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***EUROPEAN CHAMBERS OF COMMERCE
AND ALTERNATIVE RESOLUTION OF
COMMERCIAL DISPUTES***

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FOREWORD

Before looking in detail at the alternative dispute resolution services offered by European Chambers of Commerce, some general points about the different ways these bodies are structured in the 15 Member States of the European Union must be made.

First and foremost, it must be stressed that although commercial arbitration was among the roles historically performed by the Guilds and Corporations, mediation, and “Alternative Dispute Resolution” (ADR) more generally, have only recently begun to spread throughout Europe to any significant extent, chiefly due to their great success in the North American marketplace. For readers who are less familiar with the approach, it is worth making a fundamental legal distinction: in alternative forms of dispute resolution such as mediation, conciliation and technical appraisal, the involvement of a third party binds the disputants at a merely contractual level, helping to restore the balance in their relationship. Arbitration, on the other hand, is a real judgement, with firm guarantees that both sides of the argument will be heard: derogating from the normal legal process, it permanently precludes access to it.

Secondly, a brief look at the different legal systems under which European Chambers of Commerce operate is necessary. In 8 countries (Austria, France, Germany, Greece, Italy, Luxembourg, the Netherlands and Spain), the Chambers of Commerce are *public systems*, provided for and regulated by law, with a more pronounced institutional character, acting as a point of contact between the world of business and public administration. In the remaining 7 countries (Belgium, Denmark, Finland, Ireland, Portugal, the United Kingdom and Sweden) the Chambers of Commerce are organised under a system of *private law* (associations, limited companies etc.) and business membership is voluntary. However, we should not under-rate the growing interest which some of these systems show in assuming an institutional role, in some cases in response to moves towards administrative decentralisation in their countries.

These different legal frameworks are reflected in the very wide range of ADR services offered by the various European Chambers of Commerce.

Other crucial factors are linked to the question of legal standing, such as the extent to which the Chambers of Commerce have legal powers in this field, as well as the availability of organisational and financial resources.

The result is that alongside strictly local experiments and others which are at a very early stage, there also exist Chambers of Commerce whose international prestige is incontestable in this area: for instance, the Chambers of Commerce in Stockholm, London and Paris (through the recent creation of the *Centre de Médiation et Arbitrage de Paris - CMAP*), and the Austrian Federal Chamber, as well as the International Chamber of Commerce in Paris, though this last is something of an “outsider” in comparison with the national Chamber of Commerce systems.

The international work of some German and Spanish Chambers of Commerce is also important, as is the *Camera Arbitrale* of the Milanese Chamber of Commerce.

More generally, the renewed interest of many European Chambers of Commerce in alternative dispute resolution comes at a time of legal upheaval: during the last 10 years a number of Member States have amended the relevant legislation, often drawing inspiration from the guide lines drawn up by UNCITRAL.

Starting with the private law systems, the cases of *Great Britain* and *Ireland* appear to symbolise the trend. Here the role of the Chambers of Commerce is primarily commercial, and there has been until recently a certain indifference to arbitration and conciliation services as being strictly institutional in nature and thus insufficiently “business-oriented”. However, particularly in Great Britain, a change of direction has been noted. In this context we should also note the increased collaboration between the London Chamber of Commerce and the long-standing London Court of International Arbitration.

The case of *Denmark* is also interesting: the Copenhagen Chamber of Commerce has for some time had its own arbitration regulations although at present the system is not operational.

The experience of the other Scandinavian country, *Sweden*, deserves particular attention. The Stockholm Chamber of Commerce is the headquarters of a prestigious International Arbitration Institute which ranks among the best in the world.

Finland has much in common with Portugal and some of the other public law systems generally, where the authority of Chambers of Commerce in alternative dispute resolution is recognised in law. The Statutory Order under which Finnish Chambers operate led to the setting up of a standing body for national and international arbitration within the National Association with offices in Helsinki.

Similarly, in *Portugal* the law regarding Chambers of Commerce has made it possible to set up a Centre for Commercial Arbitration with a Lisbon head office within the Chamber of Commerce, which also has powers of conciliation.

Finally, among the private Chamber of Commerce systems the case of *Belgium* is especially noteworthy. In 1993 the structure of the state underwent radical constitutional reform to establish a federal system. Here the Chambers feel a pressing need to play a clear institutional role, and this aspiration is reflected in their keen attention to the subject of alternative dispute resolution as an opportunity to regulate the market. Although it is true that few are currently operative, a number of Chambers are organising such services and others are already prepared to develop them.

Turning to the public law Chamber of Commerce systems, four - in *France*, *Germany*, *Luxembourg* and *the Netherlands* - have no legal powers over arbitration and conciliation. Nevertheless, in keeping with the institutional role implicit in their legal status, the Chambers of Commerce in these countries do have significant experience of alternative dispute resolution.

In *France* many Chambers of Commerce state that they administer such procedures. Similarly, the Luxembourg Chamber, despite its small size, organises arbitration in trade disputes.

The *German* experience is also striking: no fewer than 80 of its 83 Chambers of Commerce are members of the DIS (German Arbitration Institute) and organise arbitration under its regulations. Among the most active - handling disputes including those between business and consumers - are Munich, Cologne, Hamburg, Berlin and Bonn.

In *the Netherlands*, too, the Chambers make reference to the NAI (Netherlands Arbitration Institute); the Amsterdam Chamber of Commerce deserves special mention here.

The situation in Spain, Greece and Austria is somewhat similar to the Italian position: Chambers of Commerce are legally entitled to organise dispute resolution services.

In practice, there are certain differences: in *Greece*, largely because of financial problems, only the Athens Chamber of Commerce is active.

Spain is probably the country which mostly closely resembles Italy, and with the largest number of Chamber of Commerce Courts of Arbitration spread throughout the land: as well as those in Madrid and Barcelona, at least forty Chambers are active in the field.

The situation in *Austria* is tightly regulated by law. The “standing Courts of Arbitration” in the Chambers of Commerce of the 9 Länder have the task of administering domestic disputes. Only the Court of the Association of Austrian Chambers of Commerce (or the Federal body, the WKÖ), may act in international matters.

In *Italy*, the recent reform in 1993 (Law no. 580) redefined the role of the Chambers of Commerce; new powers were introduced and others, previously granted only to some Chambers, were formally extended to the whole system.

This applies to the organisation of services for alternative dispute resolution, formerly left to the discretion of a few Chambers, but now both a right and a duty for all Chambers: a right because they now have the powers under Law no 580 (Art. 2.c.4), and a duty because successive laws (as well as draft laws under consideration) make attempts at arbitration and conciliation through the Chambers of Commerce, compulsory.

In essence this concerns the resolution of both “business to business” and “business to consumer” disputes. It should be stressed that since the reform the Chamber Councils, representing all branches of the economy, also include a consumer representative. Of the 102 Chambers around 67 already have their own arbitration systems, and the remainder are at an advanced stage in their planning. Among these, about 10 have already acquired significant experience, organising between 6 and 34 arbitrations a year. The scheme for “drop-in” conciliation bureaux, which have been set up by all the Italian Chambers, is now well under way.

Finally, a few more general observations. Legal systems which do not correspond to business needs, and the recent Community guidelines for cross-border trade disputes, particularly in consumer affairs, have combined to create a favourable climate for the spread of these procedures in Europe today.

Institutional arbitration, as administered by Chambers of Commerce, presents undeniable advantages:

- a guarantee of the permanence of the institution;
- regulatory provisions which prevent the arbitration proceedings from reaching deadlock;
- transparent, uniform procedures fixed by regulation;
- supervision to ensure that procedures are properly followed;
- greater guarantees of the neutrality of the arbitration court;
- greater familiarity with the market and local custom.

It may therefore be hoped that the Chambers of Commerce will be able to exploit the synergies stemming from their membership of a network spread throughout Europe, and set about harmonising the services on offer. Despite all the differences - both quantitative and qualitative -ADR as provided by the Chambers of Commerce has the potential to fill a market niche, that of small to medium disputes between companies (and consumers) where there are few effective methods of resolution, particularly in cross-border cases.

The Chambers of Commerce should also undertake a major effort to raise awareness on the ground, spreading a “culture of alternative resolution”, which can effectively direct the small and medium companies, which are usually involved in small and medium sized disputes, towards rapid, effective inexpensive solutions.

As the internal market consolidates, the euro increases the competitive scope of European economic operators and electronic trade spreads throughout the world, the availability of simplified methods of dispute resolution for companies provides vital support for safe and rapid trading.

AUSTRIA

The Association of Austrian Chambers of Commerce (WKÖ)

[two lines missing re activities of Court of Arbitration of the Stock and Commodity Exchange of Vienna - see laws regulating arbitration.]

Name Internationales Schiedsgericht der Wirtschaftskammer Österreich
Address Hauptstraße 63 PF 190 1045 Vienna
Tel. +43 1 501 05 / 4397, 4398, 4399
Fax. +43 1 502 06 / 216
Contact

THE REGIONAL ARBITRATION CHAMBERS

Name	Schiedsgericht der Landeskammer Burgenland	Schiedsgericht der Landeskammer Kärnten	Schiedsgericht der Landeskammer Niederösterreich
Address	Robert Graf - Platz 1 7001 Eisenstadt	Herrengasse 10 1014 - Vienna	Bahnhofstraße 40-42 9021
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Name	Schiedsgericht der Landeskammer Oberösterreich	Schiedsgericht der Landeskammer Salzburg	Schiedsgericht der Landeskammer Steiermark
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Tel.			+43 1 51 450 - 219
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Contact			Bernhard Schneider

OTHER INSTITUTIONS ACTIVE IN ADR

Name Schiedsgericht der Wiener Börse (Arbitration Court of the Vienna Stock Exchange)
Schiedsgericht der Börse für landwirtschaftliche Produkten (Arbitration Court of the Stock
Exchange for Agriculture produce)
Address Strauchgasse, 1-3 1014 Vienna Taborstr. 10 1020 Vienna
Tel. +43 1 53 16 52 55 +43 1 21 41 65 50
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Contact Mme Schönthaler

THE ROLE OF THE CHAMBERS OF COMMERCE

The organisation of the Austrian Chambers of Commerce is regulated by the Federal Law of 24.07.1946, which established one Chamber of Commerce for each of the 9 Länder under the national co-ordination of the *Wirtschaftskammer Österreich* (WKÖ) with offices in Vienna. This law also provided for standing Courts of Arbitration to be set up in the 9 *Landeskammern*, with powers to resolve any commercial dispute without distinguishing between national and international arbitration.

The powers of the Association of Austrian Chambers of Commerce (or Federal Economic Chamber - WKÖ) in international arbitration, however, were set by the Chamber of Commerce reform of 1974; in particular, the reform recognised the WKÖ's authority to establish a Court of Arbitration to rule in economic disputes between companies where at least one has its head offices outside Austrian territory at the time when the agreement for arbitration is concluded.

When the Chambers of Commerce were most recently reformed in 1992, the Arbitral Centre was explicitly excluded from handling cases where both parties are Austrian, but not where the parties are both non-nationals, even where they share a nationality.

In this way, and in line with a decision of the Austrian Supreme Court, the Federal Chamber and the 9 Regional Chambers are excluded from exercising jurisdiction in matters of international arbitration.

This reform has certainly clarified the relationships between the Chambers of Commerce but in the view of the present writer it has raised certain problems of compatibility with Community Law.

It seems dubious to discriminate between an Austrian businessman and one from another Member State by denying the latter access to the Regional Chambers' arbitration service, which is available throughout the country and is therefore more readily accessible than the Federal Chamber which only operates from Vienna.

Excluding the Regional Chambers from the administration of cross-border arbitration has resolved some problems of interpretation regarding the identification of the competent arbitral centre, but it has also deprived the *Landeskammern* of the opportunity to offer an important service.

Not all the national Standing Courts of Arbitration are particularly active: probably either because of the very strict Austrian arbitration laws, under which there is no possibility of appeal against an award, or because Austrian business managers have more confidence in

the ordinary judicial system than in one promoted by businesses from other Member States.

a) International Arbitration

As intended, the only Centre which is currently competent in matters of international arbitration is the WKÖ's centre which was set up in 1975.

To reiterate, the WKÖ:

a) is not competent in disputes where all the parties are Austrian; in such a case, if they cannot agree to be heard at a different location within Austria and have taken the case to the International Arbitral Centre, the Court of Arbitration of the Viennese Chamber of Commerce shall have power to make an award.

b) is competent if, on the other hand, the parties are non-nationals, even if they share a nationality (or if they have head offices outside Austrian territory).

The Centre has separate rules for arbitration and conciliation.

The International Arbitral Centre of the WKÖ of Vienna is composed of the following bodies:

- 1) The Committee, with 7 members not all of whom may be members of Austrian Chambers of Commerce organisations. The Committee serves for a five year period;
- 2) The Secretariat, also appointed for a five year period by the Committee itself.

Recommended arbitration clause

"All disputes arising in connection the present contract or its breach, termination or invalidity shall be finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Centre of the Federal Economic Chamber in Vienna (the so-called Rules of Vienna)".

b) Internal arbitration

Standing Courts of Arbitration of the 9 Austrian Regional Chambers of Commerce

Of the 9 Standing Courts operating under similar regulations, the Court of Arbitration of the Viennese Chamber of Commerce is of particular interest. In the three year period 1995-1998 it recorded 22 requests for arbitration, of which 18 cases were resolved.

The average length of the process is around 9 months and mainly involves the commercial and industrial sectors (100% of the applicants were businesses).

The legal questions most often handled concerned warranties, contract law, and construction defects in buildings.

The arbitration tribunal, with one or three arbitrators, is appointed by the parties themselves; procedural rules are kept to an absolute minimum in order to provide maximum flexibility.

The task of the Chamber of Commerce is to administer proceedings and in general all matters regarding the arbitrators' fees (see in particular Art. 5 of the Constitution of the Chamber of Commerce of Vienna).

The main duty of the Chamber of Commerce is to represent the general interests of companies but it may also become involved in the resolution of disputes between companies and consumers, although it rarely does so.

APPLICABLE LEGISLATION

- Law of 2 February 1983 in emendation of Articles 577-599 of the Austrian Code of Civil Procedure;
- Act of 1 August 1895, which pre-existed the Code of Civil Procedure, relating to arbitration administered by the Court of Arbitration of the Stock and Commodity Exchange of Vienna (see introductory table).

Austrian legislation relating to arbitration leaves the disputants a great deal of freedom: only a limited number of regulations are mandatory.

It is important to distinguish between arbitration and other related forms such as evaluation (or expert determination, where the parties ask a third person to make a de facto award, for example expert determination of price in a sale), or quality arbitration (where a third party is asked to rule on the quality of goods with respect to the parameters set in the contract).

The entire procedure as regulated by the Law of 1983 puts the arbitrator in a privileged legal position, granting him considerable independence as compared with an ordinary judge.

The Law allows complete freedom as to the necessary form which a valid agreement for arbitration should take (whether a clause or an agreement): a simple telex or telegram may be enough.

Under Austrian law anyone with legal personality may be a party to an agreement for arbitration, even States and state organisations, which can have recourse to national and international arbitration under the same conditions as private individuals.

With some limitations, disputes regarding patents and trademarks may also be subject to arbitration, as may those involving competition law (for example cartel agreements).

There are no particular requirements for being an arbitrator, other than a respect for impartiality as between the parties, which is determined according to the same criteria as for an ordinary judge.

If there is a delay in appointing arbitrators, the matter may be passed to the ordinary courts.

Arbitrators have wide powers, and may independently decide on the validity of the contract underlying the clause, (the “independence of the arbitration clause”) to the exclusion of the powers of the ordinary courts.

The arbitrators’ decision as to their own legal powers may, however, be challenged before the ordinary courts.

Arbitrators may also have recourse to all the means of proof which they consider appropriate (witness statements from the parties involved, experts etc) and may also,

under Art 588 of the Code of Civil Procedure, call on the ordinary courts to intervene either to obtain possible coercive measures or, in urgent cases, precautionary measures. An amicable settlement reached during the course of the proceedings has the same force, if formalised, as an award and is therefore directly enforceable on Austrian soil. Under Austrian law, an award may never be challenged in ordinary law but it remains open to the parties to agree in advance to a 2nd or 3rd stage of arbitration.

DISPUTE RESOLUTION IN CONSUMER AFFAIRS

There appears to be no formal prohibition preventing the Chambers of Commerce from administering dispute resolution proceedings in consumer affairs, but this remains an area which has hardly been developed.



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National Reports: Austria, Werner Melis ed.
- Werner Melis, Chairman of the International Arbitral Centre of the Federal Economic Chamber of Austria: *The International Arbitral Centre of the Federal Economic Chamber of Austria*, 14.6.1993
- Anton Baier, Austria [**specify title, publisher, year..**]
- The Rules of Arbitration and Conciliation of the International Arbitral Centre of the Federal Economic Chamber of Vienna (in force from 1.1.1997)
- Replies to questionnaire from the Court of Arbitration of the **Viennese Chamber of Commerce or the WKÖ??**

BELGIUM

[missing the recommended arbitration clause]*

CHAMBERS OF COMMERCE AND OTHER INSTITUTIONS ASSOCIATED WITH THE CHAMBER OF COMMERCE SYSTEM

Name	Chambre de Commerce de Bruxelles	Arbitragekamer van de
	Kamer van Koophandel en Nijverheid van Antwerpen	Chambre de Commerce de
	Charleroi	
Address	Avenue Louise, 500 1050 Bruxelles	Markgravestraat 12(Beurs)
	2000 Antwerpen	
Tel.	+32 2 64 85 002	+32 3 23 22 219
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Contact	Mme Evenopoel	M. Bogaerts
		M. Moons

OTHER INSTITUTIONS ACTIVE IN ADR

Name	CEPANI Centre Belge pour l'Etude et la Pratique de l'Arbitrage National et International	National and international Arbitration Institute
	I.B.A. Institut belge d'arbitrage	
Address	Rue de Sols, 8 1000 Bruxelles	Universiteitstraat, 4 9000 Gent Avenue Charles-Quint, 124
	1082 Bruxelles	
Tel.	+32 2 51 50 835	+32 2 91 25 76 51 +32 2 46 90 095
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	34	
Contact	M. Steyaert (President M. Keutgen (Secretary General)	M. Storme
	M. Devos	
Name	Ombudsman de l'Union professionnelle des entreprises d'assurance (UPEA)	Business Mediation Center
	La commission de litiges voyages	
Address		North Gate III Bd Emile Jacqmain,154 1000 Bruxelles
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THE ROLE OF THE CHAMBERS OF COMMERCE

The Belgian system of Chambers of Commerce is an exact reflection of the federal structure of the State of Belgium itself, adopted in 1993. 16 Chambers are members of the Flemish Association (the *Vereniging van Vlaamse Kamers voor Handel en Nijverheid*), while 11 are members of the *Association des Chambres de Commerce et d'Industrie de Wallonie*; the Brussels Chamber is recognised as a fully independent body corresponding to the autonomous region of Bruxelles-Capitale. Local Chambers of Commerce are all co-ordinated at national level through the *Fédération des CCI de Belgique (FCCIB)*.

The contribution of Belgian Chambers of Commerce to alternative dispute resolution does not so far seem to be of central importance.

In fact, particularly where international arbitration is concerned, their only significant involvement is through CEPANI (see below) thanks to their close collaboration with the ICC (International Chamber of Commerce).

The Belgian association of Chambers of Commerce has links with CEPANI, but their involvement is not very close.

CEPANI is principally involved with economic issues through its close and direct relations with the *Fédération des Industries de Belgique* (FEB). The offices of the CEPANI are within the FEB structure; CEPANI representation at the ICC is through the FEB office in Paris; and its Secretary General is the Director General of the FEB.

It should be noted, perhaps, that there exists a more general problem regarding the division of powers between the FEB and the CEPANI, accentuated by the fact that the Association of Belgian Chambers of Commerce is a private law organisation and thus has no particular powers in law, not even the exclusive right to use the name “Chamber of Commerce”.

It remains true, however, that both the individual Chambers and their Association are looking with interest at the possibility of offering their members ADR services, perhaps without actually managing the process directly, through making use of their agreements with bodies which are already active in the field.

The only Chambers of Commerce which have their own arbitration rules and which are in a position to offer this kind of service are the Chambers of Brussels, Antwerp and Mechelen.

The Arbitration Chamber of the Antwerp Chamber of Commerce offers conciliation, arbitration and mediation services.

The social purpose is obvious; in stark contrast with expensive arbitration systems exclusively open to large companies, arbitration and conciliation are regulated by procedures able to guarantee impartiality and reasonable costs.

The procedural rules for arbitration are very detailed, both in terms of cross-examination and the treatment of connected or inseparable cases (multi-sided arbitration).

The rules for conciliation services, however, are more basic.

The Antwerp centre only dates back to 1993. It is therefore understandable that it has only handled a limited number of cases: only 10 as of summer 1998, of which 8 have been resolved in an average time of six months.

Almost all economic sectors have been represented, but there have been no consumer disputes; the main legal questions involved concern contract law.

The Brussels Chamber of Commerce has been active for longer; there are no official statistics available, but not many cases are brought to the centre.

The Rules make provision for arbitration and conciliation and were approved, in their most recent version, in 1995.

It is interesting to note how the conciliation service envisaged here differs from the system in the United States, which is intent on seeking a new equilibrium between the parties which is not restricted to the partial renunciation of claims, as in the traditional agreement. Art. 7 of the Belgian regulation states, however, that “if the parties accept the arbitrator’s solution, the arbitrator submits a contract in settlement to them and draws up a conciliation report”, thus assuming that these two terms are interchangeable.

No reference is made to the possibility of separate meetings between the arbitrator and the disputants, which is a key element in both US-style conciliation and that based on UNCITRAL’s criteria.

The present writer is a little puzzled by Art 35 of the Regulation of the Brussels Chamber of Commerce, which proposes a general renunciation of all the “means of recourse which the parties may legitimately renounce”: it is not clear whether this refers to waiving the right to recourse to the ordinary law, the usual consequence of opting for arbitration, or a general renunciation of the remedies available in law against an award.

OTHER ADR EXPERIENCES

C.E.P.A.N.I. - Centre for the Study and Practice of National and International Arbitration.

This organisation, which was founded on 25 September 1969 on the joint initiative of the Belgian Delegation of the ICC in Paris and the FEB (equivalent to the Italian Confindustria or the British CBI) aims to promote arbitration and conciliation both nationally and internationally.

Its structure consists of a General Assembly and an Executive Committee (drawn from arbitration experts).

The representative of the National Belgian Committee of the ICC and a FEB representative are members as of right.

CEPANI is the institutional partner for Belgium in dealings with the International Court of Arbitration of the ICC: it selects candidates as arbitrators on the request of the ICC Delegation and acts as a go-between between the Court and Belgian arbitrators in the case of ethical problems.

Its regulations provide a conciliation procedure, a procedure for expert determination, another for arbitration and a fast-track procedure for minor disputes (up to a value of FB 500 000) decided by a single arbitrator within a limited time-scale.

The CEPANI administers commercial arbitration: there were around 35 cases in 1997, and the 1998 figures are expected to show an increase (**is it worth asking for an update??**).

There are very few conciliation cases: 1-3 annually.

Very few cases of the simplified procedures are recorded (about three cases a year) but it should not be forgotten that these services are not widely known to potential users.

Only in 5% of cases is one of the parties a consumer, in the broad sense (including, for example, the agent in disputes arising from agency contracts or the shareholder in problems arising from the sale of a share-holding).

The simplified procedure recently adopted by CEPANI is designed for disputes and claimants of precisely this kind, and not solely at resolving high-value disputes between large companies.

Another completely new departure for the Centre is the procedure for *customising contracts* (for instance international or distribution contracts) intended to resolve problems relating to the legal or, especially, the economic interpretation of a contract.

Finally, a complete novelty is the provision of “mini-trials” making use of the Centre’s Regulations.

Belgium too has significant experience in the field of sectoral arbitration, in the construction, insurance and travel sectors.

In Antwerp there are special procedures for dispute resolution in the diamond sector.

In particular, the construction sector has a specialised Arbitration Chamber within the *Confédération Nationale de la Construction* (CNC) which calls mainly on the collaboration of technical experts (engineers and architects).

Its decisions, however, are more technical than legal, which has a number of repercussions on how pertinent the award really is.

The tourist sector has the interesting *Commission des litiges de voyages*. The number of cases heard is steadily increasing, up to 1251 in 1997 as compared with 1034 in 1996 **[update figures??]**.

In 1997, in particular, the problem was linked in about 370 cases to the failure of a holiday to come up to expectations (significant differences between hotels, locations etc. and their appearance in the brochure); 154 concerned changes to dates, timetables, etc.; 101 were problems arising from cancellation of the holiday; next came the excessive cost of supplementary services (e.g. excursions) and to a lesser extent loss of baggage and other matters.

The average time needed to settle a dispute through this body is about 6 months

In the insurance sector it has been possible since 1988 to ask an Ombudsman, based at the UPEA or professional insurance association, to intervene in cases of dispute between an insurance company and a client.

The statistics for 1988-1992 record a good 2738 requests, of which only 52% go further than an initial assessment of the validity of the claim, carried out by the ombudsman himself.

The success of this institution is due in part to the determination of the insurance companies to maintain good relations with their clients, and in part to the ombudsman’s ability to maintain close contacts in each insurance company in order to reach a rapid settlement of disputes.

APPLICABLE LEGISLATION

- Art.1676 - 1723 of the Code of Civil Procedure as introduced by the Law of 04.07.1992 adopting the Uniform Law annexed to the European Convention for commercial arbitration [**concluded by what body??**] approved in Strasbourg on 20 January 1966.
- The Law of 19.05.1998

The most important innovation introduced by the reform was the repeal of the law preventing public law bodies going to arbitration.

Arbitral tribunals have trenchant powers, and may, under Art. 6, “order precautionary and preservative measures, except precautionary seizure”.

Unless the parties agree otherwise, the Arbitral tribunal must abide by the rules of law; if a public law body is involved it is not possible for the parties to adopt a different criterion from that of the application of the law.

Unless otherwise specified, the award may be appealed within 30 days of issue, except where the parties have agreed a different time limit.

DISPUTE RESOLUTION IN CONSUMER AFFAIRS

Again, in the field of the resolution of disputes relating to consumer affairs, the Chambers of Commerce have been given no institutional role.

An arbitration procedure has, however, been directly organised by consumers’ organisations and economic operators in three specific sectors: travel agencies (see above), the sale of furniture and laundries.

There also exists - since the Law of 22.12.1992 - [**are there other references??**] a mediation service in the public services sector, with the possibility of obtaining an arbitral judgement. Finally, there are provisions for dispute resolution in the financial sector, such as those managed by the *Ombudsman de l’Association Belge des Banques* and the *Commission litiges du Groupement des Banques*.

Pilot projects are under way managed by court lawyers’ associations in some towns (e.g. the Court of Liege, the Court of Ghent).

[**Insert note on Business Mediation Center here??**]



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DENMARK

CHAMBER OF COMMERCE INVOLVED

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OTHER INSTITUTIONS ACTIVE IN ADR

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Fax.	+45 33 323 899	+ 45 33 13 37 00 + 45 33 13 04 03
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THE ROLE OF THE CHAMBER OF COMMERCE

Chambers of Commerce in Denmark have no legal powers to administer commercial arbitration.

In Denmark there is a single Chamber of Commerce organised in 5 branches: Børsen (Copenhagen), Århus, Aalborg, Odense and Aabenraa, with an independent branch in Brussels.

The Danish Chamber of Commerce is potentially in a position to play a part in resolving almost every kind of dispute, whether internal or international, having drawn up its own regulations based on UNCITRAL's rules.

From December 1995 this institution was also provided with rules for voluntary mediation.

No statistics are available, and from the information available the Chamber seems to be inactive at present: through a lack of funding and other organisational problems, this body currently does not organise any proceedings either from its central offices or from the branches elsewhere in the country.

Recommended arbitration clause

“All disputes which arise in relation to the present contract will be resolved through a binding arbitration administered by the Danish Chamber of Commerce in accordance with the rules of its arbitration centre”.

OTHER ADR EXPERIENCES

In general, it seems that recourse in arbitration, at least in its ad hoc form, is fairly widespread, although the secrecy typical of these proceedings means that statistics are not available.

Arbitration clauses are normally inserted in commercial contracts, employment contracts and joint venture partnership contracts with no significant difference between national and international arbitration.

In the field of sectoral arbitration, attention may be drawn to the role of the *Tribunal for Building and Construction Works*, and, for commodities, the *Copenhagen Arbitration Committee for the Grain and Feed Stuff Trade*, set up in conjunction with the Danish Chamber of Commerce. Similar solutions are available for disputes involving other foodstuffs such as butter, iron and metals in general, and grain.

The *Danish National Committee of the ICC* in Paris, responsible under the terms of the Geneva agreement of 1961 for appointing arbitrators for international arbitration, has its office at the Copenhagen Stock Exchange alongside the Danish Chamber of Commerce and the Copenhagen Arbitration Committee for the Grain and Feedstuff Trade.

There is also a *Danish Institute of Arbitration* with its own rules for internal arbitration.

APPLICABLE LEGISLATION

- Decree No 177 of 7 March 1973 on the recognition and enforcement of foreign arbitration awards and international commercial arbitration.
- Law No 181 of 24 May 1973 which regulates arbitration procedures, except for special provisions for labour and agricultural disputes.

Under Danish law an agreement for arbitration, whether it takes the form of a clause or an agreement, may also cover future disputes, provided that these are not too loosely defined. There is great freedom as to form: the agreement is valid even if it is only verbal, although in such a case it must be rigorously attested.

Enforcement of a decision, even where given by a foreign arbitrator, may be requested of the bailiff exactly as for an internal award.

States and public bodies may also be parties to arbitration.

There are no special arrangements for arbitration between more than two parties. These cases are most commonly encountered in the construction sector between proprietors, builders and sub-contractors, whose relationships are usually regulated by contract.

Danish law springs no surprises concerning the eligibility of disputes for arbitration: disputes involving family law are not admitted, but those regarding patents and trade

marks are, as are competition questions to the extent that they concern relations between the parties.

No special qualifications are required for arbitrators, though in general, for sectoral arbitration, experts with the appropriate technical knowledge are preferred.

The law sets no time limits on the delivery of the award, merely stating that this should be within a “reasonable” interval.

In internal cases the parties may give the arbitrator powers to resolve the dispute according to equity or amicably.

Awards may not be appealed by normal means.

Denmark is a signatory of the New York and Geneva Conventions.

DISPUTE RESOLUTION IN CONSUMER AFFAIRS

Since 1975 there has been a public administrative body, the Council for Consumer Disputes, which settles disputes over a wide range of goods and services within certain value limits, and which handles about 3 000 cases a year. The Council's decisions are not enforceable but are generally respected in the circles concerned. However, if the award is disappointing it may be contested before an ordinary judge: the consumer, with assistance from the Council, is entitled to free legal representation within certain income limits.

A *Consumer Ombudsman* was also introduced in 1975 following the law on sound commercial practice [**what law is this??**] with special responsibility to protect consumers from the effects of unfair competition.



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- Danish Arbitration Institute: <http://www.denarbitra.dk>

GERMANY

CHAMBERS OF COMMERCE INVOLVED AND OTHER INSTITUTIONS CONNECTED WITH THE CHAMBER SYSTEM

Name German Arbitration Institute (DIS)
der Hamburger Handelskammer

Berlin Court of Arbitration

Freundschaftliche Arbitrage bei

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Contact		Dr. Vogel	Frau Bausch
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	Köln Wh@koeln.ihk.de	Jägerstr. 30 70174 Stuttgart	
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Contact			

OTHER INSTITUTIONS INVOLVED IN ADR

Name	Bremer Baumwollbörse (Bremen Cotton Exchange)	German Maritime Arbitration
Association	Deutscher Kaffee-Verband e V.	
Address	Wachtstr., 17-24 28195 Bremen	Kölnstr., 34 28327 Bremen
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Contact		
Name	German Arbitration Commission (linked to DIS)	Bremen Grain and Foodstuff
Exchange	Hambourg Grain Exchange Court of Arbitration	
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Contact		

Name	Chambre arbitrale des fruits et legumes	Deutsch-Französische
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THE ROLE OF THE CHAMBERS OF COMMERCE

Since the reunification of East and West Germany the DIHT, the German association of chambers of commerce, represents 83 chambers across the country.

There is as yet no legal provision in Germany which expressly authorises the chambers of commerce to carry out arbitration; this has, however, not led to any challenge to their jurisdiction; indeed, they are particularly active.

Where requested, the chambers provide assistance to the parties during arbitration proceedings, both national and international, and support the DIS (German arbitration institute).

Various German chambers of commerce have arbitration tribunals for the resolution of commercial disputes, with particular attention paid to cases of unfair competition, and with competence over disputes involving consumers.

The DIS came into existence in its present form in 1992 as a result of the merger of the DAS (German arbitration committee) and the DIS (German arbitration institute).

The DAS was founded in 1920 by the large organisations in the commercial sector as a "working committee" with the aim of promoting an arbitration culture and taking concrete measures to organise this type of proceedings.

The German arbitration institute was founded in 1974 with something of an academic emphasis, on the initiative of higher education institutions, commercial associations and professional organisations involved in arbitration.

The statutory tasks of this body are to promote arbitration, applied in a uniform manner throughout Germany, and measures in support of companies or other parties in arbitration-related issues.

The DIS cooperate actively with the principal central organisations of the German economy, and naturally with the chambers of commerce and their national association.

The organisation drew up its own regulations which came into force on 1 July 1998; they apply in tandem with the German law on arbitration (1998) if the parties have expressly noted the fact in the arbitration agreement.

There is no provision for the DIS to select the arbitrators; however they are able to offer advice regarding the selection (**DIS regulations??** Article 2)

It is possible to choose between a single arbitrator or a panel of arbitrators. In the second instance, the panel must be chaired by a judge from the normal legal system (Article 3).

Only in cases where the parties have opted for a single judge and fail to reach an agreement are provisions made by the DIS appointments committee. (Article 6)

The arbitration tribunal thus constituted makes its decisions in accordance with the legal provisions which the parties have chosen to apply to the dispute and may also make judgement on the basis of equity if the parties have expressly authorised it so to do (article 21).

Almost all of the German chambers of commerce (80 out of 83) have joined the DIS and administer arbitration proceedings in accordance with these regulations.

The chambers most active in the field of dispute resolution include Berlin, Bonn, Cologne, Bremen, Hamburg, Munich and Stuttgart.

The practices of the Cologne chamber of commerce are interesting; it provides not merely arbitration, conciliation and contract appraisal services, but is also generally involved in assisting business people to resolve disputes from the moment they arise, with options including telephone assistance and written opinions.

Its arbitration work is less important; the regulations have recently been amended (October 1997) and only two disputes have been resolved; however, the body has overseen 60 contract appraisals.

Arbitration is thus primarily an instrument used to resolve inter-company disputes, while conciliation and contract appraisal are also applicable to disputes between companies and consumers.

The Hamburg chamber of commerce also applies special regulations governing arbitration, but is mainly significant for its expertise in the area of conciliation (see below).

The Munich chamber of commerce, like most of the German chambers, works closely with the DIS and, apart from a few marginal provisions, has adopted its regulations in their entirety.

This chamber has a particularly important role in arbitration; over the last three years 450 requests have been submitted, all regarding commercial issues which are resolved on average within three or four months.

Of the requests for arbitration submitted, 82% concern national disputes and 18% international disputes.

A conciliation service, targeted on this same type of dispute, has been active only since July 1998.

APPLICABLE LEGISLATION

- Articles 1025 to 1060 of the German civil code in the version amended on 22 December 1997, which came into force in 1 January 1998 as a result of the *German Arbitration Law 1998 (Act on the Reform of Arbitration Proceedings)*.

This extremely recent German law on arbitration proceedings is a real innovation, fully in line with UNCITRAL recommendations.

There is complete liberty to select the form for arbitration agreements concluded; documents signed by the parties, exchange of letters, faxes, telegrams or other means of telecommunication.

Any failure to meet the requirements of form are automatically rectified once an arbitration procedure has been opened on the merits of the matter.

Greater safeguards are only put in place if the arbitration agreement involves a consumer: a document dealing exclusively with the arbitration proceedings and personally signed by both parties is required (except in the case of contracts made before a notary).

The law specifies that any claim involving an economic interest may be the subject of an arbitration agreement; the absolute or scheduled restrictions imposed by earlier legislation remain valid.

An arbitration agreement which meets legal requirements limits the scope for recourse to ordinary legal proceedings to specified circumstances; any court to which the case is taken is only competent to ascertain the absence of any cause which would nullify or invalidate the agreement itself and the admissibility of arbitration in the specific case.

Recourse to assistance from the ordinary courts also becomes necessary for gathering evidence or other legal activities which fall outside the powers of the arbitration tribunal.

Indeed, the law pays particular attention to the problem of relations between the arbitration tribunal and the ordinary courts; when the arbitration tribunal - private body - meets a restriction, the ordinary court is required to cooperate with it. The arbitrators may however take part in the judicial evidence-gathering procedure and put questions.

Regarding the competence of the arbitration tribunal, the importance of the principle of "autonomy of the arbitration clause" should be noted; under this principle declaring a contract void does not automatically invalidate an arbitration clause included in that contract.

In general the law aims to regulate the circumstances which are most likely to lead to disputes in order to prevent more or less specious interruptions to proceedings; it does however leave the parties with complete freedom to make provision for a different procedure. Furthermore it is laid down that at any stage of proceedings the parties may reach an agreement to be formalised in a document with the same form and effect as the arbitration award, and which thus, like the latter, is binding on the parties and has the force of a court ruling.

The law to be applied is normally that selected by the parties, or in the absence of agreement that which has the closest connection with the subject.

Up until the moment of the decision the parties may ask the third party to settle the case as in an amicable settlement or by equity.

In any instance the arbitration tribunal must take account of the other contractual provisions and of commercial practices, which latter, we should perhaps underline, are collected and codified by the chambers of commerce.

At the request of either party the arbitration tribunal remains competent to rule on any problem of material rectification or interpretation of the ruling.

There are a limited number of circumstances in which it is possible to request that the award be annulled: incapacity of the parties, the failure of the judgement to respond to the terms of the request, an irregularly constituted arbitration tribunal or procedural irregularities during the hearing, the subject of the dispute not being suitable for resolution by arbitration, or a contravention of public law.

The circumstances in which recourse to the regional Appeal court is possible are also clearly prescribed: issues relating to the appointment, substitution or termination of mandate of the arbitrator, the determination of the competence of the appeal tribunal, the annulment or the enforcement order for the award, for both internal and international disputes.

The Federal Court too is limited in its ability to challenge the award; in the main it can only re-examine the legality of the decisions made by the regional appeal court in the cases referred to it.

There are, however, no specific legal provisions for mediation and conciliation.

Germany is also a signatory of the New York Convention on the recognition and execution of foreign arbitration decisions.

RESOLUTION OF CONSUMER DISPUTES

The German chambers of commerce have an important role regarding disputes involving the consumer. On the basis of available data, updated to 1992, they handle an average of 10 000 cases a year, 90% of which are resolved on a voluntary basis.

The Hamburg Chamber of Commerce has opened a consumer conciliation bureau, comprising:

- 1) a President, with legal responsibility
 - 2) a representative of the commercial associations
 - 3) a consumer representative
- all nominated by Chamber of Commerce members.

The proceedings are not opened or the case has to be resubmitted if:

- it is a minor dispute or the dispute is clearly without foundation
- the subject of the dispute is the price of the service provided
- the dispute regards a service from the craft sector and involves a member of the craft sector chamber.
- for other reasons which make it clear that the bureau will not be able to resolve the case.

In accordance with these four points the President decides whether the conciliation process will be started and rapidly calls the two parties together for a face to face meeting. In general witnesses and experts are not expected to take part. Proceedings are held in camera and in the event of the failure of one party to attend the initial meeting without justification, the entire conciliation proceedings are considered to have failed.

If the parties fail to reach an agreement, the bureau will in any case formulate its proposals for conciliation. If, as a result of legal or purely technical factors, this proposal cannot be discussed within the conciliation process under way, it is sent to the parties concerned with a predetermined time limit for acceptance.

In the event that the parties do not accept the resolution of the dispute as suggested by the bureau, the conciliation process is considered to have failed.

One final note: the conciliation services provided by the bureau are free of charge.

Many chambers of commerce are active in this field, including notably the Munich chamber which, despite not having approved specific regulations for conciliation services is involved in arranging amicable settlements of disputes involving consumers.

The treaty of unification of East and West Germany also set up Arbitration Councils at municipal level and municipal conciliation offices.

In 1992 the federal association of German banks (*Bundesverband Deutscher Banken*) introduced an ombudsman to assess claims by consumers in this sector.

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- DIS regulations (1998)
- Website <http://www.ihk-koeln.de> (Cologne chamber of commerce)

GREAT BRITAIN

CHAMBERS OF COMMERCE INVOLVED AND OTHER INSTITUTIONS ASSOCIATED WITH THE CHAMBER OF COMMERCE SYSTEM

Name	London Chamber of Commerce Chamber of Commerce	Cambridge & District Chamber of Commerce	Central & West Lancashire Chamber of Commerce
Address	33, Queen Street, London EC4R 1 AP Village, Olivers Place, Fulwood, Preston, PR2 9WT Road, Histon, Cambridge, CB4 4LQ	cwlcci@aol.com info@camcham.demon.com.uk	9/10 Eastway Business The Business Centre, Station
Tel.	+44 171 248 4444	+44 1772 653 000	+44 1223 237 414
Fax.	+44 171 489 0391	+44 1772 655 544	+44 1223 237 405
Contact		Brian Thorlby	Clive Young
Name	Dover & District Chamber of Commerce Kidderminster Chamber of Commerce		Glasgow Chamber of Commerce
Address	White Cliffs Park, Honeywood Road, Dover CT16 3EH Wyre Forest Business Centre. Units 7-16 MCF Complex, 1AQ		30, George Square, Glasgow, New Road, Kidderminster DY10
Tel.	+44 1304 824 955	+44 141 204 21 21	+44 1562 51 55 15
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Contact	Ray Haines		Mrs. B. Leech
Name	Liverpool Chamber of Commerce Chambers of Commerce	Bradford Chamber of Commerce	BCC Association of British Chambers of Commerce
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OTHER INSTITUTIONS ACTIVE IN ADR

Name	British Academy of Experts*	The Chartered Institute of Arbitrators	
	British Academy of Experts		
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Association (L.M.A.A.)		London Bar Arbitration Scheme	
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Fax.			
Contact			

THE ROLE OF THE CHAMBERS OF COMMERCE

Although Great Britain is unquestionably one of the main players in the field of arbitration both internationally and at European level, its reputation owes more to specialised Institutions with a long tradition than to direct Chamber of Commerce experience.

It should not be forgotten that the British Chambers of Commerce, already established by the 18th Century, are private organisations historically dedicated to providing commercial assistance to business; their powers and existence have no legal protection and their income derives from voluntary membership and the sale of services.

They have a less institutional character, and are less involved in market regulation than Chambers of Commerce in public systems (particularly in comparison with Spain and Italy).

However, certain emerging trends should not be overlooked. A recent survey by the *British Chambers of Commerce* (BCC), the National Association of "approved" Chambers (i.e. those which are formally recognised and approved by the organisation in cooperation with the Government), showed that alongside the historical collaboration between the *London Chamber of Commerce* and the *London Court of International Arbitration*, a further 9 Chambers of Commerce stated that they provided assistance in ADR proceedings (particularly mediation) and as many more were interested in becoming involved in the future

The London Chamber of Commerce is able to provide a complete advisory service in the field of dispute resolution.

Through its formal links with the LCIA it can offer national and international arbitration services with special conditions for its members (under LCIA rules).

For mediation and conciliation, too, the point of reference for the London Chamber of Commerce is the LCIA which manages these services either directly or through the Centre for Dispute Resolution with which it is linked.

Telecommunications, finance, banking and insurance, construction and computing are among the matters most frequently raised.

The LCIA also offers expert determination and maintains an appropriate list of experts for the purpose.

OTHER ADR EXPERIENCES

In the last three years the London Court of International Arbitration (LCIA) has resolved 117 cases, with just 2 cases of mediation; in 1997 alone, 52 new cases were brought to the LCIA marking a significant increase on the preceding year.

The sum involved varies between 50 000 and 200 000 [sterling??] with the majority being above US \$ 1 million and a minority over US \$ 10 million.

Telecommunications, finance, banking and insurance, construction and computing are among the matters most frequently raised.

Claimants come from many countries including America, Australia, Canada, China, England, France, Hong Kong, India and Russia.

There are defendants from the United States, the Netherlands, England, France, India, Japan, the Middle East etc.

Of the 52 cases of arbitration in 1997, the LCIA organised 7 under UNCITRAL arbitration rules and 6 on behalf of the London Chamber of Commerce.

The LCIA also offers expert determination and maintains an appropriate list of experts for the purpose.

DISPUTE RESOLUTION IN CONSUMER AFFAIRS

The British Chambers of Commerce have no formal powers in matters of consumer protection.

The London Chamber of Commerce nevertheless states that it manages arbitration procedures (via the LCIA) which are specifically intended for consumer questions.

APPLICABLE LEGISLATION

- In England and Wales: The Arbitration Act of 17 June 1996. Scotland has its own arbitration laws [**which??**]* amended during the current year in accordance with UNCITRAL's Uniform Law.

The main objective of this reform was to offer parties opting for arbitration a complete frame of reference, particularly regarding the distribution of powers between arbitrators and ordinary judges, while respecting their freedom to chose a personalised procedure if they wish.

It should be stressed, too, that in English law the mere fact that a contract has been breached entitles the injured party to recourse to the national courts to ask for its enforcement, unless the parties to the contract have explicitly stated that they will use arbitration in any dispute arising from breaches of the contract itself.

In such cases any award will be enforceable according to the normal rules.

If the award is an international one to be enforced in a foreign country, the New York Convention is applied; otherwise enforcement is ensured under ordinary national law.



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- *General Information Handbook*, The Chartered Institute of Arbitrators
- *Guide to Arbitration*, the Chartered Institute of Arbitrators
- BCC Directory of Approved Chambers

GREECE

CHAMBERS OF COMMERCE INVOLVED

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THE ROLE OF THE CHAMBERS OF COMMERCE

In 1992 the Greek system of Chambers of Commerce underwent an important reform (Law No 2081/1992) which led to the setting up of 58 mixed Chambers, i.e. Chambers creating from the fusion of the Chambers of Commerce and Industry with the pre-existing Craft Chambers and Trade Chambers. The only exceptions, because of the importance of the economic communities they represent, were in Athens, Thessaloniki and Piraeus which maintain the three separate Chambers.

The Chambers of Commerce operate under a system of public law and are legally recognised as having a role in stimulating economic development and internationalisation.

Turning to the resolution of commercial disputes, a reform of the Chambers of Commerce in 1914 recognised their powers to establish standing Arbitration Courts (Art. 40-53 1. 184/1914).

However it should be noted that, mainly due to a lack of funds, and for other organisational problems, these measures remain largely unimplemented.

There is one exception: the Athens Chamber of Commerce, which published its own Rules on 6 June 1920. The most recent version of these, set out in Decree No 31/1979, is completely in line with the provisions for standing arbitration bodies under Art 902 of the Greek Code of Civil Procedure.

No initiatives have so far been taken to set up independent conciliation services: the Athens Chamber of Commerce Rules are exclusively intended for arbitration procedures. However, it is true, as we shall see, that one of the main tasks of arbitration is to try to reconcile by every means possible the claims of the disputing parties.

The Standing Centre of the Athens Chamber of Commerce has its own Secretariat, directed by Chamber of Commerce officials of the appropriate grade. Among its tasks are producing the minutes of hearings, ensuring that the correct procedures are followed etc.

Every two years the Administrative Committee of the Athens Chamber of Commerce draws up a new list of arbitrators, which may contain up to a hundred names.

The Athens Chamber of Commerce states that it publishes a monthly bulletin containing the names of companies intending to accept its awards.

This body resolves about five commercial cases a year, in an average time of 3-6 months; often they do not lead to an actual award because the disputing parties reach an agreement to settle during the procedure.

Recommended clause

“Every dispute relating to this contract, its validity or its interpretation or to any of its clauses, questions or points will be decided in conformity with the presidential decree no 31/1979 which establishes a Standing Arbitration Centre at the Athens Chamber of Commerce for the resolution of commercial disputes, with any amendments which may have taken place at the time when the request for the dispute to be settled through arbitration is made”.

APPLICABLE LEGISLATION

- Presidential decree no 31/1979 regulating arbitration proceedings;
- Law no 2687/1952 for the protection of foreign investments

The P.D. 31/1979, expressly provides for the creation of a Standing Arbitration Centre at the Athens Chamber of Commerce in Art. 1, and sets out a complete framework for the rules applicable to arbitration procedures. The new arrangements carry over the general measures for arbitration contained in the Greek Code of Civil Procedure.

Almost any kind of commercial dispute may go to arbitration, whether internal or international, regardless of either the legal standing of the parties - who may even be a State, or legal persons under public law - or of their place of residence and/or nationality. To be valid an agreement for arbitration must be in written form, but there are no more precise requirements.

The procedure set out in law is simple and fast, and unless there is excessive delay or disagreement between the parties is designed to leave them ample scope to reach a decision.

The independent role of the arbitrator - who may not represent the interests of the party by whom he was nominated - is upheld: his role is to help create the conditions for an amicable settlement of the dispute under consideration, or, if this proves to be impossible, to give a decision on the question.

With the exception of coercive measures and - obviously - penal sanctions, the arbitration tribunal may select experts, hear witnesses or gather other means of proof at their discretion.

The arbitrator has three months from the date of the initial hearing to reach a award, unless the parties agree or the arbitration tribunal decides otherwise, giving its reasons.

The resulting award may not be appealed. However, the law provides an opportunity for the disputing parties to go to a second stage of arbitration or to be heard by other arbitrators in exceptional cases.

Regarding foreign investment, D.L. 2687/52 gives investors the chance to opt for international arbitration for the resolution of disputes involving the Greek Government.

DISPUTE RESOLUTION IN CONSUMER AFFAIRS

Although the Chambers of Commerce have no specific powers in this area, they are involved, alongside a consumers' representative and a representative of the lawyers' professional association, in the "Local Conciliation Councils" set up under Law no 1961 of 3 September 1991. If the attempt at conciliation fails, the Council expresses a view which is not binding but which must be taken into account by the judge before whom the case is heard.

There are also four offices offering legal advice in four different Greek cities (Athens, Kavalla, Drama and Heraklion) which provide legal advice to consumers via information, mediation and conciliation services.



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FINLAND

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THE ROLE OF THE CHAMBER OF COMMERCE

In terms of the distinction between public and private Chambers of Commerce which was made in the Introduction, the Finnish Chamber of Commerce provides an interesting case. The *Statutory order* by which they were completely reformed (No 337 of 15.4.1988) gave them a role in supporting the general interests of commerce and industry which is very similar to that played by Chambers of Commerce in public systems. However, the fact that company membership remains voluntary certainly compromises their institutional independence.

Under para. 19 of the Statutory order the Central Chamber of Commerce of Finland (or CCCF, representing the 20 Finnish Chambers of Commerce) has a *Board of Arbitration* to organise arbitration procedures, in line with the role attributed to them. This is the only organisation with powers to nominate arbitrators in Finland.

The Board of Arbitration of the CCCF has the following bodies:

- a Standing Committee
- a Secretariat.

The Standing Committee is made up of no fewer than 7 and no more than 90 members elected by the CCCF itself every three years from persons with specialised knowledge of the world of economics and business.

The Board of Arbitration resolves both national and international commercial disputes. It has its own Rules which the disputing parties may choose to follow in addition to or in place of the framework law for arbitration.

The Board plays an important part in resolving procedural problems, for example those connected with the number of arbitrators to be appointed or the refusal of one party to nominate an arbitrator, etc.

Around 40 cases a year are handled, and the average length of a case heard under the Centre's rules is one year.

The sectors most frequently involved in arbitration are sales and labour contracts, partnership agreements between companies, leasing contracts and franchising, etc.

Only companies, and never consumers, are entitled to apply to the Centre. In cases involving labour contracts, the disputing party involved is the personnel manager.

There are no provisions for conciliation or other procedures; however, under Art 34 of the Rules, if during the course of arbitration the parties reach a settlement of their dispute the arbitrators may *record the agreement* in the form of an award or some other form expressly allowed by law.

It should be emphasised that the Centre has only recently begun to assess the need to introduce procedures for mediation, conciliation and/or a faster form of arbitration.

Recommended arbitration clause

“Any dispute controversy or claim arising out of or relating to this contract, and especially the breach, termination or validity thereof shall be finally resolved in accordance with the Arbitration Rules of the Finnish Central Chamber of Commerce”.

APPLICABLE LEGISLATION

- Finnish Arbitration Act (Law no 967 of 23.10.1992): this applies to both national and international arbitration.
- Enforcement Act of 23.10.1992
- New York Convention

The Finnish Arbitration Act applies, according to the principle of territoriality, if the arbitration takes place in Finland, and makes no distinction between internal and international arbitration.

The measures it sets out are broadly compatible with the general principles drawn up by UNCITRAL.

No particular conditions are necessary to take part in arbitration, apart from the obvious need to be qualified to act. States and state organisations, even if non-national, may use the arbitration system.

Under Finnish law, as in the legal systems of other countries, a general arbitration clause which fails to comply with the ordinary law for questions involving trade disputes between two parties is invalid.

All disputes under civil and commercial law may be taken to arbitration if the parties are willing.

There is nothing to prevent arbitrators being asked to fill in the gaps in a contract, or to interpret the general conditions of a contract in the light of a particular case, or indeed to adapt the conditions of a contract to possible changed circumstances.

The independence of the arbitration clause is recognised in cases where the actual contract is invalid, as is the arbitrator's power to make an award in such cases.

The procedures for appointing and replacing members of the arbitration board are very detailed.

Like most arbitration laws, the Finnish law leaves the parties ample freedom in recognition of a general principle of contractual parity.

Arbitrators, too, have wide discretion at the stage of gathering evidence. For example, an expert may be selected at the initiative of the arbitration tribunal.

Another important provision concerns the possibility of requesting precautionary measures from the ordinary courts, without this compromising the arbitrator's powers.

The law sets no time limit for issuing an award, but a limit may be set in the agreement for arbitration; if this is not respected the arbitration tribunal will be dismissed.

An award may also be challenged before a second arbitration tribunal or in the law courts.

If one of the parties refuses to implement the award, the law may be asked to issue an order for execution. Enforcement may only be refused if the award is null and void, and it is possible to appeal against such a refusal in the Court of Appeal.

Finally, it is possible to set aside the award: possible reasons include the failure of the judgement to deal with the original request, and breaches of the normal procedures for appointing arbitrators or of the right of defence.

DISPUTE RESOLUTION IN CONSUMER AFFAIRS

The Central Chamber of Commerce does not handle cases of consumer protection since Finland has authorities appointed for that purpose, including a Consumer Ombudsman.



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FRANCE

CHAMBERS OF COMMERCE INVOLVED AND OTHER INSTITUTIONS ASSOCIATED WITH THE CHAMBER OF COMMERCE SYSTEM

Name	Chambre de Commerce Internationale d'Arbitrage de Paris	Chambre Arbitrale de Paris	CMAP Centre de Médiation et Bourse de Commerce
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THE ROLE OF THE CHAMBERS OF COMMERCE

Among the public law-based Chambers of Commerce the French system is an important point of reference, both because some of the French Chambers are centuries-old and because the French model influenced almost all the other public law systems (the Netherlands, Germany, Italy etc.) in the wake of the Napoleonic occupations.

There are a great many Chambers of Commerce in France, 162 in fact, both on the mainland and in the overseas territories and departments, organised in 21 regional Unions.

Obviously not all French Chambers of Commerce have arbitration courts or are directly involved in offering ADR services. This is an activity which fits perfectly into their institutional purpose, but they have no legal obligation to do so and not all Chambers are in a position to justify the existence of an independent Arbitration Chamber.

As in Italy, many of the Chambers have united on a regional basis to create arbitration bodies, in some cases with an interesting extension of participation to other associations from the economic sector outside the Chambers of Commerce themselves.

It should not be forgotten that in France the so-called "consular trade boards" have special powers in commercial matters. These bodies, composed of highly regarded professionals, form an intermediate body between arbitration procedures and the law.

Among the Chambers of Commerce active in the sector are those of Paris, Marseilles, Toulon, Toulouse, Lille and Lyons.

The Centre de Médiation and d'Arbitrage de Paris (CMAP) was founded at the instigation of the French National Committee of the ICC (International Chamber of Commerce) in conjunction with the Paris Chamber of Commerce. It mainly offers mediation services for commercial disputes between companies.

For the moment CMAP does not handle consumer disputes; a future widening of its remit is possible since there have been a large number of requests for this service.

Although it has been active for only three years, there have been a total of 94 mediations carried out by the Centre, about a quarter of which have had a positive outcome.

The Cour d'Arbitrage Européenne de Versailles represents a Chamber of Commerce European initiative directly set up by an Association of Chambers of Commerce (Versailles, Chartres, Perprignan, Evreux, Nancy, Beauvais, Carcassonne, Narbonne and

Béziers). There is also an agreement in the form of an EEIG to create a European network for the management of mediation and arbitration; France is represented in the network by the Chambers of Commerce in Lyons, Lille and Bordeaux.

The CARA (Centre d'Arbitrage Rhône-Alpes), based in Lyons, is an Arbitration Chamber in which the local Chambers of Commerce are well represented alongside members of other important professions and economic groups. The CARA has its own internal Rules which were approved in 1993 and consists of a Management Board and an Arbitration Court with no real decision making powers but with specific powers to ensure that the procedures are correctly observed.

OTHER EXPERIENCES OF ADR

The Paris Arbitration Chamber, founded in 1926, aims to solve the conflicts referred to it either through arbitration or conciliation; there are no specific Rules for conciliation, although the procedure is included among the duties of the arbitrator.

The Chamber's arbitration Rules offer a number of options:

an *ordinary procedure* at two levels (for the first the arbitral board has 3 members, for the second it has between 3 and 5);

an *urgent procedure* (for which the President's consent is required) with one single level and a board of 3 or 5 arbitrators;

an *accelerated procedure for dispute resolution through arbitration*, PARAD, for the recovery of debts due up to a value of 700 000 FF;

a *référé arbitral* procedure: this procedure, set out in Art. 39 of the Regulations, can be used to nominate an expert, retain evidence or guarantee credits.

A special procedure has also been introduced for franchising disputes, thanks to collaboration with the French Franchising Federation which has formal links with the Chamber.

In the last three years there have been 150 requests for arbitration a year, of which a hundred result in an award.

The average length of proceedings is 4-5 months (20-30 days for the PARAD).

About 80% of the cases concerned agricultural foodstuffs, distribution and merchandising contracts and business sales; relative few cases involved the building or maritime sectors.

Of the international arbitration cases administered by the Paris Chamber of Arbitration about 30% involve one Italian party, and 30% one Spanish party; there follow lesser numbers of cases involving a party from England, Egypt, Syria, Jordan, Morocco, and Tunisia.

The *Chambre arbitrale de la Bourse de Commerce de Strasbourg* was founded much earlier, in 1900. Since then it has handled around 100 arbitrations, though no requests have been received in the last three years.

The Chamber offers arbitration and conciliation services with special emphasis on trying to reach an amicable settlement. The arbitration procedure is very straightforward, and the only essential is that both sides are given a hearing; arbiters are also expected to reach a decision in a fairly short time (3 or 6 months).

The arbitration tribunal normally consists of three arbitrators; as in the case of the Paris arbitral Chamber, however, there is an appeals procedure before a five-member arbitration tribunal.

The ICC Court of Arbitration (“the ICC Court”), which was historically based in Paris, has 72 members from 54 countries and celebrated its 75th anniversary in 1975. It is a real world leader in arbitration matters. To fulfil its statutory role of overseeing the proper application of arbitration procedures and ratifying arbitration awards, the ICC Court holds both full sessions and meetings in committee.

The ICC Court does not resolve disputes directly but, working partly in collaboration with the national committees, it selects arbitrators to hear proceedings where the parties have decided not to do so personally.

A new arbitration procedure came into force on 01.01.1998, with the aim of accelerating the process of selecting the arbitration tribunal and filing the papers on the basis of which the terms of the task are defined.

Arbitration can itself lead to deep rifts between companies: for this reason most of the cases organised by the ICC (about two-thirds) are concluded on the basis of agreement between the parties before an award is made.

The ICC also offers other services including a conciliation procedure, a pre-arbitral procedure, and expert determination managed via a Centre established for the purpose.

The conciliation procedure aims to resolve disputes on the basis of a non-binding judgement from experts in the sector concerned. So far, however, it does not appear to have met with much success in international cases.

The procedure is entirely voluntary; either party may bring the conciliation phase to an end at any time and without giving reasons.

The conciliator’s role, which is undefined as to both form and content, is to help the parties to reach an amicable agreement by giving a non-binding judgement. It may thus cover all the forms of conciliation or mediation.

In the case of expert determination, too, the role of the ICC is to organise the procedures ensuring that they comply with the Rules, and where requested to appoint an expert or college of experts, depending on the complexity of the case.

The ICC organises significant numbers of importance arbitration cases. It also arranges many seminars and conferences.

APPLICABLE LEGISLATION

- Arbitration: Law of 12 May 1980, as reformed in 1981. A proposal to amend this legislation is currently under discussion [**any news?**]
- Conciliation and mediation: Decree of 22.17. 1996 No 96/652, amending Decree No 78/381

In France, the main problems relating to arbitration legislation are historically due to the difference between internal arbitration (regulated by law) and international arbitration (the result of developments in jurisprudence).

These problems became more acute after the 1980 Reform which contained a number of compulsory provisions for internal arbitration which conflicted drastically with the wide freedom allowed to international arbitration.

The situation was partly remedied by a Decree of 12 May 1981 in consolidation of the Code of Civil Procedure: in particular, this stated that the arbitration procedure and the make-up of the arbitration tribunal exclusively represent the free choices of the parties concerned, leaving only a residual role for the law.

In deciding the case, the law states that the rules of law chosen by the parties shall be applicable. If the parties fail to make such a choice the arbitrators must decide what criteria are most appropriate for settling the dispute, bearing in mind that commercial practice must be an essential aspect in assessing their validity.

Arbitration is a complex process in that it sees the clash of two elements, one contractual and the other jurisdictional; in the case of international arbitration, further problems complicate the issue such as deciding which law is applicable.

French arbitration law probably made right decision in choosing not to lay down compulsory regulations; the result is that the parties have considerable freedom to tailor the proceedings by introducing their own rules, as do the arbitrators, provided that the wishes of the disputants are respected.

Judicial mediation refers to the right of a judge to intervene where he considers it appropriate and without prior agreement. [**clarify?**]

DISPUTE RESOLUTION IN CONSUMER AFFAIRS

Under French consumer protection law, a simple arbitration clause within a contract stating that the parties will go to arbitration in the event of a dispute is void; in order to be valid, there must be a proper agreement for arbitration. It should be added that in practice this solution is almost never sought.

It would appear that there is room in France as in Luxembourg (see below) for alternative forms of justice, such as conciliation, which neither bind the parties nor replace the ordinary courts.

In fact new possibilities are emerging following the approval on 30.03.98 of a Community Recommendation regarding the alternative resolution of consumer disputes, which invites Member States to organise or at least not to hinder the use of an impartial third party to “propose or impose” a solution.



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IRELAND

CHAMBER OF COMMERCE INVOLVED

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OTHER ADR EXPERIENCES

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THE ROLE OF THE CHAMBERS OF COMMERCE

At present only preliminary information is available, but it appears that the Irish Chambers of Commerce do not offer ADR services.

In some cases, however, they offer a general advisory service, directing interested parties to ADR centres and providing information for companies. Like Great Britain, Ireland has organisations with considerable experience of commercial dispute resolution; the most important of these is certainly the Irish branch of the *Chartered Institute of Arbitrators* (see Great Britain) which has established firm links with the Irish Chambers of Commerce.



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ITALY

THE ROLE OF THE CHAMBERS OF COMMERCE

The reform 580/93 increased the powers of Italian Chambers of Commerce in relation to support for business and promote the development of the market.

The Chambers of Commerce have become a sort of market Authority and are called on to protect its interests regarding all aspects of the economic and productive system, companies, workers and consumers, particularly encouraging the adoption of transparent rules which help to make the market more efficient as a whole.

An example of this is their role in the control of illegal clauses: if an illegal clause is found in a standard contract, the Chambers of Commerce may take action with the company or association proposing it to have the clause removed; failing this, under Law no 52 of 6 February 1996 (Community Directive 93/13) they may ask a judge to prevent its use.

In the field of alternative dispute resolution, their powers concern commercial disputes not only “business to business” but also “business to consumer”.

This means new responsibilities for the Chambers of Commerce, and although for those which had previously had significant experience of arbitration the difficulties were slight, for others a major organisational effort was needed.

Of the 102 Chambers of Commerce about 60 have already organised their own Arbitration Chambers and the rest are at an advanced stage in their constitution. Some Chambers of Commerce have decided to carry out the arbitral role attributed to them by the law in collaboration with other Chambers (e.g. the Arbitral Chamber of Piedmont, see below) or in conjunction with other organisations (e.g. the *Curia Mercatorum*, see below).

About ten Arbitral Chambers have acquired significant experience, handling between 6 and 34 arbitrations annually.

Among the most active are Bolzano, Como, Genoa, Milan (see below), Modena, Ravenna, the Arbitral Chamber of Piedmont (see below), Trieste, Venice, Grosseto, Pescara and the *Curia Mercatorum*.

Almost all the Chambers of Commerce now have “one-stop conciliation shops” in operation, where it is intended that compulsory attempts at resolving sub-contracting disputes should take place (Art 10 1. 192/98).

Under these circumstances the guidance and co-ordination provided by Unioncamere are vital. Unioncamere, Confindustria, A.I.A. and the Arbitral Chamber of Milan have signed an agreement to encourage the increasing recourse to arbitration by companies, leading to Joint simplified rules.

These rules envisage two stages: a conciliation phase, followed by an arbitration phase if the first stage fails to lead to agreement.

The maximum sum involved for the dispute to qualify under this procedure is L.300 million.

The Arbitral Chamber of Piedmont is a regional network linking all the Chambers of Commerce in Piedmont except Novara and Verbania.

The Arbitral Chamber of Milan is a special body under the Milan Chamber of Commerce which offers arbitration, conciliation and expert determination services as well as organising arbitration proceedings.

The Milan Chamber of Commerce has also set up **[when??]** a conciliation service which tries to bring about an agreement between the parties, mainly in disputes between companies, and individuals and companies, in the tourist industry and between craftsmen and consumers. The sum involved ranges from 1 to 30 million lire.

Another very interesting example linked to the Chambers of Commerce is that of the Curia Mercatorum, with offices at the Treviso Chamber of Commerce. This is an association, founded in 1995, which manages an Arbitral Chamber, organises other ADR procedures and carries out the other roles in market regulation and the control of illegal clauses which the law has recently given to the Chambers of Commerce.

The Chambers of Commerce of Belluno and Pordenone are also involved, together with a number of category associations, professional bodies, etc.

The Centre has its own arbitration rules: generally, there is an initial conciliation stage to establish whether a settlement is possible, followed by the arbitration phase.

For disputes involving up to L. 100 000 000, the Centre offers a simplified, mainly oral procedure under which an award is made according to law; the procedure takes a relatively short time, on average about 2 months.

The mediation service has met with the greatest success, with 6 cases being settled since the Centre opened as compared with 2 through arbitration proceedings.

APPLICABLE LEGISLATION

a) Law no 580 of the 29.12.1993 (Art. 2, 4 a) for Chamber of Commerce arbitration powers.

b) Code of Civil Procedure Art. 806-840 as amended by Law no 25 of 25.01.1994 for the regulation of arbitration.

c) Law no 481 of 14.11.1995 on the privatisation of public services

d) Law no 52 of 06.02.1996 adopting the Community Directive on illegal clauses in contracts, giving the Chambers of Commerce control over illegal clause in standard contracts (in conformity with Law 580/1993 Art. 2, 4 c).

e) Law no 192 of 18.06.1998 (Art. 10) on the regulation of subcontracting in the productive sector.

f) Folena draft 4597????

g) Law no 281 of 30.07.1998, regulating the rights of consumers and users.

Some notes on the above legislation

a) *see above*

b)

The regulation of arbitration procedures was radically amended in 1994, though it had also been to some extent improved by the Reform of 1983.

This is not the place for a profound analysis, but mention should be made of some essential amendments which bring arbitration closer to international standards and have made it a valid alternative to ordinary jurisdiction even when it has to be carried out abroad.

Among the most important changes are:

- the formal requirements have been eased so that the agreement for arbitration may now be concluded by telegraph or teleprinter;
- if there are problems regarding the selection of arbitrators, the judge may be asked to intervene;
- under Art. 819 bis, “the competence of the arbitrators are not negated by any connection between the dispute submitted to them and a pending legal case;
- the award has the force of a judgement, without the need for a magistrate’s order for enforcement, i.e. without reference to its inclusion in a juridical provision for its enforcement.

c)

Law no 481 of 1995 on the privatisation of public services gave the Chambers of Commerce powers to resolve disputes in the first instance between consumers and bodies providing services.

The record of the Chambers’ conciliation proceedings has the legal force of an enabling statute.

d)

e)

On the basis of Law 192/1998, in cases of dispute regarding a contract to provide subcontracting services the parties must take part in a compulsory conciliation process within 30 days of the deadline set out by the contract or by law, organised by the Chamber of Commerce in whose region the subcontractor has his office under Art. 2, 4 a of Law No 580 of 29.12.1993.

If no settlement has been reached within 30 days the parties may agree (this stage being voluntary) to take the case to the arbitration board of the Chamber of Commerce chosen as above, or if unavailable any Chamber of Commerce chosen by the contracting parties.

The arbitration proceedings are regulated by Art 806 et. seq. Of the Code of Civil Procedure and will be concluded within a maximum of 60 days from the first conciliation attempts, unless the parties agree on a shorter period.

f)

g)



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LUXEMBOURG

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THE ROLE OF THE CHAMBER OF COMMERCE

The Luxembourg Chamber of Commerce, founded in 1841, was confirmed in its role of representing the interests of business and industry by the Law of 4 April 1924, within a wider context of protecting economic interests generally.

Although there is no express legal provision for it, this law amply justifies the creation in 1987 of an Arbitral Centre with powers to organise disputes in the “*domaine des affaires*” only (Art. 1 of the Rules).

The Chamber of Commerce also offers services for the amicable settlement of disputes arising between two companies, on condition that at least one of them is a member. However, it plays no active role in expert determination, limiting itself to providing a list of accredited experts in Luxembourg.

The Centre has resolved about 12 disputes since its creation. There are no precise data as to the length of the proceedings, which varies greatly with the complexity of the case.

The Centre’s role in conciliation is much more important: 20 cases a year are settled, mainly in disputes regarding the performance of contracts.

The Centre operates under an Arbitral Council made up of 5 members nominated by the plenary assembly of the Chamber of Commerce. The Council has no direct powers to settle the disputes brought before it; it may only select, confirm or substitute (in this last case the decision may not be appealed) the arbitrators as set out in the Rules and to determine the costs of the arbitration procedure.

The Council also formally checks every arbitral award, whether partial or final, before it is signed; otherwise it is invalid.

Under the Centre’s Rules, the arbitrators, after a prior *prima facie* evaluation of the existence and validity of the agreement for arbitration, may judge on both their own competence and all questions regarding claims that the contract is invalid or non-existent.

There are some limits, though not absolute, regarding interim or precautionary measures, which can only be requested before the arbitration procedure opens. Subsequently, these are considered to be exceptional measures and the Secretariat has to be informed. **In any case, their concession remains within the powers of the arbitrators (???)**

The arbitrators have 2 months to come to a decision, unless the Council agrees to an extension.

The parties usually decide what law shall be applicable to the dispute, but the arbitrator may also do so.

This Rule also gives explicit recognition to commercial practice, which is a real source of added value in arbitration organised by Chambers of Commerce. It also establishes that an amicable settlement of the dispute is only possible if the parties expressly request it.

The decision of the arbitrators under the Rules of the Arbitral Centre of the Chamber of Commerce may not be appealed. If it is not immediately and spontaneously implemented, a judge may be asked for an enforcement order.

Another important task carried out by the Arbitral Centre of the Chamber of Commerce is that of representing Luxembourg at the Arbitration Court of the ICC.

APPLICABLE LEGISLATION

- Art. 1003-1028 of the Code of Civil Procedure, Book III
- Law of 26.11.1981 adopting the Geneva Convention of 1961 on commercial arbitration into national law.
- Law of 02.05.1983 incorporating the New York Convention for the recognition and enforcement of foreign arbitration awards.

Among the main features of the Luxembourg law is the provision regarding the different forms required for the agreement and the arbitration clause: only the first needs to be in a document drawn up before the choice of arbitrators, whether a notarised act or a private document (the agreement is otherwise void).

Unlike laws in other countries, the law in Luxembourg does not expressly sanction the principle of the independence of the arbitration clause; in practice, however, the decision regarding the valid form of arbitration proceedings is upheld, even where the rest of the contract is invalid, unless the parties have expressly excluded the possibility.

No specific legislation exists regarding other possible methods of alternative dispute resolution.

DISPUTE RESOLUTION IN CONSUMER AFFAIRS

Luxembourg legislation is traditionally in favour of commercial arbitration between companies, but like French law it sets limits for disputes involving consumers.

The consumer protection Law of 25.08.1983 states that a clause between a “professional producer” of goods and services and a consumer is void if it has the effect of depriving the latter of the right to protect his rights under ordinary law.

There is a place for other methods of dispute resolution, such as conciliation, which do not entail waiving the right to be heard in ordinary law.

Because of its traditional role as an employers' organisation, the Chamber of Commerce has no specific place in the field of consumer protection, including resolving disputes involving consumers.



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- Replies to the questionnaire from the Chambers of Commerce of the Grand Duchy of Luxembourg
- *International Handbook on commercial arbitration, National Reports- Basic Legal texts*, International Council for Commercial Arbitration (ICCA), General Editor Albert Jan Van der Berg, Kluwer, National Reports: Luxembourg

THE NETHERLANDS

CHAMBERS OF COMMERCE INVOLVED AND OTHER INSTITUTIONS LINKED TO THE CHAMBER OF COMMERCE SYSTEM

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THE ROLE OF THE CHAMBERS OF COMMERCE

The 21 Dutch Chambers, public law institutions devoted to promoting the general interests of commerce, underwent an important reform which came into force on 1 January 1998 (Law no 25029/97) encouraging their competitiveness and authorising them to increase their resources by giving a central place to the sale of services.

Dutch Chambers of Commerce play an important role in commercial dispute resolution; companies frequently insert into their contracts a clause specifying that in case of dispute the President of the appropriate Chamber of Commerce will have the power to appoint the arbitrator or arbitral college ad hoc.

Although the Dutch Chambers of Commerce do not have standing arbitration tribunals, it should nevertheless be stressed these they do exist in various sectors of commerce and industry (see below).

The Amsterdam Chamber of Commerce was responsible historically for offering the business community a dispute resolution procedure through recourse to arbitration and binding advice.

To organise this procedure the Amsterdam Chamber of Commerce has its own Rules, approved in 1988 and, therefore, in conformity with Art. 1020-1076 of the Code of Civil Procedure as amended by the Dutch law reforming arbitration procedures of 1986.

The Rules adopted by the Amsterdam Chamber of Commerce, with the exception of the provisions for the selection of arbitrators, are identical to those operated by the Netherlands Arbitration Institute (*Nederlands Arbitrage Instituut*, NAI - see below). The Amsterdam Chamber of Commerce is represented on the Governing Board of the NAI, the objectives of which include harmonising arbitration procedures throughout the Netherlands.

Where the parties request a binding expert opinion, however, the Chamber of Commerce is responsible for appointing the experts in the case.

The Amsterdam Chamber of Commerce resolves about 6 cases a year in an average time which varies between 6 and 12 months depending on the difficulty of the case.

Recommended Clause:

“All disputes arising in connection with the present contract, or further contracts resulting thereof, shall be finally settled in accordance with the Rules of the Amsterdam Chamber of Commerce”

The NAI occupies a central place in the range of institutions active in arbitration and is evidence of the extent to which the culture of ADR has penetrated the Netherlands. It has one set of Rules for arbitration (1993) and another for mediation [year??]. Thanks to the broad composition of its Governing Board, which includes representatives from the Chambers of Commerce, the business community, the courts and universities and the legal profession, the NAI brings a cross-sectoral approach to arbitration.

The NAI Rules substantially reflect the new arbitration laws, though they are much more detailed. They do not make any substantial distinction between national and international arbitration, though in recognition of the greater organisational complexity of the latter they allow a longer time-scale, and have different rules regarding the selection of arbitrators, the language of the proceedings, and the law which shall be applicable for the resolution of the dispute.

Another important difference concerns the arbitrator's powers in deciding the matter. In an internal dispute, if the parties are silent the arbitrator may decide as in an amicable settlement; in an international dispute, he must apply the law.

The evaluation (including the preliminary evaluation) of the parties' wish to submit the dispute to arbitration organised by the NAI is exclusively carried out by the arbitral tribunal, for the setting up of which only a very short time is allowed.

If the parties cannot reach agreement, the *Administrator* selects the arbitrators from a specially prepared list containing the names of three times as many arbitrators as are required.

In urgent cases, and in accordance with the provisions of the Code of Civil Procedure, it is possible to have recourse to the normal courts for interim measures.

The procedures are quite different if the "expedited" procedures are requested: the Rules do not contain an ad hoc procedure, but this may be set out by the parties in the individual case.

The enforcement of the award, through the ordinary courts if necessary, presents no problems.

OTHER EXPERIENCES OF ADR

There is a Netherlands Mediation Institute and several Sectoral Arbitration Institutes: nearly 90 separate institutes organise arbitration in the most disparate sectors: from potato markets to the construction trade, via sports sponsorship.

There is also a newly constituted centre specialising in business mediation, the Stichting ADR, Centrum voor het Bedrijfsleven (ADR Foundation, Business Centre).

APPLICABLE LEGISLATION

- The Netherlands Arbitration Act of 1986 amending Art. 1020-1070 of the Code of Civil Procedure
- New York Convention of 1958 on the recognition and enforcement of foreign arbitration awards
- NOFOTA [??] *Rules for Arbitration* [year??]

The new regulations which came into force on 01.12.1986 apply to arbitration taking place in the Netherlands regardless of the nationality of the disputants.

The law provides strict measures against parties trying to delay proceedings, but is flexible in allowing the arbitral tribunal wide powers.

DISPUTE RESOLUTION IN CONSUMER AFFAIRS

Chambers of Commerce in the Netherlands have no powers in the resolution of consumer disputes and in general play no part in consumer protection.

Here again, as in many European countries, the Chambers of Commerce are exclusively involved in the protection of business categories.

There are, however, special organisations for consumer questions known as *de Consumentenbonden*.



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- *The Netherlands Arbitration Act 1986*, Text and Annotations in English, French, and German (Kluwer Law & Taxation Publishers, Deventer, 1987)
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PORTUGAL

CHAMBERS OF COMMERCE INVOLVED AND OTHER INSTITUTIONS LINKED TO THE CHAMBER OF COMMERCE SYSTEM

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OTHER INSTITUTIONS ACTIVE IN THE RESOLUTION OF CONSUMER DISPUTES

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THE ROLE OF THE CHAMBERS OF COMMERCE

The 5 Portuguese Chambers of Commerce are private law associations which have a public role. They are regulated under Law no 244 of 29 October 1992 and represent the interests of all sectors of production except the craft sector.

The Camara de Comercio e Industria Portuguesa, which is based in Lisbon, is certainly the most well-known body in the Chamber of Commerce system, though it has no formal coordinating function in respect of the other four Chambers.

The Law regulating Portuguese Chambers of Commerce expressly gives them the right to establish Arbitration Centres with prior authorisation from the Minister of Justice.

The Lisbon Chamber is host to an important Arbitral Centre, the only one connected with the Chambers of Commerce. It was founded in 1987 in association with the Porto

Chamber and the Commercial Associations of Lisbon and Porto, and entered into a written agreement for cooperation in June 1992 with the highly respected American Arbitration Association.

This Centre offers mediation, conciliation and arbitration services, procedures for each of which are established in the Rules.

Eligibility for arbitration is set out in the Law (see below); under the Rules conciliation and mediation are allowed in all cases which can be resolved by agreement.

The Centre has received 19 Requests in the last three years and 15 procedures have been concluded. The average length of the proceedings is one year.

The types of dispute resolve concern: construction and public works (37%), sale and purchase of shares (6%), agency and distribution contracts (17%), sale of goods (6%) services (12%) others 4%.

97% of cases involved companies, 3% private individuals.

OTHER EXPERIENCES OF ADR

The new law of 1986 regulating arbitration procedures brought about a tremendous increase in cases taken arbitration, and large numbers of arbitration centres were established.

Apart from the Centre attached to the Portuguese Chamber of Commerce described above, there is also the Voluntary Arbitration Centre of the Portuguese Lawyers' Association, set up in 1993, handling cases including those involving civil, administrative, commercial and tax law.

Perhaps because of the kinds of dispute referred to this Centre, its Rules demand the presence of a lawyer although this is not the case under Portuguese law.

DISPUTE RESOLUTION IN CONSUMER AFFAIRS

There are several Centres in Portugal which are active in the resolution of consumer disputes. The most important, particularly in terms of the number of cases handled, is the Lisbon Arbitral Centre for Consumer Disputes.

This is a non-profit body set up in conjunction with the Lisbon municipal authorities to settle small consumer disputes through mediation, conciliation and arbitration.

Its clients are companies, consumers and traders.

It consists of a standing arbitration tribunal and a legal advice service.

The legal advice service assists the arbitral tribunal by:

- supplying additional information on consumer affairs for both consumers and the "professionals", the suppliers of goods and services;
- selecting cases and preparing the mediation, conciliation and arbitration stages.

The arbitral tribunal, with powers to decide disputes relating to the purchase of goods and services *in the city of Lisbon* whose value does not exceed PTE 500 000, sits under a single arbitrator.

In the last 3 years the Centre has received 2169 Requests and settled 2025 disputes.

The average time taken is 30 days.

The main sectors involved are: commerce (goods and services) 18.5%; travel/discount cards 8%; domestic electrical goods 6.7%; telecommunications 6% (1997 figures).

APPLICABLE LEGISLATION

- Framework Law 31 of 29.08.1986 on arbitration matters.

All cases may go to arbitration except those where the law reserves its rights of jurisdiction (whether in connection with the ordinary law or necessary arbitration) and on condition that the case involves alienable rights. Decisions or awards have the same legal validity as judgements in the law courts.

Portuguese arbitration law allows extensive freedom as to the form of procedure adopted, in part because arbitration is regarded as being a supplementary part of a contract (under Art 1) and can resolve questions which are not always legal.

For this reason, although in legal proceedings the parties must always be represented by a lawyer, this is not the case for arbitration.

From the point of view of formal requirements, it is better to have a formal agreement for arbitration signed by both parties, but a simple written statement that this has taken place may be enough.

It is important to note that unlike in other countries (for instance, under Dutch law) the arbitrator must reach a decision according to law unless the parties expressly provide otherwise.

Unless the parties have agreed otherwise, the arbitrator has 6 months to deliver his ruling which may go to a second stage on appeal, like an ordinary judgement, unless the parties have expressly renounced this right.

The concept of international arbitration is somewhat imprecisely defined as proceedings “involving international commercial interests”.

This distinction is not without consequences: an international arbitrator’s award may not be appealed in principle unless the parties have agreed otherwise and decided on a procedure for so doing.



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SPAIN

CHAMBERS OF COMMERCE INVOLVED AND OTHER INSTITUTIONS LINKED TO THE CHAMBER OF COMMERCE SYSTEM

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THE ROLE OF THE CHAMBERS OF COMMERCE

The Spanish Chambers of Commerce, Industry and Navigation were given explicit competence in arbitration in 1974, when a Decree from the Ministry of Commerce and Tourism recognised their right to “intervene as principle arbitrators and to create or promote services for the resolution of commercial disputes referred to them, and to give opinions and carry out expert judgements”. These powers were reaffirmed by a subsequent Royal Decree which gave the *Consejo Superior de Càmaras de Comercio* (CSC), the national association, the power as public law organisations to organise arbitrations according to either law or equity.

Finally, crowning a series of increasing institutional powers and authority, the Law reforming Spanish Chambers of Commerce explicitly gave them wide powers in arbitration matters.

This only applies to “business to business” arbitration, excluding consumer disputes, for which there other bodies are specially provided (see below).

In general the balance of Spanish Chamber of Commerce involvement in arbitration is very positive: apart from the Arbitral Court of the CSC, there are around 30 arbitral tribunals run by Chambers of Commerce all over Spain, and another 7 have already approved plans for setting up Arbitration Chambers.

Among the most important: Barcelona, Madrid, Bilbao, Tenerife and Valencia.

There are many private centres catering for alternative dispute resolution apart from arbitration.

The Spanish Arbitration Court set up in 1982 by the *Consejo Superior* carries out national and international commercial arbitration in every sector of the economy.

Over 100 requests have been made over the last three years and about 90 cases have been settled in an average time of 4 months.

Most of these cases are commercial disputes (98%) with few civil law cases (2%), resolved according to law (20%) or equity (80%), with binding and non-binding decisions reached during the course of the proceedings.

The Court also offers mediation services and nominates experts for expert determination. Among its tasks is that of promoting knowledge of commercial arbitration and spreading the practice more widely, encourage the study of national and international arbitration law, and maintaining contacts with other specialised international organisations in the field.

Unless the parties have decided otherwise, a standing Committee nominates the arbitrators who make up the actual arbitral tribunal; they are chosen from a list drawn up by the Court and the particular features of the dispute are taken into account.

Among the Committee's powers is that of resolving any problems which arise regarding the proper operation of the Court; its decisions in this regard may not be appealed. The Court remains competent to judge questions relating to the interpretation of the Rules.

The Court, in the person of its President, is responsible for establishing the willingness of the parties to entrust the resolution of the dispute to the Court, as expressed in the agreement for arbitration.

The Tribunal is competent in all matters regarding the validity of the agreement for arbitration which must be raised in the initial documents if the proceedings are to go ahead; it remains competent even if the contract is void or non-existent.

Finally, it is for the arbitral tribunal to decide which law is applicable, taking account of commercial practice and acting as informal mediators by mutual agreement of the parties.

The arbitrator has to make his award within 6 months from the date of assuming the case. In particularly complex matters, and where the parties agree, the deadline may be extended.

Recommended arbitration clause

All disputes or controversies which may arise out of the present contract shall be settled by arbitration by one or more arbitrators in accordance with the Rules and Statutes of the Spanish Arbitration Court which shall regulate the arbitration, the selection of the arbitrator or the composition of the arbitral tribunal.

Among the Arbitration Courts associated with local Chambers of Commerce is the *Tribunal Arbitral* of the Madrid Chamber of Commerce, which handled around 50 cases a year, mostly national disputes in Spanish and applying Spanish law.

The Valencia Arbitration Court also handles mostly domestic civil and trade disputes.

The Tribunal Arbitral of the Barcelona Chamber of Commerce manages about 84 arbitration cases a year and its activities continue to grow. It is worth noting that as well as the Chamber of Commerce the Barcelona lawyers and notaries association assisted in drawing up its Rules. In the proceedings managed under its Rules there is usually a single arbitrator who is directly nominated by the Tribunal Arbitral unless the parties decide otherwise.

OTHER EXPERIENCES OF ADR

[brief note of activities???

- Asociación Española de Arbitraje (Spanish Arbitration Centre)
- Spanish Maritime Institute for Arbitration and Contracting (IMARCO)
- Corte de Arbitraje del Ilustre Colegio de Abogados de Madrid

APPLICABLE LEGISLATION

- Law no 36 of 05.12.1988

The importance of this law lies principally in the fact that it increased the range of cases which are eligible for arbitration in Spain. Under the previous law of 22 December 1953 only civil law cases could be taken to arbitration; now all disputes “regarding the alienable rights of the parties” (Art. 1) are eligible, including questions of commercial law and international commerce.

Under Art. 2 matters involving labour law, constitutional law and administrative and penal law remain excluded.

The Law allows the arbitrator 6 months to come to a decision.

DISPUTE RESOLUTION IN CONSUMER AFFAIRS

Following the approval of the framework law for consumer protection (Law no 26 of 19.07.84) an arbitration system has been established especially for cases of this kind, the *Juntas arbitrales de consumo*. These bodies, which manage proceedings free of charge, give rise to decisions from a *Colegio arbitral* nominated for the purpose from time to time. Their decisions are enforceable and have the same force as a judgement.



BIBLIOGRAPHY & DOCUMENTATION

- Regulations of the Spanish Arbitration Court as amended by the reform of 05.05.1994
[???
- Rules of the Arbitral Court of Valencia approved by the Valencia Chamber of Commerce on 17.12.1992

SWEDEN

CHAMBER OF COMMERCE INVOLVED AND OTHER INSTITUTIONS ASSOCIATED WITH THE CHAMBER OF COMMERCE SYSTEM

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THE ROLE OF THE CHAMBERS OF COMMERCE

Swedish Chambers of Commerce are private law organisations, though they are recognised by the law. They have no specific competence in ADR but they may make provision for it in the regulatory Statutes which they are obliged to adopt

Under these Statutes the Stockholm Chamber of Commerce has set up its own *Arbitration Institute*, the SCCAI, and other Chambers have adopted rules for arbitration.

However, properly speaking, the SCCAI is the only body which is active in ADR in Sweden. There exist other organisations, including bodies linked to some of the 12 Swedish Chambers of Commerce, which were once active in this area, but which no longer offer services, perhaps because they proved unable to satisfy the demands of a constantly changing market.

The SCCAI was founded in 1917 and in recent decades has been acknowledged as one of the most important Arbitration Institutes in the world.

It had its own Rules for arbitration and conciliation. Rules for other forms of dispute resolution, differing wholly or in part from those existing at present, are being drawn up. A procedure for *expedited arbitration* has also been introduced and there are arbitral rules expressly designed for the insurance sector.

The SCCAI organises more than 100 cases of arbitration annually, of which only 25% are internal cases. In consequence, in most of the international cases organised, both parties come from outside Sweden.

There are very few conciliation cases.

The average length of arbitration proceeding is about a year, about two months less for internal cases.

It is hoped that at least 50% of cases are resolved before an award is made, through an amicable settlement which saves a considerable amount of time.

The parties involved are businesses active in commerce, investment, sale of goods, construction, joint ventures, distribution agreements etc.

The SCCAI plays no part in arbitration or other proceedings for the resolution of consumer disputes, which are dealt with in Sweden by other organisations.

Recommended clause

“Any dispute controversy or claim arising from or in connection with the present contract, its breach, termination or invalidity shall be settled through arbitration according to the rules of the Institute of the Stockholm Chamber of Commerce”.

APPLICABLE LEGISLATION

- Law no 147 of 1929 regarding arbitration, as amended in 1981
- Law no 145 of 1929 on arbitration agreements and foreign awards; an amendment was proposed at the beginning of 1999 which is expected to come into force on 1 April.

There is no legal definition of arbitration and conciliation in Sweden; however, in this country as in others UNICITRAL’s model law is an important point of reference in matters of international arbitration.

The Swedish concept of arbitration appears no different from that widely recognised internationally.

Swedish law has separate provisions for national and “foreign” arbitration.

The law regarding the recognition of foreign arbitration was amended subsequent to the ratification of the New York Convention.

Swedish law does not require the agreement for arbitration to be in written form although, in practice, this is most usual.

It is not essential to state what type of question is to be submitted to arbitration, though the fundamental relationship must be made clear.

There are no particular limitations on the right to have recourse to arbitration, even for foreign States or state bodies; the only exception is for non-Swedish residents, whether Swedish or non-nationals.

Cases involving the breach of industrial property rights, including trade marks, patents etc., may all go to arbitration.

The arbitrator has full powers to interpret the contract and rule on its validity.

The existence of a valid agreement for arbitration, if established within the time limits and in the manner required by law, constitutes an obstacle to proceedings if there is an attempt to bring a case in the ordinary courts.

There are no special requirements for arbitrators. If an arbitrator has to be replaced during proceedings, the arbitral tribunal has the power to do so, or, should it refuse, the ordinary Courts can be asked to intervene.

Arbitrators are required by law to conduct proceedings as rapidly and fairly as possible

The method of taking evidence and appointing experts is left fairly open. The arbitrator has no coercive powers but he may ask for an ordinary judge to intervene, for example if a witness is reticent.

Provisional and preventative measures are also guaranteed by the normal tribunal with jurisdiction in the area.

Among the important cases in which an award may be declared void are: the invalidity of the agreement for arbitration, failure to observe essential requirements, breach of the restrictions on arbitration, and also new facts or evidence which comes to light at a later date and could not reasonably have been known before.

An award may be annulled in cases where the judgement does not correspond with the request, and in cases of delay.

Finally, Sweden has ratified the major international arbitration conventions, although not the Uniform European Law

RESOLUTION OF DISPUTES IN CONSUMER AFFAIRS

It appears that dispute resolution in consumer affairs does not fall within the powers of the Chambers of Commerce; in other Scandinavian countries, there are bodies expressly designed for consumer protection and the settling of disputes involving them.



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- Procedural rules for simplified arbitration.
- Rules for arbitration in insurance cases
- Introduction to arbitration organised by the Stockholm Chamber of Commerce
- *International Handbook on commercial arbitration, National Reports - Basic Legal texts*, International Council for Commercial Arbitration (ICCA), General Editor Albert Jan Van der Berg, Kluwer, National Reports: Sweden, Elf Holmbäck and Justice Nils Mangård, June 1989.

COMMUNITY GUIDELINES

BRIEF NOTES ON THE RECOMMENDATIONS OF 30.03.1998 ON THE PRINCIPLES APPLICABLE TO ORGANISATIONS RESPONSIBLE FOR EXTRA-JUDICIAL DISPUTE RESOLUTION IN CONSUMER AFFAIRS

In view of the fact that a consumer disputes are characterised by an imbalance between the sum involved and costs of settling the dispute through the courts, the Commission *recommends* that existing and future bodies engaged in the extra-judicial resolution of consumer disputes *should conform to certain principles*.

The result would be to simplify the resolution of cross-border disputes and to increase consumer confidence in existing national procedures.

The guidelines apply to “those procedures which, regardless of what they are called, are designed to settle disputes through the intervention of a third party to ‘propose or impose’ a solution, excluding those which merely attempt to ‘reconcile the parties’.”



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- a) Green Paper, *Access to justice and the settlement of consumer disputes in the single market* COM (93) 576 final of 16 November 1993
- b) Green Paper *Public Procurement in the European Union.: exploring the way forward*, COM (96) 583 final of 27.11.1996
- c) European Parliament resolution on the Commission’s Communication, *Action plan on access to justice and the extra-judicial settlement of consumer disputes in the single market*, of 14 November 1996 (O.J. C 362 of 02.12.1996, p. 275).
- d) Commission Communication of 30.03.1998 regarding the principles applicable to bodies responsible for the settlement of disputes.
- e) Memorandum of the French Presidency on the creation of an “*Ombudsman pour les consommateurs européens*”.

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Paolo Martinelli, *Libro Verde sull’accesso dei consumatori all giustizia: appunti per un’analisi critica*, Documenti Giustizia 1994, no 3 p.338 et seq.

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Marco Gasparinetti, *La tutela dell’interesse collettivo dei consumatori nei Paesi membri dell’Unione europea*, La tutela collettiva dei consumatori, di Bruno Capponi, Carlo

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LA CHAMBRE DE COMMERCE FRANCO-ALLEMANDE

The decision to deal with the Franco-German Chamber of Commerce under this heading was motivated by the fact that although it has its offices in Paris and handles dispute resolution between two Member States only, this organisation is nevertheless significant in terms of cross-border dispute resolution within the single market.

Through its Arbitration Centre, the *Chambre de Commerce franco-allemande* offers arbitration and conciliation services which make use of familiarity with commercial customs and the typical problems of Franco-German trade.

The Centre settles disputes either through setting up an ad hoc tribunal or via its own standing tribunal. The latter is cheaper, and impartiality is assured by the criteria employed when organising the tribunal, which is made up of two Chambers, one responsible for settling disputes where the focus of interest is in France, the other for those in Germany. The first Chamber is composed of two French arbitrators and a German Chairman, the second of two German arbitrators under a French Chairman. To guarantee impartiality, all the arbitrators are nominated by the Centre and are particularly knowledgeable in the field of Franco-German economic relations.

In 1998 [???] four cases were brought of which three were settled.

Company acquisition cases are among the most frequent disputes handled by the Centre.

A NOTE ON CONCILIATION (international)

This is an instrument which enables the parties to co-operate in pursuit of their mutual interests, particularly in the case of companies whose aim is to maintain good customer relations in the long term.

There are two models used at European level:

a) *conciliation proceedings at specialised centres*: for example the International Chamber of Commerce (ICC) in Paris, the Centre for the Study and Practice of National and International Arbitration (CEPANI) in Brussels, the Federal Economic Chamber (WKÖ) in Vienna, the Center for Dispute Resolution (CEDR) of the Zürich Chamber of Commerce, and the Netherlands Mediation Institute **NAI?? In Amsterdam??**

b) *mini-trial*: the parties appear before a college composed of two directors from the companies involved and an independent conciliator. The principles applied are those of business practice rather than legal criteria.

ADVANTAGES: the opportunity to manage the conciliation process directly without being represented by experts; a decision reflecting the realities of each individual cases and which takes account of various factors such as psychological aspects and the characters of the disputants; the limited costs of the service, partly because in many cases a maximum number of hearings is set.

DISADVANTAGES: The conciliator's decision is not binding and, therefore, the conciliator must find some common ground between the consumers and companies involved if he is to meet with success.