

European Commission study on out of court settlement mechanisms in transnational labour disputes

DG Employment, Social Affairs and Inclusion has committed a study to document the possibility to use Alternative Dispute Resolution (ADR) mechanisms for transnational labour dispute, both **individual** and **collective** ones. It is rather an exploratory study addressed to analyse the present situation as to the possibility to use existing ADR mechanisms in the EU and EEA countries for transnational labour dispute as well as to explore several options in order to suggest any actions that might be taken to allow for transnational labour disputes to be settled out-of-court.

To sum up in a very concise way, the key questions addressed by this study are:

- to what extent and under what circumstances it should be possible to build up a general framework with different initiatives at European level to tackle transnational labour dispute, both individual and collective.
- how these initiatives at EU level would coexist with the national ADR mechanisms established to this end at European level.

The study should provide Commission services with a sound knowledge basis, putting it in a position to assess the situation and the need for any action in this area as well as highlighting relevant aspects such action would have to take account of.

Understanding the discussion: the Alternative Dispute Resolution approach

The ultimate aim of ADR mechanisms is to solve dispute. These mechanisms have been created, arranged and, given the case, regulated at national level to this end. The situation is different and quite diverse in each Member State and country, but at least they all have this objective in common.

In the case of **collective labour dispute**, it was agreed by the Commission to adopt a working definition of what makes a transnational labour dispute based on a broad and territorial perspective: a cross-border labour dispute affecting more than one Member State. Of course, there are further features as the clash between the two applicable national labour legislations –including the provisions arising from collective agreements–, even if the dispute takes place in one State only.

In the case of **individual dispute**, besides regarding the right to settling a dispute, it is convenient to take into account the added difficulty for people to access the courts of justice in countries that aren't their own or the European jurisdiction (European Court of Justice). In the case of individual labour dispute, turning to courts of justice outside one's country is a complex process that can be expensive and for which a solution may take a long time to arrive. That is why it is important to consider how the simple access to out-of-court mechanisms could be facilitated in certain individual disputes and in such a way that the effective exercise of labour rights is allowed.

In order to analyse in what way and under what requirements an ADR at EU level would be able to handle transnational labour dispute, three main issues should be discussed:

- a) competence of the EU ADR to take in the case, and the key claimants' capacity to claim and appear and in what way before the ADR;
- b) procedure: the possibility for the ADR to get to the root of the dispute and suitably handle the composition process (mediation, conciliation or arbitration schemes);
- c) outcome/effect: the status of the outcome achieved and how is it enforced, domestically and transnationally.

These three issues could be designated succinctly as the 'who', the 'how', and the 'and then what' questions generated by these transnational disputes. In addition, there is always the 'what', that is, the underlying reason for, or core content of, the dispute: what is the true conflict and what topic is being legally discussed.

Topics to be tackled

We kindly request that you give us your opinion on the following topics:

1. Do you think a European ADR initiative would be suitable to solve transnational labour dispute? Do you think a sufficient number of existing labour disputes take place that can be considered to be transnational and that could be solved out of court at EU level?
2. If you think that it could be suitable, please comment on the level of acceptance of the following initiatives that might be taken at European level or explored in the future and under which basic requirements:
 - a) EU legislation, as a Directive or soft law: what could the minimum contents of this European legislation or soft law instrument be?
 - b) Make use of the possibilities offered by the transposition of Mediation Directive 2008/52/EC into national law adapting its provisions to make them applicable to individual or collective labour dispute
 - c) Development of EU-level social partners' agreements establishing ADR mechanisms at sectoral or cross-industry level to be used voluntarily.
 - d) Code of conduct or Recommendation on ADR in labour dispute, issued by the European Commission after discussion with EU social partners: what basic elements must it contain? On what topics should these guidelines be issued?
 - e) Establishment of a network of national ADR bodies dealing with labour dispute. What scope can this approach have and what roles can it play? What are its competences? For instance, collecting information and conveying it to the national body that is dealing with a transnational labour dispute. What other functions? For instance, facilitating access to individual claimants (citizens in other member states, foreigners in other non-EU countries...)
 - f) Team of conciliators/mediators specialising in transnational labour dispute, selected by the EU social partners through their member organisations.
 - g) According to your opinion, any other EU action to be considered for transnational labour dispute.