

**Subject: Participation of energy companies in out-of-court dispute resolution procedures**

Dear Ms Astola,

I am writing to you about Alternative Dispute Resolution schemes which are an important element of effective consumer protection in energy markets. This point is now under discussion in the negotiations for the revised Electricity Directive, which sets rules for electricity markets for the coming decade. BEUC calls for the ADR to be made mandatory in this sector.

A prerequisite to a well-functioning electricity market is to establish a fair and balanced relationship between consumers and service providers. Consumers should always be able to benefit from speedy and effective complaint-handling procedures and be able to access an independent mechanism to address any possible dispute with service providers. Therefore, BEUC has been advocating to make it mandatory for companies to participate in out-of-court dispute resolution procedures.

New technologies, energy offers which are increasingly bundled with other services and innovative services by new market players may result in complex complaints. That is why it is indispensable that ADR schemes also apply to new market players and that ADR bodies cooperate across sectors.

As you know, the EU directive on alternative resolution for consumer disputes does not impose any rules on whether the traders or service providers are obliged to participate in the ADR processes. Yet energy services are different from other services – they are essential for our lives. The Electricity Directive, which is currently being revised, is the right instrument to make the participation in out-of-court dispute resolution procedures mandatory for companies. Businesses' participation and their compliance with ADR results are indeed two key requirements for ADR to be effective.

We welcome the Parliament's call for the mandatory participation of companies in ADR. We regret to see that the Commission is not supportive of this request. One of the arguments that was brought to our attention concerns the potential non-respect of the EU Charter for Fundamental Rights (Article 47 on the right to an effective remedy). This would only happen if the ADR is made mandatory in countries which also have binding non-appealable decisions, thus preventing access to justice for energy providers. We suggest to solve it with the following compromise, building on the Parliament's position (amendment 114):

'Such mechanisms [ADR] shall be extended to all energy service providers, aggregators and all contracts with energy components, including bundled offers, and local energy communities, whose participation shall be mandatory. Those Member States where, at the time of entry into force of this Directive, an ADR-system issues binding decisions on the providers without possibility of appeal before a national court, may opt to abandon the mandatory nature of the system. If they use this option, they must notify the Commission.'

We are aware of the Commission evaluation of the implementation of the ADR Directive expected in 2019. This might be too late though. Legislative measures may follow only several years later and they have an uncertain outcome. It would be much more efficient to give stronger possibilities for consumers to resolve their disputes now, rather than relying on the uncertain possibilities to do this in the future.

We hope the Commission can withdraw its opposition to the mandatory participation of companies in out-of-court dispute resolution in energy. We hope the Commission can support the compromise mentioned above in the revised Electricity Directive. According to the Commission's Consumer Market Study, one third of consumers had a problem with their electricity company in the past three years. Therefore, this will help to address the frustrations of many European energy consumers, provide them with an affordable alternative way to access justice and will contribute to building a truly consumer-centric Energy Union.

As you may know, this mandatory participation of businesses was extensively discussed during the last Citizens' Energy Forum which once again called for mandatory participation of different energy players in the out-of-court dispute resolution procedures. The same message came from the previous Forum as well as the ECCG opinion on the Clean Energy Package.

We trust you will take our recommendation into account and stand at your disposal should you have any question.

With best wishes,

Monique Goyens  
Director General

cc: Ms Marie-Paule Benassi – Acting Director – DG JUST