

Questionnaire on the basis of recommendation 98/257/CE of the European Commission

A. Addressees

The Recommendation is addressed to the bodies responsible for the out-of-court settlement of consumer disputes, to any natural or legal person, responsible for the creation or operation of such bodies, as well as to the Member States, to the extent that they are involved.

B. Registration in the EEJ-Net

The respect of the seven principles set out in the above-mentioned recommendation (Independency, Transparency, Adversarial Procedure, Efficiency, Legality, Liberty of Action, Possibility of Representation) is indispensable for the admission of a body of out-of-court settlement to the European Extra Judicial Network for resolving consumer disputes (EEJ-Net). The following questionnaire was set out to facilitate the verification of the compliance of the out-of-court bodies with these principles. To establish the compliance all questions must be answered with “yes”.

I. Independence of the decision-making body

1. Single arbitrator

- Does the person appointed possess the abilities, experience and competence, particularly in the field of law, required to carry out his function?
- Is the person appointed granted a period of office of sufficient duration to ensure the independence of his action and is he/she not liable to be relieved of his duties without just cause?
- Is it being guaranteed, that the concerned person if appointed or remunerated by a professional association or an enterprise, has not, during the three years prior to assuming his present function, worked for this professional association or for one of its members or for the enterprise concerned?

2. Collegiate body

- Does the body responsible for taking the decision either give equal representation to consumers and professionals or comply with the criteria set out above?

II. Transparency of the procedure

3. Does the body provide sufficient information about the conditions of access and the procedure, such as

- i. preliminary requirements that the consumer may have to meet
- ii. existing restrictions in regard to personal and territorial coverage and the value of the dispute
- iii. the oral or written nature of the procedure
- iv. the necessity of personal attendance
- v. exceptions of the necessity of personal attendance
- vi. the official language(s) of procedure
- vii. possible costs of the procedure for the parties
- viii. rules on the award of costs at the end of the procedure
- ix. the type of rules serving as the basis for the body's decision (legal provisions, considerations of equity, rules of conduct, etc.)
- x. the decision-making arrangements within the body
- xi. the legal force of the decision
- xii. the binding character of the decision/recommendation on the professional or on both parties
- xiii. if the decision/recommendation is binding, the penalties to be imposed in the event of non-compliance
- xiv. the means of obtaining redress available to the losing party

4. Does the competent body publish an annual report setting out the decisions taken, enabling the results obtained to be assessed and the nature of the disputes referred to it to be identified?

III. Adversarial Procedure

5. Does the procedure allow the parties concerned to present their viewpoint before the competent body and to hear the arguments and facts put forward by the other party, and any experts' statements?

IV. Effectiveness of the procedure

6. Is the effectiveness of the procedure being ensured?

In particular, are the following measures guaranteed?

- i. the consumer has access to the procedure without being obliged to use a legal representative
- ii. the procedure is free of charges or of moderate cost
- iii. there is a short periods elapse between the referral of a matter and the decision
- iv. the competent body is given an active role that enables him to take into consideration any factors conducive to a settlement of the dispute

V. Legality of the decision/recommendation

7. Is there a guarantee, that the decision taken by the body does not result in the consumer being deprived of the protection afforded by the mandatory provisions of the law of the State in whose territory the body is established?

8. In the case of cross-border disputes is there a guarantee that the decision taken by the body does not result in the consumer being deprived of the protection afforded by the mandatory provisions applying under the law of the Member State in which he is normally resident in the instances provided for under Article 5 of the Rome Convention of 19 June 1980 on the law applicable to contractual obligations?

9. Is the decision being communicated to the consumer in writing?

10. Does it state the grounds on which it is based?

11. Is the decision being communicated as soon as possible?

VI. Liberty of action

12. In the case that the decision taken by the body is binding, are the parties being informed of its binding nature in advance and do they have specifically to accept this?

13. Is it being guaranteed that the consumer's recourse to the out-of-court procedure is not the result of a commitment prior to the materialisation of the dispute, where such commitment has the effect of depriving the consumer of his right to bring an action before the courts for the settlement of the dispute?

VII. Principle of representation

14. Does the procedure allow the parties to be represented or assisted by a third party at all stages of the dispute?