



Consultation on the implementation of the EU Directive on Consumer Alternative Dispute Resolution and the EU Regulation on Consumer Online Dispute Resolution

July 2014

Q1 Do you think significant gaps exist in the provision of ADR in the State to deal with any contractual dispute arising from the sale of goods or the provision of services between a consumer and a trader, if so, where do you think they exist?

Yes, we believe that aside from the Small Claims Court and a number of sector specific schemes, there are limited options available to a consumer or trader to enter an established and pre-structured ADR scheme to effectively resolve their dispute. There are no generally applicable consumer ADR programmes available in Ireland that we are aware of. There is an opportunity therefore to build an effective and efficient consumer ADR landscape from the bottom up.

Q.2 Can you identify ADR entities which cover disputes in specific sectors? If so, in your opinion are these entities in a position to comply with the requirements of the Directive?

Yes, we are aware of a number of consumer ADR schemes that have been operated by the Chartered Institute of Arbitrators – Irish Branch (CI Arb). In our opinion, the CI Arb (Ireland) are in a position to comply with the requirements of the Directive.

Q.3 In your view, is there an existing body which could fill the lacuna in ADR coverage?

Chambers Ireland, through its role as the national committee of the International Chambers of Commerce in Ireland and the nominating body to the ICC International Court of Arbitration and the International Centre for ADR, works closely with bodies such as the Law Society of Ireland, the Bar Council of Ireland, and the CI Arb. As such we would be of the opinion that the CI Arb is in a strong position to assume a leading role in consumer ADR coverage, but there must be consultation, coordination and cooperation with other relevant bodies.

Q.4 Can you propose a specific model that the State may use to implement the Directive?

We have not formed a final view as yet as to what we believe the most effective model of consumer ADR scheme would be, but the establishment of a residual cross-sectoral entity with certain outsourced determinative functions may be the most flexible and allow a model to be built utilising the current Irish ADR landscape and existing institutions.

Q.5 How would the model proposed under Q.4 be funded (public funds, business, business organisations, case fees or a mixture)?

Funding for the scheme should be mixed and include some public funds, a nominal cost to businesses to allow them to participate in the scheme, and case fees.

Q.6 What are your views on relying on an ADR entity/entities established in another Member State or regional, transnational or pan-European dispute resolution entities?

The resolution of any cross border dispute very often requires the participation of an ADR entity based in another jurisdiction. As such, we recognise that maintaining strong links with reliable international ADR entities is a prerequisite for the successful resolution of cross-border disputes. Where it is required, and a national entity is not in a position to resolve a dispute without the involvement of ADR entity established in another Member State, we would be in favour of establishing reciprocal links between suitably competent and qualified entities.

Chambers Ireland works closely with its European partners in Eurochambres, the European Chambers of Commerce, and as such has strong links with ADR centres in many European countries. We are aware of a number of formal and informal cooperative schemes between national ADR centres. We are also the Irish representative for the ICC International ADR Centre and nominate Irish arbitrators, mediators and experts to international ADR cases. We would be happy to provide further specific detail on how these operate in due course.

Q.9 Should the implementing legislation provide for ADR entities to use all, some or none of the exemptions in its procedural rules as provided for in the Directive? Please provide an explanation for your suggestions.

Provided there is some clarity around point (f) (dealing with such a type of dispute would otherwise seriously impair the effective operation of the ADR entity) we believe that an ADR entity should be allowed to use all the exemptions in its procedural rules as provided for in the Directive.

We feel that these are legitimate grounds to refuse to deal with a dispute and do not impair a consumers access to ADR procedures. The inclusion of these exemptions will contribute to the effective operation of ADR schemes and the swift resolution of genuine disputes.

Q.11 Should ADR procedures be free of charge to the consumer or should a nominal fee be charged, if so, how much and why?

A nominal fee should be charged to consumers to contribute to the administration costs associated with case management and to help prevent entirely frivolous disputes being processed through a scheme. We have no view on what the quantum of such a fee might be at present. Any fee could also be contingent on any minimum thresholds or award levels that are set.

Q.13 What are your views on the mandatory participation of traders in notified ADR procedures, which fulfil the requirements of the Directive, in other areas which are not already mandatorily required (eg. financial services)?

Participation by both traders and consumers in ADR procedures should be entirely voluntary. In order for ADR to prove effective both parties must enter the process in good faith. We would advocate the establishment of a Consumer ADR Charter or 'Pledge' to which traders would voluntarily and publicly sign up to. This would be a declaration that they agree to use a prescribed ADR scheme to resolve disputes with consumers, once certain criteria and conditions are met.

In various forms, pledges have been used for ADR in the United States, the United Kingdom, France and Singapore.

Other

Q.18 The Department would welcome any other views on issues relating to the Directive and the Regulation which you may wish to provide.

Confidentiality – We believe that the confidentiality of the ADR process must be emphasised and protected. If traders are to engage with ADR schemes in a meaningful way, they need to be assured that their right to confidentiality throughout the process is respected.

Standardisation of Service – There is no uniform European regulatory scheme governing the practice of ADR. Many Member States have developed standardised national requirements in terms of education, training and experience that must be met before a person can claim to be an ADR practitioner. Ireland at present has no standardised system of accreditation or registration. In advance of developing a Consumer ADR framework, thought should be given to developing some form of standardised accreditation or registration of ADR practitioners, perhaps in the context of the provisions set out in the Mediation Bill.

A coordinated approach to ADR - There is huge potential to build a culture of ADR in Ireland by having a coordinated approach to its development and promotion. Schemes can be developed across Consumer ADR, Business to Business ADR, and Business to Government ADR. Given the recent delivery of the Arbitration Act and the Mediation Bill, the necessary framework is in place to achieve this. However, we must ensure that the development of the ADR landscape in Ireland is coordinated to best realise this potential and ensure effective dispute resolution and quality standards.