

Alternative Dispute Resolution Directive Position Trilogue

Retailers across Europe highly value the possibility offered by ADR schemes to find amicable solutions to contractual disputes with their customers without having to resort to court. It helps to preserve a strong customer relationship and find the right solution tailored to the specific case.

Regrettably, the changes proposed to the Directive are likely increase costs and bring very little added value. Therefore, we call on the co-legislators to amend the Commission's proposal, particularly by supporting the Council's position on two specific aspects.

- Follow the Council's [position](#) on Article 1(1), a). **Unfair commercial practices and terms should not be included in the scope of ADR.**

ADR entities are dispute resolution bodies, they are neither courts nor competent authorities responsible for enforcing the law. The core of the ADR bodies' role is to find amicable solutions in disputes where there is some type of damage and the ADR bodies need to assess how this damage should be dealt with between both parties.

ADR entities cannot legislate and do not have authority to interpret the law, nor to enforce it. **Where a practice is not explicitly listed as unfair under the UCPD, only courts can assess whether that practice fulfils the criteria of the UCPD to be considered unfair and/or misleading.** The same goes for unfair contract clauses under the UCTD. The ADR Directive must not require ADR entities to assess the unfair or misleading nature of a practice brought to its attention by a consumer. This would otherwise transform ADR entities into judicial or enforcement authorities, bringing legal unpredictability and increasing the number of cases brought to court. This would be contrary to the role of ADR which is to enable rapid, low cost out-of-court settlements.

Furthermore, it would induce many traders not to take part in ADR schemes. It will also be unclear who is actually responsible for the enforcement of EU law, especially if the ADR outcome contradicts the interpretation of the law by a national court or authority.

- Follow the Council's [position](#) by clarifying that **non-contractual situations and pre-contractual situations that do not lead to the conclusion of a contract are not in the scope of ADR (Article 1 (1), b)).**

ADR entities are dispute resolution bodies with the objective of finding a settlement in a dispute between a consumer and a trader, in case the consumer has incurred damage or loss as a result of a contract (e.g. purchase, lease, or rent) with that trader. **If there is no contract, the existence or the extent of the consumer's loss, and therewith any possible compensation, is uncertain and can legally only be assessed by a court instead of an ADR entity.**

Including pre-contractual situations that did not lead to a contract and non-contractual situations in the scope of the Directive would radically undermine the functioning of ADR. Without a contract, an ADR entity will not be able to assess whether there is a loss/damage to compensate as traditionally

done in the ADR. **This would lead to a considerable increase in unfounded or inadmissible disputes,** overburdening the system and discouraging traders from participating in ADR.

It would be illogical to include non-contractual and pre-contractual situations that did not lead to the conclusion of a contract in the scope of ADR schemes. We suggest to maintain the structure of the ADR system that has proven to be useful in terms of consumer redress and reduction of cases brought to court. **Concluding remarks**

The added value of ADR entities in many cases is their ability to be agile and help consumers and traders reach amicable solutions without having to go via courts. The ADR system has proven to be an efficient and effective way to solve settlements and has even paved the way for good practices (e.g., ADR outcomes are being used by Member States as example cases when developing national guidance).

Nevertheless, this success should not lead to the inclusion of new obligations for ADR entities that are outside of their competence, and which would lead to a massive raise in inadmissible cases, therefore creating unsolvable burdens. **It is essential that the revision of the Directive on Alternative Dispute Resolution for Consumer Disputes does not result in a modification of the nature of ADR entities and does not create legal uncertainty that would discourage traders from joining ADR schemes.**

Our position in summary: support the Council's text on Art. 1(1) a) and Art. 1(1) b)

- Do NOT extend the scope of ADR bodies to unfair, misleading, pre-contractual situations that did not lead to the conclusion of a contract, and to non-contractual cases: in these situations the existence or extent of the consumer's loss is highly uncertain or non-existent;
- Extending the scope to non-contractual situations would transform ADR bodies into enforcement bodies instead of bodies for amicable out-of-court dispute settlement. This would discourage traders from accepting ADR and raise legal uncertainty.

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*Established in 1963, **Independent Retail Europe** (formerly UGAL – the Union of groups of independent retailers of Europe) is the European association that acts as an umbrella organisation for groups of independent retailers in the food and non-food sectors.*

Independent Retail Europe represents retail groups characterised by the provision of a support network to independent SME retail entrepreneurs; joint purchasing of goods and services to attain efficiencies and economies of scale, as well as respect for the independent character of the individual retailer. Our members are groups of independent retailers, associations representing them as well as wider service organizations built to support independent retailers.



Independent Retail Europe

Independent Retail Europe represents 24 groups and their over 501.000 independent retailers, who manage more than 764.000 sales outlets, with a combined retail turnover of more than 1.411 billion euros and generating a combined wholesale turnover of 621 billion euros. This represents a total employment of more than 6.400.000 persons.

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