

# *Working Group Report on Alternative Dispute Resolution in the Energy Sector*

Report prepared for the 4<sup>th</sup> Citizens' Energy Forum – October 2011

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## 1. Background

Alternative Dispute Resolution can be defined as an out-of-court procedure where the objective is to enable the consumer to resolve a dispute and obtain compensation for the harm suffered as a consequence of a commercial transaction or practice. It covers out-of-court mechanisms that lead to the settling of a dispute through the intervention of a third party; it does not cover the direct settlement between a trader and a buyer or internal customer complaint handling mechanisms.

The Third Energy Package<sup>1</sup> aims to ensure that European citizens benefit from a truly competitive energy market and gives regulators in the energy sector new responsibilities and powers to deal with consumer issues including both protection and empowerment. The package contains also a provision obliging Member States to set up an independent out-of-court dispute resolution scheme for energy complaints. This will enhance consumer confidence by giving them access to efficient means of resolving disputes and obtaining compensation in a cheap, simple and quick manner<sup>2</sup>.

In the context of the implementation of this provision, and as referred to in the Conclusions of the 3<sup>rd</sup> Citizens' Energy Forum<sup>3</sup>, the Commission announced in November 2010 the setting up of a Working Group to identify best practices in Alternative Dispute Resolution (ADR) in the energy sector<sup>4</sup>.

### 1.1. **Mandate, scope and composition of WG**

The London Forum requested the Working Group to review existing ADR in the EU and consider national practices, where available, specific to the energy sector. The purpose of this activity would be to identify *best practices* and *necessary conditions* to support Member States in their task of *setting up adequate* and *effective* ADR schemes, as required by the said EU legislation<sup>5</sup>.

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<sup>1</sup> Directives No 2009/72/EC and No 2009/73/EC; OJ L 211, 14.8.2009 p. 55 & 94

<sup>2</sup> Member States have to transpose the provisions of the Directives by Autumn 2011

<sup>3</sup> [http://ec.europa.eu/energy/gas\\_electricity/doc/forum\\_citizen\\_energy/2010\\_10\\_21\\_citizens\\_energy\\_forum\\_conclusions.pdf](http://ec.europa.eu/energy/gas_electricity/doc/forum_citizen_energy/2010_10_21_citizens_energy_forum_conclusions.pdf)

<sup>4</sup> Commission Staff Working Paper – "An energy policy for consumers" [SEC(2010)1407]. This initiative responds also to the Council conclusions on "An Energy Policy for Consumers" of December 2010 (Council doc. 16300/10)<sup>4</sup>, which invited the Commission to establish a multi-stakeholder working group to exchange information and best practices in ADR in the energy sector.

<sup>5</sup> It should be mentioned that the work of the Working Group took note of the Commission's work on ADR<sup>5</sup> preparing a horizontal legislative proposal foreseen for end 2011; see consultation paper [http://ec.europa.eu/dgs/health\\_consumer/dgs\\_consultations/ca/docs/adr\\_consultation\\_paper\\_18012011\\_en.pdf](http://ec.europa.eu/dgs/health_consumer/dgs_consultations/ca/docs/adr_consultation_paper_18012011_en.pdf)

The Working Group has produced a report that maps existing schemes, identifies best practices of ADR in the EU energy sector and puts them forward as good practice worthy of consideration by other Member States. The report also reflects on the criteria for simple, quick, transparent and effective dispute settlement procedures and in doing so also reviews the relationship between regulators and ADR schemes in the energy sector. The report also presents and maps some good practices from company mediation schemes that could be considered by other companies when designing their customer services.

The Working Group, following the successful model of the previous Working Group on Billing, comprised representatives from Consumer Associations<sup>6</sup>, National Energy Regulatory Authorities<sup>7</sup>, public and private bodies responsible for ADR in the energy sector<sup>8</sup>, energy companies' representatives (including both industry associations<sup>9</sup> and company mediation representatives<sup>10</sup>) and other competent national bodies e.g. complaint handling boards<sup>11</sup>.

### ***1.2. Approach***

The Working Group met four times in 2011. Group members were informed about existing national practices via presentations both from their peers within the group and from invited participants<sup>12</sup>. The Working Group was chaired by the Commission (DG Health and Consumers (SANCO) – the Directorate General for Energy (ENER) was also actively present to ensure conformity with the Third Energy Package. The Commission provided a secretariat for the Working Group, prepared draft reports and in general supervised the process of preparation of the present report. At the same time, WG members were responsible for contributing to the report both in relation to their specific area and/or country information and gave their comments on policy considerations.

The present report is the outcome of the shared expressions in the Working Group. Where divergent opinions exist, this is clearly indicated in the text.

The Working Group concluded the present report in time for its submission and presentation to the Fourth Citizens' Energy Forum in London on 26-27 October 2011.

## **2. Existing European legislation**

This section offers a brief presentation on both horizontal and energy-specific ADR provisions to set the framework for following chapters. Moreover, particular attention is paid to important consumer complaint areas and to how ADR can be relevant to improve their handling.

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<sup>6</sup> Appointed by the European Consumer Consultative Group (ECCG) sub-group on Energy.

<sup>7</sup> Appointed by the Council of European Energy Regulators – CEER.

<sup>8</sup> E.g. The French and the Belgian Public Energy Ombudsmen and the UK Energy Ombudsman.

<sup>9</sup> Namely Eurelectric and Eurogas, CEDEC and GEODE

<sup>10</sup> Members of the European Energy Ombudsmen Group (EEOG); the EEOG has members in the Netherlands, Spain, UK, France, the Czech Republic, Sweden and Denmark; for more information about the EEOG see [www.eeog.com](http://www.eeog.com)

<sup>11</sup> The Swedish National Board for Consumer Disputes - ARN

<sup>12</sup> Such presentations were from the Italian company ENEL and the customer Ombudsman of the Swedish company Vattenfall.

## **2.1. Consumer ADR in the European Union**

A legal proposal on Alternative Dispute Resolution (ADR) legislation is one of the strategic initiatives of the Commission for 2011. It is also among the key actions of the Single Market Act to boost growth and strengthen confidence of businesses and consumers alike.

In 1998 and 2000 the Commission adopted two Recommendations on consumer ADR. The first applies to ADR schemes which either propose or impose a solution to resolve a dispute<sup>13</sup>. The second applies to more consensual resolution of disputes. A number of sectoral EU legislations, including in the energy sector, contain a clause that either obliges or encourages Member States to set up ADR schemes<sup>14</sup>.

Despite the fact that the setting-up of ADR schemes has progressed in the EU over the last decade, ADR has not yet reached its full potential. A study on ADR<sup>15</sup> in 2009 pointed to a number of problems, in particular: a) Persistent gaps in the coverage of ADR both geographically and sectorally; b) Lack of awareness by consumers and businesses; c) failure to respect the core principles laid down by the two Recommendations; d) incomplete offers of ADR schemes to solve consumer disputes related to e-commerce transactions. In the public consultation on ADR conducted in early 2011<sup>16</sup>, all categories of stakeholders underlined the need to develop consumer ADR.

The forthcoming initiative will pursue a twofold objective: i) Filling the gaps in ADR coverage and ensuring that consumers and businesses are aware of the existence of ADR and can rely on quality ADR services. ii) Establishing an EU-wide online dispute resolution system for cross-border e-commerce transactions. It will build on ADR schemes that already exist at national level or that are developed in specific sectors at EU level. It will complement the specific provisions on ADR contained in a number of sector-specific EU Directives.

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<sup>13</sup> Commission Recommendation 98/257/EC on the principles applicable to the bodies responsible for the out-of-court settlement of consumer disputes, OJ L 115, 17.04.1998, p.31.

<sup>14</sup> Commission Recommendation 2001/310/EC on the principles for out-of-court bodies involved in the consensual resolution of consumer ADR, OJ L 109, 19.4.2001, p.56.

<sup>15</sup> Study on the use of Alternative Dispute Resolution in the European Union (Civic Consulting of the Consumer Policy Evaluation Consortium - CPEC), 2009, available at: [http://www.cc.cec/home/dgserv/sg/evaluation/pages/eims\\_en.htm](http://www.cc.cec/home/dgserv/sg/evaluation/pages/eims_en.htm)

<sup>16</sup> Consultation paper, Feedback Statement and other relevant documents are available on the following webpage: [http://ec.europa.eu/dgs/health\\_consumer/dgs\\_consultations/ca/adr\\_consultation\\_18012011\\_en.htm](http://ec.europa.eu/dgs/health_consumer/dgs_consultations/ca/adr_consultation_18012011_en.htm).

## 2.2. ADR & Electricity and Gas legislation

With the entry into force of the Third Energy Package the 3<sup>rd</sup> of March 2011, Member States now have an obligation to "ensure that there is an independent mechanism, such as an energy ombudsman or consumer body, to deal efficiently with complaints and facilitate out-of-court dispute settlements" (Article 3(13) of the Electricity Directive, Article 3(9) of the Gas Directive). They also have to make sure that energy suppliers "specify their rights to final customers, in or with the bills and in promotional materials, with regard to their means of dispute settlement in the event of a dispute". Box 1 maps the status for out-of-court settlement for electricity in the EU.

In **Austria, Ireland, Luxembourg, Malta, Portugal and Romania**, the regulator or a complaint board closely linked to the regulator is responsible for consumer dispute settlement.

Consumer protection authorities or complaint boards under consumer protection authorities have the main responsibility for dispute resolution (only for customer complaints) in **Estonia, Finland, Hungary, Poland and Spain**.

In **Denmark**, ADR in energy, including electricity, is handled by a private Complaint Board, approved by the Minister responsible for consumer affairs.

In **Lithuania**, the responsibility for ADR is shared between the consumer protection authority, the regulator and the State Energy Inspectorate.

In **Latvia**, the responsibility is shared between the regulator and the consumer protection authority.

In **Italy**, the regulator (AEEG) is called to guarantee an efficient treatment of ADR procedures between the customer and the energy supplier or DSO. Consumers may also submit their request to independent bodies as stated by the decree implementing Directive 2008/52/CE on certain aspects of mediation in civil and commercial matters

The main responsibility for consumer dispute settlement is with independent ombudsmen or complaint boards in **Belgium, France, Greece, the Netherlands, Sweden and the United Kingdom**. The ombudsmen / complaint boards are sector specific in **Belgium, France and the United Kingdom**.

In **Bulgaria, Germany, Slovakia and Slovenia** at present there is no out-of-court dispute resolution mechanism<sup>17</sup>.

The **Czech Republic** is in the process of introducing an alternative dispute resolution scheme, which is currently running as a pilot scheme.

*Box 1 - Overview of which public bodies are responsible for out-of-court dispute settlement in the electricity sector in each of the Member States – status October 2011*

<sup>17</sup> Germany is expected to have an energy ADR scheme in place approximately in end 2011.

According to Third Package provisions, consumers should benefit from "*transparent, simple and inexpensive procedures*" when dealing with their complaints and the out-of-court dispute settlements will have to be completed within three months. In this framework, energy service providers will also have to provide a "*good standard of service and complaint handling*" to their customers as stated in Annex I of the Electricity and Gas Directive.

Consumers should also have access to "*single points of contact*" to get "*all necessary information about their rights, current legislation and the means of dispute settlements available to them in the event of a dispute*" (Article 3(12) of the Electricity directive and 3(9) of the Gas Directive).

Furthermore, the following provisions apply to vulnerable consumers. Article 3 (7) of the Electricity directive and 3(3) of the Gas Directive define also that "*Member States shall take appropriate measures to protect final customers and shall, in particular, ensure that there are adequate safeguards to protect vulnerable customers*". In this context, each Member State shall define the concept of vulnerable customers which may refer to energy poverty and, inter alia, to the prohibition of disconnection of electricity to such customers in critical times. Member States shall ensure that rights and obligations linked to vulnerable customers are applied. In particular, they shall take measures to protect final customers in remote areas. "*They shall ensure high levels of consumer protection, particularly with respect to transparency regarding contractual terms and conditions, general information and dispute settlement mechanisms....*"

Article 36, h of the Electricity directive and 40, h of the Gas Directive define the General objectives of the regulatory authority by "*helping to achieve high standards of universal and public service in electricity supply, contributing to the protection of vulnerable customers and contributing to the compatibility of necessary data exchange processes for customer switching.*"

### **2.2.1. Main complaints for consumers: Power interruptions, billing**

Recent studies, such as the In-depth Retail Electricity Study by DG SANCO<sup>18</sup>, find that *grid-related* issues and *billing* are among the main complaint subjects for energy consumers. The study found that *power interruptions* top the energy consumer complaints list, but also *inaccurate estimates of consumption, metering and billing services* frequently appear as the reason a consumer will complain to their supplier<sup>19</sup>.

These complaints will concern the Transmission System Operator (TSO) or the Distribution System Operator (DSO) and will require some coordination between these two bodies and the supplier in the treatment of the complaint. The Third Package (Article 37 – 11 of the electricity Directive) stipulates that "*... Any party having a complaint against a transmission or distribution system operator in relation to that operator's obligations under this Directive may refer the complaint to the regulatory authority which, acting as dispute settlement authority, shall issue a decision within a period of two months after receipt of the complaint. That period may be extended by two months where additional information is sought by the regulatory authority. That extended period may be further extended with the agreement of the complainant. The regulatory authority's decision shall have binding effect unless and until overruled on appeal. ...*"

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<sup>18</sup> See chapter 6 on electricity consumer complaints (in particular pp.240-4), the full study is available from: [http://ec.europa.eu/consumers/consumer\\_research/market\\_studies/docs/retail\\_electricity\\_full\\_study\\_en.pdf](http://ec.europa.eu/consumers/consumer_research/market_studies/docs/retail_electricity_full_study_en.pdf)

<sup>19</sup> The study also found limited awareness of redress procedures, including the existence/availability of other contacts on energy – also limited awareness of (the role of) energy ADR.

In this sense, although there is a provision about the **regulator's role** in such cases, there are still issues to be resolved on the handling of the complaint and the dispute if no satisfactory resolution is concluded during the handling of the complaint within the company.

### 2.3. *Definition of ADR and branding of energy company mediators*

Alternative Dispute Resolution can be defined for the purpose of this report as an out-of-court procedure where the objective is to enable the consumer to resolve a dispute with a supplier and, if appropriate, obtain compensation for the harm suffered as a consequence of a commercial transaction or practice. It covers out-of-court mechanisms which are part of a formalised scheme and separate from the complaint-handling service of the energy company<sup>20</sup> and which aims to produce a settlement of a dispute<sup>21</sup>. A dispute, in this context, does not manifest itself until it is clear that the customer and the business cannot agree bilaterally. This is where the ADR mechanism becomes the natural next step, after the company has had the opportunity to handle the complaint.

ADR offers the company and its customer an informal and rapid means of resolving their dispute. It is less expensive than a court action, although the cost of ADR is ultimately borne either by the taxpayer or by energy customers collectively, depending on the funding mechanism. It is therefore very important to assure that ADR systems function efficiently. In addition, the availability of ADR acts as an incentive for companies to improve their services, in particular complaint handling.

In some Member States and in the energy sector in particular, some companies have over the last 10 years or so put in place, in addition to the standard complaints service, a company mediation scheme such as an autonomous company ombudsman reporting directly to the Board of Directors. These schemes have proved effective in resolving complaints made by energy customers. Some have been notified to the European Commission by national authorities as out-of-court settlement bodies in accordance with the two ADR Recommendations (see chapter 2.1)<sup>22</sup>. At the same time, however impartial company mediators may be, they are nevertheless employed by energy companies. Thus in the eyes of the Commission Services they do not comply with requirements of Article 3(13) of the Electricity Directive and Article 3(9) of the Gas Directive<sup>23</sup> which specify that an *independent mechanism* needs to be put in place to facilitate out-of-court settlement procedures. Regulators and consumer representatives agree with this assessment. Representatives from company mediators did not share the Commission's views, while industry associations did not have a common position from their members.

It is also important to highlight that a nation-wide ADR scheme is a guarantee for equal treatment for all energy consumers irrespective of whether their supplier can finance a customer ombudsman.

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<sup>20</sup> Energy company here includes both supplier and DSO, where a DSO manages consumer complaints.

<sup>21</sup> The scheme often includes the intervention of a referee or arbiter, which is independent from the company.

<sup>22</sup> These recommendations are currently being reviewed with a new proposal on horizontal ADR expected to be published in autumn of 2011. Some Working Group members also noted that consumer organisations in various EU Member States have been concerned that there is no monitoring whether the ADR schemes, notified to the Commission, actually comply with the principles outlined in the Recommendations.

<sup>23</sup> Directives 2009/72/EC and 2009/73/EC respectively.

This being said, many of the principles which emerge from this report, relating to information, quality of services, public awareness and so forth can also be applied to the activities of customer ombudsmen in energy companies.

### 2.3.1. **Branding**

Closely related to the definition of ADR is the issue of branding; in particular the use of the term Ombudsman. The European Energy Regulators recently adopted a common position with regard to the branding of energy 'company ombudsmen', which they believe as a practice, confuses and even misinforms energy consumers<sup>24</sup>. The European Energy Regulators feel that the use of the term '**company energy ombudsman**' should be discontinued. Consumer representatives support this view. Representatives from the EEOG point out that any decision on labelling and branding of ADR bodies should come about following an impact assessment of the use of this terminology.

Branding may complicate or facilitate the process of informing consumers, depending for example on the national approach taken when implementing the Third Package. Members of the Working Group agreed that the crucial issue is consumer understanding and awareness: **customers need to understand how the various phases of complaint handling and ADR relate to each other** ("who does what and when"). There is a risk of confusion which will need to be mitigated by clear, easy to access and timely information.

The Working Group acknowledges that stakeholders have different opinions and that there are different national approaches. Correct and timely implementation of the existing legislative provisions in the Third Package by Member States needs to be geared towards **mitigating confusion**, also using the existing good national practices presented in this report and any other appropriate powers of energy regulators and consumer authorities.

## 3. Examples of best practices

This chapter presents examples of national best practices submitted by members of the Working Group. On top of independent ADR best practices, this report includes separately examples from company mediation schemes that could be considered by other energy companies in their design of services to their customers beyond complaint handling and before moving on to an out-of-court scheme.

### 3.1. *Information, awareness, access*

The fundament of good ADR is *information* about the process, *awareness* of the existence of a process and *access* to ADR. Working Group members agreed that success of ADR very much depends not only on how well the scheme is designed but whether it is known and used by consumers and industry. To this end, information about the scheme's existence, procedures, scope (what it can and cannot do) and the time it may take to resolve a dispute is needed. Information about ADR, and complaints handling in general, needs to reach energy consumers via various channels to make sure that no consumer (e.g. those without access to the internet) is excluded.

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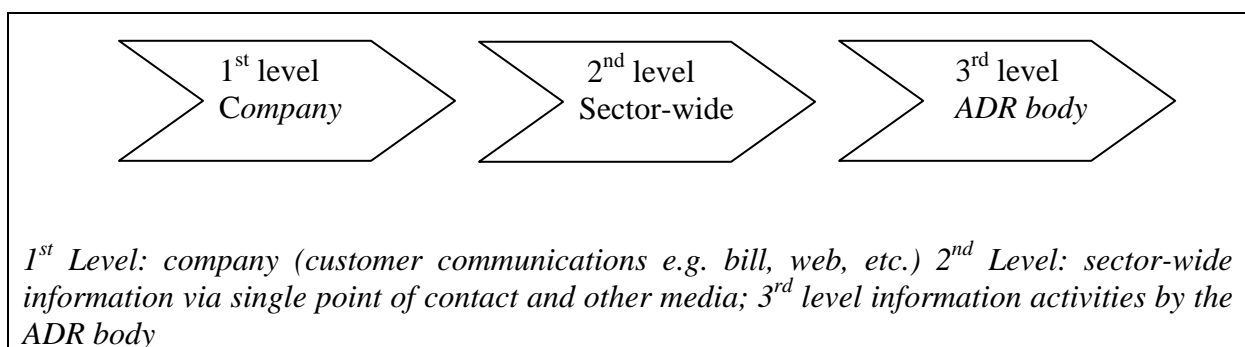
<sup>24</sup> The Regulators' Common Position is available from:  
[http://www.energy-regulators.eu/portal/page/portal/EER\\_HOME/EER\\_PUBLICATIONS/CEER\\_PAPERS/Customers/Tab2/C11-RMC-48-06\\_BrandingADRbodies\\_6-Jun-2011.pdf](http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/CEER_PAPERS/Customers/Tab2/C11-RMC-48-06_BrandingADRbodies_6-Jun-2011.pdf)

Legislative provisions in the Third Energy Package specify that information on ADR should be provided to the consumer in or with the bill and through the single contact point.

### 3.1.1. Levels of provision of energy ADR information

Working Group members agreed that information has to be *easily available*, in *clear language* and thus understandable to non-experts, be presented in *logical steps* and be *actively disseminated* to those who might need access to ADR. In fact, a major challenge identified by the Working Group is how to improve ADR awareness to consumers in light of the multiple layers of information. Moreover, due to various activities linked with energy e.g. generation, supply, distribution, information is important to decide at *what step* in the process the consumer needs *what type* of information. This could reduce complexity and even increase the use of ADR.

Graph 1: Levels of ADR-related information



Working Group members agreed information should primarily emanate from the energy company, while additional information should reach the consumer "just in time", essentially if they fail to resolve their complaint with the energy company. The customer should always be reminded of the possibility of resorting to ADR once he/she has established contact and is in dialogue with his/her supplier. Secondly, information concerning the specificities of the energy sector should be available to the consumer via the single point of contact. Finally, the energy ADR body itself should actively engage with consumers and industry to increase awareness and acceptance of interested parties in using ADR.

### 3.1.2. A single point of contact

A single point of contact, as defined by legislation, to assist energy consumers with information and to guide them through the recently liberalised electricity and gas markets, is a useful tool, but in some Member States some fine tuning is still needed. For example, in the Scandinavian market most consumers receive two bills, one for the energy network and one for the energy supplied. Without further explanation, and even *awareness raising*, household consumers will not perceive the single contact point as the main access point. Consequently, the notion of a '*consumer portal*' is being currently considered in Sweden for all consumer issues. For the energy sector as such, there is already the Energy Advice Bureau that can refer to the Swedish ADR body (ARN) handling disputes covering most consumer goods and services.

A successful *information/promotion campaign* for consumers needs to actively focus on what the single point of contact can do for them and use simple language and clear messages to ensure trust, and subsequently visibility and frequent consultation from consumers.

From the good practices submitted, the development of a 'gateway' (or a portal) on the internet to centralise information on energy markets, consumer rights, energy efficiency and ADR is an approach that could give improved know how for energy consumers. A concerted approach will reduce search costs for energy consumers, by centralising and sequencing information that is relevant for households.

### **3.1.2.1. Role of technology**

Technology is a tool for *easier, faster and cost-efficient access*, but it should not be the only avenue. Dissemination of information and access to ADR should be both via online and offline tools. From the good practices presented by Working Group members it was made clear that online communication is now standard practice; at the same time, telephone centres are also a very useful tool for many people.

Access to energy ADR and, prior to this, to information about ADR will be greatly facilitated through the provision of a single point of contact (see above). However, as frequently indicated by representatives of energy consumers and energy regulators in the Working Group, there can be confusion as to who is responsible for handling a complaint (energy supplier, distribution system operator, subcontracted company dealing with contracts, billing or similar activities).

To this effect, technology offers not only an additional medium for information but can also interconnect the various information sources and provide an overview. The single point of contact, acting as an information 'gateway' (or an energy consumers' portal), should not attempt to duplicate or replace existing contacts with the energy company and/or the consumer organisation. Rather, it can function as a hub offering a comprehensive approach for consumers including information on consumer rights, energy markets data and information about dispute settlement. The involvement of consumer organisations, energy regulators and other public bodies, energy suppliers and DSOs and other trade bodies in this process will deliver a complete picture of energy market issues to consumers and other stakeholders.

Technology can also reduce costs and increase the speed of communication and to this extent online dispute resolution (ODR) will be a useful tool. In fact, the increasing numbers of online transactions in energy will necessitate that a consumer is able to adhere to online ADR, i.e. ODR, which is quick, efficient and transparent.

An issue for the (near) future will be the treatment of 'self-generation' of energy and how ADR may be used for any disputes. In fact, self generation of energy will partly change the notion of company-customer relations transforming them from 'B2C' into 'B2B'. The Working Group did not reach any conclusions on this issue, due to the limited experience in this area so far.

### **3.1.3. Other media for information**

Whilst acknowledging the obstacles in terms of cost, television can be an effective channel for reaching certain consumer groups<sup>25</sup>. The Internet is certainly a popular and cost-efficient medium, which, nevertheless, is not a panacea for informing consumers.

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<sup>25</sup> An example can come from Consumer Focus where research into pre payment meter users found that television is likely to be the most powerful channel by which to reach vulnerable pre payment meter (PPM)

### **Examples of good practices on ADR information**

- Austria, France, the Netherlands and Italy present a comprehensive approach to information, awareness and access.
- The regulator in Austria (E-Control) provides through their web relevant information for consumers, including a price calculator and energy saving tips.
- In France, there is a dedicated web 'energie-info.fr' together with a telephone hotline and price comparison tool, run in collaboration by the energy regulator (CRE) and the public energy ombudsman (MNE). The French energy Ombudsman has also a partnership with the National Institute for Consumers (INC), a public body. They co-financed two series of five short films (duration of 2 minutes) in 2010 and 2011 on energy matters, broadcast for free on public TV channels and internet channels. Each short film has had on average 3,5 million viewers on 133 different media. The themes of the films were: To understand your bill: suppliers & distributors; Bill: energy, distribution and taxes; Estimated and real consumption; Payment difficulties; National energy ombudsman: user guide. The films can be viewed on: [www.conso.net](http://www.conso.net)
- In the Netherlands, a dedicated web [www.consuwijzer.nl](http://www.consuwijzer.nl) uses consumer-friendly information to engage consumers in becoming more assertive and know their rights, including where to address their claim once an unsatisfactory contact with the supplier has taken place. Contact is also available through Facebook and Twitter.
- In Italy, the Consumer Helpdesk is set up and financed by the energy regulator (AEEG); it is a dedicated service for consumers, including a call centre, web and expert advisers, is established under the supervision of the regulator. Moreover, the AEEG's website provides information to customers, including a price calculator and up-to-date information on consumer rights.
- In Belgium, the Ombudsman Service raises public awareness of the existence and functioning of the Ombudsman Service through:
  - A high quality and regularly updated website where all the necessary information is easily available for interested parties;
  - Energy suppliers / DSOs are requested to report information about the Ombudsman Service on their bills and websites;
  - The Ombudsman Service publishes an annual report and actively communicates main findings through press releases /articles and other similar actions;
  - The functioning of the Ombudsman Service is actively communicated in public presentations organized by social and public bodies;

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householders. Many of the most vulnerable PPM householders do not work and, for financial reasons, have limited social lives. Television plays an important part in the lives of most GB residents and this is particularly true for this group of consumers. More on 'Pre payment Meter users and self Disconnection' – research report by RS consulting for Consumer Focus from: <http://www.rsconsulting.com/publications.php>

- There is active collaboration within the context of ODR – online dispute resolution – and the Belgian application BELMED that is set up to resolve consumer disputes related to e-commerce and cross-border transactions
- A market-friendly approach exists in Spain, where the National Dispute Settlement Council (the Consumer Arbitration Board in the Consumer Arbitration System) offers a logo for traders that adhere to the scheme for display. This 'quality seal' is an incentive for companies to participate in ADR and for consumers to exercise choice also using this as a criterion. It should be pointed out, though, that there are no energy companies in Spain that carry this logo as they see their participation in the process as costly.

Specifically on energy, at present there is a section in the website of the Spanish regulatory authority, the National Energy Commission, which provides information on the rights of consumers in the energy markets. Moreover a new web site has been created by the National Energy Commission to compare prices and offers of the companies in the gas and electricity sectors.

- The Swedish Consumer Electricity Advice Bureau is an independent bureau which provides advice and guidance to consumers. All information and guidance is free of charge. The Bureau's activities started in 2002. The principles are the three authorities Swedish Consumer Agency, Swedish Energy Agency and the Energy Markets Inspectorate together with the electricity industry organisation Svensk Energi (Swedenergy). The guidance is primarily for consumers or for someone representing consumers. The information and guidance is mostly operated by telephone. Consumers can call the Bureau Monday to Friday, 9.00-12.00 am. It is also possible to contact the Bureau by sending a letter/fax or send in a question via web mail. Internet address: [www.konsumenternas.se](http://www.konsumenternas.se)

The consumers can turn to the Electricity Advice Bureau in questions concerning the electricity market. The Bureau offers pre-contractual information concerning suppliers and their prices. The Bureau gives information about the process connected with a change of supplier. It also helps consumers to understand difficult terms in their electricity bill, in contract concerning electricity supply and common terms used in the Electricity suppliers marketing. Finally, it also provides information about e.g. questions of billing and questions concerning the electricity meter.

If the consumer has a problem or a dispute with their electricity supplier or the distributor, the Bureau advises that the consumer primarily contacts the company concerned. If the consumer does not reach an acceptable solution - or if the consumer feels insecure about the answers they get from the company - the Bureau can provide the consumer with guidance and information how to deal with the problem. The Bureau informs the consumers about legislation and other regulations concerning the Electricity Market, and how they are applied by electricity supply and distribution companies.

Another main task for the Electricity Advice Bureau is to focus on problems that are common between consumers and actors in the Electricity market. The Bureau provides statistics based on the problems that consumers have in the area of the Electricity market. The concerned principal agencies are supplied with this statistics as well as the companies in the electricity industry.

- In the UK, prescribed complaint handling standards were set by the regulator to encourage the energy industry to take greater responsibility for resolving customer complaints<sup>26</sup>. The standards came into effect on 1 October 2008 and were designed to improve the service energy consumers receive and to provide effective protection when things go wrong. The energy companies must comply with a number of key requirements including obligations on how complaints are lodged and recorded as well as ensuring that details of all complaints are published. If companies are found to be in breach of these requirements Ofgem, the UK energy regulator, has the power to impose a financial penalty of up to 10 per cent of the company's turnover.

As part of the standards energy suppliers are required to signpost consumers to the Energy Ombudsman, the alternative dispute resolution scheme, on the back of energy bills and annual statements, and in their complaint handling procedures. These complaint handling procedures must appear at a clear and prominent position on their websites. Suppliers must also provide contact details of the main sources of independent help, advice and information that are available to them – of which the key source is the Consumer Direct service which handles first line energy advice calls. Consumer Direct also refers and signposts a proportion of consumer cases to the energy companies, the Extra Help Unit handling vulnerable and disconnection cases and to the ADR scheme.

### **3.2. Funding**

ADR is a cost-efficient process as the next step after the handling of a complaint within the company and prior to costly litigation. Still, there are costs and who finances the handling of the dispute is a difficult question. While most Working Group members agreed that ADR should be free of charge to consumers, or that should a fee should apply, it should not constitute a barrier to access, the financing of ADR can be resolved in different ways. Existing solutions include the socialisation of costs (through company financing), state funding (via the regulator's or the public ombudsman's services, or directly via the tax payer and state budget) and the creation of a fund to cover ADR costs.

Another question is the use of energy ADR funding as a means of improving the sector's performance for consumers. Working Group members agreed that ADR funding could be based on charges for companies in proportion to the number of disputes upheld. This could serve as an incentive or reward to good and improving corporate governance<sup>27</sup>.

However, Working Group members insisted that the funding should not influence the independence of the ADR. Funding by companies should not give them any influence on the ADR activity.

As specified in the good practices submitted by Working Group members, both the Belgian and the GB energy ombudsmen charge per case the company in question. In fact the Belgian ombudsman is currently considering the development of a 'multiple tier system' where, depending on the number of claims per company received, the ombudsman will progressively increase the fee charged per case handled for the company in question. In the case of the 'multiple tier system', it is also important to consider the company's customer base when designing the fee structure.

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<sup>26</sup> [http://www.legislation.gov.uk/uksi/2008/1898/pdfs/uksi\\_20081898\\_en.pdf](http://www.legislation.gov.uk/uksi/2008/1898/pdfs/uksi_20081898_en.pdf)

<sup>27</sup> Obviously this is not a practice that is easy to apply for an ADR body dealing with disputes on all goods and services, for example ARN in Sweden.

### **Examples of good practices on ADR funding**

- The Energy Ombudsman in the GB market is financed by all energy suppliers and DSOs, which are required to belong to the scheme, but the companies have no role in influencing the scheme's operations or decisions. The funding mechanism is a subscription, based on the company's previous year's complaints volume, plus a fee for each case accepted."
- The Belgian Public Ombudsman is a public body, financed by the energy companies (suppliers and DSO as social suppliers). The contribution is based on the points of delivery (pod) in the distribution network. For the budget of the year 2011 this contribution is fixed at 0,21 euro/pod. The budget of the year 2013 and the following years will be fixed based on two parameters: the number of pod's by a company and the number of complaints by a company.
- In Italy, at present the regulator (AEEG) supports an ADR scheme run by consumer organisations and most energy companies and especially the training of Consumer Associations' staff/conciliators but not conciliators working for energy companies. Moreover, Consumer Associations are granted a fee when the ADR procedure is successfully completed (the customer and the company have reached an agreement). At the moment the financial support is guaranteed according to a specific procedure and it is covered by a fund run by the Ministry of Economic Development. The fund is fed by the amount of fines imposed on energy companies by AEEG, which submits to the Ministry a set of proposals – such as the financing of courses and of ADR procedures - aimed at supporting consumer interests.

The training courses are attended by Consumer Associations' staff/conciliators. Consumer Associations benefit from these courses when they are party, together with an energy company, to a Memorandum of Understanding addressing ADR procedures. These ADR procedures are jointly run by Consumer Associations and energy companies. AEEG has supported the above mentioned procedures since this model has been successfully experienced in the telecommunications sector. AEEG has just launched a public survey in order to collect data on ADR procedures including those developed by Consumer Associations and energy companies and supported by the Fund.

- In Sweden, the ARN is state funded via taxation. Public funding in this case functions as a guarantee for consumer trust and is needed to facilitate the fair charging of different sectors (since ARN is a horizontal ADR body). In Sweden's case, it is also a preferable funding arrangement due to the size of the economy.

### 3.3. Independence and impartiality

The use of ADR will very much depend on both consumers' and companies' *perceptions* of the scheme's independence and impartiality, which in its turn impacts also on its efficiency and effectiveness. This is an issue of *governance*, of legal provisions but also of self-regulation. As far as the outcomes from the ADR board, or other bodies are concerned, the '*institutional architecture*' truly matters. This could include *equal representation* in the decision-making process of delegates from the parties of the dispute, the inclusion of expert opinions, the presence of a *respected authority* to oversee the process and finally reach a decision.

Input submitted by Working Group members also indicated that some sense of *conditionality* by the ADR body, when assessing if a case can be processed, is necessary to maintain efficiency and manage complainants' expectations. Essentially, this would mean that use of ADR should be considered only when the consumer has a complaint and this has been handled within the energy company in a specific, and preferably short, period of time, but the consumer is not in agreement with the outcome. Similarly, ADR should take over when the company fails to respond to a complaint at all within the timeframe.

When focusing on the steps before ADR and when considering the role of *company ombudsmen* as facilitators to the handling of complaints, it is equally important that these bodies demonstrate autonomy from their company's daily business, including the customer services department. This is how company ombudsmen justify their added value within a company that aims at improving customer service.

As outlined in section 2.3 most members of the group felt that company mediation schemes were not ADR because they fail to satisfy the criterion of independence.

Some Working Group members reported that the *existence of energy company ombudsmen does not appear to cause problems* for consumers as their conduct is integrated in the national complaint handling 'system'<sup>28</sup>. At the same time, other Working Group members underlined the risk of *confusion* for consumers as a consequence of multiple energy ombudsmen<sup>29</sup>. The correct and timely **implementation** of legislative provisions (Third Energy Package) by Member State governments needs to focus on **reducing confusion** and continue existing good practices that exist at national level.

#### 3.3.1. ADR models in the energy sector

ADR bodies are mainly sectoral but in some cases they are horizontal. They can be public bodies or private organisations that are established by an official mandate. On the basis of the submission of national practices by Working Group members, the following ADR models in the energy sector were identified:

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<sup>28</sup> Sweden is such an example; both ARN, the public ADR body, and the Vattenfall company ombudsperson, agreed that the existing levels for treatment of complaints, and later on disputes, for energy consumers are understandable by consumers and result in a efficient and effective system.

<sup>29</sup> The French Public Energy Ombudsman even comments that confusion due to the multiplicity of the use of the term 'ombudsman' reaches even company customer services departments.

### *Public Energy Ombudsman*

This model exists in France and Belgium, where a public body acts as the ADR body and consumer advocate in disputes between individual consumers and energy companies. In both cases, these bodies will be also involved in active communication of energy consumer rights and the creation of 'background awareness' i.e. market information in a consumer-friendly format, to make consumers more assertive in exercising choice in energy markets.

### *Horizontal public ADR*

In some Member States there is no energy-specific ADR. Handling a wide variety of consumer disputes can give a good overview and consistency. For example in Sweden, the Consumer Dispute Settlement Board is a horizontal body that may also accept energy disputes. This ADR body receives public funding and is free of charge for companies and consumers.<sup>30</sup>

### *Private Energy Ombudsman appointed by public authorities*

This model exists in the GB market only so far. An independent body, not affiliated to any company or government services, is responsible for ADR in energy. By regulation, all energy companies have to be members and finance the ombudsman services. The Board of Directors (mainly non-executive) is responsible for guaranteeing the Ombudsman's independence, integrity of schemes and making sure that companies cannot, in any way, influence the decision of the Ombudsman.

### *National Energy Regulatory Authority involved in ADR*

In several EU Member States energy regulators are directly involved in ADR such as Ireland and Austria, acting as an independent and authoritative institution. In other cases, energy regulators have a role to play in ADR, for example in Italy where the regulator supports the financing of the scheme that is run jointly by companies and consumer associations and is now called upon to guarantee the efficient functioning of ADR procedures. In other countries such as France, they collaborate closely with the public energy ombudsman to improve the ADR process, improve market information for consumers (establishment of a single contact point) and also to get feedback on market developments on the basis of ADR cases. Under the Third Energy Package provisions energy regulators will have to guarantee an effective ADR process in energy.

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<sup>30</sup> ARN pointed out that an “ombudsman” in Sweden has a different role from an ADR. The ombudsman’s function is to represent the interest of a certain group of people. In Sweden there are different public ombudsmen including the Ombudsman for Equal Opportunities, the Consumer Ombudsman and the Equality Ombudsman. There are also private customer ombudsmen in many companies. Neither the Consumer Ombudsman (nor any of the other ombudsmen) has a dispute settlement function. The Consumer Ombudsman represents the consumers in different contexts, such as the Market Court or in group claims at ARN. Specifically for energy, how ARN functions is closely related to the activities of the Electricity Advice Bureau (see best practice in chapter 5).

### *Privately funded energy ADR involving industry and public bodies*

In Denmark, the Energy Supplies Complaint Board is established in co-operation between the Consumer Council, the Association of Danish Energy Companies and the other major energy companies. The Board is composed of a neutral chairperson and four members. The chairperson is a city court judge. The Consumer Council appoints two members, and two members are appointed to represent the energy company. The Danish Competition and Consumer Authority serves as secretariat to the Board.

### **Examples of good practices on ADR independence and impartiality**

- The Swedish National Board for Consumer Disputes (ARN) in Sweden is a reputable ADR body. The claims are tried in a court-like setting, where there are two representatives each from trade and consumer associations, the case rapporteur from the ARN and the President of the committee who is a respected judge appointed by the government. Experts are asked to present their opinion concerning the facts of the dispute their presence provides expertise and creates a sense of ownership of decisions taken. The ARN will not hear cases for this sector that concern claims of less than €200, or if the trader was not contacted earlier on<sup>31</sup>.
- The Irish Energy Regulator's Consumer Desk is de facto an ADR process within the regulator. The process followed requires input by both parties to the dispute to be submitted to the regulator and later on both to comment on submitted information. Eventually, the regulator issues a recommendation, which can also include compensation. In this good practice the regulator acts as the ADR scheme administrator. In this case too, the regulatory authority will consider the claim after the complainant has contacted the company.
- The Belgian Ombudsman service is a national, fully independent and autonomous public service with a legal personality (imposed by legal provisions). The Ombudsman service is functioning in total independence from energy companies. Furthermore, the Ombudsman does not follow any instructions of any government in their decision making. The Ombudsman is appointed by the government for 5 years (once renewable) and is required not to have had any professional/ binding relations with the energy sector. In fact, the Ombudsman has the same legal personality and independent status as the federal Belgian regulator.
- The French Energy Ombudsman is a national, fully independent and autonomous public service with a legal personality. The Ombudsman is nominated by the government for 6 years. Their term in office is not renewable and not revocable.

#### **3.3.2. Energy company mediation schemes**

This report cannot fail to acknowledge the existence of company mediators or customer ombudsmen in some EU Member States, as valuable actors towards the improvement of the complaint handling process as part of a company's quality of service to their customer. In countries such as France, Spain, Sweden and Norway, energy company ombudsmen or mediators, have been active for some years. Feedback from Working Group members

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<sup>31</sup> Consumer representatives in the Working Group warned against the €200 threshold for hearing cases, as it may constitute a barrier to access ADR for low incomes and/or for smaller claims.

suggests that consumers in Scandinavia can distinguish the role of a company ombudsman and their input to the complaint handling process from an independent ADR body/process.

### **3.4. Transparency of process and decision**

Closely linked to the ADR body's independence and impartiality is the principle (and practice) of transparency of process and decisions made. Here too, good governance principles and procedures matter. Crucial elements are *trustworthiness* and the *neutrality, objectivity and competence* of the ADR body. To this effect, the parties to the dispute must be able to react throughout the process requesting information, providing additional input and, where appropriate, asking for additional information regarding the decision/ruling/recommendation.

#### **3.4.1. Data reporting/registration/publication**

Transparency in the area of ADR has one additional dimension, data reporting/registration/publication. As highlighted by energy regulators in the Working Group, detailed information about the subject of complaints that cannot be resolved within the company, can be an important indicator about market functioning and areas that require greater attention for the future. Consumer representatives commented that improved reporting will also give signals as to whether ADR is a process that is worth entering into instead of litigation.

Consumer representatives also suggested that detailed statistics on the outcomes of ADR cases should be included among the published material and the French public energy ombudsman underlined that information on the final outcome could include some indication of the decisions taken by the ADR body (e.g. sums awarded, actions taken by company on the basis of the decision etc.).

Detailed information about the outcomes of ADR in energy is important for consumer organisations involved in rating energy companies and could also be linked with any other information about the problematic conduct of certain companies<sup>32</sup>. The registration and description of outcomes that demonstrate how a law is interpreted can signal to law makers and market oversight bodies whether legislation is becoming obsolete. The publication of this case law is equally important for consumers and those advising them when considering adherence to ADR.

Finally, the competence of the ADR body throughout the process and specifically the capacity to come to a fair ruling is very important. Therefore, making sure that the ADR body is properly qualified and well-equipped will contribute to quality and ADR's public image as a reliable process.

##### **3.4.1.1. Transparency, publication and privacy**

Whilst it is necessary for stakeholders to review the outcomes of the process, there are also questions of upholding the principle of the public's access to information but also of privacy of personal data. Moreover, even when certain legal provisions already exist (see chapter 2), special care is needed related to publication of ADR information. Working Group members in their input underlined that there are clear data privacy 'red lines' that require confidentiality when outcomes of disputes are published.

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<sup>32</sup> Such as 'naming and shaming' activities.

### **Examples of good practises on ADR transparency**

- The Swedish National Board for Consumer Disputes will report on 'case law' on an annual basis covering a number of claims, topics and outcomes, awarded compensation (average) and will also respond to a request by a magazine to release (as information held by a public body) the names of companies that have not complied with the Board's recommendations. This magazine will then publish a 'black list'. This is necessary as the Board issues recommendations and not binding decisions.
- The Belgian and the French Public Energy Ombudsman services have detailed transparency and publication procedures. The French body publishes 'generic recommendations'<sup>33</sup> on their website anonymously for consumers and operators. The Belgian body classifies complaints according to ERGEG's methodology and publishes the reasoning for its decision but treat personal information with confidentiality. The Belgian Energy Ombudsman publishes decisions in their website and recommendations in their annual report. Both publish data on their financial and human resources.
- The Energy Ombudsman in the UK does not currently publish any company specific information although it does cover information relating to case handling and other performance indicators. However, the consumer watchdog responsible for energy, Consumer Focus, publishes a quarterly supplier 'league table' which rates the energy suppliers on their complaint handling performance. This is a weighted model that uses data from across the consumer redress path including cases handled by the Energy Ombudsman. These statistics serve the dual purpose of giving consumers information on complaint handling to make informed switching decisions as well as incentivising suppliers to improve their customer service<sup>34</sup>.

A high proportion (69%) of complaints received by the Energy Ombudsman is outside their terms of reference, primarily because complainants are coming prematurely (i.e. before 8 weeks, allowed for the company to resolve the complaint, have elapsed). In this situation, the complaints are referred back to the company. Currently no information is recorded about these OTOR (Outside Terms of Reference) contacts although the regulator's independent review in 2010<sup>35</sup> made a number of recommendations particularly around information capture and identification of systemic issues concerning company performance. These included:

- strengthening access to information to support forecasting
- collecting information about the consumers that contact the Ombudsman but are outside their terms of reference and share this information with the energy suppliers and other consumer voice bodies to enable steps to be taken to reduce these calls and ensure consumers are not incorrectly contacting the Ombudsman;
- drive down contacts to the enquiry lines by seeking to better understand the consumers that make contact (both inside and outside terms of reference);

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<sup>33</sup> According to the French energy ombudsman, a generic recommendation is a recommendation to the operators to improve / modify a practice so as to avoid other similar disputes. A generic recommendation is always based on a specific case. They are published on the ombudsman's website (anonymously for consumer & operators).

<sup>34</sup> <http://energyapps.consumerfocus.org.uk/performance/>

<sup>35</sup> <http://search.ofgem.gov.uk/search.aspx?aid=6581&pckid=755724950&pt=6018936&sw=sohn%20associates%20review%20of%20Energy%20ombudsman>

Another key finding of Ofgem's review was the need for the Energy Ombudsman to be more active in identifying and commenting on systemic issues through recording more information on the nature of cases and the causes of complaints as they are investigated and that it should establish internal processes and analysis tools to review the cases to identify and resolve systemic issues.

- The Energy Supplies Complaint Board in Denmark publishes on an annual basis a number of principal decisions, serving as guides for industry and consumers in settling disputes and improving processes at the companies. The companies are named and 12 cases per year are published on the Board's internet site.

### **Company mediation practices**

The annual reports of company ombudsmen from EEOG contain a detailed description of the activity, of the cases treated, the recommendations of improvement on handling customers and their complaints.

In line with the principle of confidentiality, details (personal data) are not published; but also in line with the principle of transparency, the recommendation is made public without personal details.

#### ***3.5. Efficiency and Effectiveness***

The effectiveness of ADR procedures is a key element of good ADR practices. Taking into account that, above all, ADR procedures must be in line with EU legislation, which specifically for energy stipulates that a complaint must be resolved within three months, the following measures proposed by the Working Group Members may further improve effectiveness:

*Process analysis* and the consideration of 'lessons learned' are crucial elements for a better functioning of an ADR scheme.

Under a good ADR system, parties should have the option to *evaluate* the *timescale*, *quality* and their *satisfaction* with the outcomes during and after the conclusion of the ADR. Beyond giving the option to interested parties to give feedback, it would be preferable that ADR bodies themselves actively, regularly and systematically review the outcomes of their conduct. This could include active engagement with both energy consumers and companies after the conclusion of a dispute. Moreover, the *success rate* of ADR should be analysed and evaluated.

This requires good internal organisation in terms of process planning and communication with various stakeholders. In this context, the establishment of regular meetings involving consumer organisations, suppliers and ADR bodies are important. Also contacts and comparisons with other sectors or countries can help to improve the process and to learn from similar experiences.

The role of *technology* should be highlighted as a key contributor towards a more efficient and effective process in time and cost terms.

An effective ADR is directly linked to a process that is simple and clear. In fact, while it represents an additional 'layer' or 'step' in dispute settlement, ADR need not be a complicating factor, but rather a 'logical next step' for parties in a dispute. If satisfactory for both parties it will also be the final step. Improving clarity and transparency of a process will contribute to better ADR.

In the case of energy, and given the various actors involved in the delivery of energy to households, consumer awareness raising and education are also needed. Nevertheless, education and awareness raising cannot be substitutes for an ADR that is not as simple, transparent and intuitive for consumers as possible.

Finally, attention should be paid to the duration of ADR procedures and resources needed to solve disputes.

### **Examples of good practises on ADR effectiveness**

- The GB Energy Ombudsman runs and publishes annual customer satisfaction surveys.
- The ARN in Sweden will follow up cases to review whether the decision (recommendation) was enforced.
- In Italy, as regards ADR procedure jointly run by consumer associations and energy companies, disputes are resolved through the involvement of energy companies and consumer representatives in an online environment.
- The Belgian public Energy Ombudsman is dealing with disputes that are ruled admissible within a period of 40 working days. Before filing a dispute with the Energy Ombudsman, the consumer should have first tried to come to an arrangement with their electricity or natural gas company.

During this 40-day period, the Ombudsman service will try to obtain an amicable settlement with the energy company (in more than 70 % of the disputes in 2010) or else formulate a non-binding recommendation. This term may be extended once by another period of 40 working days if the complaint requires a more in-depth investigation. The payment of bills that are being investigated by the Office of the Energy Ombudsman are suspended for the duration of the investigation, on the understanding that the dispute was found to be admissible in the first place.

### **Company mediation practices**

Duration and satisfaction are the most important criteria when it comes to compare ADR schemes. More generally speaking, according to EEOG, efficiency and effectiveness may be reached respecting a two months period as duration to a case resolution and a satisfaction rate towards the conclusion higher than 80%.

EEOG members publish customer satisfaction surveys results annually and the details of the duration of the settlement of disputes.

### **3.6. Nature of decision**

ADR is in itself a process where both parties to a dispute agree voluntarily to enter and to accept that another entity will assess the facts of the case and deliver a verdict. Although the process is flexible and not as formal as a court, still the issue of whether the nature of decision should be binding or not is a challenging question. On the one hand, making decisions binding reinforces the role of the ADR body and instils trust in the process, which in turn may result in a greater use of the ADR scheme. On the other, flexibility could be compromised and there may be issues of access to justice.

Most Working Group members' submissions of national practice indicated that decisions, also referred to as recommendations, are not binding. Thus, both parties still had the right to take their case to court, if they disagreed with the ADR outcome. In Spain, however, the decision for the Consumer Arbitration System is binding and is considered as case law (*res judicata*).

Consumer representatives in the Working Group underlined that decisions of the ADR need to be binding for companies. Making decisions binding on companies is also a means of increasing consumer trust in the process as a 'safety mechanism' for those consumers willing to invest time and effort in entering ADR rather than taking their claim to the court.

Another important issue when discussing decisions by the ADR body is whether the decision may include compensation and/or damages. In most national practices, the ADR body is able to recommend compensation. Damages, however, are within the remit of a court or tribunal<sup>36</sup>.

For company mediation schemes (EEOG members), outcomes are not binding.

#### **Examples of good practices on ADR's nature of decision**

- The GB Energy Ombudsman's decisions are binding for the energy supplier or DSO, where the consumer accepts, but not for the consumer. This process ensures that the right of access to justice is preserved. Energy companies also maintain the right to judicial review of the decision.
- The Belgian Ombudsman Service tries to obtain an amicable settlement between the complainant and the energy company. If an amicable solution is not possible, the Office of the Energy Ombudsman may send a non-binding recommendation to the energy company on condition that there are sufficient legal and factual elements on hand to obtain a lawful or fair solution. In other words, dispute files are closed if no amicable solution can be found or if the energy company does not accept the recommendation the Office of the Energy Ombudsman has formulated. However, following mediation by the Office of the Ombudsman, the parties involved in the dispute can always resort to the courts for adjudication.

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<sup>36</sup> The Swedish ARN can recommend both economic compensation and damages.

### 3.7. Additional tasks /elements related to ADR

This section highlights a number of diverse elements from the submitted national practices that can be beneficial to ADR.

**Training** for company employees and consumer organisation representatives was seen as an important ingredient for good ADR by some Working Group members. Also related to awareness of an ADR scheme's existence and process, training can result to more efficient and effective ADR, reducing ambiguity and thus enhancing trust in the process.

**Attention to special groups/issues** can also improve the outcome of ADR in a sensitive area such as energy. In fact, in certain instances access to ADR will be compromised. For example if there is a fee for low incomes, if the information is through the internet and the consumer does not have access. Paying attention to special groups and issues will require a careful assessment of the needs of special groups of the population and how to best address them to avoid exclusion.

**Group claims** can be an important element in the future for ADR in the energy sector. Working Group members have identified limited activity in this area so far. In fact two subjects for group claims which were mentioned related to electricity interruption of supply and a dispute on district heating (example came from Sweden). However, grouping claims and settling them in an ADR process could be both cost and time efficient provided judicial collective redress is also available as a last resort.

**Monitoring of market developments and giving advice** is an activity that is indirectly related to ADR. In fact, ADR bodies have the responsibility of reporting in a transparent and regular manner. At the same time, given the existence of dedicated energy ADR bodies, in some national practices submitted by Working Group members it was indicated that beyond reporting, public energy ombudsmen were asked to regularly advise the national parliament, the competent ministry/ies and the regulator.

**Awareness raising campaigns** were highlighted by a number of Working Group members as important tools for improving transparency and consumer trust in open energy markets. To this effect, the In-depth Retail Electricity Market Study by SANCO found also that there is limited awareness of information and/or redress channels in the energy area in the EU. Energy consumers were not familiar with the function or existence of ADR bodies, energy ombudsmen services or other similar models. As identified in the communication section, earlier in this report, some horizontal ADR bodies engage in active communication. Due to the legislative requirements, the Third Package, to set up ADR bodies Member States could consider engaging in parallel activities to raise to the public's attention that a new process is (will be) in place.

#### **Examples of good practices on ADR additional elements**

##### *Training*

- The Italian energy regulator is actively involved in the training for consumer organisation representatives.

##### *Attention to special groups/issues*

- Consumer Focus, the GB consumer watchdog, has a mandate to assist/represent vulnerable consumers in their disputes with their energy company. It may also be involved when the dispute may result to disconnection. Consumer Focus has regular meetings with both the Energy Regulator and the GB Energy Ombudsman.

### *Monitoring of market developments and advice*

- Both the Belgian and the French Public Energy Ombudsman services regularly meet the national energy regulators and other public services dealing with consumer protection in the energy sector. The Belgian body has a mandate for political advice to the government and the national parliament.
- The Italian regulator will hold quarterly meetings with the Consumer Help Desk and consumer organisations and energy company representatives to receive their feedback and assess market developments. The Consumer Help Desk carries out complaints handling and has the obligation to inform AEEG on a regular basis about the outcomes of it and to report to AEEG the suppliers or DSOs not compliant with the regulation.

#### **4. Key elements of good ADR**

The WG members agreed on a number of key elements for good ADR in the energy sector, which are closely linked to the good national practices presented in the previous chapter.

Since ADR is a voluntary and co-operative process that the two parties to the dispute decide to access, **trust** is very important. **Official approval**, via regulatory or other public endorsement of the process, will increase consumer and business confidence and willingness to join the ADR scheme.

The ADR body should be **independent** and this should be demonstrable via its governance structure, the reporting of activities and impartial decision-making. To this effect, **transparency of information** such as **regular publication of data and evidence** submitted to regulators and other market monitoring bodies related to ADR will help identify and address systemic shortfalls in the energy sector. In addition to this, publication of 'case law' is important for everybody to understand how problems are resolved in the energy sector. Any publication should comply with data protection provisions.

**Information and awareness** of an ADR is paramount to the existence and access of such a scheme by interested parties. To this end, Working Group members agreed that this **information may reach consumers through various levels**: **1)** communication from the energy company towards their clients (e.g. bills, contract, company website, call centres); **2)** via a sector-wide single point of contact; **3)** via the ADR scheme. The definition of levels may **reduce complexity** for interested parties by making information available to them when needed.

The **format and channels** used for this communication matter. To this end the **single point of contact** and **online tools** generally will be helpful but will need to be supported by **clear language** specifying when a case is admissible, how to access the scheme and how a dispute is processed. A **step-by-step guide** in a 'user-friendly' format can be very helpful. At the same time, online tools should not exclude the use of other means, such as post, telephone and fax.

**Ease of access** is fundamental. It should be easy for consumers but also for customer services personnel, to understand how ADR works and how it can be accessed and what areas it covers. ADR should be preferably **free of cost** for consumers. If a fee is applied, it should not be such that could impede access for consumers. While fees for companies and consumers and state taxation are options for the **funding** of ADR, progressive charging for companies according to the frequency of cases involving them not being resolved at earlier stage could be an intelligent way of giving incentives towards good corporate practices

**Good system design and operation** is key for efficiency. An **unambiguous definition of ADR and of the scope of the scheme** can also improve ADR's reputation as an efficient and effective process. A **clear process** requires that all involved understand what **steps**, by whom and by when need to be taken. Resolving disputes in a **timely manner** is very positive too.

**Effectiveness** of the ADR body under the principles of **consistency, competence** (including that of the officials employed by the scheme) and **fairness** is important. At the same time, to increase consumer use of ADR, it is crucial that **decisions are complied with by suppliers or DSOs**.

**Performance** of ADR is another relevant factor that may increase access rates. **Key Performance Indicators** such as timing of resolution and number of cases resolved together with a robust process of **complaints classification**, via the existing Commission harmonised classification system and as developed further specifically for the energy sector by ERGEG/CEER, could both improve **understanding of market functioning** and existing deficits and demonstrate positive outcomes of turning to ADR prior to litigation.

Working Group members also agreed that it is useful for ADR bodies to hold regular meetings with regulators, consumers and industry representatives to **review the impact of ADR on dispute settlement**.

Finally, while all citizens accessing the ADR scheme should be treated fairly, **attention to certain groups of the population such as vulnerable consumers** is sometimes needed to guarantee their access to ADR and the practical handling of their case to avoid exclusion.

**5. Annex I - Mapping of ADR in the energy area and examples of company mediation**

|                             | <b>United Kingdom</b>  |  |
|-----------------------------|--|--|
| <b>Name of the body</b>     | <b>Ombudsman Services Ltd.:</b><br>-Ombudsman Services: Energy,<br>-Ombudsman Services Communication,<br>-Ombudsman Property (collecting societies and intellectual property in development)   | <b>Consumer Direct</b><br><b>Consumer Focus</b><br><b>Ofgem (the NRA)</b>  |
| <b>Private/Public</b>       | Private (company) approved by energy regulator   | Public   |
| <b>Governance/structure</b> | Energy supply companies and network operators are required to be a member of the statutory redress scheme (the Ombudsman). <ul style="list-style-type: none"> <li>• Private company limited by guarantee</li> <li>• Member of the British and Ireland Ombudsman Association</li> <li>• Board of executive and non-executive directors</li> </ul>   | Both Consumer Focus and the Ombudsman report information on the complaints they receive on a monthly basis to Ofgem. Same do the energy companies. |
| <b>Scope</b>                | <ul style="list-style-type: none"> <li>• Service for domestic consumers and micro businesses</li> <li>• Complaints volume: received more than 250,000 contacts</li> <li>• Processed over 15,000 complaints</li> <li>• Relevant legislation (The Consumers, Estate agents and redress Act 2007 CEARA) requires all energy sector companies supplying services to residential or micro-business consumers to join a scheme that is approved by the regulator OFGEM.</li> </ul> | <ul style="list-style-type: none"> <li>• to ensure that the energy companies deal properly and fairly with their customers</li> </ul>              |

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| <p><b>Process</b></p>                  | <ul style="list-style-type: none"> <li>• Regularly meetings with participating companies (to provide forecasts, feed-back, raise issues)</li> <li>• Sector liaison panel (for general discussion, consult on annual budget and business plan, performance measurement)</li> <li>• Before a complaint is dealt with by the Ombudsman, a customer is required to have submitted the complaint to their energy company</li> </ul> | <p>Consumer Focus deals directly with the energy company if the customer is classed as vulnerable or the complaint regards disconnection.</p> <p>Consumer Direct directs the customers to the relevant body to handle complaints or enquires.</p> <p>OFGEM enforces the statutory complaint handling standards required to be met by the energy companies</p>        |
| <p><b>Process binding yes/no</b></p>   | <p>Ombudsman decision is binding on the energy company when the consumer accepts but not on the customer who may seek further redress through the courts.</p>  |  |
| <p><b>Adherence of the parties</b></p> | <ul style="list-style-type: none"> <li>• Adherence with the principles of good governance (independence, effectiveness, openness, etc.)</li> </ul>   | <p>The Office of Fair Trading (OFT) Code of Practice prescribes for schemes to be non-binding on consumers but legally binding on trade in order to redress the structural imbalance of power between consumers and industry.</p>  |
| <p><b>Nature of outcomes</b></p>       | <ul style="list-style-type: none"> <li>• Schemes are statutory-based (underpinned by legislation that requires companies in the sectors to belong to the scheme approved by the public regulators Ofgem and Ofcom)</li> <li>• Possible remedies: no action by the company, an apology or other non-financial action</li> </ul>   | <ul style="list-style-type: none"> <li>• Ofgem is not responsible for the reporting of complaints (although it may decide to publish complaints data in future) but is statutorily required to receive reports.</li> <li>• the individual organisations (energy companies, Consumer Focus and the Ombudsman) are required to provide and publish reports.</li> </ul> |
| <p><b>Access free yes/no</b></p>       | <p>yes</p>   | <p>yes</p>   |
| <p><b>Price</b></p>                    | <ul style="list-style-type: none"> <li>• Average financial remedy: Pounds 140 (for residential consumers), Pounds 600 (for micro-business consumers)</li> <li>• Annual budget Pounds 6,4m (part of OS:Energy 42%)</li> </ul>   |  |

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| <b>Funding</b>  | <ul style="list-style-type: none"> <li>• Free of charge for consumers (CEARA scheme)</li> </ul>   | Consumer Direct is government funded through the Office of Fair Trading. Consumer Focus is funded by the government and the postal and energy industries. |
| <b>Duration</b> | <ul style="list-style-type: none"> <li>• The complainant must take the complaint to the ombudsman within 9 months from the time that it was first made to the company</li> <li>• 8 weeks for the service provider to resolve the problem</li> <li>• 6 weeks to proceed to investigate the complaint (average time)</li> </ul> |   |

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|                             | <b>France</b>   |   |
| <b>Name of the body</b>     | <p><b>French Energy Ombudsman (Médiateur National de l'Énergie, MNE)</b><br/> <b>-General Directorate for Competition Policy, Consumer Affairs and Fraud Control (DGCCRF, Ministry of Economy)</b><br/> <b>-NRA (Commission de Régulation de l'Énergie, CRE)</b></p> <ul style="list-style-type: none"> <li>• <b>CoRDIS</b> ( dispute settling authority within CRE)</li> </ul> | <p><b>Customer ombudsman (Mediateur de GDF SUEZ &amp; Mediateur d'EDF)</b></p> <p>Both are notified to the European Commission by France as ADR systems</p> |
| <b>Private/Public</b>       | Public  | Company Mediation   |
| <b>Governance/structure</b> | CRE and MNE have set up a joint organisation: Energie Info that functions as a customer information service.  | Directly attached to the head of the Group  |

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| <p><b>Scope</b></p>                    | <ul style="list-style-type: none"> <li>• Disputes between consumers &amp; suppliers (mediation)</li> <li>• Contribution to consumer's information about their rights</li> </ul>  | <p>Disputes between consumers and suppliers/distributors</p>   |
| <p><b>Process</b></p>                  | <ul style="list-style-type: none"> <li>• the customer has to submit a complaint first to the supplier, and then allow the supplier 2 months to handle</li> <li>• to be eligible to MNE, one must be a household customer or a professional connected to <math>\leq 36</math> kVA or consume less than 30,000 kWh of gas per year</li> <li>• a complaint can be submitted by letter or through the website</li> <li>• MNE has to propose a written recommendation to settle the dispute within 2 months.</li> </ul> | <ul style="list-style-type: none"> <li>• customers must always formally submit a complaint if they want to solve a disagreement with their supplier</li> <li>• if the customer does not agree with the outcome, both parties have a so-called dispute</li> <li>• all customers are eligible to send disputes to the company ombudsman, there is no access restriction</li> </ul> <p>For EDF, even suppliers' disputes can be solved.</p> |
| <p><b>Process binding yes/no</b></p>   | <ul style="list-style-type: none"> <li>• Recommendations that not binding in the case of MNE</li> <li>• decisions that are binding if given by DGCCRF or CoRDIS.</li> </ul>  | <p>Not binding</p>   |
| <p><b>Adherence of the parties</b></p> | <ul style="list-style-type: none"> <li>• CRE has established a stakeholders' Forum dedicated to household customers and small professionals, the GTC (Groupe de Travail Consommateurs).</li> <li>• DGEC, DGCCRF and MNE participate in the GTC along with service providers (DSOs and suppliers) and consumer associations.</li> </ul>   | <ul style="list-style-type: none"> <li>• Adherence with the principles of good governance (independence, effectiveness, openness, etc.) Company ombudsmen respect the principles of the charter of the <i>Club des Médiateurs de Services au Public</i> with members responsible for handling the main part of mediation in France.</li> </ul>   |

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| <b>Nature of outcomes</b> | <ul style="list-style-type: none"> <li>• In the case of MNE each part may go to court if dissatisfied with the recommendation, and even before the end of the dispute settlement process.</li> <li>• In some recommendations, MNE may ask the supplier/DSO to pay fees to the customer, as a compensation for the damage they have suffered.</li> </ul> |              |
| <b>Access free yes/no</b> | yes   | yes          |
| <b>Price</b>              | MNE is financed by a tax on energy consumption, the “CSPE”.   | Free of cost |
| <b>Funding</b>            | • Cost of Energie-info is shared 50/50 with regulator   |              |
| <b>Duration</b>           | MNE has to propose a written recommendation to settle the dispute within 2 months.  | 2 months     |

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|                             | <b>Belgium</b>  |   |
| <b>Name of the body</b>     | <b>Ombudsman Service for Energy</b>   | As of 1 January 2009, a “Regional mediation service for energy” (“Service regional de médiation pour l’énergie – SRME) was created within the Walloon energy regulator (CWaPE). |
| <b>Private/Public</b>       | Public and independent federal entity with legal personality                      |   |
| <b>Governance/structure</b> | The Ombudsman service is functioning in total independence from energy companies. |   |

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| <b>Scope</b>                    | <ul style="list-style-type: none"> <li>• Distribution of questions and complaints regarding the functioning of the electricity and gas market</li> <li>• Independent and single point of contact on the European and Belgian level</li> <li>• Handling of disputes between final customers and the electricity and gas companies</li> <li>• Disputes regarding electricity and gas coming from residential and professional clients</li> </ul> |
| <b>Process</b>                  | <p>20 working days to decide the admissibility of a complaint (the customer has to submit a complaint first to the supplier)</p> <p>40 working days to seek a compromise. This period can be extended by another 40 working days</p>   |
| <b>Process binding yes/no</b>   | Non binding recommendations if the energy company does not accept within 20 working days the recommendation the Ombudsman has formulated   |
| <b>Adherence of the parties</b> | The establishment of a permanent consultation group with regulators and other public services which meets at least two times a year.   |
| <b>Nature of outcomes</b>       | <p>Dispute files are closed if no amicable solution can be found or if the energy company does not accept the recommendation the Office of the Energy Ombudsman has formulated.</p> <p>However, After the mediation by the Office of the Ombudsman, the parties involved in the dispute can always resort to the courts for adjudication.</p>  |
| <b>Access free yes/no</b>       | yes  |
| <b>Price</b>                    | If the company takes the ombudsman contribution (0,21 euro/pod) into account, it has to be mentioned on the bill   |
| <b>Funding</b>                  | The companies have to pay an ombudsman contribution based on the points of delivery in the distribution network. For 2011 and 2012 this contribution is fixed at 0,21 euro/pod. The budget from the year 2013 and the following years will be fixed based on two parameters: the number of pod's by a company and the number of complaints by a company  |
| <b>Duration</b>                 | <p>40 working days to seek a compromise. This period can be extended by another 40 working days.</p> <p>When a recommendation is made the company has 20 working days to not agree with it.</p>  |

|                                 | <b>Austria</b>  |
|---------------------------------|---|
| <b>Name of the body</b>         | <b>E-control</b>  |
| <b>Private/Public</b>           | Public  |
| <b>Governance/structure</b>     | The ADR body is established and run by the country's national energy regulatory authority.  |
| <b>Scope</b>                    | <ul style="list-style-type: none"> <li>• Energy Hotline serves as the first point of contact and may give information, perform price calculations or advise on some basic issues (e.g. self-meter readings, recent price increases, possibilities and process of supplier switching, etc.),</li> <li>• ADR Board deals with more complex requests, especially issues and complaints where there seems to be some wrongdoing by one of the contractual partners</li> </ul> |
| <b>Process</b>                  | <ul style="list-style-type: none"> <li>• suppliers are subject to the obligation to mention in their bills the possibility for customers to appeal to E-Control's ADR board.</li> <li>• customers contact E-Control via phone, fax, mail and e-mail regarding various concerns</li> <li>• not compulsory for consumers to first contact their contractual partner</li> </ul>  |
| <b>Process binding yes/no</b>   | No.   |
| <b>Adherence of the parties</b> | <ul style="list-style-type: none"> <li>• The solutions of the ADR board are only suggestions to both parties involved and are not binding.</li> <li>• Either party may go to court afterwards if not satisfied with the outcome of the ADR procedure.</li> </ul>  |
| <b>Nature of outcomes</b>       | <ul style="list-style-type: none"> <li>• E-Control's ADR Board achieves a proportion of nearly 90% of all ADR procedures satisfactorily resolved for the parties involved.</li> <li>• E-Control must publish a yearly action report on the ADR Board's activities and procedures and its outcomes</li> </ul>  |
| <b>Access free yes/no</b>       | Yes.  |
| <b>Price</b>                    | No fees or sanctions which may be imposed on any party involved.  |
| <b>Funding</b>                  | Public body   |
| <b>Duration</b>                 |   |

|                             | <b>Ireland</b>  | <b>Italy</b>   |
|-----------------------------|---|--|
| <b>Name of the body</b>     | <b>Energy Customers Team</b>  | <b>AEEG</b> - handles complaints about gas and Electricity operators by mean of the “Consumer Help Desk”.<br><br>The major suppliers and consumer organisations have agreed on a Memorandum of Understanding addressing ADR procedures for each company. Each Memorandum passes the examination and approval of the Aeeg   |
| <b>Private/Public</b>       | Public  | Public   |
| <b>Governance/structure</b> | The service is governed by the Commission of Energy Regulators (CER)  | The Consumer Help Desk is governed and reports back to the AEEG.<br><br>The Memoranda of Understanding ( <i>Protocolli di conciliazione</i> ) are ruled jointly by the consumers associations and the companies.   |
| <b>Scope</b>                | <ul style="list-style-type: none"> <li>• to provide an independent, simple and easily accessible service for customers with unresolved complaints</li> </ul>  | <ul style="list-style-type: none"> <li>• The scope of the Consumer Help Desk is to give information, assist and help energy and gas customers by providing a direct link of communication for quick answers to their reports, demands and unresolved complaints</li> <li>• The Memoranda provide a chance to find an agreement for unresolved complaints by providing to consumers the assistance of consumers associations they can either choose directly, or be assigned to on turnover basis.</li> </ul> |
| <b>Process</b>              | <ul style="list-style-type: none"> <li>• a two-step process which allows customers to escalate their complaint to a senior level if they are not satisfied with the response which they received the first time they have attempted to resolve their issue</li> <li>• if the customer is still not satisfied with the response they have received they may</li> </ul> | <p>The complaints have to be sent first to the suppliers and then, in case of no response or unsatisfactory response, the complaint is sent to the AEEG. Energy companies have to answer to consumer complaints within 40 week days.</p> <ul style="list-style-type: none"> <li>• 30 days for information requests addressed to the company.</li> <li>• Companies need to answer inquires coming from the Consumer Help Desk in max.15 working days.</li> </ul>  |

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|                                 | refer their complaint to the Energy Customers Team for an independent review and determination.  | <ul style="list-style-type: none"> <li>• Only if the matter is urgent the claim can be sent directly to both the company and to the AEEG.</li> <li>• The Memoranda also foresee that before starting a conciliation procedure, the customer must have sent the complaint to the company and waited for the 40 days elapsed with no answer or having received an unsatisfactory response.</li> <li>• Most of the Memoranda can be handled completely by on-line procedure, but it is always possible to meet the counterpart and treat the case face-to-face.</li> </ul> |
| <b>Process binding yes/no</b>   | Binding on the company but not on the customers.   | • Not binding, but AEEG can fine the company if it does not comply with its recommendations.  |
| <b>Adherence of the parties</b> | <ul style="list-style-type: none"> <li>• binding direction on the utility in relation to compensation</li> <li>• to put in place a resolution for the customers</li> <li>• customers who do not accept the decision of the CER, they are free to pursue their complaint through the court</li> </ul> | <ul style="list-style-type: none"> <li>• AEEG can order the supplier to cease any behaviour violating consumer rights;</li> <li>• AEEG can place a financial fine on the supplier for non-compliance with regulations or through an infringement proceeding.</li> <li>• Adherence to a Memorandum of understanding for ADR is voluntary either for the companies and the consumers associations.</li> </ul>   |
| <b>Nature of outcomes</b>       | Not aware of any customer choosing to exercise a legal option following a decision made by the CER.  | AEEG can fine on operators, but it cannot prescribe a compensation for damages (in order to obtain it, the customer must go to court).  |
| <b>Access free yes/no</b>       | Yes.   | Yes.  |
| <b>Price</b>                    | There is no charge for the customer to have their complaint dealt with by the Energy Customers Team.   | There is no charge for customers.   |
| <b>Funding</b>                  | Public body  | <p>AEEG (and thus the Consumer Help Desk) are financed by a fee of 0,3 ‰ the energy operators have to pay based on their annual revenues</p> <p>AEEG funds part of the costs of the Consumers Associations dealing with ADR</p>   |

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|                 |  | based on the existing Memoranda of understanding by a fee for each claim procedure ended up positively. |
| <b>Duration</b> |  | See above   |

|                             | <b>The Netherlands</b>  | <b>Sweden</b>   |  |
|-----------------------------|---|---|--|
| <b>Name of the body</b>     | <p><b>Stichting Geschillen Commissie</b></p> <p><b>Nma</b> (Dutch Office of Energy Regulation)</p> <p><b>ConsuWijzer</b> (information desk set up by Nma, Telecom authority and the Consumer authority)</p> | <p><b>The Swedish NRA</b></p> <p><b>The Energy Markets Inspectorate (EI)</b></p> <p><b>The National Board for Consumer Disputes ARN</b> (only for complaints bigger than 200 euro that have not been settled in court)</p> <p><b>Municipality consumer advisor</b></p> <p><b>Electricity Consumer Advice Bureau</b> (not an ADR body, but an energy consumer information service)</p> | <p><b>Customer Ombudsman (E.ON &amp; Vattenfall)</b></p> |
| <b>Private/Public</b>       | Public  | Public  | Private, company mediation                               |
| <b>Governance/structure</b> | As long as suppliers deal with complaints in an adequate manner, the <b>Nma</b> intentionally plays no role in individual complaint handling or dispute settlement.   | The public authorities give more credibility to the process. In case of difficulty to solve a dispute through the customer ombudsman a resort to a public authority is always possible.   |  |

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| <p><b>Scope</b></p>                  | <ul style="list-style-type: none"> <li>• to ensure adequate resolution of customer complaints</li> <li>• to monitor customer compliant handling</li> </ul>   | <ul style="list-style-type: none"> <li>• to impartially try disputes between consumers and business operators</li> </ul>   | <p>Disputes between consumers &amp; suppliers. The Customer Ombudsman also provides customers with background information for dialogue at all external levels necessary.</p>   |
| <p><b>Process</b></p>                | <ul style="list-style-type: none"> <li>• customers must always formally submit a complaint if they want to solve a disagreement with their supplier or DSO</li> <li>• if the customer does not agree with the outcome, both parties have a so-called dispute</li> <li>• all household customers are eligible to send disputes to the independent dispute settlement body</li> <li>• alternatively, customers can go to court and ask the judge to issue a verdict</li> </ul> | <ul style="list-style-type: none"> <li>• all household customers are eligible to contact any of the third party bodies, depending on the issue</li> <li>• It is not compulsory for a customer who wishes to complain to any of the third party bodies to first have submitted his/her complaint to his/her supplier/DSO</li> <li>• Customers that are unhappy with an issue can turn to the ombudsman within the company for a retry of the issue. <ul style="list-style-type: none"> <li>• If the customer even after the retry is not happy, he/she can turn to the National Board for Consumer Complaints.</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>• all household customers are eligible to contact any of the third party bodies, depending on the issue</li> <li>• It is not compulsory for a customer who wishes to complain to any of the third party bodies to first have submitted his/her complaint to his/her supplier/DSO</li> <li>• Customers that are unhappy with an issue can turn to the ombudsman within the company for a retry of the issue. <ul style="list-style-type: none"> <li>• If the customer even after the retry is not happy, he/she can turn to the National Board for Consumer Complaints.</li> </ul> </li> </ul> |
| <p><b>Process binding yes/no</b></p> | <p>The decision is binding.</p>  | <p>Recommendations are not binding.</p>  | <p>Not binding</p>   |

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| <p><b>Adherence of the parties</b></p> |  | <ul style="list-style-type: none"> <li>• the vast majority of companies(80%) follow the boards recommendations.</li> <li>• Companies that do not follow the boards recommendations will get blacklisted</li> <li>•The regulator has the power to impose a conditional fine if a company does not follow the relevant legislation.</li> <li>•A decision by the regulator can be appealed to the court.</li> </ul> | <ul style="list-style-type: none"> <li>•The regulator has the power to impose a conditional fine if a company does not follow the relevant legislation.</li> <li>•A decision by the regulator can be appealed to the court.</li> <li>• Companies that do not follow the boards recommendations will get blacklisted</li> </ul> |
| <p><b>Nature of outcomes</b></p>       | <ul style="list-style-type: none"> <li>• monitoring customer complaints (through ConsuWijzer) is effective and can show evidence of market malfunctioning</li> <li>• results show that customers are becoming slightly ever more satisfied with the process by which suppliers solve their complaints, especially with regards to the lead time and accuracy</li> <li>• the major causes of complaints still are the handling of metering data for billing and the remaining problems during the supplier switching process</li> </ul> | <ul style="list-style-type: none"> <li>• decisions in favour of consumers 39%</li> <li>• possibility to access class actions</li> <li>• compliance with recommendations 75%</li> <li>• black list published twice a year by Rad &amp; Ron magazine</li> </ul>  | <p>Written personalised document based on the facts provided by the parties and applied to put a term to the dispute. In some cases; handling, supporting and monitoring the customers complaints through the applicable company processes</p>   |
| <p><b>Access free yes/no</b></p>       | <p>No</p>  | <p>Yes</p>   | <p>Yes</p>   |
| <p><b>Price</b></p>                    | <p>The cost is 25 euros for the consumer.</p>  | <p>Free for the consumer and aprox. 3000 SEK for the ARN per case</p>  |  |

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| <b>Funding</b>  | The cost will be refunded by the supplier (the opposing party), if the case is settled in favour of the customer. | ARN is a public authority, financed over the state budget.  |                                |
| <b>Duration</b> |   | Three weeks for the supplier to settle the case in the first instance and within 6 months time for the ARN to provide recommendation. | From a few days to two months. |

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|                             | <b>Spain</b>   |  |
| <b>Name of the body</b>     | <p><b>Consumer Arbitration System:</b><br/>Consumer Arbitration Boards</p> <p><b>Consultative bodies:</b><br/>Commission of the Consumer Arbitration Boards, and General Council of Consumer Arbitration System</p>  | <b>ENDESA's Ombudsman</b>  |
| <b>Private/Public</b>       | Public   | Private (company mediation)  |
| <b>Governance/structure</b> | <p>There are several levels without hierarchy among these Consumer Arbitration Boards:</p> <ul style="list-style-type: none"> <li>- national (the National Consumer Arbitration Board);</li> <li>- regional (Consumer Arbitration Boards of Autonomous Communities);</li> <li>- provincial (Consumer Arbitration Boards of Provinces) and municipal - cities (Municipal Consumer Arbitration Boards). All of them could deal with all kind of conflicts. The competence is based on the</li> </ul> | The Ombudsman is designed by the Board of Directors of the Company. It is independent from Endesa's management and handles customer complaints following a mandate of impartiality and fairness. |

|                |   |   |
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|                | consumer's residence, although the parties could choose which body they prefer.   |   |
| <b>Scope</b>   | Conflicts that affect legal or contractual rights recognized to consumers and users, regardless of their quantity are submitted to arbitration. This system is not able to solve disputes when there are causes of poisoning, injury, death or reasonable evidence of crime or damages directly deriving from them.   | All the stakeholders that can possibly have a dispute with the Group, in Spain.   |
| <b>Process</b> | <p>It is not necessary to firstly complain to the company. However, it is recommended.</p> <p>In the arbitration process, there is a prior mediation with the company. The Consumer Arbitration Board will try to get the parties to reach an agreement, without the need for the intervention on behalf of arbitrators. The mediation procedure needs the suspension of the arbitration process. The process begins with the formulation of a request for arbitration which could be presented to the Consumer Arbitration Board directly or through a Consumer Association. If the business or professional which the complaint has been made against adheres to the system, the President of the Arbitration Board will agree to the beginning of the arbitration procedure. If not, the application will be transferred to the business, company or professional concerned within 15 days to inform them if they agree to solve the disputes through the Consumer Arbitration System or if they refuse the request to use this system.</p> <p>Should the business or professional opt to accept the request for arbitration, then the arbitration procedure is considered to have</p> | Before a complaint is dealt with by the Ombudsman, customer is required to have submitted the complaint to the energy company |

|                                 |  |  |
|---------------------------------|--|--|
|                                 | begun.   |  |
| <b>Process binding yes/no</b>   | Binding for both parties.  | Ombudsman settlements are only binding on the energy company but not on the customer.  |
| <b>Adherence of the parties</b> | Adherence is not compulsory; it is on a voluntary basis. Only if the company accepts the adherence to the Consumer Arbitration System, the dispute with the consumer will be solved by this mechanism.   | Adherence is not compulsory, it is based on a voluntary basis  |
| <b>Nature of outcomes</b>       | Written personalised document based on the facts provided by the parties and applied to put an end to the dispute.   | Written personalised document giving a ruling on a common agreement between the customer and the company, based on the facts provided by the parties and applied to put a term to the dispute. Remedies: actions, non-actions, financial compensation, apology, etc. |
| <b>Access free yes/no</b>       | Yes  | Yes  |
| <b>Price</b>                    | No cost for consumers  | No cost for consumers  |
| <b>Funding</b>                  | The National Consumer Arbitration Board is funded by the Public Administration. The rest of Consumer Arbitration Boards (regional, municipal, etc.) are funded by the public subsidies (they are funded by the territorial public Administration to which they are attached). The Commission of the Consumer Arbitration Boards and the General Council of Consumer Arbitration System are funded by the Public Authorities. | Fully funded by the Company  |
| <b>Duration</b>                 | 6 months (average)   | Two months, excepting complex cases  |

|                             | <b>Czech Republic</b>   | <b>Norway</b>   |
|-----------------------------|---|---|
| <b>Name of the body</b>     | <p><b>The State Energy Inspection (SEI)</b><br/> <b>The Energy Regulatory Office (ERU)</b><br/> <b>Consumer Advisor</b> ( non-profit, independent organisation)<br/> <b>Customer Ombudsman E-ON</b></p>   | <p><b>Norwegian Electricity Industry association</b> (NorgesEnergi AS)<br/> <b>Consumer Council</b><br/> <b>The electricity appeal board</b></p>  |
| <b>Private/Public</b>       | <p>No out-of-court scheme yet.<br/> E-ON company mediation</p>  | <p>Private with participation of consumer and industry representatives</p>  |
| <b>Governance/structure</b> |   | <p>Ombudsman is independent from the company's management and has a mandate of impartiality in the settlement of the claims presented.</p> <p>The customer Ombudsman is organized as a standalone position and works with a team of 3 people dealing with difficult customer issues.</p> <p>The Board is run by a judge and has two representatives from the Norwegian Consumer Council and two representatives appointed by electricity companies.</p>   |
| <b>Scope</b>                | <ul style="list-style-type: none"> <li>• The E-ON Customer Ombudsman is the next( third) step for the escalated complaints of E.ON customers, through independent inspection of their cases and with help of mediation before litigation</li> </ul> | <ul style="list-style-type: none"> <li>• to propose solutions to claims that have already been processed by NorgesEnergi's client services department in cases where the client is not satisfied with the company's response.</li> <li>• to enforce the customer's right to an adequate level of customer care and to sustain customer interest in all contact with the company</li> <li>• to propose activities to improve activities to improve the quality of customer service and customer relations in general.</li> </ul> |

|                                 |   |  |
|---------------------------------|---|--|
| <b>Process</b>                  | <ul style="list-style-type: none"> <li>• Most disputes are solved within the customer service departments. Some escalate to management of complaints or further on to the Ombudsman.</li> <li>• The Customer Ombudsman also addresses the company for future improvements for customers.</li> <li>• The customer can also go directly to SEI or ERU or address the dispute with the independent Consumers Defence Association.</li> </ul> | <ul style="list-style-type: none"> <li>• after receiving a complaint, the Ombudsman requests documentation about the case from the company</li> <li>• ombudsman starts mediation between consumer and company representatives</li> <li>• in the case where no agreement is reached, the Ombudsman issues a written resolution</li> </ul> |
| <b>Process binding yes/no</b>   | Not binding   | Not binding  |
| <b>Adherence of the parties</b> |   | <ul style="list-style-type: none"> <li>• The regulator has the power to impose a conditional fine if a company does not follow the relevant legislation.</li> <li>• A decision by the regulator can be appealed to the court.</li> <li>• Companies that do not follow the boards recommendations will get blacklisted</li> </ul>         |
| <b>Nature of outcomes</b>       |   | <p>Annual report to the management outlining the main problem areas and potential solutions.</p> <p>In 2010 90% of complaints were solved by a mediation process and 10% by a resolution of the Ombudsman.</p>   |
| <b>Access free yes/no</b>       | Yes   | Yes  |
| <b>Price</b>                    | Free  | Free   |
| <b>Funding</b>                  |   | It is voluntary and free.  |
| <b>Duration</b>                 | 2 months  | Approximately 2-3 weeks.   |

## 6. Annex II – Members of the Working Group on ADR in the Energy Sector

### *Working Group Chair:*

Jacqueline Minor  
European Commission

### *Consumer representatives:*

Heidi Ranscombe  
Consumer Focus

Carmen Redondo Borge  
HISPACOOB

Monika Štajnarová  
BEUC

Augusta Maciuleviciute  
BEUC

Thorsten Kasper  
German Consumer Association

Paolo Landi  
Adiconsum

### *National energy regulatory authorities (representative appointed by CEER):*

Patricia de Suzzoni  
CRE (FR)

Cristiano Artizzu  
AEEG (IT)

Sebastian Gras  
BNetzA (DE)

Dirk Van Evercooren  
VREG (BE)

### *Ombudsmen & ADR bodies:*

Stephane Mialot  
MNE (FR)

Charlotta Frantz  
Swedish National Board for Consumer Disputes

Eric Houtman  
Ombudsman Energie (BE)

Lewis Shand Smith (Richard Sills)  
UK Energy Ombudsman

*Energy Industry representatives:*

Gert De Block  
CEDEC

Roel Kaljee  
Eurelectric

David Johnson (Margot Loudon)  
Eurogas

Carmen Gimeno  
GEODE

Michel Astruc  
EEOG

*European Commission:*

Carina Törnblom

Marie-Christine Jalabert

Franck Gouery

Kyriakos Gialoglou