

**GOVERNMENT RESPONSE TO
CALL FOR EVIDENCE**

**EU proposals on
Alternative Dispute
Resolution**

MAY 2012

Contents

Introduction.....	4
The Consultation Process	5
Analysis and Government Response	8
Question 1: What are your views on the key estimates the European Commission make in their Impact Assessment which are summarised in Annex A [of the Call for Evidence]? Overall do you think that the Commission’s proposals will lead to their anticipated benefits for consumers, business and the Single Market?	8
Question 2: Can you provide any evidence to quantify the costs and benefits to the UK described in Annex B and Annex C [of the Call for Evidence] and/or provide details of any additional costs or benefits?.....	10
Question 3: Do you think that the “chargeback” process and/or processes used to resolve claims made under Section 75 of the Consumer Credit Act should be considered as a form of ADR? If not, do you think consumers would (or should) be more likely to use “chargeback” or make claims under Section 75 of the Consumer Credit Act where this is available, rather than using ADR to resolve a dispute? Why?	11
Question 4: What do you think of the proposed scope of the Directive? Where do you think there are gaps, if any, in the provision of ADR currently in the UK? Can you provide any estimates on how much public subsidy, if any, would be required to ensure ADR of the required standards is available for all consumer disputes?	13
Question 5: What do you think of the standards/requirements for ADR providers that are proposed by the EU? If you are an ADR provider can you currently demonstrate that you meet them? If not, why not? Would you be willing to develop you scheme so it could meet these standards? If so, what might this cost you? Are there any standards that you think are not appropriate or not required? Are any missing? Can you see any potential for UK ADR providers to provide their services to non-UK businesses?	14
Question 6: What do you think about the proposed role of the Competent Authority? What kind of organisation do you think could be a suitable Competent Authority for the UK? Can you suggest an existing organisation that you think would be well-placed to take on this role? How much do you think it would cost to fulfil this role?	17
Question 7: Do you think that consumers would change their behaviour if businesses were required to inform consumers about an ADR scheme and/or whether they would participate in ADR? What evidence do you have to support this view?.....	18
Question 8: What would be the costs to business of providing these additional information requirements to consumers? How could these impacts be lessened for all businesses and, in particular, for small or medium businesses?.....	19
Question 9: Do you have any other comments on the proposed Directive?	21

Question 10: What do you think about the proposals in the ODR Regulation? What would be the costs/benefits of the ODR platform and facilitators to consumers, businesses and ADR providers? Would ADR providers be able to meet the 30-day deadline for concluding cross-border disputes? What would be the costs to business of these additional reporting requirements? Might these requirements mean business is more reluctant to trade online and cross-border?23

Annex25

Introduction

The European Commission published legislative proposals on Alternative Dispute Resolution (ADR) on 29 November 2011. The Department for Business, Innovation and Skills launched a Call for Evidence on these proposals. This document sets out a summary of the responses to each question and provides a short Government response.

The European Commission proposals included a draft Directive on alternative dispute resolution for consumer disputes (Directive on consumer ADR) and a draft Regulation on online dispute resolution for consumer disputes (Regulation on consumer ODR). Copies of the legislative proposals can be found on the following website:

<http://ec.europa.eu/consumers/redresscons/adrpolicyworken.htm>

ADR refers to schemes that are available to help complainants resolve their disputes out of court. The most common forms are mediation, where an independent third party helps the disputing parties to come to a mutually acceptable outcome, and schemes where an independent third party considers the facts and takes a decision which may or may not be binding on one or other of the parties.

The Commission claim the proposed Directive would ensure quality ADR schemes exist to deal with contractual disputes arising from the sale of goods and the provision of services by traders across the EU. The draft Regulation would enable consumers and traders to access directly an online dispute resolution platform (ODR platform) which will help to resolve contractual disputes arising from cross-border online transactions through the intervention of an ADR scheme complying with the Directive.

On 21 December 2011 the Department published a Call for Evidence on these European proposals in order to seek views from stakeholders on the impacts of the proposals on the UK. This document sets out a summary of the responses received for each question and provides a short Government response.

The responses received have already informed the UK's negotiating position on these proposals and will continue to inform this position as negotiations proceed.

Thank you to all those who took the time to respond to the Call for Evidence.

The Consultation Process

The Call for Evidence was conducted between 21 December 2011 and 31 January 2012. Information about the Call for Evidence, including a link to the document, was sent to a wider range of representative stakeholders. It was available in electronic form on the website of the Department for Business, Innovation and Skills.

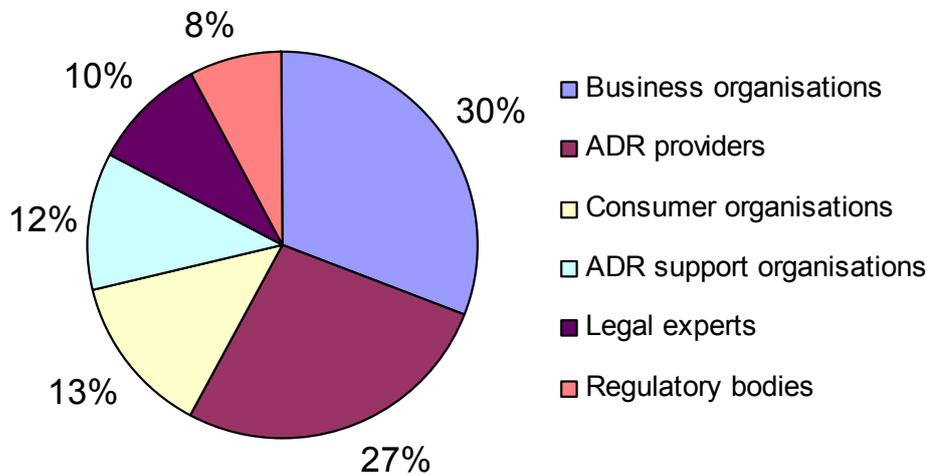
Responses were received from fifty-two stakeholders. The majority of respondents were either organisations representing groups of businesses or organisations that provide Alternative Dispute Resolution (ADR). Responses were also received from consumer organisations, legal experts and regulatory bodies. In general there was support for the intent of the proposals but some scepticism as to whether the proposals would deliver the benefits suggested.

Stakeholders were asked to provide responses to ten specific questions on the European legislative proposals. A summary of responses for each question is set out below. These seek to reflect all of the views expressed, although it is not possible to describe all responses in detail.

Alongside a summary of responses, tables have been provided showing the number of stakeholders who responded to each specific question. Where percentages have been used, they have been calculated on the basis of the total number of responses to that specific question. Some stakeholders chose not to answer the questions directly but made general comments. In these cases Government officials have made reasonable assumptions about which questions they were addressing and, where appropriate, they have been recorded as providing a response to that question.

A total of 52 responses to the Call for Evidence were received. A full list of all the organisations who responded can be found in the Annex. Figure 1 provides a breakdown on the types of organisations that responded. The categorisation of respondents was based on the best judgement of Government officials using the information supplied by respondents. This categorisation was difficult because a number of stakeholders perform numerous different roles. It was decided to categorise a stakeholder as an “ADR provider” if they provide ADR as part of their role, even if they also fulfil another role of being a consumer organisation or business organisation or even, in one case, a regulatory body.

The category of “ADR support organisations” includes organisations that either provide technology for ADR providers or provide other support for ADR providers, for example by operating as an umbrella organisation for ADR providers. The category of “business organisations” mainly includes trade associations or other business groups but also includes four responses from individual businesses.

Figure 1: Breakdown of responses by type of organisation

The Government was pleased with the detailed and thoughtful responses provided by many stakeholders.

In accordance with Government transparency policy, copies of all of the responses are available at: www.bis.gov.uk/consultations

Next steps

The proposed European legislation is being negotiated in both the European Council and the European Parliament. The negotiations are progressing quickly and we expect Member State Governments to be asked to agree a “general approach” on the proposals before the summer. The European Parliament has also commenced their consideration of the proposals and we anticipate that final agreement will follow later this year. The responses received have already informed the UK’s negotiating position on these proposals and will continue to inform this position as negotiations proceed.

Once the European legislation has been adopted the Government will launch a consultation to obtain stakeholder views on implementing the legislation in the UK.

A stakeholder group has been formed from those who responded to the Call for Evidence or who have otherwise expressed an interest in this European legislation. Those on the stakeholder group receive updates on negotiations and further requests for views as new issues arise during negotiations. We are happy to expand this stakeholder group if others express an interest in joining.

Queries

Please direct any queries about this proposed European legislation, or any requests to join the stakeholder group that has been established, to:

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Analysis and Government Response

Question 1: What are your views on the key estimates the European Commission make in their Impact Assessment which are summarised in Annex A [of the Call for Evidence]? Overall do you think that the Commission’s proposals will lead to their anticipated benefits for consumers, business and the Single Market?

The table below sets out the number of responses received from different types of stakeholders:

Category of respondent	Number of responses	% of total
Business organisations	10	28
ADR providers	13	36
Consumer organisations	4	11
ADR support organisations	5	14
Legal experts	2	6
Regulatory bodies	2	6
Total	36	100

Benefits to the Single Market

There were strikingly different views expressed on the importance of greater use of effective ADR to the Single Market. One stakeholder suggested that a common ADR solution across the whole of the EU is needed to achieve a fair Single Market. One consumer organisation said that not all types of ADR included in the scope of the Directive can be regarded as effective, for example if they do not offer binding solutions.

Another consumer organisation stated: “access to effective forms of redress is the single most important issue in terms of developing the internal market”. This was based on survey results carried out in October 2011 in which, of those questioned who said they would not shop cross-border, 54% of UK consumers said it was because they were worried they would not be able to get an exchange or refund if something went wrong.

In contrast, a business organisation argued that they believe there are many reasons why consumers may choose not to shop across borders. For example: language barriers, differing technical standards, difficulty of exercising withdrawal rights, lack of brand recognition, payment systems, card costs of currency conversion and delivery costs. This business organisation argued these issues may be more important than the issue of redress.

One stakeholder said the proposals presented a great opportunity to improve the consumer landscape and increase commerce in the Single Market. However, this same stakeholder,

along with many others, questioned whether the proposals would, in fact, lead to greater use of ADR because there is no requirement for business to use ADR.

European Commission estimates of costs and benefits

Many stakeholders supported the Commission's assertion that greater provision of quality ADR in the EU would increase consumer confidence and support the Single Market but little evidence was provided.

A number of consumer organisations, and other stakeholders, stated that the benefits of the proposals to consumers would not be realised unless businesses were required, at least in certain sectors, to use ADR and to follow the outcomes of that ADR. (Views expressed on this issue are given in more detail in Question 9.) Another key factor would be the extent to which the proposals are publicised and consumer awareness increased.

One stakeholder said that the estimates do not take into account the proportion of claims that are resolved satisfactorily directly with the trader; another that they don't include the proportion of claims where consumers themselves wouldn't want to use ADR. Finally, one stakeholder suggested it would be wrong to assume that all claims are valid and would result in the payment of redress to consumers. Statistics for one UK ADR provider suggests consumer complaints are upheld in only around half of cases.

Although many stakeholders agreed that ADR is generally cheaper than court action, a few stakeholders questioned whether ADR is cheaper than court action in all cases, for example particularly complex disputes. It was suggested that court action would be preferable for such cases.

Some stakeholders thought the Commission had over-estimated the likely number of consumer to business disputes that would be transferred out of the court system into ADR. Information provided by a business organisation suggested large UK retailers might have around 50 cases each year that go to court, compared to around 100 million transactions and 100,000 customer enquiries each year.

In addition, UK ADR providers report that a significant number of the cases they currently deal with would never have gone to court and therefore businesses would not be saving costs by resolving these cases through ADR.

Some stakeholders felt the Commission's assumption that an average loss is around £250 was too high. One stakeholder suggested the Commission significantly over-estimated the benefits by scaling the average loss figure to all European citizens over 15 years of age. They doubted if many 15 to 25 year olds have the financial means to engage in cross-border transactions involving an average loss of around £250. Information from large UK retailers suggested an average product price of around £20.

Concerns were received from stakeholders that the Commission's estimates of the likely costs to business of the proposed information requirements were based on interviews with just 22 businesses, as they felt this may not be representative. In addition, one stakeholder questioned the suggestion that there are only 15,251 businesses in the EU in the financial sector as there are over 27,000 such businesses regulated in the UK.

Some stakeholders thought the Commission should have provided estimates on the cost of establishing Competent Authorities. Finally, one stakeholder said that estimates should be revised for sectors that already have effective ADR.

Government response

In view of stakeholder comments it seems unlikely that these proposals will deliver the benefits suggested by the European Commission. Firstly, although they may establish more ADR capability, there is no guarantee that this would lead to more use of ADR. Secondly, the Commission seem to have significantly over-estimated the potential benefits of greater use of ADR within the EU.

In addition to comments made by stakeholders, UK Government economists and statisticians believe that the European Commission distorted the real picture when determining the typical loss per consumer complaint. The Commission used the figure of £250 which was determined by using the mean loss per complaint from survey data. In fact the data is skewed by a small number of high value claims. The median loss per complaint is nearer £15 and our economists take the view that it is this figure that should have been used when estimating total benefits.

Question 2: Can you provide any evidence to quantify the costs and benefits to the UK described in Annex B and Annex C [of the Call for Evidence] and/or provide details of any additional costs or benefits?

This question received the lowest response from stakeholders which could be due to a lack of evidence to support the suggested costs and benefits. The table below sets out the number of responses received from different types of stakeholders:

Category of respondent	Number of responses	% of total
Business organisations	4	15
ADR providers	10	37
Consumer organisations	5	19
ADR support organisations	3	11
Legal experts	2	7
Regulatory bodies	3	11
Total	27	100

Most stakeholders who commented thought the Call for Evidence had broadly identified the right costs and benefits to the UK but could not offer any quantitative evidence.

To support the potential benefits of greater use of ADR some stakeholders provided evidence in the form of the results of surveys of UK consumers. These results suggest a significant proportion of UK consumers do not get a satisfactory outcome when they complain and, instead, give up trying to resolve the dispute.

A few stakeholders provided evidence of savings that had been realised in the UK by using mediation to resolve disputes as opposed to court action. Estimates on the cost of ADR when compared to court costs ranged from 1/8th to 1/3rd. However no evidence specific to consumer to business disputes was forthcoming. Indeed, UK ADR providers report that a significant number of the cases they currently deal with would never have gone to court. Other stakeholders noted that in their view very small value claims may not be suitable for either court action or ADR.

A few stakeholders suggested ADR is not always a lower cost or quicker option compared to court action, particularly for complex cases. One stakeholder noted that there would only be cost-savings if the outcome of ADR were followed, as otherwise disputes may still end up in court.

One stakeholder noted that there will be little or no additional benefits in sectors where effective ADR already exists in the UK. Another stakeholder said it was wrong to classify businesses paying more redress as a cost as this is in fact a societal benefit.

The following additional benefits of effective ADR were suggested:

- better standards in terms of customer service, as businesses try to avoid ADR
- lower costs to consumer law enforcement as businesses improve standards
- ADR providers can give information to regulators on repeated problems
- fewer “chargeback” claims or claims made under Section 75 of the Consumer Credit Act against credit/debit card providers
- lower prices from increased cross-border competition
- a cheaper more direct route to market for ADR providers

One stakeholder suggested there would be the need for considerable public subsidy of ADR if the fees to business were to be made reasonable.

Some stakeholders thought greater accessibility to ADR would lead to greater costs to business as more consumers would be prepared to take their disputes to ADR than to court. It was noted that any additional costs of ADR to businesses will be passed on to consumers in the end through price increases.

Government response

Once the proposed European legislation has been adopted, the Government will launch a consultation to obtain stakeholder views on implementing the legislation in the UK. This consultation will include a revised assessment of costs and benefits to the UK, taking into account the responses received to the Call for Evidence.

Question 3: Do you think that the “chargeback” process and/or processes used to resolve claims made under Section 75 of the Consumer Credit Act should be considered as a form of ADR? If

not, do you think consumers would (or should) be more likely to use “chargeback” or make claims under Section 75 of the Consumer Credit Act where this is available, rather than using ADR to resolve a dispute? Why?

The table below sets out the number of responses received from different types of stakeholders:

Category of respondent	Number of responses	% of total
Business organisations	9	28
ADR providers	9	28
Consumer organisations	5	16
ADR support organisations	3	9
Legal experts	3	9
Regulatory bodies	3	9
Total	32	100

Nearly all stakeholders did not consider that either “chargeback” or claims made under Section 75 of the Consumer Credit Act should count as ADR for the purposes of the European legislation. Some of the arguments made were: (i) because they don’t offer the full range of remedies of ADR such as a replacement or an apology, (ii) because they do not always ensure the end of the dispute as it would be possible for a business to separately pursue a consumer for payment even if their bank had refunded their card payment, and (iii) because the processes involved are not transparent or being conducted by independent third parties.

However, a number of stakeholders stated that these mechanisms can provide effective redress for consumers, if they are just seeking to get their money back.

Consumer organisations reported that these mechanisms are not well understood either by consumers or by bank/building society employees, which made using them sometimes time-consuming and frustrating.

Business organisations felt these mechanisms were often unfair on businesses, as very limited checks are made on consumer complaints before refunds are made by card issuers leaving businesses to meet the shortfall.

Some stakeholders suggested that consumers should be made more aware of these possible routes to obtain redress. One stakeholder expressed concern that if these mechanisms were to be used more then overall costs of using credit/debit cards would increase. Another said that it would be necessary to ensure consumers are not able to use multiple routes to claim redress for the same dispute.

Government response

It seems clear that these mechanisms to reverse credit/debit card transactions are a viable method for consumers to seek redress in certain circumstances but they do not offer the same

level of fairness and transparency as ADR. Once the proposed European legislation has been adopted, the Government will launch a consultation to obtain stakeholder views on implementing the legislation in the UK. This consultation will need to consider what place mechanisms such as “chargeback” and claims made under Section 75 of the Consumer Credit Act should take in the landscape of consumer redress in the UK.

Question 4: What do you think of the proposed scope of the Directive? Where do you think there are gaps, if any, in the provision of ADR currently in the UK? Can you provide any estimates on how much public subsidy, if any, would be required to ensure ADR of the required standards is available for all consumer disputes?

The table below sets out the number of responses received from different types of stakeholders:

Category of respondent	Number of responses	% of total
Business organisations	10	25
ADR providers	12	30
Consumer organisations	6	15
ADR support organisations	4	10
Legal experts	4	10
Regulatory bodies	4	10
Total	40	100

Some stakeholders argued that the scope of the proposals should be focussed on areas where there is an evidence of need; others thought a broad scope to be appropriate. A number of stakeholders suggested that these proposals provided an excellent opportunity to review the landscape of ADR in the UK. Some stakeholders questioned whether certain sectors would be included in scope, e.g. higher education or services provided for a fee by local authorities. One stakeholder expressed a view that by virtue of other European legislation their sector (gambling) should be excluded from the scope of the legislation. Some stakeholders questioned the need for further ADR in their sectors: post and aviation.

Most stakeholders expressed the view that, although the UK has excellent ADR in some areas, there are gaps. However one ADR provider claimed to offer ADR for all consumer to business disputes and another claimed to do so for all such disputes about online sales. Specific sectors mentioned in relation to a lack of ADR were: passenger transport; water; construction; private parking; insolvency practices; and vehicle repair.

A number of stakeholders referenced the 2010 study by the Office of Fair Trading titled: “Mapping UK consumer redress. A summary guide to dispute resolution systems”¹. This study suggested gaps in ADR in the UK in the following sectors: food and drink; DIY materials/cleaning products; clothing and footwear; toiletries and beauty services; jewellery, silverware and clocks; tobacco; nursery goods; sports and hobby equipment; toys and games; CDs, DVDs and computer games; and photography.

Even in sectors where there is ADR available stakeholders suggested there are gaps, from the perspective of consumers, simply because some individual businesses within those sectors choose not to use ADR.

Stakeholders explained that gaps also exist in regulated sectors, such as legal or financial services due to statutory definitions. For example, there is no ADR for will-writing or foreign currency exchange. A number of stakeholders welcomed the opportunity to extend coverage of ADR in regulated sectors.

Many stakeholders suggested the scope of existing ADR providers should be widened wherever possible to fill gaps in coverage, rather than creating new ADR providers, in order to make the best use of existing expertise. Others suggested that a cross-sectoral approach with a new ADR provider would be very beneficial. A few stakeholders voiced opposition to having more than one ADR provider in a given sector. One stakeholder noted the trend towards consumers being offered contracts of mixed services and the difficulties of identifying the appropriate sectoral ADR provider.

It was suggested that establishing additional ADR to cover all the sectoral gaps in the UK would require significant public subsidy, particularly if the ADR has to be provided free or at moderate cost to consumers, but no estimates were provided. One stakeholder suggested there would be the need for considerable public subsidy of ADR if the fees to business were to be made reasonable. ADR providers in the regulated sectors pointed out that they receive no public subsidy as their costs are recovered through fees on businesses that are required by national law to use them.

Government response

A further assessment will be needed once the proposed European legislation has been adopted to determine whether or not the UK would need to establish additional ADR to meet the requirements of the Directive. There are good arguments to support extending the scope of existing organisations where this is possible, as opposed to establishing new ADR providers.

Question 5: What do you think of the standards/requirements for ADR providers that are proposed by the EU? If you are an ADR provider can you currently demonstrate that you meet them? If not, why not? Would you be willing to develop your scheme so it could meet these standards? If so, what might this cost you? Are there any standards that you think are not appropriate or not

¹ <http://www.offt.gov.uk/OFTwork/policy/mapping-uk-consumer-redress/>

required? Are any missing? Can you see any potential for UK ADR providers to provide their services to non-UK businesses?

The table below sets out the number of responses received from different types of stakeholders:

Category of respondent	Number of responses	% of total
Business organisations	8	21
ADR providers	12	31
Consumer organisations	6	15
ADR support organisations	6	15
Legal experts	4	10
Regulatory bodies	3	8
Total	39	100

Proposed ADR requirements

There was much support from stakeholders to the general principles that ADR providers should operate in a way that is impartial, transparent, effective and fair. Most ADR providers who responded said that they either already meet the proposed standards or could do so relatively easily. One stakeholder expressed concern that the proposed European requirements might lead to a reduction of UK standards; another that they might prove too onerous for smaller ADR providers.

Most stakeholders felt the 90-day time limit in which to complete dispute resolution procedures was reasonable and many ADR providers said it was achievable but there were notable exceptions, and a number of stakeholders said it would depend on exactly when the time period started. Some felt it better to focus on quality rather than speed perhaps using the phrase “quickly and with minimum formality”.

A number of stakeholders noted that having business funding for an ADR provider does not necessarily mean a lack of impartiality, all that was needed was appropriate governance.

A number of questions were raised about where ADR should take place for a dispute between a business in one EU Member State and a consumer in another EU Member State. Other related questions included what would be the appropriate language? And what would be the relevant law? Concerns were raised about any suggestion that ADR providers would need to become experts in the consumer law of all EU Member States. Some ADR providers thought it would be burdensome and unnecessary to extend their operations to include cross-border disputes mainly due to concerns about translation costs; others explained that they already resolve disputes from consumers in other Member States.

Finally, concerns were raised about the status of procedural rules operated by many ADR providers. One stakeholder explained that the proposals should enable ADR providers to have rules or procedures that are fit for purpose and tailored to their circumstances. For example, time limits in which a consumer must refer their complaint.

A number of other detailed comments were made on specific requirements. These are too numerous to list here but they have been taken on board.

Missing requirements

Many stakeholders were disappointed that the proposals do not indicate that consumers should first take their dispute to the trader in question, with the aim of resolving the dispute without the need for the intervention of a third party.

A number of stakeholders wanted the independence requirement of Commission Regulation 98/257/EC² on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes to be included.

Other suggested requirements for ADR providers:

- to collect customer satisfaction data,
- to report repeated or particularly egregious offenders,
- to include in any redress awards compensation for the time and trouble caused,
- to have the ability to make non-financial awards,
- to take into account the legal rights of consumers when making awards,
- to take special account of the needs of disadvantaged or vulnerable consumers,
- to have a mechanism to handle complaints against them,
- to have investigatory powers,
- to have the ability to enforce outcomes of the ADR.

Overseas potential

Some stakeholders felt there would be potential for UK ADR providers to provide their services to non-UK businesses; others thought these would be restricted by language barriers and different legal systems. Some ADR providers explained that they are already operating in other EU Member States.

Government response

The Government will continue to liaise with stakeholders as the quality requirements for ADR providers are refined during negotiations. A balance is needed to ensure the requirements are appropriate and not overly onerous.

The Government will try to get agreement from other Member States for further flexibility to extend the 90-day deadline for concluding dispute resolution proceedings where this is appropriate and for the legislation to take account of the procedural rules that ADR providers use to ensure their effective operation. The Government shares the view of many stakeholders that it is important for businesses to be given the opportunity to resolve a consumer complaint first, before ADR is undertaken.

Although it may lead to additional costs for some ADR providers, it seems appropriate to include the ability to handle cross-border disputes in the list of requirements because of the

² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1998:115:0031:0034:EN:PDF>

particular benefits ADR can bring to such disputes. However, ADR providers should not have to operate in more than one EU language unless they choose to do so. ADR providers should also not be required to be knowledgeable about consumer law in all EU Member States. Indeed, in some forms of ADR in-depth knowledge about consumer law is not necessary at all as the aim is to achieve an outcome that is satisfactory to both parties. The Government's view is that for cross-border cases it would generally be better to use an ADR provider in the country in which the trader is established.

Finally, it should be noted that there is no obligation on ADR providers to meet the proposed standards; only ADR providers that want to be recognised as such under this European legislation need to meet the Directive's requirements. However, ADR providers who are not recognised as such may find themselves at a commercial disadvantage.

Question 6: What do you think about the proposed role of the Competent Authority? What kind of organisation do you think could be a suitable Competent Authority for the UK? Can you suggest an existing organisation that you think would be well-placed to take on this role? How much do you think it would cost to fulfil this role?

The table below sets out the number of responses received from different types of stakeholders:

Category of respondent	Number of responses	% of total
Business organisations	11	28
ADR providers	13	33
Consumer organisations	5	13
ADR support organisations	3	8
Legal experts	4	10
Regulatory bodies	3	8
Total	39	100

Most stakeholders thought a Competent Authority would be useful to ensure consistency, transparency and accountability of ADR schemes but concerns were expressed about the potential cost, particularly given the number of different ADR providers in the UK. One stakeholder suggested this proposal could turn into an unthinking administrative process.

Many different suggestions were made for a UK Competent Authority. These included: a Government Department, OFT, Citizens Advice, the UK's European Consumer Centre, the Trading Standards Institute, the Administrative Justice and Tribunals Council, the Civil Mediation Council, a Law Society and the British and Irish Ombudsman Association. Some stakeholders thought it important that the Competent Authority be a public organisation with appropriate representation from consumers and business on its governing body. Another stakeholder suggested a new body on the model of the Electoral Commission.

Some stakeholders thought it important to retain the oversight role of regulators in some sectors, e.g. the Financial Services Authority for the Financial Ombudsman Service. One stakeholder suggested that confidence in the independence of ADR providers might be affected if they are located in or too close to regulatory authorities. Another stakeholder noted that some trade associations, Chambers of Commerce and Professional Institutions have quasi-Competent Authority roles in the UK in that they supervise ADR schemes that seek to resolve disputes that their members encounter with consumers.

A number of stakeholders noted that having only one, single Competent Authority in the UK would lead to duplication of functions given the large number of different ADR providers. It was suggested that each sector should have its own Competent Authority and that Scotland should have its own Competent Authority. One stakeholder thought it would be more cost-effective to have a single, pan-European Competent Authority.

It was suggested that the Competent Authority could usefully also handle disputes raised against ADR providers/practitioners and provide training. Another stakeholder thought they should have a role of championing ADR more widely.

One business organisation suggested that the necessary monitoring could be done through self-regulation. In contrast one consumer organisation thought the Competent Authority needed to be a regulator or an enforcer.

Government response

It is clear from stakeholder responses that it would be difficult for the UK to have just one Competent Authority to cover all the ADR providers that exist within the UK and that to do so could lead to duplication and unnecessary costs. The Government will press for Member States to be allowed to have more than one competent authority with one of these competent authorities being designated as the main point of contact with the European Commission. Exactly how many competent authorities will exist in the UK will be a matter for consultation once the European legislation has been adopted.

The Government considers it necessary to have competent authorities to monitor the standards of ADR providers in the UK but they do not need to have regulatory powers. If an ADR provider, which has been recognised under the European legislation, fails to uphold the required standards then the UK Government considers it would be appropriate for them to be removed from the list of recognised ADR providers. The UK Government will be seeking amendments to the proposals, if necessary, to enable such a mechanism. How this would work in practice and what appeals mechanisms would need to be in place will depend on the outcome of negotiations and consultation with stakeholders.

Question 7: Do you think that consumers would change their behaviour if businesses were required to inform consumers about an ADR scheme and/or whether they would participate in ADR? What evidence do you have to support this view?

The table below sets out the number of responses received from different types of stakeholders:

Category of respondent	Number of responses	% of total
Business organisations	8	24
ADR providers	12	35
Consumer organisations	6	18
ADR support organisations	4	12
Legal experts	3	9
Regulatory bodies	1	3
Total	34	100

Generally respondents felt that consumers would change their behaviour if businesses were required to give consumers information about the availability of ADR. A few stakeholders said that they had anecdotal evidence to support this premise but no quantitative evidence was provided. Other stakeholders felt that consumers did not generally enter into transactions thinking that there would be a problem and that there were a number of other factors that would also be important to consumers looking to make a purchase, e.g. price. It was suggested that the availability of ADR might be more significant for infrequent or expensive purchases or for markets with a lower reputation for consumer service or for trying new markets and unfamiliar brands.

A number of stakeholders felt that alongside the information provided by business, more needed to be done to raise awareness of the benefits and limitations of ADR to both consumers and businesses, particularly through the media.

Government response

Raising awareness of the benefits and limitations of ADR with both consumers and businesses is clearly important if this European legislation is to have a positive effect. The Government will work with stakeholders to determine appropriate mechanisms for doing so as part of implementing the European legislation in the UK once it has been adopted.

Last year the Government launched its Government Dispute Resolution Commitment³ through which government departments and their agencies are communicating to their customers, contractual partners, service providers, employees and the general public that they are serious about effective dispute resolution. As a follow-up, the Government is also working with a number of professional and business organisations, to create a similar Dispute Resolution Commitment for businesses which should help to raise business awareness of ADR.

Question 8: What would be the costs to business of providing these additional information requirements to consumers? How could these impacts be lessened for all businesses and, in particular, for small or medium businesses?

³ <http://www.justice.gov.uk/downloads/courts/mediation/drc-may2011.pdf>

The table below sets out the number of responses received from different types of stakeholders:

Category of respondent	Number of responses	% of total
Business organisations	10	31
ADR providers	10	31
Consumer organisations	4	13
ADR support organisations	4	13
Legal experts	1	3
Regulatory bodies	3	9
Total	32	100

Divergent views were received on the likely costs to business of the proposed information requirements. Some suggested costs could be large; others thought costs would be very small as similar requirements were already being met. One stakeholder said that based on responses industry gave to research conducted in 2009, the total one-off costs to include ADR information on bills in the telecoms sector would be around £200,000 which they felt was low when compared to the potential benefits. Another stakeholder suggested businesses would have to set aside £1000 each in one-off costs to implement the proposed requirements.

Many stakeholders suggested that amending websites would not be costly but providing information on invoices and receipts could be, particularly by businesses that use more than one ADR provider for different products/services.

One stakeholder suggested it would be better to have different requirements for different sectors or for the requirements to take a more generic form.

One ADR provider expressed concern that providing consumers with the details of an ADR body too early in the process could lead to unnecessary costs for ADR providers in dealing with disputes the consumer could resolve directly with the business. Business organisations also seemed to agree with this approach, favouring the provision of information about ADR when responding to a complaint rather than when a purchase is made. However, a consumer organisation thought it essential that consumer have this information before they make purchasing decisions. One suggestion was that business should have to state prior to any purchasing decisions whether or not they would use ADR but would then only need to provide the details when responding to a complaint.

A number of stakeholders were concerned that confusion would occur if a business is required to provide details about an ADR body when the business has no intention to use ADR. This would also reduce the desired effectiveness of the ADR logo in question and undermine consumer confidence in that ADR.

Several stakeholders noted that similar information requirements on ADR already exist in EU legislation, for example in the Consumer Rights Directive, and that these should be aligned as far as possible.

Stakeholders suggested that the impact of these information requirements could be reduced by providing a template or standard wording.

Government response

The Government will seek agreement from other Member States on information requirements that provide useful information to consumers, at the right times and which are proportionate for businesses. In particular, information provided by businesses to consumers should not mislead consumers into thinking ADR is available when, in reality, it is not. The Government will also be mindful of existing information requirements on ADR that UK businesses have to meet.

Once the European legislation has been adopted the Government will work with stakeholders to determine how to minimise costs for businesses whilst maintaining consumer benefits, e.g. through developing guidance on standard wording.

Question 9: Do you have any other comments on the proposed Directive?

This question, not unexpectedly, received the highest number of responses from stakeholders. The table below sets out the number of responses received from different types of stakeholders:

Category of respondent	Number of responses	% of total
Business organisations	12	27
ADR providers	13	30
Consumer organisations	7	16
ADR support organisations	4	9
Legal experts	5	11
Regulatory bodies	3	7
Total	44	100

Many stakeholders took the opportunity to raise additional issues/concerns with the proposed Directive on ADR.

A number of stakeholders expressed disappointment that the proposals would not require businesses to use ADR and/or would not make the outcomes of ADR binding on the business. Some consider this to be essential if benefits to be realised (see responses to question 1). Others suggest that making the use of ADR mandatory on business would just increase costs for business and ultimately consumers. Some stakeholders said that it is preferable to allow differentiation in the market by letting businesses decide whether or not to use ADR. Another stakeholder suggested businesses should, at least, be required to state whether or not they would be bound by the outcomes of ADR.

One stakeholder thought it would be wrong to restrict access to the courts of either party, whatever the results of any ADR. Another stakeholder suggested that attempting ADR should be a pre-requisite to issuing court proceedings.

Many stakeholders expressed concern at the inclusion in scope of disputes initiated by businesses against consumers. They suggested that this would make the consumer less-likely to complain for fear of counter-claims. Others said there would be no practical purpose in including such disputes, as ADR should not be used for debt-recovery and it would be impossible to ensure compliance by consumers with ADR outcomes. Another argument was that Ombudsmen schemes had been created to level the playing field between (weaker) citizens/consumers and (more powerful) institutions. It would therefore be inconsistent for them to handle disputes initiated by business against consumers.

A number of stakeholders suggested that ADR should be provided for free to consumers, although some thought a small, refundable fee might be useful in deterring vexatious or frivolous claims. Concerns were expressed about the increasing role of Claims Management Companies. One stakeholder suggested that the desire for ADR to be provided for free or at moderate cost to consumers had to be balanced against the possible demand, cost and capability of the ADR provider. One stakeholder said that the key problem was how to fund disputes about low value claims.

A few stakeholders expressed concern at the wide definition of ADR. They suggested that including within scope both mediation and arbitration, and everything in-between, would not, in fact, deliver the level playing field suggested by the European Commission. Other stakeholders expressed concern at different ADR providers operating in the same sector. They argue that giving business choice about which ADR provider to use leads to a reduction in standards.

A number of other issues were raised by individual stakeholders including: the need for the proposals to not undermine the mandatory ADR systems that operate in the UK; the proposed timetable for implementation being too ambitious; the need to include in scope any consumer disputes, not just those relating to contracts; whether the legislation would apply to disputes that arise before the legislation is implemented; concerns about allowing businesses to use ADR providers in another Member State; argument that dispute resolution operated by single-traders should not be counted as ADR; questions about how ADR will handle disputes where payment was made by a credit/debit card; concerns about the information-sharing obligations.

Government response:

The Government does not intend to argue that the Directive should make the use of ADR mandatory across all sectors; this should be necessary only in sectors where evidence suggests this would be a proportionate response. However, where businesses choose to advertise that they will commit to use ADR to resolve disputes they may be accused of misleading consumers if they then refuse to use it in individual disputes or refuse to abide by the outcomes it delivers. The Government will seek to ensure the EU proposals do not unnecessarily impact existing, effective mandatory schemes in the UK whereby businesses are required to use ADR.

Although there are arguments for including within scope disputes initiated by businesses against consumers, the Government considers that, on balance, they should be excluded. In the UK a number of ADR providers, e.g. Ombudsmen, were established with the specific aim of addressing the imbalance of power between an individual consumers and a business. It would be inappropriate to require these organisations to change their focus and doing so would be likely to reduce consumer confidence.

How best to fund ADR is a significant issue and the Government will be mindful of the various issues as negotiations on the European legislation continue. It will also be a key issue when

the European legislation has been adopted and UK implementation is under consideration. One option would be to leave the funding of ADR to the market to decide, within the Directive's constraints. There are good arguments both for and against a small refundable fee for consumers.

Although the Government appreciates the concerns of some consumer organisations that allowing different types of ADR might not provide consistency for consumers, the Government regards the breadth of different dispute resolution mechanisms that are considered to be ADR under this proposed European legislation to be a strength. Different types of ADR suit different types of disputes and indeed many different types of ADR are currently used to resolve consumer to business disputes in the UK. The Government believes it would therefore be wrong to exclude any specific type of ADR from the legislation or to require ADR of a specific type to be established for all consumer to business disputes.

The Government has taken on board all other comments made and will be taking these forward in negotiations, as seems appropriate.

Question 10: What do you think about the proposals in the ODR Regulation? What would be the costs/benefits of the ODR platform and facilitators to consumers, businesses and ADR providers? Would ADR providers be able to meet the 30-day deadline for concluding cross-border disputes? What would be the costs to business of these additional reporting requirements? Might these requirements mean business is more reluctant to trade online and cross-border?

The table below sets out the number of responses received from different types of stakeholders:

Category of respondent	Number of responses	% of total
Business organisations	11	28
ADR providers	13	33
Consumer organisations	5	13
ADR support organisations	5	13
Legal experts	3	8
Regulatory bodies	3	8
Total	40	100

Many stakeholders liked the idea of an online portal for dispute resolution but some thought the proposals themselves were misleading as the ODR platform would not be a genuine Online Dispute Resolution (ODR) scheme, rather it would just signpost disputing parties to existing ADR providers. Some stakeholders thought it essential that the platform does more, i.e. that it provides a capability to actually resolve disputes.

One ADR provider questioned the feasibility of automatically directing consumers to an appropriate ADR body, as disputes are often quite complex. Other stakeholders noted that the system would be useless if a business could simply choose not to participate. One suggestion was that it would be better to increase the capacity of the network of European Consumer Centres.

Most stakeholders felt the proposed 30-day time limit for concluding online cross-border disputes to be unfeasible, particularly given the same procedures would be used as for, often less-complicated, domestic disputes which would have a 90-day time limit under the ADR Directive. A number of stakeholders suggested the same time limit should apply to online cross-border disputes as for other disputes.

A number of stakeholders said it was hard to see what benefits the ODR platform would bring given businesses would be required under the ADR Directive to provide details of an ADR provider. A number of stakeholders said translation would be useful but it was stressed that this was needed throughout the dispute resolution process, not just for the initial complaint form.

One stakeholder thought the requirement to have both ODR contact points and ODR facilitators would lead to duplication and increased costs. Another thought the scope of the Regulation should be extended to disputes about domestic as well as cross-border online sales.

A couple of stakeholders said that if a service were used in the UK then this should not constitute a cross-border sale, even if the service was bought when the consumer was resident in another Member State.

A few stakeholders expressed concern that the proposals might have the effect of eroding existing mandatory ADR schemes in the UK as they do not recognise the situation where businesses are required by national laws to use one, specific ADR provider. They suggested in these circumstances the ODR platform should automatically refer parties to the relevant ADR provider.

One stakeholder questioned how the proposals would sit alongside FIN-NET, an existing system for resolving cross-border disputes in the financial sector.

Government response

The UK Government shares the concerns of stakeholders that the ODR platform may deliver only limited benefits and may confuse or even mislead consumers and will continue to press the European Commission for further clarifications.

The UK Government will seek agreement from other Member States to amendments to enable the proposals to deliver real benefits whilst reducing the risk of consumer confusion and unnecessary costs. Specifically, the Government will press for the proposed 30-day limit for concluding dispute resolution proceedings for disputes about online, cross-border purchases to be removed and for the 90-day limit proposed in the ADR Directive to apply instead.

The Government will also seek to ensure the EU proposals do not undermine existing, effective mandatory schemes in the UK whereby businesses are required to use certain, specific ADR providers even when the complaint is from a consumer in another Member State.

Annex

List of Respondents

AAT (Association of Accounting Technicians)

ABI (Association of British Insurers)

ABTA (Association of British Travel Agents)

Angus Logan (Solicitor)

BCC (British Chambers of Commerce)

BBA (British Bankers' Association)

BRC (British Retail Consortium)

BIOA (British and Irish Ombudsman Association)

British Sky Broadcasting Group

Bus Users UK

BVRLA (British Vehicle Rental and Leasing Association)

CAA (Civil Aviation Authority)

CBI (Confederation of British Industry)

CEDR (Centre for Effective Dispute Resolution)

Christopher Hodges (Professor of the Fundamentals of Private Law)

Citizens Advice

CMC (Civil Mediation Council)

Consumer Focus

Consumer Council for Northern Ireland

Cosmo Graham (Professor of Law)

Financial Services Consumer Panel

FLA (Finance and Leasing Association)

FOS (Financial Ombudsman Service)

FSA (Financial Services Authority)

FSB (Federation of Small Businesses)

IDRAS (Improving Dispute Resolution Advisory Service for Higher and Further Education)

IMRG (Interactive Media in Retail Group)

Law Society of England and Wales

Law Society of Scotland

Legal Ombudsman

Legal Services Consumer Panel

NLA (National Landlord Association)

NCIF (National Casino Industry Forum)

NETSA (North East Trading Standards Association)

Ofcom

OIA (Office of the Independent Adjudicator for Higher Education)

OFT (Office of Fair Trading)

Ombudsman Services

PhonepayPlus

Pre-Legal.com Ltd

RDO (Resort Development Organisation)

RICS (Royal Institution of Chartered Surveyors)

Royal Mail Group Ltd

Scottish Arbitration Centre

TDS (The Dispute Service Ltd, Tenancy Deposit Scheme)

The Mediation Room

The Scottish Mediation Network

UK Cards Association

UK ECC (United Kingdom European Consumer Centre)

Virgin Media Limited

Which?

Woods of Shropshire Limited

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