Consultation on Alternative Dispute Resolution in the area of Financial Services

Observations of Assuralia

Introduction

Assuralia, the Belgian insurance association, welcomes the public consultation on Alternative Dispute Resolution (ADR) in the area of Financial Services. It advocates ADR to resolve disputes between consumers and financial services providers. In comparison to judicial redress, out-of-court settlements offer a quicker and cheaper way to settle disputes, improve access to justice and increase consumer confidence in financial services.

Therefore, the European Commission (EC) should further promote the use and improve the functioning of existing ADR schemes. Perhaps the introduction of quality standards is worth considering. In those sectors where ADR does not exist yet, the EC should recommend the creation of ADR in all upcoming sector legislation.

With regard to the financial services sector, gaps in the geographical coverage and procedural differences should be narrowed. In most countries financial ADR schemes are voluntary and the result of an industry initiative. Assuralia admits this, but it believes that it is in the interest of both customers and businesses if all financial services providers adhere to ADR schemes in the Member States where they operate.

In fact, Assuralia considers that all Member States (MS) should implement FIN-NET and have schemes to resolve disputes between consumers and their financial service providers out-of-court. Assuralia hopes that these Member States will clarify the reasons behind the absence of ADR and FIN-NET implementation.

Besides, compulsory adherence to ADR does not have to mean that all financial settlement schemes must be identical. Assuralia acknowledges that these systems differ from each other due to specific national legal or factual arrangements as well as cultural particularities. Yet, it must be avoided that consumer complaints are not taken care of by dedicated ADR schemes.

Initiatives raising consumer awareness about different out-of-court settlement procedures are crucial. Assuralia is convinced that customers will be more willing to seek redress out of court if they would receive appropriate information about the existence of different complaint procedures. That is why Assuralia relies on self-regulation. It has its own ‘Code of Conduct’ for complaint management both in-house and through the Belgian Insurance Ombudsman. Our members are requested to inform their customers of relevant complaint services in their...
policies. The EC should reflect on introducing mandatory contractual information requirements in this field.

For more details about our point of view, Assuralia refers to its answers on the questions in the paper below. In case of questions or remarks, do not hesitate to contact:

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**About Assuralia**

Assuralia, the Belgian insurance association, was established in 1920. It is the representative body for mutual, co-operative and joint-stock insurance companies in Belgium. Today, it covers about 98% of the Belgian market i.e. currently more than 32.5 billion euro premium income (local business excluding FOS premium and reinsurance premium income). Assuralia represents the interests of the Belgian insurers and actively promotes business co-operation. It is a member of the Comité Européen des Assurances (CEA).
Observations with regard to the consultation document

General comments

The EC should take into account that Assuralia is the sector federation of insurance companies. It offers several services to its members. The drafting of codes of conduct, including a code for complaint management, is one of our tasks. However, Assuralia is not involved in the complaint handling process between individual insurance companies and their clients. Yet, our members are affiliated to the Belgian Insurance Ombudsman.

Since 1987 the Belgian insurance sector has its own Ombudsman. It is recognized as the ‘single booth’ for the sector by the Royal Decree of 21 June 2006. It is not a governmental body, but it has a mission defined by law and is supervised by a board in which consumers, professionals and supervisors are represented. The Ombudsman operates autonomously. As a neutral party he helps to reconcile the interests of one or more customers who have a dispute with their insurance company or intermediary. He offers his services for free.

The Ombudsman received 3.392 written complaints in 2007. 80% of these written complaints were admissible. In 54% of the examined cases the plaintiff was in his right. Disputes about the content of policies represented 45% of the complaints. The majority of the complaints (55%) were about claims settlement. Plaintiffs challenged mostly refusals for compensation, the amount of compensation and the delays of reimbursement. This was more specific the case for motor liability insurance.

Yet, the Insurance Ombudsman is not qualified to decide on the liability for a motor accident, nor the value of damage caused by motor accidents. That is the task of the magistrate. In this respect, Assuralia, some Bars and the federation of intermediaries launched the non-profit organization ARIBTRAGE in 2000 with the aim to lower the case-load of police courts. The arbitration procedure is open for motor liability disputes with merely material damage and possibly the reimbursement of medical and pharmaceutical costs of maximum 250 euro.

"Arbitration" (cf. article 1676-1723 of the Judicial Code) is a legal technique for the resolution of disputes outside the courts. In case of arbitration parties agree to submit their disagreement to an arbitral tribunal composed of one to three people. On the basis of the request of the parties, the tribunal will render a decision (an arbitral award) which is obligatory. This award binds the parties and can be enforced if needed. Arbitration has its own costs, but is definitely less time-consuming than a court settlement.

The non-profit organization ARBITRAGE settles disputes within 5 months. The procedural costs are divided amongst the parties and often covered by their legal expenses insurer. Despite those merits, Assuralia concludes that the popularity of ARBITRAGE remains limited. The saying “Unknown, unloved” is perhaps a part of the explanation. In this respect, an information campaign and a reminder at the time of the reporting of the accident seems appropriate.

Membership of FIN-NET

The Belgian Insurance Ombudsman is a member of FIN-NET. Hence, he is the most appropriate stakeholder to respond to this consultation. Assuralia will restrict itself to more general observations and suggestions to improve the effectiveness and efficiency of ADR, both in a domestic and cross-border context.

- What steps need to be taken to make FIN-Net a comprehensive network, covering all Member States and financial services sectors?
- Should action be taken at EU level? If yes, what form should it take? Binding? Non-binding?
Since its creation in 2001, FIN-NET did not gain much publicity and remains relatively unknown to both consumers and financial services providers in EU Member States. The fact that the network covers only 19 out of 27 Member States spoils somehow the objectives of the Single Market in the area of financial services.

More publicity should be the first step to make FIN-NET more comprehensive. The next step must be an assessment of the reasons why some Member States did not join FIN-NET yet. The results must encourage the EC to take appropriate measures so that all Member States join the network voluntarily. Compulsory membership should be considered if it would appear to be the only way to cover all financial services by the network. In the end, Assuralia would not reject compulsory FIN-NET membership.

Assuralia admits that there are differences between the national ADR schemes that belong to FIN-Net. However, those differences should not be problematic if all schemes comply with the quality standards that are embedded in the two EU Recommendations on out-of-court settlements. In this respect, the EC should use the responses to this consultation to check if the principles of independence and impartiality are met across Europe. If not, an update of the application of those standards will be necessary.

Finally, periodical evaluations and adjustments are necessary. Members should learn from ‘best practices’/‘failures and errors’ and aim for a common approach of dispute resolution to make the network more comprehensive. Without ignoring the particularities of national systems, applicable law, differences in treatment should be minimized. This goes a fortiori for disputes in the area of financial services provided via Freedom of Services (FOS) where the host country standards may differ from those that are applicable in the home state (local market).

Creation of ADR schemes

- **What action needs to be taken to encourage the creation of ADR schemes, where they do not exist?**

- **Should any action be taken at EU level? If yes, what form should it take? Binding? Non-binding?**

Some directives encourage Member States to create such systems (e.g. Distance Marketing Directive, Insurance Mediation Directive or MiFID). Assuralia welcomes this approach. It requests the EC to further recommend the use of ADR in future legislative work. Moreover, it would not reject binding EU action if sufficient flexibility is left to the Member States. Some sectoral directives, such as the Payment Services Directive, already oblige MS to create out-of-court settlement procedures. Framework directives seem the most appropriate instruments to meet the specificities of the different national (financial) markets.

At national level, self-regulation might be helpful. Assuralia distinguishes two ways to encourage the creation of ADR schemes. On the one hand, financial sector federations should stimulate the creation and use of out-of-court settlements. On the other hand, financial services providers should take responsibility to set up complaint procedures at company level. In this respect, our ‘Code of conduct for complaint management’ is worth mentioning. The aim of this code is twofold. Our members are required to set up an internal complaint management procedure and are requested to refer to the Belgian Insurance Ombudsman in their contracts.

Adherence to ADR schemes

- **Should adherence to an ADR scheme be mandatory to all financial services providers? If yes, should the financial services providers be obliged to adhere to the ADR scheme only if the**
country where they are established or to all the ADR schemes in Member States where they provide services?

- Should action be taken at EU level? If yes, what form should it take? Binding? Non-binding?

Assuralia is in favour of mandatory adherence of all financial services providers to ADR. This holds true for both domestic and foreign ADR schemes. The financial services providers should rely on FIN-NET for cross-border disputes. In view of that, Assuralia would not reject binding EU action.

Information to consumers about ADR schemes and FIN-NET

- Should financial services providers be obliged to inform customers about the possibility to resolve disputes through an ADR scheme? Should this obligation be applicable also with regard to FIN-NET?

- Should action be taken at EU level? If yes, what form should it take? Binding? Non-binding?

- When should the financial services provider inform its customer about the possibility to address the complaint to an ADR scheme? As part of the contractual information? At the moment when the dispute arises and it cannot be settled between the provider and the customer bilaterally? Both? Other?

In line with the answers above, Assuralia would support binding EU action. A framework directive seems most appropriate.

A proper balance must be ensured between informing consumers about the existence of ADR and at the same time avoiding overburdening consumers with irrelevant information at pre-contractual stage. Therefore, Assuralia finds it most appropriate to inform the customers of ADR at the contractual stage.

With regard to FIN-NET, action at EU level seems less necessary. FIN-NET is a network of national ADR schemes. It should be the responsibility of those national ADR schemes to inform the customer about the existence of FIN-NET for the settlement of cross-border disputes. In this respect, consumer organisations have also a role to play.

Awareness of FIN-NET and of its member ADR schemes

- Is there a need to promote FIN-NET and its member ADR schemes? If yes, what would be the best way to do so?

Yes, it is necessary to promote FIN-NET and its member ADR schemes. A mix of actions seems the best way to do so. Regulatory bodies, different media, sector federations and consumer organisations have an important role to play in national awareness raising campaigns and financial education. National websites of FIN-Net members should have a direct reference link to the FIN-NET website. The introduction of a similar layout for member’s websites is also worth considering.

At EU level, financial education should be further promoted. Another action should be the improvement of the content on the FIN-NET website (e.g. short summaries of different ADR procedures, etc.). The website should also be available in all recognized EU languages.

Finally, the promotion of FIN-NET via the European Consumer Centres Network (ECC-NET) is a valuable opportunity. The ECC-NET is an EU-wide network designed to promote consumer confidence by advising citizens on their rights as consumers and providing easy access to redress, particularly in cases where the consumer has made a cross-border purchase.
Commission Recommendation 98/257/EC on the principles applicable to the bodies responsible for the out-of-court settlement of consumer disputes, and Recommendation 2001/310/EC on the principles for out-of-court bodies involved in the consensual resolution of consumer ADR.