



Position Paper

EMOTA contribution to the European Commission Consultation on the use of Alternative Dispute Resolution as a means to resolve disputes related to commercial transaction and practices in the European Union

EMOTA¹'s main goal is to assist policy makers in removing any barriers to cross-border trade. EMOTA's commitment to a barrier free EU Single Market is long standing and can be traced across all our positions and actions. We are making the following comments with the aim to constructively contribute to the debate over the future of the EU Digital Single Market for products and services by reflecting the views of online sellers across 17 markets, including the largest.

The European E-commerce and Mail Order Trade Association, EMOTA, welcomes the opportunity to participate in the European Commission Consultation on Alternative Dispute Resolution Mechanisms for commercial transactions. EMOTA and its members have always shown support to the use of out of court settlement systems as a more flexible and faster tool able to ensure consumer satisfaction in case of a dispute. To a large extent, e-Commerce depends on consumer trust, and ADR systems could enhance further the consumer trust in the online environment.

EMOTA represents 20 national associations in the European Union and beyond, which represent about 2600 traders (list of members in Annex). As the association representing distance selling in the European Union, building consumers' trust in e-commerce is one of the main goals of EMOTA. We therefore welcome the Commission's approach towards identifying areas where ADR systems can be improved and further promoted to both consumers and companies.

In order to improve and offer incentives for companies to trade across borders, ADR systems will have to offer a fair system of resolutions, based on the contract law. Companies in a majority of cases will agree to extensive efforts in order to satisfy the consumer. However, in those cases where a third party would be more adequate to provide a resolution to the dispute, traders may find themselves in a less advantageous position simply because it is normally assumed that the company has a stronger position compared to the consumer and that it therefore needs less protection. **Any further consideration of ADR systems should start with the pre-condition that both parties need protection of their legitimate interests.**

Specific comments:

¹ EMOTA, the European eCommerce and Omni Channel Trade Association, is the European level umbrella federation representing online and distance sellers across Europe. The main mission of EMOTA is to promote eCommerce and Distance Selling and help policy makers remove any barriers to cross-border selling. Transparency register N° 11251212351-96



Awareness:

The Commission consultation document asks on several occasions about how ADR schemes could best be promoted among consumers and businesses. We feel that authorities and NGO's, including professional associations, such as EMOTA and its members, would be the best channels to promote such systems, giving them more credibility vis-à-vis consumers and companies. The adherence to ADR schemes should be voluntary and uncomplicated, through single points of contact, with very clear roles (and clear definitions as to who can take these roles), but limited to providing information (which would increase credibility).

Involvement and coverage:

The use of ADR schemes should remain voluntary and inexpensive to all parties involved. As it is in the interest of the trader to inform consumers of the adherence to an ADR scheme, making this a mandatory requirement would only add extra bureaucracy and burden. Requiring all businesses to register with an ADR scheme, and making ADR decisions binding, would make these systems lose their main advantages, being voluntary (our favourite option), credible, simple, fast, flexible and inexpensive.

The procedures should not be over-complicated by making it mandatory to conduct a first stage in a dispute within an ADR scheme. It should be left to both parties to decide how they would like to proceed, and allow companies to try to satisfy the consumer's demands first. Including SMEs in a system which was designed for a simplified alternative to legal action, would over burden ADR schemes.

Online Dispute Resolution Schemes

EMOTA would welcome and support a system whereby disputes arising from online transactions could be settled in a fast, efficient and inexpensive way. However, there seems to be little support for ODR schemes, and far less for a centralised ODR scheme. The Commission should further explore this possibility, which could, under the correct conditions, provide businesses and consumers across Europe an easy way to settle disputes.

Cross border disputes and collective claims:

National associations and the European Consumer Centres Network, both organized at the European level can play a fundamental role in cross border disputes. Via umbrella organisations, such as EMOTA, national organizations could act as information points for consumers wanting to contact a local ADR scheme located in another country, and occasionally even provide basic assistance.

Funding:

As mentioned above, mandatory registration and mandatory financial contributions for all businesses could result in a loss of confidence in the scheme, as a result of the potentially higher contribution by businesses in the overall funding.

In terms of the funding, EMOTA supports a solution that ensures a balanced approach and protects the interests of all parties involved, while maintaining a high level of trust in the ADR system. PanEuropean cooperation between the different ADR schemes would enable an important exchange of experience and allow for a higher degree of harmonisation in the decisions taken, thus reducing costs.



The Commission presents several examples for the funding of ADR schemes. We agree that an overall consumer dominated funding, based on fees, would be inappropriate and would discourage individual consumers from participating. At the same time, charging consumer bodies with the task of dealing with ADR cases on behalf of consumers would not ensure an impartial approach. We believe that the ideal solution would be to establish, on a voluntary basis, a system, through which the burden would be shared, in a fair and proportional way, only between the parties involved, as a real alternative to lengthy and bureaucratic legal proceedings.

In order to increase efficiency, EMOTA would encourage the Commission to further explore the utility of introducing a small fee for consumers that use an ADR scheme, with the aim to prevent abuse through a large number of unfounded cases.

We would like to thank you for the opportunity to comment on this consultation and remain at your disposal for any additional information.

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