

**CEER Response to the European Commission Consultation on
“The use of Alternative Dispute Resolution as a means to resolves disputes
related to commercial transactions and practices in the EU”
8 March 2011**

The Council of European Energy Regulators (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. CEER also acts as a preparatory body for the European Regulators' Group for Electricity and Gas (ERGEG), which is the European Commission's formal advisory group of energy regulators.

1 Introduction

European energy regulators welcome the European Commission's initiative to promote ADR and agree that encouraging active participation of consumers 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.

Customers themselves can play an important role in stimulating competition. Energy regulators have a proactive policy of empowering customers to actively participate in the energy markets by enhancing access to information; removing the obstacles to supplier switching; assessing the roll-out and promoting smart metering, where roll-out is assessed positively, so as to stimulate an effective demand side response; and addressing customer rights issues (e.g. complaints and billing).

Approximately two thirds of the national energy regulators (NRAs) play an important role in alternative dispute resolution, either as the main body responsible for complaints or sharing the responsibility with other authorities. Regulators strongly encourage dissatisfied customers to complain, as complaints are an effective way of mobilising change.

The 3rd energy liberalization Package, adopted by European Union on 13 July 2009, includes new provisions on customer protection, and in particular as regards customer complaint handling and alternative dispute resolution (Articles 3 and Annexes I of the 2009 Electricity and Gas Directives¹). Member States are required to set up new protections for household customers, among which:

- Single points of contact to provide information on their rights;
- Information in or with the bills about the means of dispute settlement;
- An important role in raising the awareness of customers is given to service providers, which should provide a good standard of service and complaint handling and

¹ Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC and Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC

implement redress schemes;

- Creation of independent mechanisms for the treatment of complaints and disputes;
- Financial compensation for customers; and
- Complaint monitoring.

The ERGEG *Guidelines of Good Practice (GGP) on Customer Complaint Handling, Reporting and Classification* (Ref. E10-CEM-33-05, 10 June 2010) aim to provide Member States and national regulators with input on how to translate 3rd Package provisions into operational modalities. Good practices already in place in some Member States were of high relevance when drawing up these recommendations. This report, which focuses on the electricity and gas sectors, includes 15 recommendations on complaint handling, as well as a proposal for complaints classification, inspired by the European Commission's classification.

The main recommendations identified in this report are:

- A single point of contact should deliver, in every country, free information and advice on consumer issues;
- Customers should be provided, on their electricity and gas bills, with the relevant and exhaustive contact information in case they need to complain;
- Customers should be able to choose between various channels to submit a complaint;
- Alternative dispute settlement should be made available for all household customers, preferably without charge or as inexpensively as possible irrespective of the financial amount of the dispute;
- Statutory complaint handling standards for the energy sector should be in place, including:
 - Written complaint handling procedures (within service providers and third parties) should be available to all customers;
 - Information on alternative dispute settlement body should be provided with the first acknowledgment of a complaint;
 - The use of a common complaint classification would permit national regulatory authorities (NRAs) that wish to do so, to make a comparison between service providers' quality of service performances;
 - Final answer from a service provider should be issued as soon as possible but within two months.
- Redress schemes should be in place to allow compensation in defined cases;
- It should be compulsory for service providers to report data on complaints to the NRA, when they are asked for it; and
- The NRA or another third party body having responsibility for customer complaints should provide and publish reports on complaints.

CEER welcomes the opportunity to participate in this consultation. CEER's response addresses the issue of ADR from the perspective of the energy sector, namely the electricity and natural gas markets. The consultation questions have been considered in terms of their relevance to the energy sector and to the customer-related provisions of the 3rd Package.

For further information or clarification, please contact Mrs. Fay Geitona, CEER Secretary General, fay.geitona@ceer.eu.

2 Responses to individual Questions

For the purposes of CEER's response, the term "service provider" encompasses both suppliers and distribution system operators (the monopolistic utilities which manage the physical distribution of natural gas or electricity to consumers). This general term is used to avoid any misunderstandings and to include the various country-specific situations.

The expression "third-party body" used throughout this response means an independent alternative (or out-of-court) dispute settlement body.

Joint response to Questions 1 and 3:

Regarding the most efficient ways to raise the awareness of national consumers and how they can best be informed of their right to ADR, CEER recommends that customers should be provided by their service provider with the relevant contact information of the relevant third party body in case they want to complain.

In particular:

- **Service provider websites:** Any information on complaint handling must be easily found on the website, including the steps towards the investigation and eventual resolution of a complaint, and the name(s) and contact information of the relevant third-party body.
- **Customer service call centres:** They should be able to inform customers about the steps towards the investigation and eventual resolution of a complaint, and the name(s) and contact information of the relevant third-party body.

The availability of such information is an essential prerequisite for allowing customers to exercise their rights.

Whereas in some countries, customers awareness of their rights is already high, in others much more has to be done regarding customer information on their rights (in these countries, information on the bill seems a prerequisite). This can depend on the maturity of the market and the level of competition. It should be carefully considered that in some countries, some customers, and particularly the vulnerable ones, may not have any access to the internet and/or are not fluent in writing a complaint.

Response to Question 2:

As stipulated in the 3rd Package (Art.3 paragraph 12 of Directive 2009/72/EC for Electricity, Art. 3 paragraph 9 of Directive 2009/73/EC for Gas), Member States should ensure a single point of contact for consumers. CEER recommends in its GGP that the single point of contact should deliver, in every country, free information and advice on consumer issues. Such a single point of contact could deliver, for example, information on: suppliers; different types of supply contracts; price comparisons; consumer rights; and how to complain. When the single point of contact receives complaints, it should be able to direct customers to the relevant body to handle their complaints (if the single point of contact is not also the relevant third party body). This service should be set either by government or the national regulator (in some cases in cooperation with other bodies in charge of consumer issues). It should be easily available either by phone, email, written mail (letter or fax) or in person.

Response to Question 4:

In addition to the availability of information on the existence of ADR through the service providers and single points of contact, CEER recommends that the third party bodies themselves offer a wide range of channels in order for a customer to get in contact with them, and, in any case, more than one, even if – at a later stage – a written document may be necessary for a formal procedure with alternative dispute settlement bodies.

Various possibilities for making contact aim to avoid discrimination of any category of customers (e.g. people with low literacy, customers with disabilities, etc).

Response to Question 5:

One effective way to encourage the use of ADR and compliance with the ADR decisions is for the regulator to receive data from third party bodies. Data on disputes can be used by a regulator to publish reports on complaints & disputes, within the framework of its retail market monitoring activities.

In addition, CEER recommends that third party bodies provide and publish reports on complaints they have received, on a yearly basis. Depending on the level of maturity of the retail market, the report could include information such as:

- Categories of complaints which most frequently appear;
- Identification of areas of improvement on the retail market, following the analysis of complaints; and
- A list of third-party bodies' recommendations which have been followed by service providers, including their names.

Response to Question 6:

The 3rd Package provides a requirement for ADR for the energy sector.

Response to Question 7:

Although CEER does not remark on consumers' right to legal redress, we recommend that before submitting a complaint to a third-party body, customers should first contact their service provider to explain their complaint and try to solve it directly with the provider.

Even if the service provider is the first step in the complaint process, customers can naturally ask for information on their rights to an independent body (the single point of contact or an alternative dispute settlement body in case it also deals with information requests), before submitting their complaint to their service provider

Response to Question 8:

CEER believes that service providers should follow the alternative dispute settlement body's recommendations even if they are not legally binding. The right to go to court if the solution is not satisfactory is not affected.

Following the ADS body's recommendation would clarify duties and responsibilities of different market actors, including customers, and give visibility to market actors in the

eventuality that a similar case should occur in the future. All customers and service providers would benefit from this practice.

Response to Questions 14 and 15:

National energy regulators are empowered to act as dispute settlement authorities in case of complaints with respect to distribution system operators (DSOs) – they might also be installed by the Member States as an alternative dispute resolution body for any other out-of-court dispute.

CEER believes that an ADR can be publicly or privately managed, so long as in the latter case it is separate and independent from the industry.

CEER does not consider as “third-party body” the consumer complaint handling mechanisms operated by service providers (e.g. “company ombudsman”) or mechanisms providing complaint handling services operated by or on behalf of a service provider.

Response to question 16:

Energy regulators recommend that alternative dispute settlement should be made available for all household customers, preferably without charge or as inexpensively as possible irrespective of the financial amount of the dispute.

When customers want to complain, they should first contact the service provider in order to try to solve the problem directly (see response to Question 7). CEER is of the opinion that this process should not exceed two months.

As a result of this preliminary process, the proper use of a complaint handling procedure resulting in no charge is likely. It is necessary to avoid imposing obstacles on customers since this may prevent customers from complaining and therefore involving themselves in the liberalised energy market.

Customers who have already received a refusal from their own service provider and who are confident of their rights should not be discouraged, because of excessive charges, from attempting to settle their dispute with the help of a third-party body.