



Voorzitter

# Eerste Kamer der Staten-Generaal

The President of the European Commission  
De heer J.M. Barroso  
B-1049 BRUSSEL  
BELGIË

Binnenhof 22  
postbus 20017  
2500 EA Den Haag

telefoon 070-312 92 47  
fax 070-312 92 33

e-mail [voorzitter@eerstekamer.nl](mailto:voorzitter@eerstekamer.nl)  
internet [www.eerstekamer.nl](http://www.eerstekamer.nl)

Date 24 januari 2012

Subject Subsidiarity objections COM(2011)793 en COM(2011)794

Reference 149842.01U

Dear Mr Barroso,

In accordance with the procedures adopted for this purpose, the Senate of the States General has checked the above-mentioned proposals by reference to the principle of subsidiarity. In doing so it has applied Article 5 of the EU Treaty and Protocol 2 to the Treaty of Lisbon on the application of the principles of subsidiarity and proportionality.

In this letter we inform you of the opinion of the Senate of the States General. Identical letters have been sent to the European Parliament, the Council and the Dutch government.

The proposed Directive concerns an obligation for Member States to ensure that all disputes between consumers and traders that arise from the sale of goods or the provision of services can be submitted to an ADR entity. The proposed Regulation aims at establishing a European online dispute resolution platform. The legal basis for both proposals is Article 114 of the Treaty on the Functioning of the European Union.

The Senate of the States General has taken note with interest of the above proposals. The Senate has not discovered anything about the chosen legal basis that would warrant an objection. It wishes, however, to raise various objections in relation to the principle of subsidiarity.

#### *Subsidiarity objections to the proposal for a Directive on consumer ADR*

The Senate considers that the proposal does not comply with the principle of subsidiarity as the reasons given for the need to adopt this approach to harmonisation are not adequate.

The Senate arrives at this conclusion first of all because this proposal for a Directive obliges the Member States to introduce legislation under which an entity is established to arrange for alternative dispute resolution providing a high level of consumer protection. A successful form of dispute resolution is already in operation in the Netherlands. However, this system does not have a statutory basis, but is instead founded on self-regulation and the voluntary participation of the parties. This system is of a fairly advanced nature in comparison with the situation in other Member States. Voluntariness and self-regulation have been factors in the system's success. The Senate therefore sees no reason to adopt legislation providing for a system of alterna-



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tive dispute resolution. It believes that if the European Commission wishes to achieve its goals the first step should be to adopt appropriate policy measures and that the possibility of making proposals for a directive need only be considered later.

As regards the proposal for a Directive on consumer ADR the Senate would also note that this appears to disregard aspects of private international law which may arise, for example, in answering the question in which Member State an ADR entity could or should hear a dispute.

The Senate also notes that in Article 2 and Article 5 (2) of the proposed Directive on ADR for Consumers it is provided that the Directive will apply not only to cross-border consumer disputes but also to domestic consumer disputes. As the Senate considers that the scope of the Directive goes further than necessary, it makes a subsidiarity objection on this point as well. The Senate sees no reason why the alternative resolution of domestic consumer disputes should be regulated in a European directive.

*Subsidiarity objections to the proposal for the Regulation on consumer ODR*

The Senate notes that the success of the ODR platform depends on the proper functioning of the ADR entities in the Member States. While the ADR entities in the Member States are not functioning properly, the Senate does not see the point of or need for an ODR platform. This is why the subsidiarity objections referred to above also apply to this proposal.

Finally, the Senate would point out that in its opinion the consequences of the ADR proposals could entail considerable expense. In the system of alternative dispute resolution that is in operation in the Netherlands, the costs are in principle borne by the market. As a consequence of the proposal for the Directive the costs would be partially transferred to the government sector. The Senate therefore objects to this proposal on this ground as well.

Yours sincerely,

G.J. de Graaf  
President of the Senate of the States General