

OECD Recommendation on Consumer Dispute Resolution and Redress



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Foreword

This Recommendation was developed by the OECD Committee on Consumer Policy (CCP). Work on its principles was initiated in late 2005. The Recommendation was adopted by the OECD Council on 12 July 2007.

Table of contents

Preface	5
OECD Recommendation of the Council on Consumer Dispute Resolution and Redress	6
Annex	8
I. Purpose, scope and definitions	8
II. Domestic Frameworks for Dispute Resolution and Redress	9
A. Dispute resolution and redress mechanisms for consumers acting individually	9
B. Dispute resolution and redress mechanisms for consumers acting collectively	10
C. Mechanisms for consumer protection enforcement authorities to obtain or facilitate redress on behalf of consumers	11
III. Cross-border consumer disputes	11
IV. Private sector co-operation	12
V. Mechanisms for collecting consumer complaints and analysing marketplace trends	13
VI. Education and awareness	13

Preface

Ensuring adequate mechanisms for effective consumer dispute resolution and redress has been a key priority of OECD work for a number of years. In December 1999, the OECD Council adopted a *Recommendation concerning Guidelines for Consumer Protection in the Context of Electronic Commerce* which calls for the development of fair, effective and transparent mechanisms to address consumer complaints and to resolve consumer disputes arising from business-to-consumer electronic commerce, including those that occurred across borders.

The importance of providing consumers with access to redress mechanisms was re-iterated in 2003 in a *Recommendation of the Council concerning Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices across Borders*. This Recommendation specifically recommends that in developing a framework for effective enforcement co-operation against fraudulent and deceptive commercial practices, Member countries should consider how to ensure effective redress for victimised consumers. The 2003 *Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices across Borders* further encourage Member countries to undertake a study of the role of consumer redress in addressing the problem of fraudulent and deceptive commercial practices, devoting special attention to the development of effective cross-border consumer redress systems.

Following these Recommendations, the OECD Committee on Consumer Policy (CCP) worked towards the development of a harmonised framework for effective dispute resolution and redress mechanisms that would apply to both domestic and cross-border transactions. In 2004, the CCP embarked on a comprehensive study of dispute resolution and redress. In a 2005 analytical report, the CCP presented an overview of Member country frameworks, which served as a background for an OECD Workshop on Consumer Dispute Resolution and Redress in the Global Marketplace, held in Washington, DC on 19-20 April 2005. The report and discussions at the workshop revealed significant legal and practical impediments to adequately resolving consumer disputes with cross-border elements, thereby pointing to the need for Member countries to provide consumers with more effective and comprehensive dispute resolution and redress mechanisms.

On the basis of this preparatory work, the CCP decided to develop the present Recommendation setting out principles for an effective and comprehensive dispute resolution and redress system that would also be applicable to domestic and cross-border disputes. Taking into consideration of the rapid growth in electronic commerce, the Recommendation intends to provide consumers with confidence that their claims arising from both online and offline transactions with business will be settled in a fair and effective manner.

OECD Recommendation of the Council on Consumer Dispute Resolution and Redress

THE COUNCIL,

Having regard to the Convention on the Organisation for Economic Co-operation and Development of 14th December 1960, in particular, Article 5 b) thereof;

Having regard to the Ministerial Declaration on Consumer Protection in the Context of Electronic Commerce of 8 October 1998 [C(98)177(Annex 2)];

Having regard to the Recommendation of the Council concerning Guidelines for Consumer Protection in the Context of Electronic Commerce, adopted on 9 December 1999 [C(99)184/FINAL], which states that consumers should be provided “meaningful access to fair and timely dispute resolution and redress without undue cost or burden,” and which calls for the development of effective cross-border redress systems;

Having regard to the Recommendation of the Council concerning Guidelines for Protecting Consumers from Fraudulent and Deceptive Practices Across Borders, adopted on 11 June 2003 [C(2003)116], which calls on Member countries to provide redress mechanisms for consumer victims of fraudulent and deceptive commercial practices and to devote special attention to the development of effective cross-border redress systems;

Recognising that the availability of effective dispute resolution and redress mechanisms can increase consumer confidence and trust in the online and offline marketplace, encourage fair business practices, and promote cross-border commerce, including electronic and mobile commerce.

Recognising that consumer disputes require tailored mechanisms that provide consumers with access to remedies that do not impose a cost, delay and burden disproportionate to the economic value at stake and at the same time do not cause excessive or disproportionate burdens on society and business.

Recognising that most existing domestic frameworks for consumer dispute resolution and redress were developed to address domestic cases and are not always adequate to provide consumers with remedies across borders.

Recognising that monetary remedies may be more easily recognised and enforced by foreign courts than other kinds of remedies and as such may be more effective in cross-border cases.

Recognising that the authority for consumer protection enforcement authorities to obtain redress for consumers can be particularly helpful in addressing complex cross-border disputes involving fraudulent and deceptive commercial practices.

Recognising that actions taken by consumer protection enforcement authorities and consumer organisations in the collective interest of consumers may serve an important and complementary goal to this Recommendation.

Recognising that, despite the diversity of mechanisms and legal cultures that exist in Member countries, a consensus exists on the need for common principles setting out the main characteristics of effective consumer dispute resolution and redress systems.

Recognising that certain principles set forth in this Recommendation may have relevance to mechanisms for dispute resolution and redress for consumer victims of breaches of laws in other policy areas affecting consumers and may serve as the basis for future work in these areas.

On the proposal of the Committee on Consumer Policy:

RECOMMENDS:

That Member countries implement this Recommendation as set out in the Annex thereto of which it forms an integral part.

INVITES:

Non-Member economies to take account of this Recommendation, and to implement it with appropriate assistance from Member countries;

INSTRUCTS:

The Committee on Consumer Policy to exchange information on progress and experiences regarding the implementation of this Recommendation, review that information, and report to the Council on this subject within 5 years.

Annex

I. Purpose, scope and definitions

This Recommendation sets out common principles for Member countries on mechanisms for consumers to resolve disputes and obtain redress for economic harm resulting from transactions with businesses involving goods or services, including transactions across borders. It is intended to apply solely to complaints initiated by or on behalf of consumers, and not to complaints initiated by businesses against consumers or another business.

The Recommendation is primarily aimed at third-party dispute resolution and redress mechanisms. It recognises that consumer disputes can often be resolved directly by the relevant business and that consumers and businesses should first attempt to resolve their disputes directly before seeking recourse through third-party mechanisms.

For the purposes of this Recommendation, the terms:

- “Dispute resolution” refers to the use of mechanisms designed to provide consumers who have suffered economic harm resulting from transactions involving goods or services, including transactions across borders, the opportunity to resolve their complaints against businesses and to obtain redress. This term is inclusive and encompasses informal and formal mechanisms, online and offline mechanisms, private and public sector mechanisms, and administrative and judicial mechanisms.
- “Redress” refers to compensation for economic harm, whether in the form of a monetary remedy (*e.g.* a voluntary payment, damages, restitution, or other monetary relief) or a conduct remedy with a restorative element (*e.g.* exchange of a good or service, specific performance or rescission of a contract).
- “Economic harm” refers to actual monetary loss sustained by a consumer as a result of a breach of legislation or common law principles aimed at protecting consumers.
- “Consumer protection enforcement authority” means any national public body, as determined by each Member country, that has as a principal mission implementing laws against fraudulent, misleading, or unfair commercial practices affecting consumers and has powers (a) to conduct investigations or (b) to pursue enforcement proceedings, or (c) to do both.
- “Disadvantaged or vulnerable consumers” refers to particular consumers or categories of consumers, who because of personal characteristics or circumstances (*e.g.* age, mental or physical capacity, education, income, language or remote location) may meet particular difficulties in accessing dispute resolution and redress.

II. Domestic Frameworks for Dispute Resolution and Redress

Member countries should review their existing dispute resolution and redress frameworks to ensure that they provide consumers with access to fair, easy to use, timely, and effective dispute resolution and redress without unnecessary cost or burden.

In so doing, Member countries should ensure that their domestic frameworks provide for a combination of different mechanisms for dispute resolution and redress in order to respond to the varying nature and characteristics of consumer complaints.

In addition, Member countries should pay special attention to the ability to obtain or facilitate monetary redress for consumers which is an important element of a comprehensive consumer protection enforcement framework.

In particular, Member countries should work towards providing consumers with dispute resolution and redress mechanisms from each of the categories set out in Sections A to C below, which are complementary and mutually reinforcing.

A. Dispute resolution and redress mechanisms for consumers acting individually

1. Consumers should have access to dispute resolution mechanisms to resolve their individual disputes with businesses, and where appropriate, obtain redress.
2. These mechanisms should not impose a cost on consumers that is disproportionate to the value of the claim at stake.
3. These mechanisms should be designed to be sufficiently accessible and easy to use to enable consumers to elect to conduct the procedure without need for legal representation or assistance as far as possible.
4. Consumers should be provided with clear, comprehensible, and accurate information on the procedure, including the process for initiating a complaint and selecting a dispute resolution mechanism, expected costs and duration of the procedure, possible outcomes, avenues for appeal, and whether the outcome is binding.
5. These mechanisms should be designed so that they can be used by consumers with only minimal additional information or help (*e.g.* through the use of standard forms to facilitate the submission of necessary documents).
6. The special needs of disadvantaged or vulnerable consumers should be considered so that they, or their representatives, can access these mechanisms.

7. Dispute resolution and redress mechanisms for consumers acting individually include, but are not limited to:
 - a. Alternative dispute resolution services, including online dispute resolution, by which consumers and businesses engage in an out-of-court process to reach an agreement. Such services may include procedures which lead to the settling of the dispute through the active intervention of a neutral third party, who proposes or imposes a solution or procedures which facilitate the resolution of a consumer dispute by bringing the parties together and assisting them in reaching a solution by common consent. They may also include agency based mechanisms, by which consumers submit their complaint against a business to a public agency for investigation and finding; and/or
 - b. Simplified court procedures for small claims, which offer consumers the opportunity to obtain a judicial determination of their dispute through less formal and expedited procedures than those used in traditional court proceedings. This may include simplified proceedings in separate courts or tribunals of limited jurisdiction or simplified proceedings in the regular courts of first instance.

B. Dispute resolution and redress mechanisms for consumers acting collectively

1. When a number of consumers allege that they have suffered economic harm as a result of the similar conduct of the same entity or related entities, and it is not practicable or efficient for them to act individually to resolve their disputes, those consumers should have access to mechanisms that provide for the collective resolution of those disputes.
2. Member countries should ensure that the collective resolution procedures are transparent, efficient, and fair to both consumers and businesses. Accordingly, Member countries should ensure that:
 - a. Such procedures provide meaningful relief for consumers, particularly when a proposed settlement involves non-monetary relief or when those who act on behalf of consumers seek to benefit disproportionately at the expense of harmed consumers;
 - b. Such procedures include measures to discourage abusive collective actions, particularly when consumers have not suffered economic harm; and
 - c. Such procedures are not used to protect domestic businesses from competition or applied unfairly against foreign businesses.
3. Where collective action is available on an “opt-in” basis, whereby consumers must take specific steps to join themselves to the collective action, Member countries should ensure that reasonable measures are taken to inform consumers of the initiation of such cases so that they can take steps to include themselves within the group and benefit from the resolution.
4. Where collective action is available on an “opt-out” basis, whereby consumers are joined to the collective action unless they take specific steps

to exclude themselves, Member countries should ensure that reasonable measures are taken to inform consumers of the initiation of such cases so that they can take steps to exclude themselves if so desired. Consumers should not be forced to take part in, or be bound by the resolution of, a collective action proceeding of which they have not been adequately informed.

5. Dispute resolution and redress mechanisms for consumers acting collectively include, but are not limited to:
 - a. Actions initiated by an individual consumer in his or her own name and acting as a representative party for other consumers who have suffered economic harm as a result of the similar conduct of the same entity or related entities; and/or
 - b. Actions initiated by consumer organisations acting as representative parties for consumers who have suffered economic harm as a result of the similar conduct of the same entity or related entities; and/or
 - c. Actions initiated by consumer protection enforcement authorities acting as representative parties for consumers who have suffered economic harm as a result of the similar conduct of the same entity or related entities, as more fully described in Section II. C below.

C. Mechanisms for consumer protection enforcement authorities to obtain or facilitate redress on behalf of consumers

1. Member countries should work towards ensuring that consumer protection enforcement authorities have the ability to take action and obtain or facilitate redress for consumers, including monetary redress. Where appropriate, in seeking such remedies, consumer protection enforcement authorities may be assisted by other enforcement entities, such as private consumer organisations.
2. Mechanisms for consumer protection enforcement authorities to obtain or facilitate redress on behalf of consumers include, but are not limited to:
 - a. The ability to seek a court order for redress in civil proceedings; and/or
 - b. The ability to seek a court order for redress in criminal proceedings; and/or
 - c. The ability to act as a representative party in lawsuits seeking redress.

III. Cross-border consumer disputes

In implementing the mechanisms contained in Section II, Member countries should take into account the need to improve awareness of and access to dispute resolution and redress mechanisms and to enhance the effectiveness of consumer remedies in cross-border disputes.

In particular, Member countries should work towards:

1. Providing clear information to consumers and relevant consumer organisations on judicial and extra-judicial dispute resolution and redress mechanisms available within their countries.
2. Participating, where possible, in international and regional consumer complaint, advice and referral networks.
3. Expanding the awareness of justice system participants, including the judiciary, law enforcement officials, and other government officials, as to the needs of foreign consumers who have been harmed by domestic wrongdoers.
4. Encouraging the greater use of technology, where practicable, to facilitate the dissemination of information, and the filing and management of consumer disputes, in particular cross-border disputes.
5. Taking steps to minimise, when necessary and appropriate, legal barriers to applicants from other countries having recourse to domestic consumer dispute resolution and redress mechanisms.
6. Developing multi-lateral and bi-lateral arrangements to improve international judicial co-operation in the recovery of foreign assets and the enforcement of judgments in appropriate cross-border cases.

IV. Private sector co-operation

1. Member countries should encourage businesses and industry groups to provide consumers with voluntary mechanisms to informally, and at the earliest possible stages, resolve their disputes and obtain redress as appropriate.
2. Such mechanisms may include, but are not limited to:
 - a. Effective processes for internal complaints handling, which provide consumers with the opportunity to resolve their complaints directly with the business concerned in a fair, effective, and timely manner without imposing a fee or charge for accessing or using these processes.
 - b. Private third party alternative dispute resolution services, by which businesses establish, finance, or run out-of-court consensual processes or adjudicative processes to resolve disputes between that business and consumers. This may include private ombudsman schemes, by which businesses appoint and finance a neutral body to investigate, determine or make recommendations on any disputes that may arise between that business and consumers.
 - c. Protections for payment cardholders in disputes with merchants, by which payment card issuers provide consumers with remedies for disputes arising out of transactions for goods or services. Such protections may include, for example, limitations on liability to pay for non-delivered or non-conforming goods or services.
 - d. Customer satisfaction codes that set levels of service and describe performance and redress responses when service levels are not met.

3. Member countries should encourage businesses to adhere to domestic and international standards developed through open and transparent multi-stakeholder processes pertaining to internal complaints handling, private third party alternative dispute resolution services, protections for payment cardholders in disputes with merchants, and customer satisfaction codes.

V. Mechanisms for collecting consumer complaints and analysing marketplace trends

1. Member countries should work towards ensuring that they have systems in place to collect consumer complaints and, where necessary, analyse marketplace trends.
2. Member countries should consider opportunities for the collection and exchange of information from foreign consumers in developing their systems, and should consider the feasibility of using existing databases for such collection and exchange. Member countries should give due consideration to the relevant protection of any information that could be so exchanged.

VI. Education and awareness

1. Member countries should co-operate with businesses, industry groups, and consumer groups in furthering consumer and business understanding of how to avoid disputes, of dispute resolution and redress mechanisms available to consumers, and of where consumers can file complaints.
2. In designing education and awareness initiatives, special consideration should be given to the needs of disadvantaged or vulnerable consumers.