



European Network of Councils  
for the Judiciary (ENCJ)

Réseau européen des Conseils  
de la Justice (RECJ)

# ALTERNATIVE DISPUTE RESOLUTION AND THE JUDICIAL DOMAIN

Project Team co-coordinated by

*Consiglio superiore della magistratura & Sodni  
svet*

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**Alternative dispute resolution (ADR) includes  
the following typical forms:**

- ⌚ negotiation
- ⌚ conciliation
- ⌚ mediation
- ⌚ collaborative law
- ⌚ arbitration

**Beyond the basic types of ADRs there are also  
other different forms, such as:**

- ⌚ case evaluation
- ⌚ early neutral evaluation
- ⌚ family group conference
- ⌚ ombuds

## **Benefits**

- ⌚ ADR is usually less formal, less expensive, and less time-consuming than a trial.
- ⌚ ADR may be more suitable for multi-party disputes.
- ⌚ The process is generally confidential and less stressful than traditional court proceedings.
- ⌚ In ADR processes parties play an important role in resolving their own disputes. This often results in creative solutions, longer-lasting outcomes, greater satisfaction and improved relationships.
- ⌚ ADR should enable a more complete resolution of disputes, whereas in judicial proceedings, parties are bound by specific claims. ADR may resolve disputes more thoroughly in that it seeks to identify and address the cause unlike traditional judicial systems of democratic states governed by the rule of law which only deal with the symptoms. This has the potential to achieve more long-term and stable solutions.

## **Risks**

- ⌚ The power of large corporations and utilities to force consumers into a disadvantageous dispute resolution procedure.
- ⌚ The imposition of settlements without consumers having access to legal advice.
- ⌚ The imposition of solutions by unidentified online decision-makers.
- ⌚ The absence of appeals in private arbitration processes.
- ⌚ The growth of private dispute resolution procedures without article 6 ECHR protections for the weaker party.
- ⌚ The abrogation of independent judicial determinations and court procedures.

- A. The risk that persons will be denied an independent judicial determination**
- B. The risk that persons will settle their claims without having first had access to independent legal advice**
- C. The risk that decision-makers or those conducting ADR processes are inadequately qualified**
- D. The risk that individual parties have an inadequate understanding of the available methods of dispute resolution**
- E. Risks of decision-making by an unidentified online or other decision-maker**
- F. The risk that mediation or other ADR options are under-used, because of their voluntary nature and an absence of quality assurance**
- G. The risk of abuses of the power of large governmental or commercial entities as the opposing party**

***It is worth highlighting the role of ADRs as a  
means  
of achieving social harmony***

**Green paper on alternative dispute resolution in civil and commercial law, Item 10,  
Chapter 1.2.**

# Analysis of answers to the questionnaire

- **Explanation**

- The present analysis is only **one of possible** evaluations of the given answers
  - The answers were not in a simple form of Yes or No.
  - Members do not deal with all the data from the national systems.
  - Members' different interpretations of the questions.



# Findings

- A general outline of ADR availability through the Courts
- An overview of legislative regulation of Court related ADR in civil proceedings
- The participation of judges and Court related ADR procedures
- The influence of Court related ADR on the work and mission of courts and on **the right to a fair trial** in a reasonable time

- A brief overview of legislative regulation of Court related ADR procedures in criminal proceedings

# Presentation of the findings of the Project Team

- Litigation compared with ADR
- Different kinds of ADR including Court related ADR
- An analysis of Court related ADR as a dispute resolution tool
- The ideal model of ADR taking into account associated risks

- Protections required for Court related ADR
- ADR and criminal proceedings

# Recommendations for Court related ADR in civil proceedings

- 1. ADR should be *made available* to the parties in civil cases.
- 2. ADR should be *considered* in all appropriate cases.
- 3. A Judge should, in appropriate cases, be proactive in recommending ADR.
- 4. The Judiciary should be trained in aspects of ADR.
- 5. ADR should take place at the earliest possible stage in the dispute.
- 6. Member *States* should promote, monitor and analyse ADR.
- 7. Failure to participate in ADR procedure may be sanctioned.

# Minimum standards for Court related ADR in civil proceedings

- **1. The basic procedural safeguards in Court related ADR in civil proceedings should provide,**
  - the right to an equal position/**equality of arms**;
  - that the solution reached within the ADR proceeding is truly the reflection of real and **true will of the participants**;
  - **protection from disclosure** of data revealed in ADR in further judicial proceeding;
  - the principle of **confidentiality**.

- **2. In order to support the above mentioned procedural safeguards:**
  - only those with training accredited by an appropriate professional body should be allowed to lead an ADR procedure;
  - appropriate training should be available to all judges to recognise the advantages and risks together with the potential need for ADR procedure.

- 3. A judge who has **led an ADR** procedure should **not perform the function of judge** in the following trial, unless in accordance with the domestic law, **both parties express the wish to continue** to proceed with the same Judge and the Judge considers the *circumstances of the case* are such that it would be appropriate to him/her to do so, taking also into account the need for objective independence and impartiality.



- 4. **Parties** should be **adequately informed** with regard to the rules and procedures of ADR.
- 5. Following the completion of an ADR procedure the **settlement** may, if approved by a Court, be **formally enforced**.
- Parties should have the opportunity once the ADR is finalised, of **reopening the case**, but only in **exceptional** circumstances, defined by domestic law.