

## CEER Position Paper on the Commission proposal Directive on Consumer ADR, COM(2011) 793

12 March 2012

The Council of European Energy Regulators (CEER)<sup>1</sup> supports the European Commission's efforts to improve Alternative Dispute Resolution (ADR) legislation in the interest of consumers, so that they can better exercise their right to quality services from traders, including energy suppliers. European energy regulators agree that encouraging the active participation of customers in the functioning of markets helps protect healthy competitive conditions. Indeed, energy regulators believe that complaints are a direct way for customers to communicate their needs and concerns. Authorities and industry can use this input to better understand, gauge and meet these needs.

Consumers that are informed of and trust in efficient ADR mechanisms will engage more actively with the energy market and will be far more inclined to switch energy suppliers, thus promoting competition, putting downward pressure on prices and pushing for better service.

We note that the proposed consumer ADR Directive is not specific to energy and rather addresses ADR schemes in many sectors. Nevertheless, CEER would like to highlight some important ADR issues in the energy sector which may also be relevant to this broader discussion. In particular, we recommend the following improvements for an effective ADR:

1. ADR bodies must work to ensure customers know this tool is available to assist them by **communicating widely on the availability of ADR**;
2. Customers should **contact the trader in the first instance** when they have a complaint. ADR should be used if the trader/customer cannot resolve the complaint;
3. The **independence and integrity** of the ADR body should be ensured, to promote customers' trust in the process. The ADR body's **funding** should be transparent.
4. The **branding** of ADR bodies and any trader complaint handling and complaints services **should be distinct and not create any confusion** for customers;
5. It is important to ensure ADR systems **operate efficiently and provide value for money**; and
6. Where a trader is part of a **vertically-integrated company**, relevant authorities should **monitor closely whether this affects customers' rights and market competition** market.

We explain these recommendations in greater detail below. We have also prepared some suggestions for amendments to the draft ADR Directive, which we hope will help to ensure that ADR bodies in Europe can work effectively for consumers.

### 1. Communication and information about ADR

One of the crucial aspects of successful and efficient ADR mechanisms is consumer understanding and awareness of the various phases of complaint handling and how complaint handling and ADR processes relate to each other. CEER therefore believes it is crucial that ADR bodies **commit sufficient resources to make the existence of the ADR body known to consumers**, but also that they explain how ADR fits into the broader picture of complaint handling and access to court in case of non-agreement.

In addition, the risk of confusion needs to be avoided by ensuring clear, easy to access and timely information.

### 2. ADR is a “further” step in a complaint process

CEER recommends that before submitting a complaint to a third party body, **customers should first contact their service provider/trader to raise their complaint** and try to solve the problem directly with the provider (see our Guidelines of Good Practices on Customer Complaint Handling, Reporting and Classification<sup>2</sup>). In many cases, customer problems can be resolved in this manner, avoiding the need for the customer to refer to independent and autonomous ADR bodies.

### 3. Independence of ADR bodies

The demonstrable **independence of the ADR body is fundamental** to generating the trust of the customers as regards the ADR process. As a corollary to independence, special attention should be given to transparency of the funding sources of ADR bodies, so as to mitigate any concerns regarding the impartiality of the ADR body.

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<sup>1</sup> CEER is a not-for-profit association in which Europe's independent national regulators of electricity and gas voluntarily cooperate to protect customers' interests and to facilitate the creation of a single, competitive, efficient and sustainable internal market for gas and electricity in Europe.

<sup>2</sup> GGP on Customer Complaint Handling, Reporting and Classification (Ref. E10-CEM-33-05)  
[http://www.energy-regulators.eu/portal/page/portal/EER\\_HOME/EER\\_CONSULT/CLOSED%20PUBLIC%20CONSULTATIONS/CUSTOMERS/Custom%20Complaint%20Handling/CD/E10-CEM-33-05\\_GGP-ComplaintHandling\\_10-Jun-2010.pdf](http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_CONSULT/CLOSED%20PUBLIC%20CONSULTATIONS/CUSTOMERS/Custom%20Complaint%20Handling/CD/E10-CEM-33-05_GGP-ComplaintHandling_10-Jun-2010.pdf)

#### 4. Branding of Trader Mediators vs ADR bodies

In 2011, CEER issued a Position Paper on the branding of in-house 'company mediators' as energy 'company ombudsmen'.<sup>3</sup> CEER is of the view that this practice confuses and even misinforms consumers and that use of the term 'company ombudsman' should be discontinued. In DG SANCO's Working Group on ADR, the consumer representatives supported CEER's position. This logic can be extended to other sectors, where the trader's complaint handling processes should not be confused with a separate ADR body.

CEER recognises that many energy companies (suppliers and/or DSOs) have established procedures providing the possibility of dealing with customer complaints in an efficient and effective way. Several electricity and gas companies have put in place well-functioning first and second level complaint handling procedures.

However, as a matter of clarity – given the competitive nature of electricity and gas market – CEER has recommended that it would be **better not to define industry/company mediators as '(company) ombudsmen', in order to avoid any confusion on the part of the customer concerning the role of different complaint handling bodies.** Even if such company mediators exercise their function within the energy company in an independent way, the use of the term 'ombudsman' might be confusing for customers, especially in countries where ombudsmen that are independent from the industry have been established. In these countries with a dual system, there is a clear risk for customers not to be able to exercise their rights effectively, in particular if they wish to seek advice from an independent body.

By avoiding the use of the term '(company) ombudsman' when referring to a complaints mediator within a company, customers can clearly understand the nature of the entity to whom they are addressing their complaint and the various steps they can undertake, namely: the customer service of the service provider in the first instance, the company mediator (if applicable) afterwards, then an independent and public ADR body, and finally a court.

#### 5. Cost efficiency

CEER believes that ADR offers companies and their customers an informal and rapid means of resolving disputes. It is less expensive than a court action, although the **cost of ADR**

might be ultimately borne either by the taxpayer or by customers individually or collectively, depending on the funding mechanism. It is therefore **very important to ensure that ADR systems function efficiently**. In addition, the availability of ADR acts as an incentive for companies to improve their services, in particular complaint handling.

## 6. Integrated energy companies

A particular point of interest for CEER is the fact that in many Member States, there are still energy traders which are integrated with or closely linked to distribution network/system operators (DSOs), due to insufficient unbundling of companies' competitive and monopoly activities.

Article 26 of the Electricity Directive (Art 26 of the Gas Directive) states: *“Where the distribution system operator is part of a vertically integrated undertaking, the Member States shall ensure that the activities of the distribution system operator are monitored by regulatory authorities or other competent bodies so that it cannot take advantage of its vertical integration to distort competition. In particular, vertically integrated distribution system operators shall not, in their communication and branding, create confusion in respect of the separate identity of the supply branch of the vertically integrated undertaking.”*

An integrated structure might confer an advantage to these companies if customers raise a complaint to either the energy supply trader or the DSO. The close relationship between energy trader and DSO might facilitate the transfer of information or data that is necessary to remedy the raised problem. At first sight, such practices appear to be beneficial to the customer, when looking at complaint handling and ADR in isolation.

However, CEER considers **that insufficient unbundling constitutes an obstacle to the development of competitive energy retail markets in the EU** and that **DSO unbundling merits closer attention from the authorities**, both at national (where relevant) and European level. Similar issues might be important to consider in other sectors, e.g. telecom or railway, where a vertically-integrated trader might have particular interests affecting the independence of its complaint handling decisions.

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<sup>3</sup> CEER Position regarding the 'branding' of ADR bodies (Ref C11-RMC-48-06), [http://www.energy-regulators.eu/portal/page/portal/EER\\_HOME/EER\\_PUBLICATIONS/CEER\\_PAPERS/Customers/Tab2/C11-RMC-48-06\\_BrandingADRbodies\\_6-Jun-2011.pdf](http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/CEER_PAPERS/Customers/Tab2/C11-RMC-48-06_BrandingADRbodies_6-Jun-2011.pdf)

## **FURTHER BACKGROUND**

### **ADR in European Energy Legislation: Customers should benefit from competitive energy markets**

With the Third Energy Package<sup>4</sup>, the EU seeks to ensure that European citizens benefit from a truly competitive energy market and thus energy regulators have been given new responsibilities and powers to deal with consumer issues, including both protection and empowerment. In addition, Member States are required to ensure appropriate information, complaint and redress mechanisms are in place for energy customers.

Art. 3 (13) of the Electricity Directive (Art. 3 (9) of the Gas Directive) requires Member States to *"ensure that there is an independent mechanism, such as an energy ombudsman or consumer body, to deal efficiently with complaints and facilitate out-of-court dispute settlements"*. Member States also have to make sure that energy suppliers *"specify their rights to final customers, in or with the bills and in promotional materials, with regard to their means of dispute settlement in the event of a dispute"*. CEER believes these tools will enhance consumers' confidence by giving them access to efficient means of resolving disputes and of obtaining compensation in a cheap, simple and quick manner.

The Electricity and Gas Directives 2009/72/EC and 2009/73/EC also task Europe's energy regulators with addressing complaints: *"Any party having a complaint against a transmission or distribution system operator in relation to that operator's obligations under this Directive may refer the complaint to the regulatory authority which, acting as dispute settlement authority, shall issue a decision within a period of two months after receipt of the complaint... The regulatory authority's decision shall have binding effect unless and until overruled on appeal."*

Member States must transpose the provisions of the Electricity and Gas Directives by 3 March 2011. CEER considers that it is very important for customers that these provisions are correctly implemented.

In addition, through CEER, energy regulators have done extensive work on energy customer empowerment and protection issues, including on ADR, complaint handling, switching suppliers, billing and retail market functioning. We are also actively engaged with the European Commission's DG ENER and DG SANCO in improving policies in these areas.

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<sup>4</sup> <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:L:2009:211:SOM:EN:HTML>

### **European Commission Working Group on ADR in the energy sector**

During 2011, CEER participated in the European Commission's (DG SANCO) Working Group on ADR in energy which resulted in a very good report that was presented to the 4<sup>th</sup> Citizens' Energy Forum in London. The conclusions of this report have prominently influenced the proposed ADR Directive and the parallel proposal for a Regulation on online dispute resolution (ODR) for consumer disputes (COM(2011) 794).