



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 17 April 2013 (18.04)  
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**ADDENDUM TO "I/A" ITEM NOTE**

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from: General Secretariat of the Council  
to: COREPER /COUNCIL

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No. Cion prop.: 17795/11 CONSOM 196 MI 616 JUSTCIV 339 CODEC 2242

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Subject: Proposal for a Directive of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR) (**first reading**)  
Adoption of the legislative act (LA + S)  
= Statement  
**COMMON GUIDELINES**  
**Consultation deadline for Croatia: 17.4.2013**

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**Statement by Spain on the Directive on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR)**

Since the 1998 and 2001 Recommendations were adopted, Spain has supported all initiatives relating to alternative dispute resolution for consumer disputes, and will continue to encourage the establishment and development of ADR bodies, in accordance with the text adopted today.

However, we cannot accept the content of Article 13 insofar as it requires those traders who are obliged to or have committed to make use of ADR entities to provide duplicate information.

Firstly, they must refer to this obligation or commitment on their websites and in all contracts or general terms and conditions. Secondly, they must repeat this information each and every time they reject a complaint submitted directly to them. Furthermore, in such cases they must once again specify whether they will make use of the entities, although the fact that they have previously committed to or are obliged to use them means that the answer can only be yes.

On the other hand, traders who have not committed to or are not obliged to make use of an ADR entity only have to mention the ADR entities by which they are covered when they reject a complaint submitted directly to them by a consumer, specifying at that time whether or not they will make use of the entities, something that is entirely up to them to decide.

In order to avoid the twofold obligation which is thus imposed on traders who have already committed to make use of ADR entities but not on those who have not, the former will find it more attractive to refrain from accepting the intervention of ADR entities prior to a complaint. In this way, they will avoid having to provide the information on their websites and in all of their contracts. This will also prompt new traders not to commit in advance to using ADR entities, thereby simplifying the information requirement imposed on them by the Directive.

The purpose of the Directive, which is to improve the retail internal market and provide redress for consumers by creating ADR entities, increasing their coverage and making them more widely available, could be undermined, and the impact on the strengthening of consumer protection in terms of access to justice could be negative.

After 20 years of development, the Spanish system of mediation and arbitration, which is publicly managed and funded, covers the whole country and all economic sectors. More than 80 % of the complaints received by our ADR entities come from companies which are committed to using them and will now be required by the new text to give duplicate information. These include the major telecommunications companies, which receive around 25 million complaints per year and account for over 60 million users receiving monthly bills.

Spain showed its support for the text of the Council general approach. We would also have accepted without hesitation the proposal as set out in the Commission's original text, which would have helped improve awareness of ADR entities since it required all traders to provide information about them. However, for the reasons set out above, we will abstain from voting on the adoption of the Directive because we cannot accept the final wording of Article 13.

#### **Statement by the United Kingdom regarding the implications of Article 13(3)**

The UK has concerns that imposing compulsory information requirements in this manner on traders who have no intention of using ADR will cause confusion for traders and consumers, impose unnecessary burdens on traders, and create difficulties with compliance and enforcement. The impact of this provision should be closely monitored by the Commission and feature prominently in the report on the application of the Directive.

## Statement by the United Kingdom

The Council is being asked to adopt the Proposal for a Directive on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR) with Article 114 as its legal base. The United Kingdom believes that Article 12 of the Directive falls within the scope of Article 81 TFEU and that this Title V legal base should therefore have been cited. In light of the fact that Article 12 is adopted pursuant to Title V, the United Kingdom considers that this provision should have been split from the Directive and placed in a discrete instrument, or removed from the text of the Directive. As the United Kingdom can accept the policy objective of Article 12, it has opted in pursuant to Protocol 21 of the Treaty on the Functioning of the European Union.

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