

Viviane Reding

Vice-President of the European Commission, EU Justice Commissioner

Ensuring access to justice: Alternative Dispute Resolution

Check Against Delivery
Seul le texte prononcé fait foi
Es gilt das gesprochene Wort

Seminar “Finding balanced alternatives: promoting alternative dispute resolution mechanisms in the EU” co-organised by the American Chamber of Commerce to the European Union and Businesseurope

Brussels, 19 September 2011

Ms. Gibbons, Mr. De Buck,

Ladies and Gentlemen,

It is a pleasure for me to be with you today at the close of your well-timed seminar on Alternative Dispute Resolution. This is a crucial area in the field of civil justice, which can surely bring significant benefits to citizens and businesses alike throughout the European Union over the coming years.

As Commissioner for Justice, Fundamental Rights and Citizenship I am in the front line to tackle the well known challenges of the judicial system. Judicial procedures can be slow and costly, especially in solving cross-border disputes. They can be particularly burdensome for those involved – businesses and consumers alike.

The "Justice for Growth" agenda has at its heart the goals of eliminating unnecessary costs and speeding up procedures. In this context I look very positively at ways in which ADR mechanisms can help in our current economic situation, most of all in the interest of the small- and medium-sized enterprises – which represent more than 99% of all companies in the EU and provide more than two thirds of jobs in the private sector.

ADR is a cheap, simple and efficient method to reach a solution in case of a disagreement. And it can allow businesses to access justice without breaking the bank. ADR can be a solution for small companies that is affordable and allows them to focus on their core business rather than getting caught up in costly litigation.

But Alternative Dispute Resolution is more than just a tool for businesses. Consumers also want quick, affordable and efficient solutions to disputes.

"Access to Justice" is one of the main rights for European citizens, a right also guaranteed by the Charter of Fundamental Rights. This means that the right to go to court must always prevail. ADR must not eliminate this right. It must be an alternative, not a replacement.

In this spirit, for more than 10 years, the Commission has been active in promoting Alternative Dispute Resolution (ADR) for consumer disputes.

Let's take as an example the Mediation Directive of 2008. This Directive opens ways to settle amicably cross-border disputes in civil and commercial matters and encourages judges to promote recourse to mediation. The Directive can be applied to any dispute in civil and commercial matters, including family matters and disputes between businesses and consumers. As it says in the Directive's recitals, agreements resulting from mediation are likely to be complied with voluntarily and therefore avoid the need to go to court. They are also more likely to preserve an amicable and sustainable relationship between the parties. That is an important value that we should not forget.

Mediation is by no means the only possible type of Alternative Dispute Resolution. I would like to emphasize that the Commission values other forms of ADR. Two Commission Recommendations have identified a number of minimum guarantees that ADR schemes should respect, including impartiality and effectiveness. In some specific sectors, (including energy and consumer credit), EU legislation requires ADR schemes to be set up for consumer disputes.

Today, more than 700 ADR schemes exist across the EU. We have, however, clear evidence that ADR has not yet reached its full potential. The three main shortcomings are gaps in the coverage of ADR schemes, lack of awareness of consumers and businesses and the uneven quality of ADR schemes.

So, there is still a need to further develop Alternative Dispute Resolution.

Let me illustrate this with an example which shows the highly diverse situation in the Union. In Belgium, there are about five ADR cases per every thousand inhabitants

every year. While in the Czech Republic, the Member State in which ADR seems to have the smallest number of fans, there is only one case per every ten thousand inhabitants. That is a very big discrepancy in awareness between the two countries – fifty times less popular if you look at it in detail. We have to fill this awareness-gap.

For ADR to be effective, more needs to be done in a cross-border context. With the increase of distance there is a decrease in trust, a different language and culture to deal with and a different contract law to navigate. We need to ensure that everyone, wherever they are established in the European Union, and wherever their business partners are based can have access to efficient ADR mechanisms which are transparent and fair at the same time. This is how the internal market should develop.

There is already broad experience on ADR in the consumer area. It is thus a logical first step that the Commission, under the lead of Commissioner Dalli, will present before the end of this year legislative proposals on ADR and Online Dispute Resolution (ODR) which focus on consumer disputes. These initiatives were announced in the Single Market Act, the Digital Agenda as well as this year's Commission Work Programme.

The forthcoming proposal on ADR will make sure that ADR schemes are in place to deal with all consumer disputes when consumers buy goods or services from a trader based somewhere in the Single Market.

The forthcoming proposal on Online Dispute Resolution will increase the efficiency of ADR when consumers buy from traders in another country via the Internet. The entire complaint process will be handled on-line, providing consumers with direct access via an EU-wide platform. As a result, disputes can be resolved swiftly and easily.

These proposals, once implemented, will boost the confidence of consumers when shopping across borders, contributing to the growth of e-commerce.

Now, let me turn to another issue linked to ADR, which I find particularly relevant and important. And which actually serves as a very good example of how access to justice can work.

Last June the European Parliament adopted a report by Diana Wallis on Contract Law. In the report, the overwhelming majority of the Parliament called on the Commission to consider synergies between ADR and an instrument in European contract law. This is exactly what the Commission is preparing now, in the form of the forthcoming Commission proposal in the field of European contract law. My approach is to make sure that traders wishing to apply the optional contract law instrument also consent to use an ADR mechanism. Parties will of course still have the right to go to a court if they want to. And the decision to use the optional instrument will be left for the parties to take.

So the Commission deliberately follows an incremental approach; one that is complementary and coherent. It adopts step-by-step measures. The next step is to look at B2B in ADR. Based on a recent consultation we conducted, I note that businesses show a general interest for further work in this field, which would cover also business to business transactions.

Furthermore, Diana Wallis presented a separate report to be approved in the Legal Affairs Committee of the European Parliament. This report highlights the Parliament's earlier calls for further efforts to develop ADR. Most importantly, it states that any approach to ADR should go beyond consumer disputes and should include Business to Business commercial and civil transactions.

I know that there are very good Business to Business ADR mechanisms already in place. For example, the International Chamber of Commerce provides recognised and widely used ADR services to businesses. But even though they are a cheaper solution than going to court, they are still very costly for an SME. The average Business to Business ADR proceeding costs upwards of €27,000

This is not ideal. We have therefore to look at alternatives being more efficient and less costly. My services have started an analysis. I warmly invite you all to share your views with my services and to make your ideas and suggestions on this topic known.

I am confident that together we can achieve a simpler, cheaper and more efficient way of resolving disputes. Today's conference has served as a useful contribution to this process. I know that I can count on your continuous input and support to make alternative dispute resolution a reality!