



The Danish Governments feedback on "the use of Alternative Dispute Resolution as a means to resolve disputes related to commercial transactions and practices in the European Union" from DG SANCO.

Summary

- *The Danish Government supports the intention of the Commission to secure consumers and traders a cheap, simple and quick way of solving disputes, for example through ADR.*
- *The Commission should consider introducing limits to which disputes should be covered by an ADR solution (eg. upper and lower price limits).*
- *It should not be compulsory to try a dispute before an ADR board before it can be brought before the courts, and the decisions of ADR boards should not be binding.*
- *The funding of ADR solutions should be left to the Member States to decide.*

The Danish Government's feedback

The Danish Government supports the intention of the Commission to secure consumers and traders a cheap, simple and quick way of solving disputes, for example through ADR. Denmark agrees that ADR solutions may contribute to increased consumer confidence in cross-border trade, which is relevant in relation to e-commerce in particular.

The Danish Government already makes wide use of ADR in the consumer complaints field. The Danish Government has a public body called the Consumer Complaints Board (*Forbrugerklagenævnet*). Additionally, 18 private complaints boards consider cases within their respective fields. They are approved by the Minister for Economic and Business Affairs. Finally, there are various non-approved complaints boards. These private complaints boards are run by the relevant industries, and they are not covered by the principles stated below. The Danish consumer complaints system satisfies the desire of the Commission to secure consumers and traders a cheap, simple and quick dispute resolution mechanism, for example through ADR.

**MINISTRY OF ECONOMIC
AND BUSINESS AFFAIRS**

Slotsholmsgade 10-12
DK-1216 Copenhagen K

Tel. +45 33 92 33 50

Fax +45 33 12 37 78

CVR no. 10 09 24 85

oem@oem.dk

www.oem.dk

The Danish Government's position is that it should be possible to continue the main principles of the Danish consumer complaints system in case EU rules are introduced in this field.

Relative to the specific questions of the Commission in its consultation paper, the Danish Government wishes to make the following observations:

1. The Commission should carefully consider whether all disputes between consumers and traders should be covered by an ADR solution. In Denmark, it is possible to specify limits as to what cases are eligible for consideration. These limits may be lower or upper price limits for the product or service. The Danish Consumer Complaints Board set a fixed lower limit to obviate the need for the Board to consider all ordinary daily shopping transactions, and an upper limit to ensure that buyers of products or services characterised as luxuries cannot make use of a publicly funded complaints board.

If no limits are laid down for the cases to be covered by ADR solutions, the consequences may be far-reaching and may imply unnecessary costs and administration for both the public authorities and businesses, particularly in the countries where ADR solutions are not yet in wide use.

The Danish Government therefore suggests that any EU rules on ADR solutions be targeted at the products and services that may especially contribute to increased consumer confidence in cross-border trade, particularly e-commerce. Relevant products or services could be those that already constitute a large proportion of the cross-border trade today, such as air travel or products typically traded on the Internet.

2. In Denmark, the Consumer Complaints Board and the approved private complaints boards only consider individual complaints submitted by consumers. In relation to ADR systems the Danish Government has no experience or tradition of collective complaints.
3. It should not be compulsory to try a dispute before an ADR board before it can be brought before the courts. Consumers should not be restricted in their access to resolution of disputes. If consumers find that the court system is the most expedient way of settling a dispute, they should not be barred from such procedure.

Moreover, a very large number of boards of very different types exist. The boards differ greatly by their fields of work, composition (including participation by legally trained persons and by professional and industrial bodies) and methods of work. Also, the individual cases differ. As an example, cases presenting evidential problems that

should be clarified by statements from the parties or witnesses are usually not very suited for consideration by a complaints board. Concerning the interaction between complaints boards and courts in consumer cases, reference is also made to section 361(1) of the Danish Administration of Justice Act (*retsplejeloven*). This provision prescribes that if a consumer requests that a case eligible for consideration by the Consumer Complaints Board or a complaints or appeal board approved by the Minister for Economic and Business Affairs be considered by the relevant board, the court will dismiss the case and refer it to such board. In that connection, it should be noted that Part XXXIX of the Administration of Justice Act provides rules on court consideration of small claims cases. The rules provide for an easy and cheap procedure for civil actions concerning disputed claims not exceeding DKK 50.000.

4. The Danish Government is not supportive of a rule making decisions of ADR boards binding as that could give rise to significant due process concerns. One reason is that, when making their decisions, ADR boards do not offer the same procedural guarantees as the courts. Consideration by the courts implies various procedural guarantees following from the Danish Constitution, the European Convention on Human Rights and otherwise provided by law. Similar guarantees are not offered in case of consideration by a board.

In 2009, Denmark made efforts to make complaints board decisions binding on traders. However, this was not implemented as it clearly appeared from the consultation responses to the relevant bill, including the response from the Supreme Court that such scheme would give rise to significant procedural concerns. Moreover, a consumer would risk being forced into court proceedings even against the consumer's desire. Instead, a two-pronged scheme was introduced to ensure the enforceability of board decisions. One prong of the scheme means that a trader must notify the board in writing within 30 days of a decision delivered by the board if the trader does not want to be bound by such decision. It is then up to the consumer to choose whether to bring an action before the court. If the trader remains passive, the consumer can have the decision enforced with the help of the enforcement court. The other prong of the scheme implies that consumers may have their expenses for a legal action based on a board decision covered by the Competition and Consumer Authority. This two-pronged scheme applies to complaints submitted after 1 January 2010.

5. EU legislation in the field should be based on Commission Recommendations 98/257/EC and 2001/310/EC. These Recommendations are well-known and provide the important principles guaranteeing due process protection of consumers and

traders. The recommendations thus form the basis of the Danish Consumer Complaints Board and the approved private complaints boards.

6. The funding of ADR solutions should be left to the Member States to decide. In connection with ADR solutions, it should be possible to charge a fee for consumers wanting to complain and to order the traders to pay the costs.

ADR solutions should be based on the principle that public authorities should not become involved in disputes which can be settled between the parties concerned. Traders and consumers should take responsibility for their own complaints to a wide extent, also in terms of funding. That is the reason why consumers have to pay a fee to submit a complaint and traders have to pay the costs if they lose the case. This is a vital prerequisite for building a well-functioning consumer complaints system based on dialogue and cooperation.

On the one hand, the consumer fee is to urge consumers to consider their complaints once more, thereby contributing to make sure that the complaints are substantive. On the other hand, the fee should not be so large as to keep consumers from complaining.