

Directive of the European Parliament and of the Council
amending Directive 2013/11/EU on alternative dispute
resolution for consumer disputes, as well as Directives (EU)
2015/2302, (EU) 2019/2161 and (EU) 2020/1828

POSITION
January 2024

Key messages

The French Association of Large Companies (AFEP) welcomes the European Commission's publication of a proposal for a Directive aimed primarily at amending the 2013 Directive on alternative dispute resolution (ADR) for consumer disputes, to adapt it to the digital age and encourage the use of these alternative dispute resolution tools, including in cross-border situations.

In particular, companies welcome the inclusion within its scope of companies not established on the territory of an EU Member State, but which nevertheless offer their products or services to consumers within the EU.

To improve this draft Directive, AFEP supports the following measures:

- **Make the possibility for an ADR entity to bundle similar cases against one specific trader into one procedure conditional** not only to the consumer concerned being informed and not objecting, but also on the **professional concerned being informed and not objecting**;
- Maintain the existing wording of Article 5.4 of Directive of May 21, 2013 regarding the possibility for Member States to make the introduction of ADR procedure conditional on prior contact between the consumer and the trader concerned in order to settle the dispute directly;
- **Allow the professional sufficient time to respond to a request to initiate an ADR procedure** by an ADR entity, i.e. a **period of 30 working days**.

AFEP comments on the proposal for a Directive

1. Scope – Article 2

AFEP member companies welcome the extension of the Directive's scope on the following points:

- The inclusion of companies not established in the territory of an EU Member State, but which nevertheless offer their products or services to consumers within the EU. This reform will put economic operators established in the EU on an equal footing with operators established outside the EU, and thus help to build fair competition between players;
- The integration of digital content and services, which will adapt the 2013 Directive to the digital age.

However, they question the appropriateness of specifying that Member States may apply the ADR procedures provided for in the Directive to categories of disputes other than those listed in the Commission's proposal when the Commission has chosen a directive as one of the legislative tools at its disposal. Above all, AFEP member companies consider that **too great a diversity of regimes across the EU would contribute to the fragmentation of the Single Market** and will encourage neither companies nor individuals to make use of this alternative dispute resolution method, despite the Commission's observation in its impact study that both insufficiently used this method.

2. Access to ADR entities and ADR procedures – Article 5

AFEP welcomes the encouragement of amicable dispute resolution between a consumer and a professional, including by adapting ADR procedures to the digital age, in particular:

- The obligation for ADR entities to provide for a fully online procedure while maintaining an offline procedure for consumers at their request;
- The possibility of automatic processing of ADR requests;

These innovations are likely to speed up the processing of ADR requests and should be encouraged.

Similarly, **AFEP companies welcome the possibility for an ADR entity to bundle together different cases involving the same professional** in order to facilitate and speed up the handling of disputes. **They propose, however, that this possibility be made conditional on the prior acceptance of such consolidation by the professional in question.**

In this respect, they note that the Commission's proposal provides for such prior agreement for the consumer, but not for the professional. However, the professional involved may have just as many reasons as the consumer for opposing the bundling of several cases. In particular, circumstances may vary significantly from one case to another, justifying keeping them separate.

With regard to the possibility for Member States to make the introduction of an ADR procedure before an ADR entity conditional on **prior contact between the consumer and the professional concerned in order to settle the dispute directly**, AFEP companies question the

appropriateness of adding "*without introducing disproportionate rules about the format of such contact*" to the Commission's proposal.

Indeed, the assessment of the disproportionate nature of such rules will be subject to interpretation, will vary from one Member State to another, and could lead to fragmentation of the internal market. AFEP, therefore, recommends retaining the original wording of Article 5.4.a as set out in the 2013 Directive: "*the consumer did not attempt to contact the trader concerned in order to discuss his complaint and seek, as a first step, to resolve the matter directly with the trader*".

Finally, AFEP member companies note the introduction of an **obligation for traders contacted by an ADR entity to inform the latter whether or not they agree to take part in the proposed procedure within a reasonable timeframe** not exceeding 20 working days. This novelty is likely to speed up out-of-court settlement processing times. However, companies are urging legislators to **extend this period to 30 working days**, to enable companies to process all these requests.

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ABOUT AFEP

Since 1982, AFEP brings together large companies operating in France. The Association, based in Paris and Brussels, aims to foster a business-friendly environment and to present the company members' vision to French public authorities, European institutions and international organisations. Restoring business competitiveness to achieve growth and sustainable employment in Europe and tackle the challenges of globalisation is AFEP's core priority. AFEP has 117 members. More than 8 million people are employed by AFEP companies and their annual combined turnover amounts to €2,600 billion. AFEP is involved in drafting cross-sectoral legislation, at French and European level, in the following areas: economy, taxation, company law and corporate governance, corporate finance and financial markets, competition, intellectual property, digital and consumer affairs, labour law and social protection, environment and energy, corporate social responsibility and trade.

Contacts:

Jocelyn Goubet, Director for Economic Law j.goubet@afep.com

Alix Fontaine, European Affairs Deputy Director a.fontaine@afep.com

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