



More can be done to make Consumer-Dispute Resolution fully effective in the EU – NEON Comments on the Report on the Application of the ADR Directive

NEON, the European network of independent, not-for-profit consumer dispute-resolution services and ombudsmen active in the energy sector, welcomes the European [Commission's report on the application of Directive 2013/11/EU](#) (the "ADR Directive"). In view of the publication of the Commission report, NEON conducted an internal study in order to determine the impact the Directive has had on publicly-mandated dispute-resolution bodies on the ground. This paper builds on that internal study and summarises its main findings. It is therefore an aggregated reply that does not necessarily reflect the situation encountered in all Member States and by all individual NEON members.

Based on our experience, the ADR Directive has created a certain level of awareness and a level-playing-field for alternative dispute resolution (ADR) bodies in the European Union. However, we also observe some important shortcomings.

As rightly identified by the Commission report, the general lack of knowledge of ADR procedures and the lack of clarity for consumers when it comes to identifying the ADR entity to turn to in case of problems, are two of the main issues limiting the effectiveness of the Directive. In addition, we have identified four other situations that, in our view, restrict the progress that the Directive could have helped to achieve. Those are:

- The lack of clarity of the certification and independence/impartiality criteria listed in the Directive;
- The adverse impact the Directive has had on certain pre-existing ADR bodies and legislation;
- Limited cooperation between ADR entities and enforcement authorities;
- Strained financial resources of ADR bodies.

Lack of clarity of the certification and independence/impartiality criteria

As shown in the Commission report, there is currently a large fragmentation when it comes to how the text of the Directive has been transposed into national law. **It is our understanding that those national differences are closely linked to the very general certification and independence criteria of the Directive**, and not only to very different (pre-existing) legal structures or cultures.

For example, the expertise, independence and impartiality criteria in Article 6 mostly apply to natural persons. Financial independence criteria are currently limited to having a separate budget when the natural person in charge of ADR is employed or remunerated exclusively by the trader. It can be questioned whether those criteria are likely to guarantee the full independence of the ADR body, especially when they are not combined with accountability and governance criteria and requirements on the source of the funding.



It is our impression that the **lack of clarity found in certain provisions of the ADR Directive has created new challenges for Member States**. EU countries have therefore tried to solve the certification and independence questions left open by the Directive in their own way, leading to the fragmentation mentioned in the report. This fragmentation is not only detrimental for consumers —especially those faced with cross-border disputes— but it also hampers cross-border cooperation at a time when it is increasingly needed.

Impact of the Directive on pre-existing ADR bodies and legislation

From what we can observe, **the minimum requirements of the ADR Directive did not always have positive outcomes**, especially in countries that had already pre-existing ADR systems. In some countries, the Directive has actually lowered national quality requirements: for example, in France, the time for the public energy ombudsman (le Médiateur National de l'Énergie) to treat complaints was changed from 60 to 90 days following the transposition of the Directive. In other countries, pre-existing ADR bodies (established by national law), have not been certified due to an extremely restrictive interpretation of the Directive, linked to the lack of clarity mentioned before. Finally, especially in Member States where different entities operate in the same sector, the Directive has led to competition between them and a lack of cooperation when it comes to avoiding the ping-ponging of the consumer and the identification of structural issues encountered by consumers.

Limited cooperation between ADR entities and enforcement authorities

It is our view that ADR entities should not simply solve individual complaints, but also use their work to detect structural issues in the market. In that sense, **the cooperation between ADR bodies and other enforcement authorities is essential**. While, in the energy sector, NEON members acknowledge that the cooperation between ADR entities and enforcement authorities works fairly well, we think that this cooperation could still be considerably strengthened, for example through more stringent reporting obligations or through the obligation of presenting the ADR annual reports to public enforcement authorities and policymakers.

Strained financial resources

In the energy sector, roughly half of consumers know about ADR procedures, mostly thanks to information obligations put on companies and proactive communication campaigns by ADR bodies. This is despite the fact that **many ADR bodies currently struggle with limited funding and resources, due to a varied and complex set of reasons (decreasing public budgets, traders filing for bankruptcy, lack of mandatory adherence to an ADR scheme, etc.)**. This considerably limits their flexibility in dealing with an increasing number of complaints following communication actions and other (unexpected) events such as traders stopping their activity or a sudden surge in unfair trading practices by certain traders.



Our Recommendations

In view of the above, **we call upon the Commission to increase its efforts to support ADR entities and their networks** through more ambitious funding programmes and actions including all stakeholders involved in ADR, from consumer protection authorities to civil society organisations and consumer representatives. In addition, we would also suggest that the **Commission re-establishes an Expert Group on ADR** (with Member States, ADR bodies, consumer representatives and other civil society organisations) **to increase the sharing of experiences and allow an open dialogue on the challenges that still lie ahead in order to make ADR fully effective in the EU.**

Last but not least, we would like to refer to the **provisions of the new electricity (“market design”) directive**, especially the need for independent ADR mechanisms such as energy ombuds, regulatory authorities and other consumer bodies. Those schemes have shown their effectiveness in dealing with energy disputes both for consumers and for traders, with which NEON members have established a good cooperation over the years.

We would therefore suggest **extending the provisions found in the electricity sector to other regulated sectors providing essential goods and services** (including gas, water, telecoms, postal and financial services, public transport, healthcare), therefore providing larger missions to ombuds and regulatory authorities, allowing them to propose structural solutions to companies and policymakers. At the same time, independent ADR bodies can help raise the voice of vulnerable consumers and citizens in order to cope with the financial, technical and digital transitions developed by (new) services in the internal market.

We look forward to taking up the challenge to make the most out of ADR in the EU, and to teaming up with all stakeholders wishing to help implement the ADR Directive to the best of its potential.



Annex: The Impact of the ADR Directive on Publicly-mandated ADR Bodies

In preparation for this paper, NEON conducted an internal questionnaire among its members (autonomous and independent organisations set up by national and regional authorities) to determine the impact that the ADR Directive has had on them. The main results of this work show that, while the Directive has influenced the set-up of national ADR bodies and systems, not all developments are equally positive. The main learnings are briefly summarised here:

- **A large number of consumers still does not know about ADR, with a level of un-awareness of the ADR entity being between 50% and 70%. Information provided by traders** is deemed to be the most effective way of raising awareness of ADR among consumers, followed by **information provided by national authorities.**
- **Consumers are confused as to what ADR body to turn to, especially when there are several ADR providers in the same sector.**
- **The legislation has led ADR bodies to adapt their complaint treatment procedures.** In one specific case (France), the quality requirements were actually lowered by the Directive, when the deadline to treat cases went from 60 to 90 days.
- **NEON members cooperate with other ADR entities on a national level,** despite the fact that very few Member States encourage cooperation through their national legislation or in a structured way.
- Despite the provisions of the Directive, **the cooperation between ADR entities and enforcement bodies could be substantially improved.** In some countries, there is no information exchange and ADR entities are not forced to send information to enforcement authorities and policymakers. In others, despite information exchanges, no solutions are implemented following the advice provided by ADR bodies.



NEON is the European network of independent, not-for-profit consumer dispute-resolution services and ombudsmen active in the energy sector. Our members have the public mandate to provide an easily-accessible and free-of-charge system to solve disputes between consumers and companies. We work to guarantee the rights of all consumers, including the most vulnerable ones, through the promotion of public-interest, independent complaint-resolution bodies.

Our members are autonomous and independent organisations or belong to such an independent organisation and have been put in place by the national, regional or local authorities on which they depend. In 2017, our members resolved 90 000 complaints in the energy sector.

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