



EUROPEAN Justice Forum

European Parliament's activities on Collective Redress and ADR

July 2011

The document provides an overview on the developments in the European Parliament (EP) related to Collective Redress (CR) and ADR dossiers within the period of 11th – 14th July, and contains accounts of the following:

- I. [ITRE consideration of the draft opinion on CR, 11th July;](#)
- II. [IMCO, presentation of the study on ADR, 12th July;](#)
- III. [IMCO, consideration of the draft opinion on CR, 12th July;](#)
- IV. [ECON, exchange of views and speech by Almunia](#)

In Sum:

On CR the views so far are divided especially between ITRE and IMCO committees, where discussion in ITRE is focused on safeguards. IMCO is more focused on financial issues and some of the MEPs stressed that a discussion on CR is pointless.

On ADR the views so far are in line with EJF especially after presentation of new study on ADR which underlines necessity of ADR schemes that are more effective and cheaper for MS. Most discussions focused on the issue of financing ADR.

I. [ITRE consideration of the draft opinion on CR, 11th July;](#)

ITRE held its first meeting on Collective Redress (CR) chaired by MEP Herbert Reul (EPP, DE) and attended by the European Commission's representative, Eddy de Smijter, Deputy Head of Unit A1, Private Enforcement, DG COMP.

ITRE as the shadow committee on the ADR and CR reports has appointed the following MEP to lead on the process as draftsmen:

- Opinion on Collective Redress

Lena Kolarska-Bobińska (EPP, PL) – Rapporteur:

- CR is a compromise and ITRE committee should support it as it is an important tool for consumers and SMEs in defending their rights.
- Called on the EC communication to move toward EU level system on CR to and toward strong system of safeguards to avoid abusive litigation by creating clear rules on admissibility, liability, jurisdiction and who can organize such an action.
- Safeguards examples: limits on which NGO and which national authorities can take part in an action, guarantee by action takers to cover liability on legal costs when a case is subject of negative decision, preventing forum shopping which should prevent from extremes of US system.



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- Stressed that CR should facilitate access to court, but ADR often can be quicker and with lower-costs. Consumer should be given an option which way they prefer.
- Emphasized that complete harmonization across Europe is impossible, because of the great differences between MS legal systems. She insists on common system on EU level, with minimum standards prepared by Commission, as a facultative possible measures guideline for Member States.

Fiona Hall (ALDE, UK) – Shadow Rapporteur:

- Supported the idea of limiting the number of bodies involved, to achieve it she suggested put the limits to bodies who were touched by the action and who have active interest in it.
- The importance of SMEs having recourse against large companies and suggested CR should expand and extend to environmental law, as on Hungarian example, both business and citizens were affected by pollution accident which spread over many borders. CR would ensure proper functioning of law in cross-border cases.
- Emphasized that CR should be both: opt-in and opt-out, where judge can decide what the best option is in particular case.

Claude Turmes (Greens, LU) – Shadow Rapporteur:

- Asked about future steps and expectations toward EC outlined the problem with framework legislation which is too vast to cover enough what different sectors required.
- As a shadow rapporteur, Turmes suggested the table amendments and discussion on sectoral specificity in area of environment, consumers, competition etc. to create more targeted instruments.
- Underlined the two-stage test case procedure (in the most affected country phase 1) go to court establish responsibility, phase 2) SMEs, citizens take first ruling and ask for compensation. System recommended by French and German senates.
- Admitted the need to prevent forum shopping and urgency to create the special rules on it.
- Disagreed with Rapporteur on loser pays principle. Suggested to look into detail the European Small Claims Regulation if there is a solution for potential users of CR.

On behalf of the European Commission - Eddy de Smijter, Private Enforcement Unit, DG COMP:

- Underlined that mainly the stakeholders welcome the exercise to look for common principles on CR, trying to find for every law will be applicable, stressed need to find sufficient safeguards against abusive;
- Most of the stakeholders support opt-in option and Reference to US avoid by all costs
- Common demand to stimulate ADR which will not be mandatory to escape form judicial CR possibility;
- Suggested that CR mechanism should not apply only to consumers but also SMEs;



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II. Internal Market and Consumer Protection Committee (IMCO), presentation of the study on ADR and rapport ADR in civil, commercial and family matters, 12th July;

12th July, during IMCO meeting chaired by MEP, Malcolm Harbour (EPP, UK) and attended by the European Commission's representative, Maria Christina Russo, DG SANCO [insert title] the study "*Cross-Border Alternative Dispute Resolution in the European Union*" was presented. This report presents the results of research on ADR and selected EU legislation relevant for consumer redress. The research was conducted by Civic Consulting and it is a preparatory work for study that Commission is preparing.

Presentation was divided into 3 parts: Overview over ADR schemes, legal analysis and presentation of conclusions.

1. Overview was presented by **Ms. Neva Nahtigal** (Coordinator), where the main points were:

- Within the EU overall 750 ADR schemes has been identified and 470 of them has been notified to the Commission.
- In 2008 reported exceeded 500 thousands of ADR cases thanks to increased availability and consumer awareness.
- Case studies were taken over 7 national ADR scheme with cross-border coverage through 3 relevant EU networks (ECC - NET - European Consumer Centre; FIN-NET - Finance Dispute Resolution network on national out-of court complain schemes and SOLVIT - Network that solves problems caused by misapplication on internal market by public authorities).
- Barriers to overlap on national cross-border level to use ADR schemes were found both in geographical and sectoral cases.
- ADR schemes do not accept complaints unless traders are in different MS.
- ECC NET play fundamental role in ADR schemes in bridging language gaps.

Legal analysis was presented by **Professor. Tom Van Dyck**. The study examined three EU jurisdictions in five countries: France, Poland, The Netherlands, United Kingdom and Germany.

- European Small Claims Procedure is rarely used by consumers. The main reasons of it are: the low level of awareness, gaps and in existing regulatory framework. Prof. underlined that ESCP gap is lack of transparency about cost; secondly claim form has to be in other language and finally, lack of clear and certain information about procedures.
- Showed that Mediation in civil and commercial matters does not indicate obligatory standardized quality of mediators, and who will take cost of mediation.



- Prof. Van Dyck pointed out that all jurisdictions propose the court intervention and they are not a real ADR, but complementation measure and do not substitute completely legal procedures.

Recommendation chapter was presented **Dr. Frank Alleweldt - Project director:**

- Existing ADR instruments do not compensate in full wage: traders, SMEs and members or traders out of trade association. Dr Alleweldt informed that ADR schemes are more successful in more regulated sectors like finance or telecommunication.
- Stressed the need for specific instruments built on previous legislative requirements, especially strengthening access to cross border ADR.
- Showed that legal instruments could be complemented by issuing ADR best practice, evaluation on guideline on existing, well working ADR models at particular MS. ADR schemes work better if they are put under national organization umbrella.
- EU legal instrument needs to require MS to ensure sufficient founding for their ADR system to operate effectively, especially in cross border situations that have higher costs.

Robert Rochefort (ALDE, FR) – Rapporteur:

- ADR should encourage with legislative proposals with priority for Single Market Act and all efforts should be taken to fulfill gaps both geographical and sectoral.
- Proposed creation of single European charter, which will be simple capable to cooperate with different groups, with proportionality of system and costs particularly for SMEs.
- Underlined the importance of transparent annual reports on ADR.
- Strongly advised ADR should be operated by in a competent way - trained people, encourage quality certification under 9001 to assure strengthen in approach.
- Suggested EC to define ADR as it has negative meaning in some languages.

Barbara Weiler (S&D, DE) – Shadow Rapporteur:

- Asked about experience in public business whether ADR is issued and is it necessary to have legislative EC proposal, agree with foundation of law for the countries where there is no legislation on ADR like in Bulgaria.
- Underlined that ADR should be supplementary to the idea of class actions and it should be free for consumers.

Hans-Peter Mayer (EPP, DE) – Shadow Rapporteur:

- Stressed that knowledge of the procedure is essential. Suggested creating of a Website available in all EU languages which will be accessible and easy to use for regular user.



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- Asked for more specification and clearance in definitions and terms that to do not allow much room for interpretation.
- Suggested ADR costs might be reimbursed; ADR schemes should not be free of charge, otherwise people will find it useless or they will exploit it.

Ashley Fox (ECR, UK) – Shadow Rapporteur:

- Outlined ADR if works is benefit for business, should be free of charge, otherwise it will not develop.
- Disagreed with rapporteur in point about CR system being essential.
- Agreed with statement that national systems must be coordinated and to avoid creating another EU body, coordination should be held with smallest touch possible; he suggested launching special website on ADR schemes.

Philippe Juvin (EPP, FR)

- Underlined the ADR importance to move away from confrontation: loser –winner.
- Stressed that CR should be final result once ADR is exhausted.
- ADR should be free of charge.

Sylvana Rapti (S&D, GR) - Rapporteur of draft opinion on CR

- Brief comment that ADR and CR go hand in hand and to support ADR there have to be CR. Free access to ADR is helpful, but as MEP Mayer said: everything free is tends to be underestimated.

On behalf of the European Commission - M.-C. Russo, Head of Financial services and Redress Unit, DG SANCO:

- Stressed that presented opinion is in line with EC proposal and confirmed that is the main reason of proposal for the Directive to fill the gaps especially in these sectors where ADR does not exist.
- EC thinks about creation a compliment to the legislation to set out to cooperation principles.
- Considers that ADR should be free of charge or costs could be symbolic, as it will make consumers more involved into the case.
- Wished to create an internet platform which will avoid EU structure to cover cross- board cases and to linkup existing national ides build on positive experiences from MS.
- Studies and work of EC on CR will be continued.

Final remarks by Robert Rochefourt (ALDE, FR) – Rapporteur:

- Stressed that creation of Directive is not necessary, charter would be sufficient.
- Underlined that ADR schemes do not deal with CR.

Timelines:

- 19 July - deadline for tabling amendments
- 31 August – vote in the IMCO Committee

III. [Internal Market and Consumer Protection Committee \(IMCO\), consideration of the draft opinion on CR, 12th July;](#)

Directly after ADR study presentation, there was a discuss on the draft opinion on CR, presented by:

Sylvana Rapti (S&D, GR) - Rapporteur draft opinion on CR:

- Underlined fact it is necessary to encourage early ADR and take things to court as final results.
- Suggested that Commissioner gave impression of unclear intentions to avoid with all forces US system.
- To start discussion MEP Rapti read out the proposal made by European Justice Forum, which states: *“European model of individual and collective redress based on ADR, complemented by the public authorities and over seamed by the court to assure fairness and finality. Lets us annotate the principles at EU level and allow MS to adapt that model (...) in the way it best fits with its national civil justice system.”*

Because of the lack of time only short comments were made by following MEPs:

Philippe Juvin (EPP, FR) - Shadow Rapporteur:

- Suggested that if we are in favor of European system based on CR we have to defend different consumers, but we need to defend businesses within EU as well.
- Mentioned that CR should be final result if mediations are down; punitive damages are not acceptable.

Jurgen Creutzmann (ALDE, DE) - Shadow Rapporteur:

- Is of the view that that MS have too different legal cultures, which is impossible to replace it with one, what is more not many people collectively go to court, there is rather a big number of small value cases.

Ashley Fox (ECR, UK) – Shadow Rapporteur:

- Stressed that Commission proposal is a mistake; procedures will be too long, he predicted no agreement will work out but only not worth compromise will be set up



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- Suggested to find a solution that works with every MS legal grain and tradition.

On behalf of the European Commission – Ms Russo, Head of Financial services and Redress Unit, DG SANCO:

- Reminded that Commissioners: Viviane Reding and John Dalli were discussing CR on 25th May. The results will come with the communication. She assured that everything will be done to avoid abusive litigation, especially by special safeguards and that all consultation will be done with respect of MS.

Timelines:

- 19 July, 18h00 - deadline for tabling amendments
- 19 September - vote in the Committee.

IV. [ECON, exchange of views and speech by Almunia](#)

Almunia's speech in ECON:

- Commissioner Almunia VP of the Commission, responsible of Competition policy presented in the EP ECON committee the annual competition policy report and gave a short background on State aid control, fight against cartels, antitrust and merger control activities over the past year. He then went on to speak about policy developments in horizontal and vertical agreements and new rules in the insurance field.
- As regards CR he commented that once the principles are defined he intends to propose a specific legislative measure for the private enforcement of antitrust infringements.

Exchange of views in ECON:

- Only MEP to speak on this was MEP Andreas Schwab (EPP, DE) on CR under art 14 we are able to be involved in co-decision
- This is not an empty statement – CR should not have power over all areas, and we should ensure that US circumstances to do happen in EU (i.e. contingency fees)
- We don't want forum shopping – which will be created if we move forward
- If however we did do create EU wide mechanism, MS cannot just to accept EU form of CR but should also prepared for their national civil justice system to be adjusted in such a way that the US system would be excluded
- Having Schwab fully in line with EJF and making sure messages are conveyed also in ECON is a positive note and helps reinforce our message