

ALTERNATIVE DISPUTE RESOLUTION IN THE EUROPEAN UNION
*
NATIONAL BUSINESS ASSOCIATIONS

Please fill in and return the questionnaire no later than
20th March 2009

*by email in Word-Format (.doc) to ADR@civic-consulting.de
Please do not pdf the questionnaire*

In the Consumer Policy Strategy for 2007-2013 the European Commission underlines the importance of effective enforcement and redress for consumers and announces that it would reinforce the monitoring and encourage the use of the existing recommendations that establish a number of minimum guarantees for Alternative Dispute Resolution (ADR) schemes (Recommendation 98/257/EC and 2001/310/EC).

The Commission therefore has commissioned to Civic Consulting of the Consumer Policy Evaluation Consortium (CPEC) a study to analyse the overall functioning of ADR schemes¹ across the European Union and to identify best practices.

This survey is addressed to national business associations in all Member States. Your contribution will help the European Commission to assess what measures may be necessary to strengthen the functioning of ADR schemes across Europe.

If you have any further questions, do not hesitate to contact Sara Buccino at:

ADR@civic-consulting.de Phone: +49 30 2196 2287 Fax: +49 30 2196 2298

Part 1. General information

1. Please identify yourself:

a. Name:

Michaela Barcajova, Mgr.

b. Country:

Slovakia

c. Questionnaire completed by:

Michaela Barcajova, Policy Advisor of Legislation, michaela.barcajova@slaspo.sk, tel: +421 2 4342 9985

¹ ADR schemes are bodies responsible for the out-of court settlement of consumer dispute resolutions. Included in the scope of the present survey are both notified ADR schemes (i.e. notified by an authority in your country to the European Commission and listed on DG SANCO's website) and non-notified ADR schemes. Excluded from the scope of this survey are settlements reached in the framework of a judicial procedure and dispute resolution schemes between businesses.

2. Does your association have an internal ADR scheme/procedure for the out-of-court settlement of disputes that might arise with consumers?

No

According statutes, Slovak Insurance Association (SLASPO) can not interfere in legal relations between the insurance company and consumers.

SLASPO established the Ethics Committee that solves ethical disputes between member insurance companies. This committee also resolves ethical problems, when one insurance company acts against consumers' interests and so that discredits the reputation of the whole insurance sector. That's why we could say, that it also serves to protect the consumer.

If YES, please fill in, in addition, the supplementary questionnaire addressed to ADR schemes in the EU ("Questionnaire_ADR schemes" in attachment).

If NO, do your members use external ADR schemes² to solve disputes that might arise with consumers?

Yes

Our members can use mediation or arbitration to solve their disputes with consumers.

Pursuant to the new slovak legislation (Act on consumer protection in financial services planned to be effective from the 1st January 2010) consumers will have a possibility to use the financial ombudsman, that would be common to the whole financial market.

3. Under which conditions do your members use ADR and for what type of claims?

Mediation is regulated by the Act No. 420/2004 on Mediation.

Mediation itself is based on a mediation agreement or common statement of the parties to the protocol written by mediator. The whole process is based on mediator's endeavour to mediate both parties by discussion, compromise, or another means. The result of mediation could be an agreement, that is binding for the parties a could be use for execution under some conditions.

Mediation as an out-of-court activity referred also to commercial contractual relations where persons involved in the mediation using a mediator to resolve the dispute, which arose from the contractual relationship or other legal relationship. So that any claim between insurance company and consumer could be solved by mediation.

Arbitration is regulated by Act No. 244/2002 on Arbitration.

Arbitration agreement is also the basis for arbitration. It can be replaced by a common statement of the parties to the protocol or arbitration clause within some contract. During an arbitration process the parties have the equal position, process starts with an action and when an action has already been submitted within arbitration court, it is not possible to bring it to the general court. The arbitration court decides about written or verbal process, court realizes only suggested evidences and process would finished by an arbitration judgement, that has the same effect as a final court judgment.

Within an arbitration process a property disputes arise from national and international civil and commercial relations are solved. So that also any claim or dispute between insurance company and

² The questions refers both to private ADR schemes, i.e. out-of-court schemes established by private bodies, and public ADR schemes, i.e. out-of court schemes established by public authorities.

consumer could be solved by arbitration.

It has to be highlighted that arbitration in Slovakia is performed by arbitration courts, that already has the word "court" in the title. Then is important to emphasize that arbitration courts are not specially designed for consumers (as financial ombudsman will be), but for everybody.

4. Do your members comply with final decisions issued by ADR schemes?³

Don't know

If not all the members comply, what are the main reasons for non-compliance?

Please specify

5. In your view, what are the main reasons that prevent businesses from using ADR schemes? (multiple choices possible)

- Lack of available ADR schemes in some sectors of industry
- Lack of businesses awareness regarding the existence of schemes
- Lack of information on the procedural rules of the schemes
- Lack of trust in the schemes
- Complexity of the schemes
- Length of the procedure of the schemes
- Maximum/Minimum value for the claim to be admitted
- Other *Generally ADR schemes are not well-known and spread, and that's why people are using general courts more often. People considered these schemes as very complicated, so that they prefer general courts also because of the long court's tradition.*

Arbitration is more used by companies, businesses, then by common people; but mediation do not, because of the decision's character and mediation's own principles. Decision reached within mediation has not the same effects as judicial decision and businesses need such a decision in order to enforce it. Then the main principle of the mediation is to bring parties to compromise, that is not so suitable for obtaining redress. For businesses it is easier to bring the action to the general courts and reach the enforceable decision, mainly when they are confident in their claim.

Part 2. Assessment of the use of ADR in your country

6. Are there sectors of industry in your country in which it is not possible to solve a dispute with a consumer through ADR because no relevant schemes are available?

No

³ Final decision means the issuing of a recommendation or decision by an ADR scheme, or the conclusion of a consensual agreement between the parties mediated by an ADR scheme.

If YES, please specify sectors of industry in which there are no Consumer ADR schemes available (multiple choice possible)

- Banking
- Insurance
- Investment/securities
- Transport
- Postal services
- Package travel/tourism
- Telecommunications
- Energy, water supply, heating
- Food services/products
- Non-food consumer goods
- Construction
- Games of chance
- Scams and pyramid schemes
- Other *Please specify*

In Slovakia anybody (consumers or companies) can use mediation or arbitration. These institutes are not specially designed for some services, sectors or consumers and everybody can use them.

Furthermore a financial ombudsman will be dedicated for all financial services and specially designed for consumers.

7. Please provide your view concerning the functioning of the ADR schemes in your country.

a. Are ADR schemes known by consumers?

Hardly known in any sector

As it is mentioned above - most people considered these schemes as complicated, so that they prefer general courts that have a long tradition.

b. Are ADR schemes independent in their decisions?

Don't know

But we suggest that they are independent, because there is no reason for contrary.

c. Are ADR schemes easily accessible⁴ to consumers?

Please select from the dropdown menu

None of possibilities from menu seems as appropriate. Accessibility within ADR will only improve in a future.

They are hardly accessible in that way, that existing ARD schemes are quite expensive.

Financial ombudsman, planned according the new act, expects only symbolical charge - this fact will improve accessibility, no doubt.

On the other hand people are not obliged to use legal representative when using ADR and the whole arbitration process could be written if an arbitration court decides so. These possibilities make the process easier.

For comparison bank's ombudsman is widely well-known in Slovakia and people are using his services a hepls very often - we can say that is very well accessible to consumers . So that we hope, that financial ombudsman will also be a great hepl for common people.

d. Are the ADR schemes an effective way for consumers to obtain redress?⁵

Don't know

We don't think so, that mediation is the best way of obtaining redress, because it is mainly designed for reaching compromise between parties, which is more suitable for example within neighbourly disputes or similar civil cases. So that for financial institutions it is not so advantageous form of solving disputes.

Arbitration appears to be more suitable for quick redress, but it's less used on the whole.

⁴ ADR procedures can be regarded as easily accessible if consumers have access to the procedures without being obliged to use a legal representative, if the procedures are available also by electronic means, and if the procedures are free of charge or of moderate cost.

⁵ This question only refers to consumer relevant cases which in principle could be solved by ADR, such as low and medium value claims that are not overly complex and do not involve complicated issues of liability.

8. In your view, what are the main reasons that prevent consumers from using ADR schemes? (multiple choices possible)

- Lack of available ADR schemes in some sectors of industry
- Lack of consumer awareness regarding the existence of schemes
- Lack of information on the procedural rules of the schemes
- Lack of trust in the schemes
- Complexity of the schemes
- Length of the procedure of the schemes
- Cost of the procedure of the schemes
- Maximum/Minimum value for the claim to be admitted
- Lack of compliance by the business
- Other. *ADR schemes are not well-known and spread, and that's why people are using general courts more often. People considered these schemes as very complicated, so that they prefer general courts. Most of Slovaks are also very conservative and have a "fear" of something "alternative".*

In Slovakia mainly mediation is relatively new institutes, so that such a barriers will be still existed some time.

As it is mentioned above, ADR will be improved by establishing financial ombudsman for the whole financial services and hopefully would be so well-known, helpful and accessible as bank's ombudsman nowadays.

9. In your view, what are the main reasons that prevent consumers from using ADR schemes cross-border (i.e. consumer residing in other EU Member States against a business/trader in your country)? (multiple choices possible)

- Language barriers
- Travel expenses
- Lack of available ADR schemes in some sectors of industry
- Lack of consumer awareness regarding the existence of schemes
- Lack of information on the procedural rules of the schemes
- Lack of trust in the schemes
- Complexity of the schemes
- Length of the procedure of the schemes
- Cost of the procedure of the schemes
- Maximum/Minimum value for the claim to be admitted
- Lack of compliance by the business
- Other. *Please specify*

10. What are in your view the advantages of ADR procedures compared to court proceedings in your country?

The out-of-court mechanisms are more flexible than court proceedings and length of procedure is shorter within ADR.

11. What are in your view the disadvantages of ADR procedures compared to court proceedings in your country?

In Slovakia it is quite higher fees and less experiences with these institutes. People regard them as very complicated.

12. Do you think that the existing ADR schemes in your country could easily be adjusted to deal with mass claims?

Don't know

If YES, what adjustments would be needed in your view?

Please specify

If NO, what will be the main obstacles?

13. Do you think collective ADR could be an effective way for consumers to obtain redress for mass claims in a cross-border situation?

Don't know

As it is mentioned above, existing mediation uses many tools in order to reach compromise between parties, so that it is hard to say yes or no. It is strange to imagine collective redress within mediation, when legal representative that represents hundered affected consumers will be persuaded by various psychological means and tools to reach compromise on behalf of consumers. Within future financial ombudsman is now early to access something.

14. In your view, are there any features of the ADR procedures available in your country that could be considered best practices and could be applied to other ADR schemes in order to improve their functioning? If applicable, please make a distinction between individual and collective procedures.

Please specify

15. What in your view could be done to further develop individual ADR and collective ADR in your country?

Make ADR mechanism more accessible. Improve ADR, as it is planned in Slovakia. It is the first step. Then it is necessary to propagate these institutes as quicker, more flexible and accessible on the whole to common people than normal court proceedings.

16. In your view, what would be useful indicators to monitor the evolution of ADR schemes in the next years?⁶

Concrete cases and their features - outcomes, effectivity of results, leght of procedures, accessability on the whole, fees etc.

⁶ Examples for possible indicators would be: number of cases, outcomes, speed of procedure, visibility, reputation among business and consumers, coverage of sectors etc.