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CONTRIBUTION

From:	General Secretariat of the Council
To:	Working Party on Consumer Protection and Information (Attachés) Working Party on Consumer Protection and Information
N° Cion doc.:	ST 14434/23
Subject:	DIRECTIVE on Consumer ADR - Written comments by the German delegation on the 4-column document

Delegations will find attached written comments by the German delegation.

Written comments by the German delegation on the 4-column document dating 30 April 2025 – preparation for the 2nd trilogue on 19 May 2025

Germany thanks the Polish Presidency for continuing the trilogue negotiations and wishes the Presidency all the best for the upcoming 2nd trilogue.

Comments regarding the lines that have been greened:

Line 52a/53 automated means

The 4-column document dating 30 April 2025 does not include the proposals by the Presidency regarding line 52a/53 that were presented in advance to the working group on 5 May 2025 (WK 5547/2025). With regard to those proposals that have not yet been included in the document we welcome that recital 10b) (line 19) should clarify what is meant by the "decision-making process", however we propose, that the definition should not refer to "actions which influence the admissibility of the complaint", but to "actions which influence the legal decisions concerning the admissibility of the complaint or the outcome of the dispute". While we still think that a link to article 22 para. 1 GDPR would provide more clarity, we can support the new proposal.

Line 54 bundeling of cases

The wording of line 54 concerning letter b) "the natural persons in charge of the ADR procedures have sufficient knowledge to deal with the case in accordance with Article 6" should be aligned with the wording in line 53: "b) a natural person from the ADR entity meeting the requirements of article 6 (1) decides about the bundeling of the case." Otherwise it is not clear if letter b) introduces additional requirements i.e. special knowledge of bundeling as pointed out by several member states in the working group.

Line 58g training for ADR entities

We could support the inclusion of "necessary" training. But the change from "MS shall encourage ADR entities" to "MS shall ensure" creates unnecessary additional burdens for national authorities.

Line 67a, 70a and 78 translations/machine translation tools

We do not support the text proposal for a new Art. 5 para. 2 lit g (line 67a). In the working group on 8 April 2025 the Polish Presidency explained line 70a was supposed to replace the changes proposed by EP regarding line 67a. However, the current 4 column document contains a drafting proposal for line 67a.

The new text proposal for line 67a which requires Member States to ensure that ADR entities are able to use machine translation tools to support ADR procedures should be deleted. First, it does not respect the limited resources of ADR entities. They should not be obliged to provide for translation in any way. We therefore see no need for the proposed regulation. Second, at the request of the EP the obligation to support the parties with the use of machine translation of information was already discussed in the context of article 14 on the ADR contact points (line 70a). We cannot support the new text which now obliges ADR contact points to provide machine translation. The last text proposal presented in the last working group obliged ADR contact points to "support the parties, where necessary, with the use of machine translation". We also refer to our last written statement that it needs to be made clear that ADR contact points do not bear responsibility for mistakes in a machine translation and do not have to offer themselves such a machine translation.

Finally, the proposed text seems unclear regarding the obligation of Member States. What is meant by the "obligation to ensure that ADR entities are able to use machine translation tools"? The question whether and under which circumstances machine translation tools may be used in ADR procedures can be influenced by many legal aspects; some of them are regulated under EU-law: e.g. protection of personal data. The relationship of the newly proposed Member States obligation to this legal framework is unclear and would need to be further examined.

If we understand it correctly, the Commission is already obliged to offer ADR entities access to the machine translation tools. Why should Member States be obliged to ensure that ADR entities are able to use these tools additionally? It could instead be acceptable to include an encouragement for Member States in line 78 to inform ADR entities and the ADR contact point about the machine translation tool provided by the Commission.

Line 68a competent ADR contact point

We would like to refer to our previous technical drafting proposal: with regard to the traders the reference should be made to Article 4 (2) of the current directive which defines where a trader is established.

Line 70 ADR contact point

The wording of line 70 has been changed from "providing relevant information concerning…" to "assisting with the submission of the complaint…". These changed have not been discussed in the working group, however, we cannot support them. It is marked in line 70 that

COM will propose a recital explaining that the new wording means providing relevant information. However, this recital is still missing.

Line 75 ADR contact point

The notion of good faith should not be included in line 75.

Line 76 reporting obligations by ADR entities

As pointed out in our written comments dating 10 April 2025 Germany can show flexibility towards the EP's wish to reinclude points f) and h) in Art. 19 paragraph 3 as long as in the overall result of the revision of this directive there is a reduction of administrative and bureaucratic burdens.

In addition, we would like to draw the attention of the presidency to the following preliminary remarks concerning lines that are marked yellow or red

Line 33 Definitions

The current 4-column-document contains changes regarding the definitions in line 33 that have not been discussed in the working group. The German delegation reiterates its strong support for the council mandate in line 33, which should be fully upheld. The current drafting proposal in line 33 is incomplete, it needs to be complemented by the missing parts of the council mandate: "where a sales or service contract, including digital content and service contracts, is concluded between a consumer and a trader where the consumer pays or undertakes to pay the price, and where a dispute arises relating to pre-contractual and contractual obligations. This Directive shall also apply where the trader supplies or undertakes to supply digital content which is not supplied on a tangible medium or a digital service to the consumer and the consumer provides or undertakes to provide personal data to the trader. It shall not apply to cases falling under the exceptions provided for in Article 4(2)(b) of Directive (EU) 2019/2161."

Line 49 geographical scope

From our point of view the drafting proposal in line 49 does not reflect the status quo of discussions in the working group. We have already commented extensively on this matter. Irrespective of whether the compromise proposals are supported or not any drafting proposal needs to be in accordance with the Rome-I Regulation.

The draft agreement includes a proposal for a recital that explains what is to be understood as “directing of activities”. However, the wording of the recital still includes “targeting of activities”, this should be adapted, too. It should be avoided to include examples of what is to be understood of “directing of activities”. Rather the concept of directed activity should be interpreted in accordance with Article 6(1)(b) of the Rome I Regulation (Regulation (EC) No 593/2008) and Article 17(1)(c) of the Brussels Ia Regulation (Regulation (EU No 1215/2012).

Line 77b regular checks by competent authority

The EP’s proposal to require regular checks into the functioning and activities of the ADR entities by the competent authorities has been criticized by many Member States since it creates additional bureaucratic burdens. We would like to reiterate our technical drafting proposal in our written comments dating 10 April 2025: The EP’s proposal is acceptable provided that ‘regular’ is deleted and ‘**as and when appropriate**’ is added instead:
‘Competent Authorities shall conduct checks into the functioning and activities of the ADR entities to monitor compliance with the requirements of this Directive **as and when appropriate**.’

The German delegation would like to emphasize that all previous comments remain valid, especially with regard to the material scope.