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**June 2013**

# Management of consumer disputes out of court

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*In line with recently adopted EU legislation, the government has appointed a committee instructed to propose measures, by 30 June 2014, to ensure that consumers have access to flexible and cost-effective dispute resolution procedures outside court. The focus will be on whether the recommendations of the National Board for Consumer Disputes should become enforceable. Such a system exists today in several of our neighbouring countries and would likely have consequences for both individual consumers and businesses.*

## The assignment

In guidelines dated 28 February this year, the government tasked a special committee with proposing appropriate measures to ensure that consumers have access to flexible and cost-effective dispute resolution procedures outside court.<sup>1</sup> The assignment also includes proposing suitable measures to encourage more businesses to follow the recommendations of the National Board for Consumer Disputes (the "ARN"). The committee must report to the government by 30 June 2014.

## Background of the assignment

The background of the government's initiative is among others the minimum requirements – in the form of transparency, independence, expertise and legal certainty – that will be imposed on the dispute resolution bodies of member states in consumer relations by the newly adopted directive regarding alternative dispute resolution in consumer disputes.<sup>2</sup> The Directive is linked to the Regulation on online dispute resolution adopted at the same time.<sup>3</sup> The assignment is also motivated by an observed increase in the number of rulings of the ARN and increased cross-border trade, particularly online, which creates more complex cases and extends processing time.

## Current system

Disputes between traders and consumers in Sweden can currently be litigated either in court, by arbitration or before the ARN. Under the existing system, decisions issued by the above mentioned first two instances are binding on the parties and enforceable by the authorities. The ARN's decisions are not binding, instead the ARN issues recommendations to the parties stating ARN's view on how the dispute should be

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<sup>1</sup> Directive 2013:23 "Management of consumer disputes out of court"

<sup>2</sup> <http://register.consilium.europa.eu/pdf/en/12/pe00/pe00079.en12.pdf>

<sup>3</sup> <http://register.consilium.europa.eu/pdf/en/12/pe00/pe00080.en12.pdf>

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resolved. However, dispute resolution by the ARN is favourable to the parties for several reasons. Most importantly, it is free (in so far as the parties are not charged for the ARN's work, and that each party bears its own "costs") to both consumers and traders, and the procedure is also relatively quick (as a rule, matters should be settled within 90 days upon completion of exchange of written documentation). The entire procedure is conducted in writing, and the ARN's decisions are made by a board consisting of a chairman with judicial experience and, usually, four members representing consumer and business interests. As in the case of a court or arbitration tribunal, the ARN's recommendations must be based on the materials submitted by the parties and guided by applicable laws, practice and contracts.

Statistics from the ARN show that between 71 and 76 percent of the board's recommendations have been complied with in recent years. This result is different in different industries. The number of cases before the ARN has increased, and in 2012 the number of cases increased by 23 percent. One reason for this increase is assumed to be that the ARN has made it possible to report disputes online, in line with the above mentioned Regulation about online dispute resolution.

Businesses who choose not to comply with the ARN's recommendations are published on a so-called black list compiled by the consumer advice magazine Råd & Rön. Apart from the loss of goodwill which this may entail for the businesses, the ARN's recommendations thus do not provide any grounds that a consumer can use against a business in a procedure before the Swedish Enforcement Authority.

**Future system – some reflections**

A similar inquiry as the one currently underway was conducted in Sweden at the end of the 1970's.<sup>4</sup> At that time, the inquiry did not result in any proposal that the ARN's decisions should be made enforceable. The inquiring body believed there were numerous inherent problems in such a system.

A legal system where an agency like the ARN acts in parallel with courts and arbitration tribunals – in the sense that the ARN's ruling would have equal force as court judgements and arbitration awards – is, however, a possibility in the future in Sweden. There are similar systems today both in Denmark and Norway, where decisions made by bodies equivalent to the ARN in those respective countries are enforceable provided certain conditions are met. The committee has also been instructed to look at the situation in other countries. Among others, the committee will study other EU countries and their out-of-court dispute resolution bodies in order to compare compliance with the decisions of such bodies with compliance in Sweden.

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<sup>4</sup>Public inquiry SOU1978:40 "Dispute resolution in the consumer area" and proposed legislation no. 1979/80:114 "On the activities of the National Board for Consumer Disputes"

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If a system, like the one in Denmark or Norway, were to be introduced in Sweden, this would probably entail certain changes for Swedish companies and companies that do business in Sweden. The obvious change would be that the business would be forced to go to court if the business failed to comply with the ARN's decision in a dispute, which would be both time consuming and costly. Potentially, there could be a greater incentive for consumers to complain about a faulty product or service, which would mean an increased number of cases for businesses to manage.

The current inquiry does not directly relate to the relationship between businesses whose disputes will still need to be resolved finally in a court or by arbitration. The proposed legal system does, however, involve some new aspects. Knowledge of and readiness for these are important, in particular in the context of future business relations with consumers.



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