



EUROPEAN COMMISSION

Internal Market and Services DG

FINANCIAL INSTITUTIONS

Retail issues, consumer policy and payment systems

Brussels, **14 September 2009**

**SUMMARY OF THE RESPONSES TO THE PUBLIC CONSULTATION
ON ALTERNATIVE DISPUTE RESOLUTION IN THE AREA OF
FINANCIAL SERVICES**

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1. INTRODUCTION

On 11 December 2008 the European Commission published a consultation document on alternative dispute resolution in the area of financial services and invited stakeholders to respond by 27 February 2009. This document is a summary of the contributions received.

The results of the public consultation will help the European Commission to assess the need and scope of any policy action on alternative dispute resolution in the area of financial services.

2. THE CONSULTATION DOCUMENT

The purpose of the consultation document was to seek the views of the stakeholders on how alternative dispute resolution (ADR) in the area of financial service could be further improved. In particular, stakeholders were invited to express their views on what steps they would consider necessary to make FIN-NET a more comprehensive network, to encourage the creation of ADR schemes and to ensure that financial services providers adhere to them. The document also contained questions on whether financial services providers should be obliged to inform customers about the possibility to resolve disputes through an ADR scheme and whether there is a need to promote FIN-NET and its member ADR schemes.

3. RESPONSES TO THE CONSULTATION

The European Commission received sixty-eight responses to the public consultation. This document provides a high level overview of the comments made by stakeholders.

The respondents can be classified into six main categories: public authorities, consumers/users, financial services industry, ADR schemes, members of the European Consumer Centres Network (ECC-Net)¹ and others. The table below shows how the responses are split between these different categories.

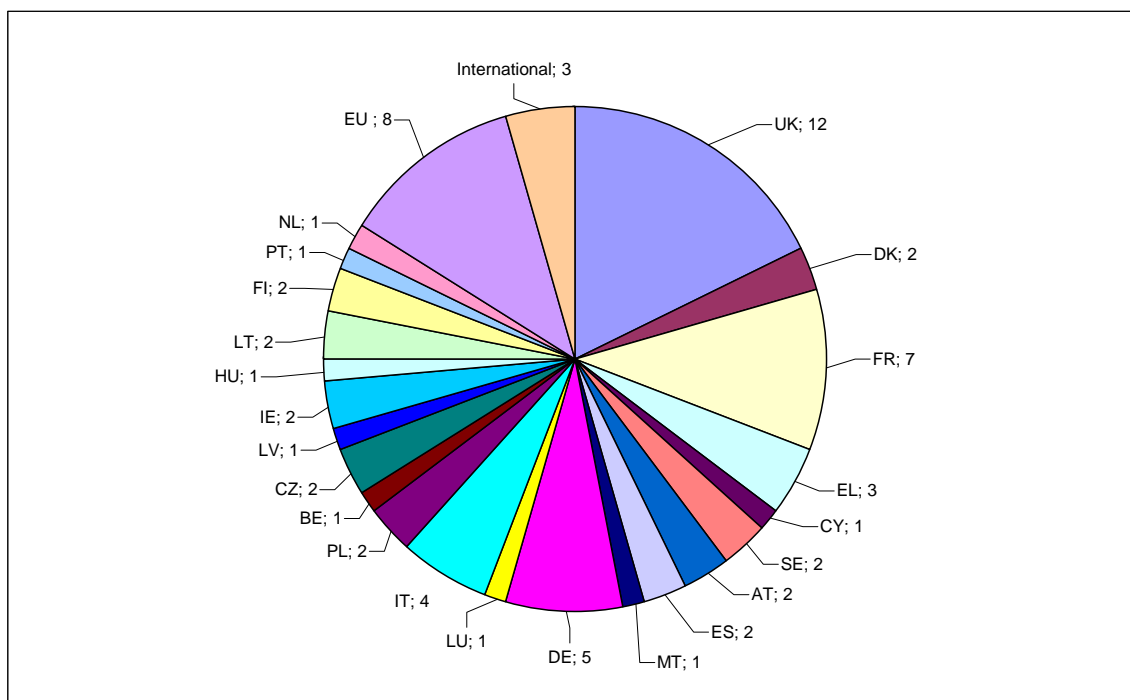
¹ ECC-Net is an EU-wide network of the European Consumer Centres, the aim of which is to promote consumer confidence by advising citizens on their rights as consumers and providing easy access to redress, particularly in cases where the consumer has made a cross-border purchase. ECC-Net services to consumers range from providing information on their rights to giving advice and assistance with their complaints and the resolution of disputes. For more information, please see the ECC-Net annual report 2007 at http://ec.europa.eu/consumers/redress_cons/docs/annual_report_ecc_2007.pdf.

Table 1: Contributions received by stakeholder category

Stakeholder Category	Number of replies	Percentage
Public authorities	6, of which: 5 Member States 1 Level-3 committee (CEIOPS)	8.8 %
Financial services industry	21, of which: 18 Representative Bodies 3 Corporates	30.9 %
Consumers/users	6, of which: 4 Representative Bodies 2 Expert Panels	8.8 %
ADR schemes ²	13	19.1 %
ECC-Net members	14	20.6 %
Other	8	11.8 %
Total	68	

In total, contributions were received from stakeholders from 22 EU Member States as well as from representative bodies at EU and international level.

Graph 1: Numbers of contributions received by territorial origin



² All except one are FIN-NET members.

3.1. General

There is general recognition by stakeholders of the benefits of ADR schemes. Many of them agree that ADR schemes are an effective way to resolve disputes which cannot be resolved by the consumer and the financial services provider bilaterally. Therefore, stakeholders are generally of the view that there is a need to look for ways to improve the possibilities for redress through ADR schemes. However, positions differ as to how this can be achieved and at what level (national/EU). A few stakeholders suggest further research into the reasons for the existing gaps in ADR geographical and sectoral coverage. Some voices from the financial services industry underline that setting up ADR schemes involves costs and that it should be ensured that these costs do not outweigh the potential benefits of having the ADR schemes in place.

3.2. Membership of FIN-NET

Stakeholders were asked the following questions:

- What steps need to be taken to make FIN-NET a comprehensive network, covering all Member States and financial services sectors?
- Should action be taken at EU level? If yes, what form should it take? Binding? Non-binding?

Public authorities support action to make FIN-NET a more comprehensive network. The majority of public authorities suggest non-binding measures, such as awareness-raising, informal contacts by the Commission with those ADR schemes that are not members of FIN-NET, or the Commission issuing a Recommendation. However, one Member State authority as well as some Level 3 Committee members consider that binding measures at EU level should be considered. One option could be inserting a provision requesting Member States to ensure adherence of ADR schemes to FIN-NET in all sectoral legislative measures.

The financial services industry recognises the importance of ADR schemes joining FIN-NET. However, respondents in this stakeholder group either do not specify what kind of action could be taken or suggest non-binding measures, such as awareness-raising initiatives, publicising the benefits of ADR and FIN-NET, or the Commission recommending to Member States to ensure that ADR schemes join FIN-NET. A few respondents argue that the Commission should assess further why some existing ADR schemes have not joined FIN-NET. A couple of respondents in this stakeholder group suggest binding action at EU level.

Consumer/user stakeholders would like to see binding EU action to ensure that all Member States have ADR schemes which cover all financial services sectors and which become members of FIN-NET. One national consumer association suggests that there should be only one ADR scheme covering all financial services in each Member State instead of numerous schemes covering different sectors or providers.

Some ADR schemes are in favour of binding EU action to ensure that ADR bodies exist in all Member States, cover all financial services and providers and join FIN-NET. Others suggest that non-binding measures, such as launching a publicity campaign to all ADR schemes that are not members of FIN-NET to present its role and demonstrate the network's effectiveness and then inviting them to join or contacting the non-members

informally. According to some, the Commission could issue a Recommendation covering this issue.

ECC-Net members emphasise the importance of having ADR schemes in all Member States covering all financial services for the comprehensiveness of FIN-NET. Some advocate for awareness-raising or other non-binding measures. A few would like to see a binding EU measures. A couple of ECCs are of the view that it would be useful for FIN-NET to have a common IT tool.

3.3. Creation of ADR schemes

Stakeholders were asked the following questions:

- What action needs to be taken to encourage the creation of ADR schemes, where they do not exist?
- Should any action be taken at EU level? If yes, what form should it take? Binding? Non-binding?

Suggestions from public authorities on actions to encourage the creation of ADR schemes vary. The majority of the Level 3 Committee members are in favour of action at EU level. A number of respondents are in favour of adding provisions in all sectoral legislative measures obliging Member States to ensure the creation of ADR schemes. One Member State authority points out that currently existing provisions, which only encourage the creation of ADR, are not sufficient to result in a comprehensive network of ADR schemes. A couple of Member State authorities suggest that the Commission could assist Member States in establishing ADR schemes by facilitating exchange of experiences or funding. Some respondents suggest that the Commission could issue a framework Recommendation on ADR, which would cover the whole financial sector.

Some respondents from the financial services industry side point to the need for further analysis of the reasons for the absence of ADR schemes in some Member States. While this stakeholder group generally agrees that there is a need to encourage ADR scheme creation, they favour non-binding measures, such as Commission recommendation or self-regulation. Some respondents suggest that the benefits of ADR schemes should be demonstrated to those Member States where they do not exist. One European banking association expresses its commitment to explore possible means of improvement of coverage of ADR schemes that are created by the financial services industry.

Respondents from consumer/user side are mostly in favour of obliging Member States to have ADR schemes covering all financial services sectors in place. This view is shared by many ADR. Other respondents from the ADR schemes stakeholder group suggest that the Commission should issue a Recommendation encouraging Member States to have ADR schemes in place. A number of ADR respondents underline the importance of promotion of the benefits of ADR schemes and FIN-NET in those Member States where they do not exist. According to some, the existing ADR schemes could be of assistance in this task by sharing their experiences.

The views of ECC-Net members vary. Some suggest soft measures, such as promotion of the benefits of ADR schemes and awareness campaigns. Others favour binding EU measures.

A number of respondents from various stakeholder groups point out that any measures on the creation of ADR schemes should leave the questions of their organisation and characteristics to the competence of Member States.

3.4. Adherence to ADR schemes

Stakeholders were asked the following questions:

- Should adherence to an ADR scheme be mandatory to all financial services providers? If yes, should the financial services providers be obliged to adhere to the ADR scheme only in the country where they are established or to all the ADR schemes in Member States where they provide services?
- Should action be taken at EU level? If yes, what form should it take? Binding? Non-binding?

The majority of public authorities are in favour of mandatory adherence to an ADR scheme for all financial services providers. One national public authority specifies that EU sectoral legislation should contain an obligation for financial services providers to adhere to an ADR scheme. Most of the respondents in this stakeholder group are of the view that providers should adhere to an ADR scheme in the Member State where they are established. However, a number of members of the Level 3 Committee consider that adherence should be mandatory in all Member States where providers offer their services.

With a few exceptions, the financial services industry is against the introduction of a mandatory adherence to ADR schemes for financial services providers. According to them, the nature of ADR schemes is voluntary and introduction of mandatory adherence would not be appropriate, since ADR is meant as an alternative to mandatory judicial process. However, acknowledging that gaps in the ADR network are also due to partial adhesion to schemes by providers, one European banking association declares its readiness to improve the level of adhesion on a voluntary basis. A couple of respondents argue that an obligation to inform the customer about the provider's adherence to an ADR scheme in the contract would induce providers to adhere to ADR schemes due to competitive pressure. Respondents from the industry side consider that providers should adhere to an ADR scheme in the country where they are established.

Consumers/users are in favour of mandatory adherence by financial services providers to ADR schemes and would like to see binding EU action on this issue. With one exception, respondents from this stakeholder group argue that providers should adhere to an ADR scheme in all Member States where they provide services.

The majority of ADR schemes argue that adherence to ADR schemes by providers should be mandatory and favour binding EU action on this issue. Only a couple of schemes argue that the adherence to ADR schemes should be voluntary, since ADR schemes are alternative mechanisms for dispute resolution. According to them, the Commission could rather encourage the adherence. Views in this stakeholder group vary as to which ADR scheme the providers should adhere to: some respondents favour

adherence in the Member State where the provider is established, others argue that providers should adhere to ADR schemes in all Member States where they provide services.

A number of ECC-Net members are in favour of binding EU measures to make adherence to ADR schemes by providers mandatory. Others, while emphasising the importance of adherence to ADR schemes, would like to see softer, non-binding measures or no measures at EU level at all. Views differ also among this stakeholder group as to whether the providers should adhere to an ADR scheme only in the Member State of their establishment or in all Member States where they provide services.

Most other stakeholders support the idea of mandatory adherence to ADR schemes by providers.

3.5. Information to consumers about the ADR schemes and FIN-NET

Stakeholders were asked the following questions:

- Should financial services providers be obliged to inform customers about the possibility to resolve disputes through an ADR scheme? Should this obligation be applicable also with regard to FIN-NET?
- Should action be taken at EU level? If yes, what form should it take? Binding? Non-binding?
- When should the financial services provider inform its customer about the possibility to address the complaint to an ADR scheme? As part of the contractual information? At the moment when the dispute arises and it cannot be settled between the provider and the customer bilaterally? Both? Other?

According to the majority of public authorities, financial services providers should be obliged to inform customers about the possibility to resolve disputes through an ADR scheme as part of contractual or pre-contractual information. A couple of respondents in this group point out that such obligation could be set out in EU sectoral legislation.

The financial services industry generally agrees that for consumers to be able to seek redress they need to be informed about the possibility to resolve their disputes through an ADR scheme at a pre-contractual stage or when signing the contract. Many respondents in this stakeholder group do not specify what measures should be taken to achieve this goal. Some advocate for self-regulatory measures, some suggest that binding EU measures should be taken, while others are against binding EU measures. Some respondents refer to the existing information requirements in some EU legislative acts, such as the Payments Services Directive or the Consumer Credit Directive. A number of financial services industry respondents argue that providers should also inform about FIN-NET, while others do not consider it necessary, since, given the design of FIN-NET, the consumer's home ADR scheme should inform about the ADR scheme in the provider's Member State, which is usually the scheme competent to resolve the dispute.

According to consumer/user respondents, financial services providers should be obliged to inform their customers about the possibility to resolve disputes through an ADR scheme. However, some of them argue that this should be done at a pre-contractual or contractual stage, others favour such information to be provided at the moment when the

dispute arises and cannot be resolved by the consumer and the provider on a bilateral basis. The majority of respondents in this stakeholder group are in favour of binding action at EU level. One user expert panel stresses that alongside the obligation to inform about an ADR scheme, it is necessary to ensure that procedures for out-of-court resolution of disputes are efficient, speedy, objective and free of charge or of moderate costs.

ADR schemes consider that financial services providers should be obliged to inform their customers about the possibility to resolve disputes through an ADR scheme. Some argue that such information should contain also the contact details of the scheme. The majority of respondents consider that such information should be given in the contract or at the pre-contractual stage. Others argue that such information should be given at the moment when the dispute arises and cannot be resolved by the provider and consumer bilaterally or both in the contract and when the dispute arises. A number of ADR schemes would favour binding EU action on this issue. Views differ as to whether such obligation should also be applicable with regard to FIN-NET: some are in favour, others argue that due to the design of FIN-NET information about national ADR schemes is sufficient to ensure that cross-border cases are resolved.

According to ECC-Net members, consumers should be informed about their possibilities to get redress. Most of them argue that such information should be given both in the contract and when the dispute arises. Views in this stakeholder group diverge as to whether binding EU action is needed or whether softer measures at EU level should be taken.

A number of other stakeholders are also supportive of the obligation on providers to inform their customers about the possibility to resolve disputes through an ADR scheme.

3.6. Awareness of FIN-NET and of its member ADR schemes

Stakeholders were asked the following questions:

- Is there a need to promote FIN-NET and its member ADR schemes? If yes, what would be the best way to do so?

Respondents from all stakeholder groups almost unanimously agree that there is a need to promote FIN-NET and its member ADR schemes both at EU and national levels by public authorities, consumer organisations, financial services providers and ECC-Net. According to some respondents, however, FIN-NET would be best promoted through its member ADR schemes.

Some suggestions for ADR and FIN-NET promotion are rather general. Examples include awareness-raising or information campaigns, possibly as part of wider financial education campaigns, involving a wide range of information channels, or public events, such as conferences, seminars. Some respondents also suggest more specific measures, such as production of leaflets, improvement of FIN-NET and national ADR websites (a couple of respondents argue that FIN-NET website should not be limited to three languages and should be translated into all EU languages) or spreading of information about disputes resolved via FIN-NET.

Some respondents consider that an obligation for financial services providers to inform their customers about the possibility to resolve disputes through an ADR body would be the most effective tool for ADR promotion.