

22 February 2012

Position Paper on ADR/ODR

Seldia, the European Direct Selling Association represents 22 European, national, Direct Selling Associations (DSAs) and, directly and indirectly through its corporate members, also represents over 1,000 direct selling businesses with annual sales in excess of 14.0 billion Euro and eleven million, independent, direct sellers working with those businesses. Seldia has Code of Conducts for dealing with consumers and dealings among commercial partners. The Codes are similar to the Global Code of Conduct by the World Federation of Direct Selling Associations (WFDSA).

Both Seldia and WFDSA oblige their members to adopt the Codes and appoint a Code Administrator (Ombudsman). Seldia's Code Administrator is a Committee and handles cross border complaints in the Internal Market.

Recommendations

Seldia is supportive of the European Commission initiative on ADR/ODR. Seldia has been continuously promoting alternative dispute resolution methods as a satisfactory redress mechanism via its membership and in house structures, as explained above. It would like to make the following recommendations.

1. Discrepancies between member states should be respected and different national systems should be maintained if they are effective.

The Direct Selling sector provides for a number of ADR schemes (Code Administrators) in most of the European Member States. These schemes are well-established and efficient redress system at national level. The variety of ADR schemes should thus be respected.

2. The impartiality of a mediator should be ensured according to the domestic context

Seldia supports the call for an impartial mediator, and believes that this could be achieved in various manners. A collegial mediator, including both trade and consumer representative(s) is not always economically justified. The direct selling industry often engages independent lawyers as mediator in those markets. In such circumstance, the lawyer can be considered impartial if it is not paid by any of the parties (company, direct seller or consumer). The European Commission should develop the criteria of impartiality for natural persons.

Seldia believes that impartiality should not be assessed by any economic criteria, company's in-house mediators should thus not be excluded from efficient legal ADR schemes.

3. A limit should be secured on the prerogatives of member states

The direct selling industry supports the prerogatives conceded to Member States to monitor and assess existing ADR schemes. However, these prerogatives should be limited and that they should not hamper the functioning of well-established ADR schemes. The proposed Directive should ensure that a mediation scheme that complies with the Directive cannot be denied authorisation or notification.

4. Pan-European ADR schemes should be encouraged

There will be cases in which a national mediator may not offer the most effective remedy, for example in cross-border cases where consumer and trader are not in the same jurisdiction. For those cases, the establishment of a European mediator should be encouraged. A specific procedure should be created for the notification and monitoring of European schemes, which is not foreseen in the European Commission proposal.

5. Exhaustive information requirements shall be avoided

Seldia supports the transparency criteria in ADR schemes. Consumers shall be entitled to receive all the appropriate information about their complaint. However, information requirements should be limited to essential practical information thus avoiding administrative burden.

6. Legal representation should be excluded

Seldia opposes legal representation for parties to a complaint. Most of the disputes handled by ADR schemes in direct selling are resolved without the need of legal representation. Such representation goes against the spirit of self-regulation, adds a considerable administrative burden and costs to the procedure, and does not facilitate dispute resolution.

7. Online Dispute Resolution should be encouraged

Seldia supports online dispute resolution. A common platform will make complaints procedure more accessible, more efficient and more economic.

8. Any online redirection of complaints should be neutral

Seldia supports the European Commission proposal to create a single online platform for redirection to the competent ADR scheme. No mediation scheme should ever be excluded from this redirection platform and all schemes should be dealt with on an equal basis without the platform setting preferences. This principle of neutrality should be laid down in the proposed Directive.

Attachment - List of Direct Selling Code Administrators (mediators/ombudsmen)

Country/ Direct Selling Association (DSA)	Code Administrator /Ombudsman	Function	Remuneration	Who can complain	Free for Consumers
Belgium	Michel De Ridder	Lawyer Member of the Bar	By DSA	Consumers Companies	Yes
Bulgaria	Tanya Foutekova	Lawyer Member of the Bar	By DSA	Consumers Companies	Yes
Czech Rep.	Viktor Petrus	Lawyer Member of the Bar	By DSA	Consumers Direct Sellers Companies	Yes
Croatia	Sanja Juric	Lawyer Member of the Bar	For free	Consumers Companies	Yes
Denmark	Richard Petersen	Lawyer Member of the Bar	By DSA	Consumers Direct Sellers Companies	Yes
Estonia	Martynas Duksa	Lawyer Member of the Bar	For free	Consumers Direct Sellers Companies	Yes
Finland	Sakari Virtanen	Expert	By DSA	Consumers Direct Sellers Companies	Yes
France	Commission Paritaire de Mediation	Representation of the industry and consumers	/	Consumers Companies	Yes
Hungary	Kristina Arto (Pr.) Gyorgy Morvay (Consumers) Executive Dir. DSA	Representation of the industry and consumers	/	Consumers Direct Sellers Companies	Yes
Italy	Fabio Bortolotti	Law Professor	By DSA	Consumers Companies	Yes
Latvia	Egils Fortins	Law Professor	For free	Consumers Direct Sellers Companies	Yes
Lithuania	Martynas Duksa	Lawyer Member of the Bar	For free	Consumers Direct Sellers Companies	Yes
Netherlands	Geschillen Commissie	Representation of the industry and consumers	/	Consumers Direct Sellers Companies	25€
Poland	Maciej Laszczuk Andrzej Zbroja	Lawyers Members of the Bar	By DSA	Consumers Direct Sellers Companies	Yes
Portugal	Luis Nandin de Carvalho	Lawyer Member of the Bar	By DSA	Consumers Direct Sellers Companies	Yes
Spain	Consumer Arbitration Courts	Representation of the industry and consumers	/	Consumers	Yes
Sweden	Robert Hansson	Lawyer Member of the Bar	By DSA	Consumers Direct Sellers Companies	Yes
United Kingdom	Paul Dobson	Law Professor	By DSA	Consumers Direct Sellers Companies	Yes