



**THE HIDDEN WORLD OF CONSUMER ADR:
REDRESS and BEHAVIOUR**

**Alternative Dispute
Resolution for
Consumers in the EU**
Dr. Iris Benöhr

**Friday 28th October 2011
Ship Street Centre, Jesus College**

Swiss Re



The Foundation for Law, Justice and Society

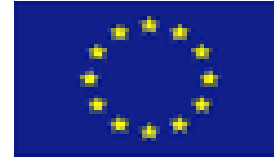
Bridging the gap between academia and policymakers

Overview

1. Introduction
2. Competences of the EU
3. Historic Overview
4. Recommendations
5. Mediation Directive
6. ADR in Specific EU Directives
7. EU Networks
8. Conclusions



1. Introduction



- ▶ Increased movement of goods and people across the EU
- ▶ ADR schemes as speedy and low cost alternatives to court procedures
- ▶ Growing interest of the EU and Member States in ADR mechanisms
- ▶ Recommendations and Mediation Directive

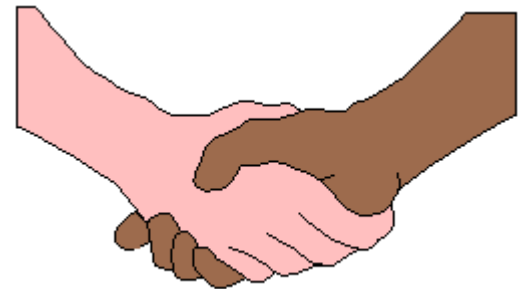
2. Competence of the EU in ADR

- ▶ Originally limited competence in civil justice
- ▶ Treaty of Amsterdam and Lisbon: extended competences
- ▶ Possible basis for ADR measures:
 - ▶ Pre-Lisbon: Article 65, 153, 95
 - ▶ Post-Lisbon: Article 81 TFEU
 - ▶ Article 114 TFEU (ex Art. 95 EC)
 - ▶ Art. 169 TFEU (ex Art. 153)



3. Historic Overview

- ▶ 1998 and 2001 Recommendations
- ▶ 2002 Commission's Green Paper on ADR
- ▶ 2004 Voluntary European Code of Conduct for Mediators
- ▶ 2007 Regulation on European Small Claims Procedure
- ▶ 2008 Mediation Directive
- ▶ 2011 EU Consultation on ADR



4. Recommendations

- ▶ Two EU Recommendations to promote consumer ADR (1998 and 2001): minimum guarantees
- ▶ Recommendation 98/257/EC on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes (a third party that proposes or imposes a solution)

7 Principles:

- ▶ *independence*
- ▶ *transparency*
- ▶ *adversarial principle*
- ▶ *effectiveness*
- ▶ *legality*
- ▶ *liberty*
- ▶ *representation*


Recommendation 2001 / 310 / EC

- ▶ Applies to third party bodies responsible for out-of-court consumer disputes resolution procedures
- ▶ The ADR body attempt to resolve a dispute by bringing the parties together to convince them to find a solution by common consent

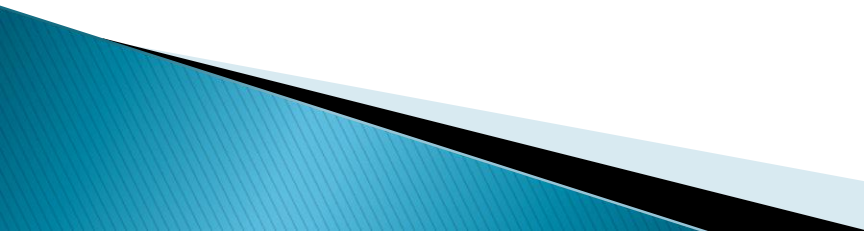
4 Principles:

- ▶ *Impartiality*
- ▶ *Transparency*
- ▶ *Effectiveness*
- ▶ *Fairness*

5. Mediation Directive

- ▶ 2004 Code of Conduct: principles to which individual mediators in civil and commercial matters can commit
 - ▶ Organizations can promote code of conduct
 - ▶ 2008 Mediation Directive to facilitate access to justice
 - ▶ Harmonises national rules concerning mediation
 - ▶ Applies to cross-border mediation only. However MS may wish to extend the application of the provision implementing the Directive in national mediation procedures
- 

Mediation Directive

- ▶ MS have to provide the general public with information on how to contact mediators
 - ▶ Definition of mediation
 - ▶ Training for mediators
 - ▶ Encourages judges to promote mediation
 - ▶ Independence requirements for mediators
 - ▶ Enforcement of agreement resulting from mediation (Art. 6)
 - ▶ Confidentiality of mediation (Art. 7)
 - ▶ Prescription and limitation periods (Art. 8)
- 


6. ADR in specific Directives

- ▶ Measures encouraging MS to establish ADR schemes:
 - ▶ E-commerce Directive
 - ▶ Postal Service Directive
 - ▶ Market in Financial Instruments Directives (MiFID)
- ▶ Measures requiring ADR schemes:
 - ▶ Telecom sector
 - ▶ Energy sector
 - ▶ Consumer Credit Directive
 - ▶ Payment Services Directive

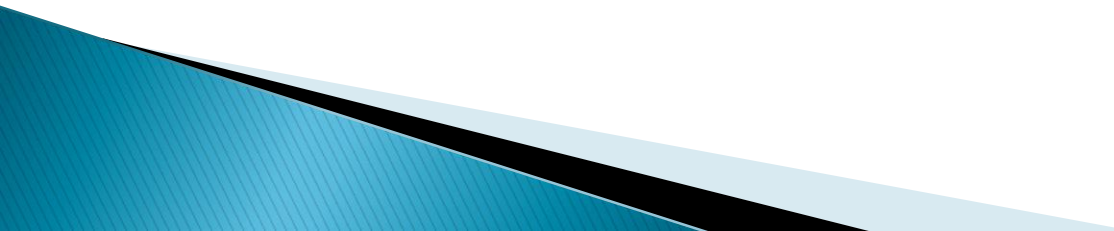
Older measures

Newer measures

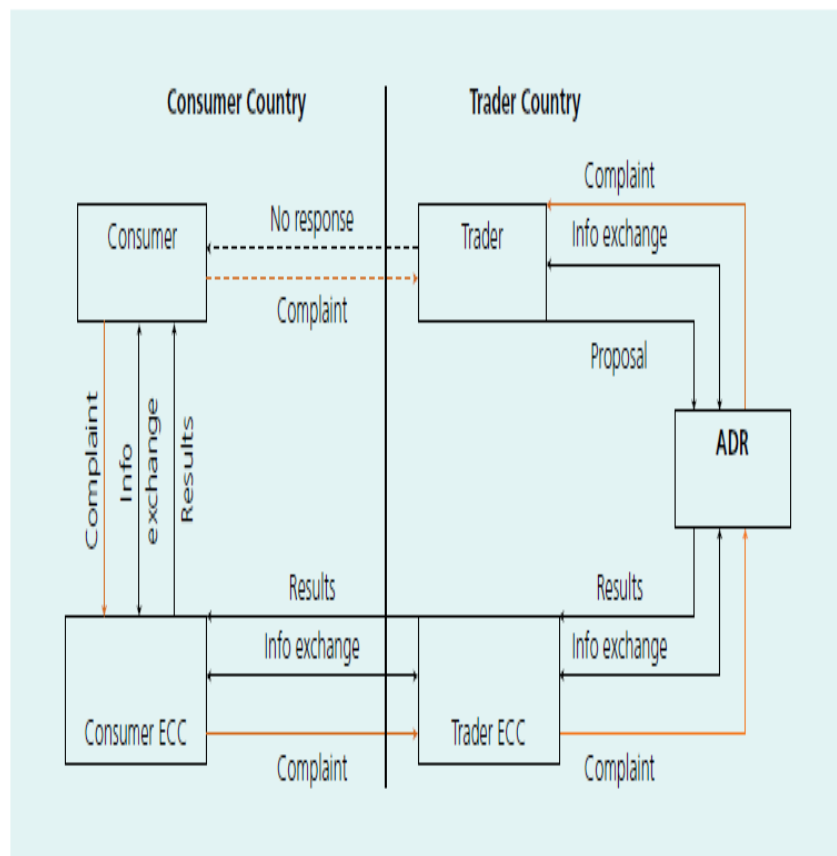
7. EU Networks

- ▶ 2005 European Consumer Centres Network (ECC–Net)
 - ▶ To assist consumers in the resolution of cross–border complaints and disputes
 - ▶ Single European consumer centre in every MS and in Iceland and Norway as contact point
 - ▶ Public or non–profit–making body approved by the Commission
 - ▶ Funded by the Commission and national governments (about 60.000 cases a year)
- 

Tasks of the ECC–Net

- ▶ 1. Inform consumers and provide advice about rights
 - ▶ 2. Advice and support with cross–border complaints
 - ▶ 3. Provide easy access to ADR–bodies where no amicable cross–border solution was found
 - ▶ 4. Raise awareness of ADR schemes
 - ▶ 5. Cooperate with other EU–networks
- 

Pict. 2.1. Theoretical cross-border case handling – the ECC-Network cooperating with ADR



1.

- Consumer Centre assists consumer in translation
- Transfers the case to the consumer centre where business is located

2

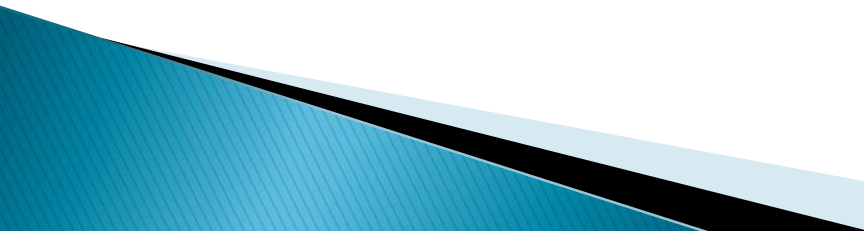
- Consumer centre transfers case to the relevant ADR Scheme

3

- ADR body takes a decision
- Informs consumer centres

ADR Procedure

FIN-NET

- ▶ Financial Services Complaints Network
 - ▶ Cross-border financial complaints in the EU
 - ▶ Links 50 out-of court schemes in the EU, Norway, Iceland and Lichtenstein
 - ▶ ADR bodies need to comply with EU standards
 - ▶ FIN-NET provides information and helps consumers to identify the relevant complaint scheme
 - ▶ Transfers the complaints to the relevant cross-border scheme
- 

Conclusion

How do we find a coherent ADR approach for EU consumers?

