Coffee break

11.00 – 11.30 Experiența Danemarcei în domeniul sistemelor ADR, Peter Fogh KNUDSEN, Director, Centrul European al Consumatorilor din Danemarca

11.30 – 12.00 Experiența Italiei în domeniul sistemelor ADR, Federico VICARI, Director, Centrul European al Consumatorilor din Italia

12.00 – 12.30 Experiența Poloniei în domeniul sistemelor ADR, Piotr STANCZAK, Director, Centrul European al Consumatorilor din Polonia

12.30 – 13.30 Lunch

13.30 – 14.00 Experiența Franței în domeniul sistemelor ADR, Camille BERTRAND, Consilier juridic, Centrul European al Consumatorilor din Franța

14.00 – 14.30 Experiența Olandei în domeniul sistemelor ADR, Eva Calvelo MUINO, Avocat, Centrul European al Consumatorilor din Olanda

14.30 – 16.00 Discuții și concluzii
FORMULAR DE PARTICIPARE

NECESITATEA SISTEMELOR DE REZOLVARE ALTERNATIVĂ A DISPUTELOR ÎN ROMÂNIA

Care sunt cele mai bune practici în statele membre?
Cum sa creștem încrederea consumatorilor în piață, în contextul actual?

14 Mai 2009

Va rugam trimiteți acest formular până pe 8 Mai 2009 prin

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The Necessity of Alternative Dispute Resolution systems in Romania

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<td>Ministerul Administratiei si Internelor</td>
<td>Alina Moisoai</td>
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<td>33</td>
<td>Ministerul Comunicatiilor si Societatii Informationale</td>
<td>Alexandra Radoi</td>
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<td>Tudor Cristian Grigore</td>
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<td>Provident</td>
<td>Dragos Marinescu</td>
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<td>Madalina Musetescu</td>
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<td>45</td>
<td>Ministerul Administratiei si Internelor</td>
<td>Alina Galusca</td>
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Procedura de notificare a sistemelor de rezolvare alternativa a disputelor (ADR)
Unde vă puteţi adresa atunci când aveţi probleme cu un produs sau un serviciu achiziţionat dintr-un alt stat european?

Cine vă poate informa asupra drepturilor pe care le aveţi în calitate de consumator european?

Dacă aveţi o plângere împotriva unei companii sau te afli într-un litigiu cu un operator economic străin, cine vă poate sprijini în soluţionarea cazului?
În Europa există numeroase tipuri de sisteme de soluționare alternativă a disputelor.

Acestea îmbracă formele cele mai variate atât în privința compoziției, cât și a procedurii aplicabile.

Diversitatea mecanismelor de soluționare extrajudiciară a litigiilor nu reprezintă o problemă în sine
Aceasta vizează mecanismele de soluționare extrajudiciară a litigiilor care propun sau impun o soluție.

Soluția astfel adoptată poate lua forma unei decizii obligatorii pentru părți sau se poate rezuma la simple recomandări ori la propuneri de tranzacții care pot fi acceptate de părți.

7 principii esențiale:
- Independența organului responsabil de luarea deciziei
- Transparența procedurii
- Respectarea principiului contradictorialității
- Eficacitatea procedurii
- Respectarea legalității
- Libertatea de a accepta sau nu o decizie obligatorie
- Dreptul de a fi reprezentat.
Aceasta vizează organismele de soluționare extrajudiciară a litigiilor care încercă rezolvarea unei probleme aducând părțile laolaltă pentru a le convinge să găsească o soluție de comun acord.

4 principii:

Imparțialitatea organismului de soluționare extrajudiciară a litigiilor
Transparența
Eficacitatea
Echitatea
Baza de date a CE privind sistemele de ADR

Fiecare Stat Membru notifică Comisiei numele organizațiilor responsabile pentru rezolvarea alternativă a disputelor dintre consumatori și operatorii economici.

Baza de date privind sistemelor ADR include numele și datele de contact ale acestor organisme din Statele Membre și EEA care sunt conforme cu Recomandările 257 sau 310.

http://ec.europa.eu/consumers/redress_cons/adr_en.htm
CENTRUL EUROPEAN AL CONSUMATORILOR ROMANIA

N. Bălcescu 32-34, 16(1-3), Sector 1
București

Tel: 00 40 21 315 71 49
Fax: 00 40 21 311 02 43

office@eccromania.ro

www.eccromania.ro
a.d.r.

Alternative Dispute Resolution
notiunea de a d r

• Pe de o parte, modul alternativ poate fi considerat ca o procedură de mediere sau de conciliere distinctă de jurisdicție (sensul restrâns al ADR);

• Pe de altă parte, modelele alternative pot face obiectul unei defiiniții mai largi, atunci când, se consideră că modelele alternative de soluționare a litigiilor pot avea loc în fața instanțelor de judecată (sensul larg al ADR).
Cele două clasificări nu sunt exclusive. În esență, persoana însărcinată să soluționeze litigiul sau să asigure negocirea între părți poate fi numită prin jurisdicția statului, sau poate aparține unui ordin profesional, ori poate fi o persoană independentă.
forme a dr

- **Arbitrajul** (constă în a face apel la un „terţ” faţă de sistemul judiciar. Acest terţ are rolul să instrumenteze cazul, în sensul de a asculta părţile, şi de a lua o decizie);

- **Concilierea** constă în recurgerea la un terţ, dar în general, această etapă este prevăzută în cadrul unei proceduri, pentru a asculta părţile şi de a le face propuneri de soluţionare a conflictului, pe o cale extrajudiciară;
for me a dr (continuare)

- **Medierea** "însemmă un proces structurat, indiferent cum este
denumit sau cum se face referire la acesta, în care două sau mai
multe părţi într-un litigiu încercă, din proprie iniţiativă, să ajungă la
un acord privind soluţionarea litigiului dintre ele, cu asistenţa unui
mediator. Acest proces poate fi iniţiat de părţi, recomandat sau impus
de instanţă sau prevăzut de dreptul unui stat membru”.

- **Negocierea** constă în a cădea la o înţelegere cu partea „adversă”.
Există mai multe forme de negociere care țin de anumite aspecte
cum ar fi: raportul de forţe dintre părţi;

- **Med-arb** este o mixtură între tehnica medierii și cea a arbitrajului.
Poate este cea mai complexă pentru că presupune și o consiliere a
păților, dar și găsirea unei soluții pentru rezolvarea pe cale amiabilă a
conflictului;
sinopsis Și disponibilitate

• Scheme publice ADR cu sferă generală de aplicabilitate;

• Schemele publice ADR cu o sferă specifică de aplicare;

• Scheme private ADR cu o sferă generală de aplicare;

• Scheme private specifice.
scheme publice cu aplicare generala

- Comitetul de Plângerii al Consumatorului în Danemarca;
- Comitetul de Plângerii al Consumatorului în Estonia;
- Comitetul de Plângerii al Consumatorului și Consilierii Municipali ai acestuia la nivelul local în Finlanda;
- Schema denumită Cutii Poștale 5000 Franța;
- Comisia pentru Rezolvarea Disputelor Comerciale în afara Curții (tribunalului) în Grecia;
- Comisia de Arbitraj ale Consumatorilor din Ungaria;
- Centrul de Protecție a Drepturilor Consumatorului în Letonia;
- Centrul Național de Protecție a Drepturilor Consumatorilor în Lituania;
- Directoratul Afacerilor Consumatorului în Malta;
- Inspectia Comerțului în Polonia;
- Centrele pentru Arbitrarea Disputelor Consumatorului în Portugalia;
- Centrele de Mediare în Slovacia;
- Sistemul de Arbitraj al Consumatorului în Spania;
- Corpul Național pentru Plângerile Consumatorilor și consilierii municipali ai acestuia în Suedia;
scheme public cu sferă specifică de aplicare

- Arbitrajul Financiar în Republica Cehă;
- Ombudsmanul pentru Pensii în Irlanda;
- Comitetul de Control al Sectorului Financiar în Luxemburg;
- Managerul Plângerilor Consumatorului din cadrul Autorităţii Serviciilor Financiare în Malta;
- Ombudsmanul Financiar în Marea Britanie;
scheme private cu sfera generala de aplicare

• Există numai câteva scheme private de ADR, cu o sferă generală de aplicare, pentru disputele dintre consumatori și agenții economici, în jurisdicțiile supuse analizei.

• Exemplele cele mai notabile sunt Biroul de Afaceri Îmbunătățite din Canada și Biroul de Afaceri Îmbunătățite din SUA.
scheme private specific e

- Austria – Ombudsmanul Internetului;
- Belgia – Comisia pentru Confl ctele Turismului și Ombudsmanul Asigurărilor;
- Canada – Planul Arbitrării Asociației Producătorilor de Vehicole cu Motor;
- Republica Cehă – Asociația Cehă pentru Comerțul cu Motoare și Reparații;
- Franța – numeroase scheme de mediere organizate cu participarea agenților economici din anumite sectoare și consumatori;
  Exemplu: Ombudsmanul Poștei, Ombudsmanul Companiilor Căilor Ferate și Ombudsmanul Conflictelor Electricității și gazelor;
- Slovenia – Scheme de arbitrare a Companiei de Asigurări „Triglav”;
- SUA – Asociația Națională a Protecției Comercianților.
natura juridica a formelor aadr

• Natura juridică prezintă importanță cu privire la faptul dacă ADR este de natură legală sau contractuală, adică el este impus prin lege, sau derivă dintr-o convenţie a părților;

• Forma de organizare este cea care aduce în dicuţie dacă părţile sunt obligate să se supună uneia dintre formele reglementate de ADR, sau nu.
forme a d r e g l e m e n t a t e  în  r o mâ n i a

• MEDIEREA

• ARBITRAJUL (aplicabil în acest moment doar în materie civilă și comercială)

• Soluționarea cererilor cu valoare redusă (procedură prevăzută de proiectul Codului de procedură civilă)
medier e a

• Medierea reglementată prin Legea nr. 192/2006 privind medierea și organizarea profesiei de mediator.

• „Prevederile prezentei legi sunt aplicabile și conflictelor din domeniul protecției consumatorilor, în cazul în care consumatorul invocă existenta unui prejudiciu ca urmare a achiziționării unor produse sau servicii defectuoase, a nerespectării clauzelor contractuale ori a garanțiilor acordate, a existentei unor clauze abuzive cuprinse în contractele încheiate între consumatori și agenții economici ori a încălcării altor drepturi prevăzute de legislatia natională sau a Uniunii Europene în domeniul protecției consumatorilor”.
Medierea

- Este un **mijloc alternativ** de soluționare a litigiilor dintre consumatori și agenții economici;
- Ea se realizează prin intermediul mediatorului care este o persoană abilitată în acest sens;
- Mediatorul trebuie să respecte următoarele principii: confidențialitate, imparțialitate și neutralitate;
- Părțile sunt libere să aleagă mediatorul, să se supună soluției pe care prin intermediul acestuia o vor lua;
- Dacă nu ajung la o înțelegere prin intermediul mediatorului ele sunt libere să se adreseze instanței de judecată sau instanței arbitrale.
arbitrajul

• Este reglementat de Codul de procedură civilă (Cartea a IV-a)

• Din punct de vedere procedural arbitrajul este o modalitate privată de soluționare a litigiilor dintre părți de către o persoană aleasă de către acestea;

• Arbitrajul constă în supunerea unui diferențial uneia sau mai multor persoane imparțiale a căror decizie leagă părțile, punând capăt conflictului (American Arbitration Association)
Convenția arbitrală

- Convenția arbitrală reprezintă acordul de voință al părților în legătură cu soluționarea diferendului dintre ele prin arbitraj.

- Convenția arbitrală se poate încheia sau sub forma unei clauze compromisiorii, înscrisă în contractul principal, fie sub forma unei înțelegeri de sine stătătoare, denumită compromis (art. 343 alin. 2 C. proc. civ.).
soluționarea cererilor de valoare redusă

- Proiectul Codului de procedură civilă prevede soluționarea cererilor de mică valoare într-o procedură specială;
- Sunt supuse procedurii speciale cererile a căror valoarea nu depășește 10.000 lei, sumă calculată fără dobânzi, cheltuieli de judecată și alte venituri accesorii;
- Competența de soluționare a cererii cu valoare redusă aparține judecătoriei;
- Legiuitorul lasă la latitudinea părților, alegerea acestei proceduri, dacă pretențiile reclamantului se încadrează în cuantumul sumei precizate.
European Consumer Centre France

The necessity of ADR systems in Romania - 14th May 2009
ADR in France
- Starting point -

The necessity to find fast and low cost solutions to consumer disputes has been obvious for years.

First idea: easy access to first instance court procedures

Problems: - multiplication of court procedures,
- congestion of the courts,
- apprehension of the consumers towards court procedures.
The creation of ADR systems in France is one of the solutions proposed to allow the consumers to solve their disputes with traders.

**Advantages of the ADR:**

Simple
Easy access
Flexible
Low cost
ADR in France
- Creation of ADR-bodies -

• As from the 80’s, alternative means of dispute resolution have been set up via the creation of ADR-bodies

• These initiatives concern not only consumer protection but all kind of disputes (from disputes with administration to family mediation)

• In the field of consumer protection, « institutional » mediators have been set up in the main sectors of public service but also in the financial and insurance sector or even doorstep selling
• About 20 ADR-bodies are notified to the European Commission

• They intervene in various fields of consumer protection

• There’s only very few general mediation schemes, mostly the ADR are specialized (banking and insurance, energy, doorstep selling, railway, etc.)
ADR in France
- List of notified ADRs -

- Le Médiateur de la République
- Les Conciliateurs de Justice
- Les commissions de règlement des litiges de consommation (CRLC)
- Les boîtes postales 5000
- Ministère des Finances (Minefi)
- MEDIATEURDUNET.FR
- Ville de Paris
- Autorité des marchés financiers AMF Ombudsman
- Médiateur de la Fédération française des sociétés d'assurances
- Médiateur du Groupe la Poste
- Médiation d'Electricité de France
- Gaz de France
- Médiateur de la SNCF
- Le Médiateur de la RAPT
- Médiateur de la téléphonie
- Commission Paritaire de Médiation de la Vente Directe
The ADR procedures must obey to several principles to be efficient and to obtain the parties’ confidence.

The Recommendation from the Commission, 4th April 2001, indicate a list of principles for a good practice of ADR:

- Independence
- Transparence
- Efficiency
- Legality
- Contradictory
ADR in France
- Questions and problems -

- Not all mediators are « law experts »

- They give an opinion not only based on law but also equity

- Most of the time, the decision from the ADR isn’t binding for the company (and the consumer)

- In most cases the ADR decisions aren’t published so they can’t help the general consumer interest and there’s no evolution of case law based on ADR decisions
- Lack of ADRs in some sectors where it’s definitely necessary: e.g. Tourism

- Very few ADRs of general competence

- Mostly sectorial or geographical competence of the ADR

- In several sectors the competence is even limited to certain types of operations or products e.g. banking sector

- Not all ADRs are used to cross-border complaints or even speak English or other foreign languages
- In some sectors, critics think that the ADR isn’t independent enough e.g. banking and insurance or even railway as they are chosen and paid by the business either internally or externally.

- In some sectors, the access to ADR is quite difficult: the consumer first has to contact his local agency or office, then the customer service, finally an internal mediator and, only at the last stage, he can contact the « sectorial ADR » if he received no response or an unsatisfactory response to his claim.

Sometimes, to call on the “Sectorial ADR”, the trader must be a member of the group which set up the ADR.
ADR in France

Example:
BANKING SECTOR
ADR in France
- Example: banking sector -

- Mediation in the banking sector is obligatory since the end of 2002

- Each credit institution had to nominate one or several mediators in order to recommend solutions to customers’ complaints concerning deposit accounts, bonus sale or batch selling

- Information on the existence and address of the mediator is given via the contract and bank statements to the customer

- The mediator has to be impartial
- He has to decide within 2 months, and his intervention suspends the prescription
ADR in France
- Example: banking sector -

- The procedure is free of charge

- The mediator has to write an annual report

- The Comity of the Central Bank (Banque de France) is in charge of supervising the mediation scheme as a whole, can give precisions on the activities and independence of the mediators and write recommendations to the credit institutions and mediators

- **Problem:** incompetence of the mediator for two large groups of consumers’ complaints: credit operation and general tariffs of the banking institution.
ADR in France

Example:
E-COMMERCE
ADR in France
- Example: Ecommerce -

- The ADR-body is the Mediator of Internet (Médiateur du net)

- Easy access to the mediator on his website, online procedure

- Treat all the cases concerning the use of internet or linked to internet (internet providers, sale online, online services,...)

- Action limited to disputes with French trader and French speaking consumers (normally, outside a referral by the ECC-Net, no cross border disputes)
Close cooperation with ECC France

- ECC France shares cases with the Mediator of Internet, allows the EU consumer to benefit from the competence of this ADR-body

- Discussions with the ADR regarding Ecommerce legislation and its application, exchange of interpretation and experience
ADR in France

Example:
PUBLIC SERVICES
ADR in France
- Example: ADR in the Public Services -

- Several ADR in various sector of public services. They are members of the Public Service Mediators Club

- One General Mediator: Mediator of the Republic (Médiateur de la République) in charge of the claims against administration in general

- The others are “sectorial ADR”: Energy, railway transport, city of Paris...

- The members meet one or 2 times a year to discuss about mediation, new legislations. They were consulted regarding the new directive about mediation in civil and commercial disputes and its transposition
ADR in France

- Example: ADR in the Public Services -

Cooperation between ECC France and several public service mediator

- Cooperation depend on the personality of the Mediator and his willing to work with us

- Mediator knows us and accepts to treat cases we send to him, this allows the EU consumer to benefit from the competence of this specific ADR e.g. Railway mediator (Médiateur SNCF)

- Meeting with the Mediators to discuss about their practice of mediation, the protocol to share the cases and the application of the national and European law
Thank you for your attention

European Consumer Centre France

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Self-regulation

The Dutch approach towards ADR
• **Consumers** represented by consumer organization

• **Traders** represented by branch organizations
• Complaints Board for Vehicles located at the Foundation for Consumer Complaint Boards.

• Social and Economic Council
10 steps in ADR (example BOVAG)

1. Complain to entrepreneur
2. Complaints board
3. Questionnaire
4. Defense of entrepreneur
5. Investigation by expert
6. Verbal hearing
7. Challenge and exemption
8. Judgment
9. Award of costs
10. Binding advice
ADR systems in Italy

ADR Conference
by European Consumer Centre Romania
Bucharest, May 14th 2009
ADRs: a cross-border phenomenon

Two main reasons for the birth and growing up of ADRs:

1) The crisis of the civil justice systems

2) The internationalization and deregulation of the legal relationships, especially in the commercial field. The trades began to be regulated by contracts and agreements and the rules involved also the dispute settlements. The historical background of this activity can be found in the lex mercatoria.

Nowadays the alternative dispute resolutions are mostly referred to in the commercial field: trades need fast procedures to settle disputes which are generally of small entity and the civil justice is not suited to this purpose.

However the parties of a dispute can obviously still decide to take legal steps: in this sense the ADRs should be better called “complementary dispute resolutions”.
Italian ADR schemes

In respect of the civil justice the main advantage of ADRs is the flexibility of the procedure: there is a common and free will of the parties towards a solution which can be reached informally and beyond a strict juridical issue.

The various ADR schemes are different in Italy, probably with the same features of all the ADRs of the other EU countries, for the level of autonomy of the parties:
From the transaction to the mediation up to the arbitration.

As for the consumers’ issues, given that the arbitration is usually expensive and is more used in the B2B field, the mediation is the most suitable scheme and it is opportune to concentrate on this.

We have two main mediation systems:

Mediations within:
1) the Communication Regional Committees (Co.Re.Com)
2) the Chambers of Commerce
The Communication Regional Committees are public bodies within the Regions and also bodies of the Communications Regulatory Authority (Agcom).

The law n. 249/1997 established the Authority and stated that when a consumer intends to take legal steps against a telecommunications company a mediation attempt is compulsory in front of a Co.Re.Com.

The issues dealt with by Co.Re.Com usually are:
- ill-services
- wrong bills
- unrequested services
Advantages:
- Fast procedure (max 30 days from the request)
- Informal scheme
- No costs
- The agreement is executive

The procedure is regulated by an act of the Authority (AGCOM n. 137/07/CONS):
- Request
- The parties are convened to the mediation in the presence of the mediator
- The hearing
- Outcome of the mediation

The effects of the procedure:
Once an agreement is reached, in case of infringement by one part, the other can ask for its enforcement.

The request can be sent by fax or registered mail. A special form is available in the website of each Co.re.com
2) Chambers of Commerce

The Chambers of Commerce (in almost each Province i.e. about 104 Chambers) are local bodies within the Ministry of Economic Development.

They offer mediation and arbitration services.

The Chambers of Commerce have been entrusted by the law (l. 580/1993) to be the most important mediation bodies in Italy. The recent Consumer’s Code (Leg. Decree 206/2005) confirmed this role.

WHEN TO USE a mediation in front of a Chamber of Commerce:
- Before starting court or arbitral proceedings, or, if such proceedings have already started, to verify whether there is chance of solving the conflict swiftly and at reduced costs.
- When there are communication difficulties between the parties.
- When required by law.

Mediation is available to everybody and for any kind of dispute because, unlike arbitration, it does not exclude the possibility of resorting to an ordinary court. In the event of failure, the parties may still seek the help of a judge or an arbitrator.
Chambers of Commerce

HOW TO APPLY
The procedure can be activated by including a clause in the contract or by filing a request with the Arbitration Chamber, which contacts the opposite party. It is regulated by the New Rules of Conciliation, promoted by the Union of the Italian Chambers of Commerce (Unioncamere).

THE MEDIATOR
The mediator is designated by the Secretariat (or jointly by the parties) from a list of professionals with specific experience in the commercial field, and who have completed special courses on mediation techniques organized by the Arbitration Chamber.

The mediator conducts the meeting informally, following the principles of impartiality and fairness. He may meet the parties separately to try to bring their positions closer by clarifying the problem and requesting that they propose solutions that could settle the dispute.

THE MEETING
Usually a single hearing, based on direct discussions with the parties, is sufficient. The parties may be assisted by legal and technical experts, or they may appear alone.

The parties may withdraw at any moment if they consider that the mediation has no chance of succeeding. The mediator does not compel them to accept his solutions, but helps the parties to reach an amicable agreement, acceptable to both. In the event of success, the conciliation ends with an agreement, with the binding force of an ordinary contract, with which the parties undertake to comply.
Chambers of Commerce

Advantages:
• Short time requirements to reach a solution
• Simple procedure
• Low costs and set in advance
• Confidential nature of the scheme

The procedure can be stopped any time.
Once an agreement is reached, it has the force of a contract.

This mediation is:
- Voluntary
- Fast
- Economical
- Confidential
- Autonomous
- Impartial
- Flexible
- Win-win

A school case: The orange (the juice / the peel)
## ADRs in Italy: some figures

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<tr>
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The mediations “on equal basis”
i.e. Conciliazioni paritetiche

Born within the Consumers’ Associations in the early 90’s this kind of mediations don’t require the presence of a third person (the mediator). The hearing is held among the consumers’ association’s representatives and those of the company.

The mediation is foreseen directly in the contract between consumer and services’ company: it is stated that in case of complaint the company will take part to a mediation attempt.

Companies which already signed mediation with the main Consumers’ Associations:

POSTE ITALIANE, ANIA, BANCA INTESA, MONTE DEI PASCHI DI SIENA, ENEL, ENI, SORGANIA, TRENITALIA, TINTOLAVANDERIE, CONSIGLIO NAZIONALE DELL’ORDINE DEGLI PSICOLOGI.
The first ODR in Italy: Risolvionline of the Chamber of Arbitration of Milan

What is it?
RisolviOnline.com is the Chamber of Arbitration of Milan’s service that helps to solve commercial disputes in an easy and cost effective way through the Internet.

What kind of disputes?
All commercial disputes can be submitted to Risolvionline.com regardless of the economic value of the dispute and the nationality of the parties involved.

The service has an international vocation since it uses the Net: all relevant information published on the website (rules, fees, instructions) are translated in 23 languages.

Some examples:
- Disputes concerning online and offline trading of goods and services
- Problems occurred in the touristic sector (mismatch between catalogue descriptions and hotel’s real features, substandard services or inefficiencies in the general organisation of the holiday/trip)
- Transport sector (flights, car rental)
- Online ticketing
- Home renovations
- Etc.
RisolvioOnline
of the Chamber of Arbitration of Milan

How does it work?

To start the proceedings it is necessary to fill in the form published on www.risolvioonline.com with the data required and a brief description of the case.

RisolviOnline.com, will contact the other parties inviting them to take part in a discussion assisted by a third neutral (the mediator).

The mediator is an impartial and skilled person who helps the parties to a dispute to enhance an effective communication and reach an agreement, without imposing any decision.

The online mediation can be managed in real time using a chat room or via discussion board through a postings’ exchange, in a private area of the website open to the parties and the mediator only.

The parties discuss with the assistance of the mediator, widely explaining their points of view on the case, making and considering proposals, trying to reach a fully mutual satisfactory agreement.
### Risolvionline
of the Chamber of Arbitration of Milan

#### Chamber of Arbitration of Milan
**RISOLVIONLINE** online dispute resolution  (updated 3/27/09)

<table>
<thead>
<tr>
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### Outcomes of the requests

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### Outcomes of the online mediation meetings

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<td>3</td>
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## RisolviOnline

of the Chamber of Arbitration of Milan

<table>
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<tr>
<th>Online/Offline</th>
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<td>70</td>
<td>19</td>
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### Matters of the dispute

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### Domestic/International

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</tr>
<tr>
<td>offline</td>
<td>64</td>
<td>53</td>
</tr>
</tbody>
</table>

| Clauses RisolviOnline | 195 |
A proposal: the European Mediator of RisolviOnline

- The Chamber of Arbitration of Milan has been creating in the last years a European network of mediators.

- The project aims at providing all European countries with a practical, easy and effective online mediation procedure.

- The mediators of all EU countries who are interested in cooperating with this ADR body can contact the Head officer of RisolviOnline.

The RisolviOnline mediator:
- Manages the cases
- Provides general information about the service in his/her mother language
- Promotes the service
A proposal: the European Mediator of RisolviOnline

He/she has to be trained in MEDIATION
(Risolvionline does not require high standards of professional qualification on mediation at this stage as for online mediation no standards exist.)

He/she has to be an effective communicator through Internet based communication technologies

He/she will be evaluate through an online roleplay

He/she has to be available for training (face to face or online) and for general involvement in the Chamber’s activities.

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Phone: +39 (0)2 8515 4522 skype: rregazz
Chamber of Arbitration of Milan www.risolvionline.com
Thank you
for your kind attention.

Federico Vicari
ECC-Net Italy
The Danish ADR system

Bucharest
14 May 2009

Presented by

Peter Fogh Knudsen
Director, ECC Denmark
The Danish ADR system

1. The Consumer Complaint Board
   - Established in 1975

2. 17 approved private complaints boards

3. A number of non-approved private complaint boards (e.g. Complaint Board for Holiday House Rentals)

The boards deal with complaints from consumers concerning goods and services provided by businesses
Private complaint boards

- In some sectors businesses want to take responsibility for disputes with consumers and they set out the rules for a board in co-operation with the Consumer Council (or other consumer organisations)

- Private boards can be approved by the Ministry of Economy and Business Affairs if they are
  - Independent and impartial
  - The chairman is a judge
  - Business and consumer interests are represented in general
Most important approved private complaint boards

- Insurance Complaint Board (2,657 cases)
- Telecommunications Complaint Board (690 cases)
- Complaint Board of Banking Services (337 cases)
- Travel Industry Complaint Board (483 cases)
- Complaint Board for Hotel, Restaurant and Tourism (57 cases)
The Consumer Complaint Board

- An independent, national, public board
- Funded by public means and fees paid by consumers and businesses
- Participation in the procedure by the business is voluntary
  - Almost all businesses participate
  - The case is dealt with no matter if the business participate
- Parties do not need to be represented by lawyers
- Decisions are based on law
- The procedure is relatively fast and cost effective
The Consumer Complaint Board

Competence

• The general rule
  • All complaints from consumers (also foreign) concerning goods, labour and services provided by businesses

• Exceptions
  • Complaints that can be dealt with by approved private complaints boards
  • Areas explicitly exempted in the executive order on consumer complaints (e.g. real estate, boats and antiques)
  • Goods and services which cost more than 13,330 €
  • Goods and services which cost less than 106 €
    • 65 € for shoes and textiles
    • 1,330 € for cars
The consumer complaint board fees and costs

- The consumer pays a fee of 20 €
  - The fee is refunded if the consumer succeeds in her complaint or if the case is dismissed by the board

- The business pays 330, 530 or 625 €
  - The fee is only paid if the consumer succeeds in her complaint
  - 260 € if the case is settled after an expert has been heard but before the board makes a decision
  - The fee is paid to the Consumer Agency
  - The fee has to be paid whether the business participates in the procedure or not
  - Payment of the fee is enforceable
Preparation of cases by the secretariat (1)

- The secretariat is impartial and provides help for both parties
- The secretariat sends the complaint to the business, and if an answer is received from the business the answer is passed on to the consumer for comments
- If necessary the secretariat asks an expert to examine the goods (free of charge for the consumer)
- The report from the expert is sent to the concerned parties for their comments
The secretariat can dismiss a case if it is obvious that the consumer can not be successful in her complaint.

The secretariat can try to settle the case (based on law).

The secretariat can make a decision if the outcome of the case is certain, without presenting it to the board.

If the case is not dismissed or settled the secretariat presents the case to the Consumer Complaint Board.
The Consumer Complaint Board Composition

• The board consists of 5 people
  • A chairman (a judge)
  • 2 members who represent the interests of trade and industry
  • 2 members who represent the interests of consumers

• The board meets approximately two times a month
Board meetings and decisions

At a meeting the members of the board discuss the case based on

- Written explanations of the parties (no oral hearings)
- The documents of the case (e.g. a contract)
- A report written by an expert who has examined the goods (if relevant)
- A look at the goods if necessary and possible

Based on this the board makes a decision based on law

**In almost all the cases the decisions are unanimous**
Nature of the decisions

- The trader has 6 weeks to inform the board if he intends to follow the decision.

- If he says that he will follow or if he does not reply, the decision is binding in the same way as a court ruling (enforceable).

- The decisions are complied with in 80-85% of the cases.

- The secretariat can help the consumer bring the case to court in case of non-compliance.
  - The consumer can receive legal aid if her income is under a certain level. This rule also applies to foreign consumers.
Remedies in case of non-compliance

- In case of non-compliance the name of the business is published (blacklisted) on the website of the Consumer Agency

- The name will stay on the list for 1 year

- The name will be removed if:
  - The case is brought to court
  - The business complies with the decision

- The blacklisting of businesses leads to compliance with the decisions of the board in an additional 30% of the cases
Cross-border ADR
What are the problems

- Too many countries have no ADR or only paper ADR
  - Only able to deal with cases from members of a certain organisation
  - Requiring consent from the trader in each case

- 4,000 “shared” complaints in our network in 2007. 150 dealt with by ADR

- Consumer rights are worth nothing if they are not enforced

- Ask yourself why you want ADR
  - To look good on paper or
  - To ensure consumers their rights

- You are only protecting unserious traders by not having wellfunctioning ADR
Cross-border cases

• Three ways to kill cross-border consumer rights
  • Only deal with cases from national consumers
  • Only accept cases in your own language
  • Require the consumer to appear in person before the board
Further information

• The following can be found in English on the website of the Danish Consumer Agency (www.forbrug.dk/english):
  • A detailed description of the Consumer Complaint Board
  • The Act on Consumer Complaints
  • The Executive Order on Consumer Complaints
  • The Executive Order on fees and costs relating to processing by the Consumer Complaint Board
The Danish ADR system

Questions?
Contact details

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Director

European Consumer Centre Denmark
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DK-2300 Copenhagen S
Phone: +45 32 66 90 06
E-mail: pfk@forbrugereuropa.dk
www.forbrugereuropa.dk
The Necessity of Alternative Dispute Resolution systems in Romania.

Best practices in the Member States. How to build up confidence between consumers and businesses?

The Polish experience with ADR systems

Piotr Stańczak
Director
European Consumer Centre
Poland
Presentation Scheme

- Consumer protection in Poland – general and individual consumer protection
- Mediation – the dispute resolution mechanism operated by trade inspectorates
- ECC’s activity in the field of Polish ADR
  - Complaint’s handling
  - Cooperation with Trade Inspection authority transition
  - Promotion and development
- Justifying Role of ADR’s notification
- ADR Promotion and development
The ECC is co-funded by the European Commission and Office of Competition and Consumer Protection.
The ECC is co-funded by the European Commission and Office of Competition and Consumer Protection.

**Sectoral ADR’s in Poland**

- Euro-label - Certification Body
- Office of Electronic Communications
- Mediation
- Permanent Court of Arbitration
- Polish Financial Supervision Authority (PFSA)
- mediation
- arbitration court
- Insurance Ombudsman + Arbitration Court
- Banking Ombudsman at Polish Banks Association
- The Commission of Ethics in Advertising
- Union of Associations – Council of Advertising
The ECC is co-funded by the European Commission and Office of Competition and Consumer Protection.
Schemes adapted to cross-border disputes’ resolution

- Mediation run in trade inspectorates
  - notified 2007
- Insurance Ombudsman + Court of Arbitration
  - notified 2006
  - member of FIN-NET
- Banking Ombudsman
  - notified 2006
  - member of FIN-NET
- Certification body of Euro-label trustmark seal (Institut of Logistics and Warehousing)
ADR in Poland – Current Stage of Play

■ Lack of common legal framework:
  – Code of Civil Proceedings (arbitration, mediation)
  – Act on the Trade Inspection along with executive regulations
  – Law on Telecommunications along with executive regulations
  – Postal Law regulations along with executive regulations
  – Act on Insurance and Pension Supervision and the Insurance Ombudsman

■ Role of softlaw (codes of practice, seal programmes etc.)
ADR in Poland – ADR Mechanisms in Softlaw

- Euro-label - Certification Body
- Complaints Board
- Polish Banks Association
- Banking Ombudsman
- Union of Associations – Council of Advertising
- Commission for Advertising’s Ethics

The ECC is co-funded by the European Commission and Office of Competition and Consumer Protection
Promotion and Development - ECC Poland

- Role of the ADR co-ordination conducted by ECC Poland
  - Case handling depends on Consumer ECC and Trader ECC
  - Compilation of annual report on ADR development for the Office of Competition and Consumer Protection
  - Regular contacts with enforcement bodies, ADR, business and consumer organizations

- Round Tables’ and Debates
  - 2006 meeting of ADR and Regulatory bodies (report on Polish ADR, European notification process of mediation run by Trade Inspection)
  - 2007 meeting of policy-makers, consumer NGOs, ADR bodies (encouragement of dispute resolution schemes, arbitration opt-in – legislative brainchild to improve arbitration in Code of Civil Proceedings)
  - 2008 two-panel debate of policy-makers, entrepreneurs, business and consumer NGOs, ADR bodies (role of consumer ADR for business activity; ADR on the Polish map of consumer protection)
Closing comments
– Tasks to Be Carry out

How To make consumer ADR effective method of consumer acces to justice
– To generate or keep European – Common Market approach of Polish ADR
– To fulfil gaps and inconsistency in Polish consumer protection system (lack of developments)
– To attract business to the consumer ADR schemes
   – self-regulation, co-regulation, problem of public ADRs
The ECC is co-funded by the European Commission and Office of Competition and Consumer Protection.