

This is a brief note re the CJC consultation on ADR and Civil Justice –Interim Report. I noticed that the deadline was last Friday, so I hope you can still include my response.

I very much agree with the vast majority of the recommendation expressed in the consultation paper. I only have a few comments in relation to some of them:

R2: A link to the website with general information about ADR methods (and about mediation in particular) should be included in the allocation questionnaire and in other documents where parties (especially litigants in person) are invited to opt in mediation. Currently, many litigants opting for mediation in the Small Claims Track do not have enough understanding about what mediation entails (indeed, many believe that opting into mediation would not require them to find compromise).

R3: This change is more likely to come from national law as the EU is not planning to make it mandatory in the near future. It is also unclear whether they would have the authority to issue a blank compulsion (as France has done for consumer issues). However, mandatory ADR is likely to continue growing on a sectorial level in the EU. It is already mandatory in a number of regulated sectors (notably for financial matters and energy disputes) and it is likely to move to other sectors e.g. aviation disputes (as it is proposed amendment for the Reg 261).

R4: See the recent report on the performance of the EU ODR platform at https://ec.europa.eu/info/online-dispute-resolution-1st-report-parliament_en

R5: I'd be very cautious re cost sanctions for litigants in person.

R25: Given that the Online Solutions Court will exclude pre-action protocols, the online procedure should allow/require prospective claimants to email prospective defendants to inform them about their an intention to bring legal action. This option should be available in the court website before the claim is issued.

R26: A particularly valuable lesson from the consumer ombudsman model is the structure of ombuds schemes which allow for specialised adjudicators. Similarly, the Online Solutions Court procedure should harness the opportunity provided by economies of scale and offer in its tier 2 (ie. the online conciliation stage) for a specialised ADR neutrals for high volume disputes (e.g. debts, consumer claims, home improvements, etc)

R28: County courts, and specially the Online Solutions Court procedure, should engage more with private ODR providers and set up various pilots, which should be independently evaluated.

R29: There is an urgent need to provide independent evaluations of existing mediation/ADR schemes. Eg, besides the Briggs Report, the HMCTS small claims mediation has not been evaluated for nearly a decade.

Professor Pablo Cortes