

18 June 2012

## AmCham EU Strongly Supports Alternative Dispute Resolution Mechanisms

As laid out in the publication ‘Finding balanced alternatives: Promoting alternative dispute resolution mechanisms in the EU’, the American Chamber of Commerce to the European Union (AmCham) EU is a strong supporter of alternative dispute resolution mechanisms (ADR) as a cost effective and fair way of settling disputes arising from business-to-consumer contracts. AmCham EU shares the European Commission’s view that the creation of quality ADR schemes will serve to fill a gap in consumer well-being, reinforce the Single Market and facilitate cross-border trade. AmCham EU therefore welcomes the European Commission 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).

AmCham EU welcomes the European Commission’s view that ADR schemes should be built on existing legal infrastructure, that such schemes should remain voluntary and that businesses should be left the flexibility to use their own specific mechanisms for resolving consumer complaints. AmCham EU believes that the following guiding principles must be followed for an ADR scheme to function correctly:

- **Independence and impartiality** guaranteed by ensuring those responsible for the ADR procedure are competent, appointed for a sufficient term and have no perceived or actual conflict of interest;
- **Transparency** guaranteed by making information readily available on the types of dispute covered, preliminary requirements, the procedural rules, the possible cost of the procedure, the likely timetable and the legal force of any solution for resolving the dispute;
- **Fairness** guaranteed by ensuring that the parties are informed of their right to refuse to participate in the procedure at any time, and that they have the right to seek independent advice and be represented;
- **Effectiveness** guaranteed by ensuring that the procedure is easily accessible and available at limited cost;
- **Legality** guaranteed by ensuring that a decision taken may not result in the consumer being deprived of the protection afforded by the mandatory provisions of national laws; and
- **Liberty** guaranteed by ensuring that a decision can only be binding on the parties if they were informed of, and agreed to, its binding nature in advance.

AmCham EU is satisfied that these principles are enshrined in the Commission proposal. However, we believe that the principles of independence and impartiality should be applied irrespective of economic dependence or funding.

American Chamber of Commerce to the European Union –  
Avenue des Arts/Kunstlaan 53, B-1000 Brussels, Belgium  
Telephone 32-2-513 68 92 – Fax 32-2-513 79 28  
info@amchameu.eu – [www.amchameu.eu](http://www.amchameu.eu)

Secretariat Point of Contact: Emanuele Degortes; [Emanuele.degortes@amchameu.eu](mailto:Emanuele.degortes@amchameu.eu) +32 2 289 1036

POSITION STATEMENT

At the same time as supporting these over-arching principles AmCham EU is in favour of promoting diversity in ADR entities. A ‘one-size-fits all’ approach with prescribed ADR schemes should be avoided. In this regard, we believe that established ADR entities constituted by single natural persons should not be prevented from pursuing dispute resolution. AmCham EU also supports the creation of pan-European ADR entities and call for appropriate procedures for their notification. AmCham EU therefore welcomes the flexibility and choice found in the proposed Directive.

AmCham EU also shares the European Commission’s insistence that ADR entities and their procedures should be accessible from all Member States for cross-border, national, on- and offline disputes. AmCham EU also welcomes the encouragement of cooperation and coordination between different ADR entities and Member States. This should be further developed to ensure the efficient operation of systems and to avoid the duplication of cases.

Confidentiality and disclosure of evidence is vital for ADR systems to function. AmCham EU believes that evidence should only be disclosed if essential to a case and that mechanisms for confidential disclosure should form part of an ADR scheme.

To ensure legal certainty AmCham EU would have liked the Commission proposal to provide for settlements reached to be enforceable by courts. It is accepted however that this will still be technically possible under the proposed Directive if both parties agree to confer power on the courts to approve voluntarily negotiated settlements. AmCham would like to see the proposal amended to make settlements legally binding.

AmCham EU supports the European Commission proposal that ADR procedure should be voluntary, free of charge or of moderate cost (no more than €50). AmCham EU members believe that Member State administrations should provide public funding to contribute towards ADR costs.

AmCham EU notes that the Commission proposal, while not establishing collective ADR schemes, does not prevent Member States from doing so and should be regarded as a preliminary step towards doing so. AmCham EU supports the creation of collective schemes, however notes that bodies engaged in collective schemes should be objective and not directly interested financially or otherwise, and that those who agree to be bound by the outcomes of a collective procedure are informed as to how their interests will be represented.

In line with the previous comments, AmCham EU encourages well-functioning ADR entities in line with the requirements of this directive to be able to be officially notified to the European Commission by national competent authorities.

AmCham EU welcomes the creation of national competent authorities responsible for ADR entities and the Commission proposals insistence on the monitoring and measurement of their performance.

American Chamber of Commerce to the European Union –  
Avenue des Arts/Kunstlaan 53, B-1000 Brussels, Belgium  
Telephone 32-2-513 68 92 – Fax 32-2-513 79 28  
info@amchameu.eu – [www.amchameu.eu](http://www.amchameu.eu)

Secretariat Point of Contact: Emanuele Degortes; [Emanuele.degortes@amchameu.eu](mailto:Emanuele.degortes@amchameu.eu) +32 2 289 1036



\* \* \*

*AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate U.S. investment in Europe totalled €1.4 trillion in 2009 and currently supports more than 4.5 million jobs in Europe.*

\* \* \*

American Chamber of Commerce to the European Union –  
Avenue des Arts/Kunstlaan 53, B-1000 Brussels, Belgium  
Telephone 32-2-513 68 92 – Fax 32-2-513 79 28  
info@amchameu.eu – [www.amchameu.eu](http://www.amchameu.eu)

Secretariat Point of Contact: Emanuele Degortes; [Emanuele.degortes@amchameu.eu](mailto:Emanuele.degortes@amchameu.eu) +32 2 289 1036