

German and Dutch parliaments send reasoned opinion

By Sophie Petitjean | Friday 24 February 2012

The legislative proposals on out-of-court resolution of consumer disputes have come up against a sizeable obstacle: in late January, the German and Dutch parliaments sent a reasoned opinion to the EU institutions denouncing the proposals' non-conformity with the subsidiarity principle. Germany's Bundesrat is also opposed to the legal basis chosen by the European Commission, namely Article 114 TFEU.

On 29 November 2011, the Commission presented two legislative proposals on alternative dispute resolution (ADR). The first is a draft directive on member states' obligation to ensure that all disputes between a consumer and a professional related to the sale of goods or services can be submitted to an alternative dispute resolution entity. The second is a draft regulation establishing a European online dispute resolution (ODR) platform. Under Article 6 of Protocol 2 on the application of the principles of subsidiarity and proportionality, national parliaments have eight weeks to submit a reasoned opinion to the presidents of the European Parliament, Council and Commission.

The Senate of the Netherlands submits three arguments in its letter. First, it criticises the idea of setting into law a system of out-of-court dispute settlement, particularly because "the Netherlands already has a successful system for dispute resolution, but it is not enshrined in law". It then points out that the text seems to disregard certain aspects of private international law that could arise, for example, in order to be able to decide in which member state an ADR entity should or could decide on a dispute. Lastly, the Dutch Senate notes that the scope of the proposals goes beyond what is necessary since they will apply not only to cross-border disputes but also to domestic consumer disputes (Article 2 and Article 5(2) of the draft directive). "The Senate fails to see why a European directive should specify how domestic consumer disputes should be settled by alternative methods," reads the opinion, on which the German Bundesrat concurs. "The Bundesrat supports the Commission's objective of further boosting cross-border retail trade, and in particular cross-border e-commerce. [...] However, it finds that, in its current form, the draft directive cannot be supported by any of the legal bases under the treaties and does not comply with the principle of subsidiarity."

The legislative proposals will be on the agenda of a hearing by the EP Committee on the Internal Market and Consumer Protection (IMCO), on 29 February.