



# The ADR/ODR proposals

## *Challenges from a national perspective*

Prof. dr. Evelyne Terryn  
KU Leuven Study Centre for Consumer Law

# Consumer redress

- Leuven DG SANCO Study January 2007 (J. Stuyck, E. Terryn, V. Colaert, T. Van Dyck, N. Peretz, N. Hoekx)

<i>Consensual Decision Process</i>		<i>Adjudicative Decision Process</i>		
<i>Individual Action</i>		<i>Collective Action</i>		
<i>Conciliation Pursued</i>	<i>Damages Pursued</i>		<i>Injunctive Relief</i>	
<b>Direct Negotiation</b>	<b>Mediation / Arbitration</b>	<b>Small Claims Procedures</b>	<b>Collective Actions</b>	<b>Actions for Injunctive Relief</b>

European complaints form

Recommendation on arbitration-type ADR

98/257/EC

Recommendation on mediation-type ADR

2001/310/EC

Directive on mediation

Proposal for a directive on ADR and a Regulation on ODR

Small claims regulation

961/2007

Injunctions directive

CPC Regulation

# Time for legislative action

- 2007 KU Leuven study on alternative means of consumer redress
- 2009 Study on the use of ADR in the EU (Civic consulting et al.)
- 2011 Study on Cross Border ADR
- Public consultation
- 2012 Consumer ADR in Europe (Hodges, Benöhr Creutzfeldt-Banda)
- ...



# ADR/ODR proposals

- Welcome initiative !
- Gaps in coverage
- Increasing quality
- Lack of awareness
- Necessary complement of other redress mechanisms
- General approach to be welcomed
  - Room for national diversity (sectoral / residual approach)
  - Flexibility in procedures
  - Promotion ODR to be welcomed
  - BUT

# ADR in Belgium

- Scattered & Gaps
- Sectoral ombudsmen (banks, insurance, telecom, postal services, ...)
- Sectoral ADR bodies (arbitration / mediation like)
- Belmed : online platform
  - ADR information
  - ODR facilitator
- Legislative proposal!
  - One federal ombudsman (sectoral back offices + residual service)
  - General contact point
  - Private initiatives continue to exist
  - Criticism : vagueness, need for royal decrees on **procedural issues**, financing of the system
  - Separate proposal on class actions (opt out)

# ADR in the Netherlands

- Well developed
- Stichting geschillencommissie
  - Self regulation
  - General terms and conditions (negotiated by sector and consumer organisations)
  - Involvement of sectoral bodies
  - ‘Binding advice’
- Broad coverage
- Advice SER (Sociaal economische raad) on Commission Proposals

# ADR in the Netherlands

- Concerns – ADR directive
  - Minimum harmonisation character to be made explicit
  - Possibility to use self regulatory initiatives to be made explicit
  - Quality criteria
    - Independence (in addition to impartiality)
- Concerns – ODR regulation
  - 30 days too short
  - Link with ECC network
  - Interoperability with existing ADR entities operating online



# Concerns & suggestions for improvement

- Legality
- Independence
- Transparency – further reaching publication of decisions (line of jurisprudence)
- Prior amicable solution as prerequisite (cf ia NL, BE)
- Suspension of prescription / limitation periods
  
- ODR – 30 days?
- Further reaching digitalisation of procedures desirable (online case management tool to conduct procedure online)
- Extended role for ODR facilitators
- Binding upon traders / Binding character of the decisions - controversial