

## I. Introduction

This paper discusses the system of ADR in Hungary. It considers whether the system provides a high level of consumer protection and consumer access to justice, looking for the most interesting and important elements of the system while highlighting areas that need improvement. Unfortunately, there is no opportunity to develop a detailed set of suggestions for improvement, given the short nature of the paper.

Hungary has two ADR entities specially designed for the resolution of disputes between consumers and businesses. *Consumer Arbitration Boards* –CABs (*Békéltető Testület*) are ADR entities of general competence. The CABs were established by *Act CLV of 1997 on Consumer Protection* (CPA) and have been in operation since 1 January 1999 (s 52(2) CPA). They are independent bodies that operate under the 19 regional chambers of commerce and industry and the Budapest Chamber of Commerce and Industry (s18 (2) CPA). Financial disputes are within the competence of the *Financial Arbitration Board* – FAB (*Penzügyi Békéltető Testület*). The FAB was established by *Act CLVIII of 2010 on Hungarian Financial Supervisory Authority*,<sup>1</sup> and is currently regulated by *Act CXXXIX of 2013 on the Hungarian National Bank* (HNBA).<sup>2</sup> There is one FAB in operation from 1 July 2011 as an independent body established by the Hungarian National Bank (HNB) (s 96(2) HNBA).

The CABs are ADR entities of a broad competence. They can hear disputes regarding any contractual or non-contractual matter (about the formation and performance of contracts for sale of goods and services, or the quality and safety of goods including matters of product liability and the quality of services) (s18(1) CPA and s 2(s) CPA). The FAB is competent to hear disputes about the formation and performance of contracts for financial services and products and disputes involving unfair commercial practices (see s 96(1) HNBA). Claims are not limited in monetary terms.

The relevant rules are contained in separate sections of the CPA and the HNBA. These statutes were amended several times to accommodate practical, local needs, or to implement EU law, i.e. Directive 2013/11/EU on Consumer ADR and Regulation 524/2013 on ODR. The latter amendments did not result in the overhaul of the existing system of ADR, given that system was already based on the principles provided by Recommendations 98/257/EC and 2001/310/EC on which the ADR Directive is based (Rec. 5).

The provisions of the CPA and the HNBA are comprehensive and detailed, virtual rule-books, using many rules of civil procedure and making the ADR process resemble the judicial process. The reason for this is that the process was modelled on the arbitration process which is a highly regulated ADR process.<sup>3</sup> In addition to statutory rules, ADR entities can have their internal rules of procedure.<sup>4</sup>

By analogy to commercial arbitration, ADR entities consist of the president and members, who are all natural persons. ADR processes are conducted in front of tripartite panels that are appointed for a particular dispute and only exceptionally the process can be conducted by an individual (s 25 CPA, s 98(1) HNBA). The ADR process is distinct from commercial arbitration because it includes a compulsory mediation phase. The aim of both the CAB and the FAB is to attempt settlement between the parties (mediation), and only if this is not successful, to render a decision on the merits of the case in a simple fast, cheap and effective way (s 18(1) CPA, s 96 HNBA).

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\* Dr. Andrea Fejős, University of Essex, School of Law, afejos@essex.ac.uk

<sup>1</sup> 1997. évi CLV. törvény a fogyasztóvédelemről.

<sup>2</sup> 2013. évi CXXXIX. törvény a Magyar Nemzeti Bankról.

<sup>3</sup> The process was modelled after the former Act LXXI of 194 on Commercial Arbitration see Principled administrative decision no 1284/2005 [1284/2005. számú közigazgatási elvi határozat] at.

<http://kuria-birosag.hu/hu/elvhat/12842005-szamu-kozigazgatasi-elvi-hatarozat>. The literary translation of 'Békéltető testület' would be 'Conciliation Board' the present wording is however more appropriate given the boards arbitration-like character.

<sup>4</sup> See e.g. the Rules of Procedure of the FAB at <https://www.mnb.hu/letoltes/egysegesszermukodesi-rend-2017-julius-3-tol.pdf>.

In Hungary, ADR is an important avenue for consumers' access to justice. Empirical evidence shows the generally low litigation culture. Some of the well-established obstacles as low value claims, and complexity of disputes, are also relevant for the Hungarian context.<sup>5</sup> Judicial activity increased more recently due to significant detriment caused by foreign currency loans.<sup>6</sup> These cases revealed the absence of judicial sensitivity to consumer vulnerability, and have showed the slow pace of judicial justice.<sup>7</sup> In addition to individual actions, consumers can also rely on the results of collective actions to obtain redress. The system of collective actions is complex in Hungary; various bodies being competent to submit claims for various types of disputes.<sup>8</sup> Importantly, some collective actions can also be compensatory. Although the legal framework for collective redress is well developed, these types of actions face various obstacles and are rarely used in practice.<sup>9</sup> Finally, consumers often mistakenly believe that they can obtain redress from administrative authorities.<sup>10</sup> The system of administrative protection is complex. Numerous regulatory authorities have a consumer protection objective. Their work is important to prevent future consumer detriment, they can collect complaints and negotiate with businesses to change their contract terms and business practices and/or initiate collective actions, but they are not empowered to order redress for consumers who have already suffered harm.

The paper provides a brief critical overview of the key rules in the current system of consumer ADR in Hungary. Following the structure of the ADR Directive it will now discuss the rules by reflection on the principles of accessibility, expertise, transparency, independence and impartiality, effectiveness, fairness, liberty and legality.

## II. Accessibility

The rules on accessibility are generous in terms of the subject matter of disputes and monetary limits on claims, as noted above. The submission of claims is however subject to several limitations.

The ADR processes can only be commenced upon the complaint of consumers (s 28 (1) CPA, s 104(1) HNBA), provided consumers previously attempted to negotiate the dispute with the business (s 27 CPA, s 102(1) HNBA). Complaints must be submitted in writing, online or offline, with the predetermined content and with submission of the supporting evidence (s 28(2) CPA, s 104(2) HNBA). There must be a statement attached that the matter has not been or is not being considered by a court or another ADR entity (s 28(1) CPA, s 104(1) HNBA). Like a court or arbitration process, consumers must adhere to the formalities attached to the content of the claims and the supporting evidence. The generous rules on accessibility are therefore somewhat limited by formalities attached to the claims submission process. Although consumers are guided by the ADR entity's website (s 37 CPA, s 103/B(2) HNBA) and can seek help from ADR entities for meeting the formal requirements (s 26/A CPA, s99 HNBA), navigating through the process may be challenging for the weakest groups of consumers, such as the elderly or less educated part of the population.<sup>11</sup>

<sup>5</sup>A. Fejős (2008) Consumer Protection in Sales Transactions in Hungary, 49(4) Acta Juridica Hungarica 441, p. 459, E. Vízkeleti, Practical problems of establishing usury [Az uszora megállapításának gyakorlati problémái], Jogi Fórum Publikáció 1-12, 2012, p. 9 at [http://www.jogiforum.hu/files/publikaciok/vizkeleti\\_edit\\_az\\_uszora\\_megallapitasanak\\_gyakorlati\\_problemai\[jogi\\_forum\].pdf](http://www.jogiforum.hu/files/publikaciok/vizkeleti_edit_az_uszora_megallapitasanak_gyakorlati_problemai[jogi_forum].pdf).

<sup>6</sup>M. Józson, Hungary, in H. W. –Micklitz, I. Domurath, Consumer Debt and Social Exclusion, Ashgate, 2015.

<sup>7</sup>M. Józson, Hungary, The Over-indebtedness of European Consumers – A view from Six countries, EUI Working Papers, Law 2014/10, p. 200.

<sup>8</sup>A. Fejős, Country report Hungary, State of collective redress in the EU in the context of the implementation of the Commission Recommendation, 2017, p. 646 et seq. at

[http://ec.europa.eu/newsroom/just/item-detail.cfm?item\\_id=612847](http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=612847); see also D. Gelencsér, Public interest actions in Hungary I. [Közérdekű igényérvényesítés Magyarországon I.], Eljárásjogi szemle 2016/3 at [http://eljarasjog.hu/2016-evfolyam/kozerdeku\\_igenyervenyesites\\_magyarorszagon\\_i/](http://eljarasjog.hu/2016-evfolyam/kozerdeku_igenyervenyesites_magyarorszagon_i/).

<sup>9</sup>A. Fejős, Hungary, Study of the Fitness check of EU consumer and marketing law, Final report Part 3-Country reporting, 2017, p. 535, 538 at [http://ec.europa.eu/newsroom/just/item-detail.cfm?item\\_id=59332](http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=59332)

<sup>10</sup>See P. Bobál, Z. B. Béky, Challenges of administrative complaint handling [A hatósági panaszügyintézés kihívásai] Fogyasztóvédelmi szemle, 2010 at [http://www.fvszemle.hu/archivum/2010\\_majusi\\_szam/maj\\_muhely/hatosagi\\_panaszugyintezes/](http://www.fvszemle.hu/archivum/2010_majusi_szam/maj_muhely/hatosagi_panaszugyintezes/).

<sup>11</sup>There is no uniform complain submission form, and the ADR entities have different approaches in interpreting the above formalities, some forms may be more complex than others. See note 20 for examples.

Non-financial complaints are addressed to the CAB that is based in the region where the consumer is permanently or habitually resident (s 20(1) CPA), except for cross-border complaints that are handled by the Budapest Arbitration Board (s 18(5) CPA). All complaints about financial services and products whether domestic or cross-border are in the competence of the FAB. Some CABs accept online claims submissions,<sup>12</sup> and complaints for disputes arising out of online transactions can be submitted through the ODR platform. Although online claims submission may ease access, claims are directed to a CAB that will apply the below discussed formalistic process. A genuine online dispute resolution, the conduct of the entire process at a distance is absent, parties are eventually invited to attend a hearing at the premises of the CABs. There may be therefore a tension between the guarantee of a fair hearing and the convenience of access that comes with modern e-commerce. In addition, accessibility may also be limited by the rules on costs, discussed below.

### III. Expertise

The relevant rules aim to ensure that ADR entities have a decent level of expertise. By asking for a higher education degree and 2 years work experience, the CPA does not set especially high requirements (s 22(1) CPA), although it does require that at least one member of the preceding tripartite panel or that the preceding individual has a law degree (s 25 (3&4) CPA). The problem is however that the CABs rely on consumer protection associations in their work (as explained below), and these will provide a limited pool of lawyers to choose from. Consumer protection organizations suffer from underfunding and many struggles to employ full time legal experts.<sup>13</sup> This may lead to a deficit in legal expertise among CABs.<sup>14</sup>

The requirement for professional qualification is set higher for members of the FAB who must have a law degree and a completed bar exam. Alternatively, members can have a degree in economics (s 97(3) HNBA). Expertise of the FAB is better secured than in the CABs. FAB membership is a career job; its members are being permanent employees of the HNB (s 97(1) HNBA).

Finally, the work of ADR entities may also be helped by independent experts. For processes in front of the CABs experts are appointed by the parties,<sup>15</sup> and by the proceeding panel for disputes in front of the FAB (s 123 HNBA).

### IV. Independence and impartiality

Independence and impartiality are key aspects of the Hungarian legal framework of consumer ADR. The paper below discusses the rules on funding, remuneration and appointment.

ADR entities are independent bodies, whose members must not be instructed in their decision-making process (s 24/A CPA, s 98(1) HNBA). Despite these formal declarations, the way ADR entities are operated may question their independence. The CABs are funded, including their members fees, by the central or local government (s 18(3)(4) CPA).<sup>16</sup> To save costs, the CABs are operated within regional commercial chambers, using their infrastructure, such as premises. Experience so far shows good cooperation, and there is no evidence of undue influence.<sup>17</sup> It may however be worth making the

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<sup>12</sup> See note 20 for examples.

<sup>13</sup> A. Fejős, note 9, p. 538.

<sup>14</sup> E.g. in the Arbitration Board of Győr-Moson-Sopron County 8 out of the 28 members have legal qualifications. Arbitration Board of Győr-Moson-Sopron County, Annual Report [Szakmai Beszámoló], 2017 at <http://www.bekeltetesgyor.hu/eves-beszamoló2>.

<sup>15</sup> A. Fejős, note 5, p. 463.

<sup>16</sup> Local government typically does not provide funding. Hungarian Chamber of Commerce and Industry (HCCI), Annual report and study on the activities of Consumer Arbitration Boards in 2014 [Szakmai beszámoló és elemzés a békéltető testületek 2014. évi tevékenységéről], 2015, p. 34 at [http://www.mkik.hu/upload/mkik/bekeltetes/410\\_bekelteto\\_2014\\_tanulmany.pdf](http://www.mkik.hu/upload/mkik/bekeltetes/410_bekelteto_2014_tanulmany.pdf).

<sup>17</sup> Ibid.

CABs physically independent. The situation is similar with FAB. To secure a decent level of funding, including expertise of its members, the FAB is financed by and its members are employees of the HNB (s 97(1) HNBA). Although there is seemingly a higher level of interdependence here than with CABs and commercial chambers; one of the objectives of the HNB as the supervisor of the Hungarian financial markets should be consumer protection, whereas commercial chambers are associations protecting the interests of businesses. Given the physical interdependence of ADR entities, an important aspect of independence and impartiality of their members is the regulation of their remuneration (see s 21(7) CPA, s 100(3) HNBA).

CAB members are appointed for a 4 year period with a possibility of re-appointment (s 21(6) CPA). FAB members are full time permanent employees, and the president of the FAB is appointed by the president of the HNB for the period of 6 years (s 100(2) HNBA).

Impartiality and independence is also observed upon the appointments of proceeding panels. ADR entities as a rule operate in tripartite panels (s 25(1) CPA, s 98(1) HNBA). For financial disputes, panel members are nominated internally by the president of the FAB (s 101(2) HNBA). For other kinds of disputes, members of the panel are appointed by the parties. Upon receipt of a claim, the president of the CAB will forward the list of its members to the parties asking them to appoint one member from the list. Should the parties fail to act within the given deadline the panel will be appointed by the president of the given CAB (s 29(5) CPA). The president must ensure equal representation of consumer and business interests (s 25(2) CPA). There are rules on the exemption of a member for reasons of conflict of interest (s 26 CPA, s 98(3) HNBA). Importantly, a person that previously advised any of the parties must be exempted (s 25(2) CPA).

Simple cases may be conducted by an individual member appointed by the presidents of the CAB and the FAB (s 25(4) CPA, s 98(1) HNBA). Although this should be an exception, the number of processes conducted in front of individuals by CABs is actually higher than in front of tripartite panels.<sup>18</sup> This may be due to lack of funding given that panel members are provided a fee on case-by-case basis.<sup>19</sup>

## V. Transparency

ADR entities maintain a website with various information, including on how to submit complaints. The requirements of transparency in complaints submission seems to be somewhat in conflict with the requirements of accessibility discussed above. Those ADR entities that aim to make the legal requirements of a complaint submission fully transparent are making the process complex, asking for ample information from consumers and informing them on the rules, with even running the danger of information overload.<sup>20</sup>

Apart from mandatory information contained in the statutes that needs to be made public (s 37/A (3) CPA, s 103/B(2) HNBA) ADR entities take different approaches in going beyond what is necessary. Some ADR entities for example publish their annual reports.<sup>21</sup>

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<sup>18</sup> In 2014 e.g. 6236 processes were conducted by individuals compared to 3371 by panels. HCCI, note 16, p. 46.

<sup>19</sup> Funding does not follow the increasing case-load. Consumer dispute resolution [Fogyasztói vitarendezés], Jogi fórum, 13 July 2015 at <http://www.jogiforum.hu/hirek/34061>.

<sup>20</sup> See the complaint submission page of Győr-Moson-Sopron megyei Békéltető Testület at <http://www.bekeltetesgyor.hu/kerelem>, and the Csongrád Megyei Békéltető Testület at <http://www.bekeltetes-csongrad.hu/eljaras-inditasa>. Compare with the approach of Budapesti Békéltető Testület at <http://bekeltet.hu/kerelem/>

<sup>21</sup> E.g. Arbitration Board of Győr-Moson-Sopron County, note 14.

## VI. Effectiveness

The processes are effective in many respects. Claims can be submitted online and offline, legal representation is not mandatory (s 29(5)(b) CPA, s 108(1)(b) HNBA), procedural deadlines are short, and the process is recommended to end within 90 days (s 31(5) CPA, s 112(5) HNBA).<sup>22</sup>

The effectiveness and the intended high level of protection may be undermined by the rules on costs. Although neither process triggers initial payments, the processes incorporate the 'loser pays' rule, this including the costs of the process, such as travel expenses and expert opinions, i.e. everything reasonably incurred except lawyers' fees (s 33 CPA, s 114 HNBA). Given the low value of claims, travel costs can be substantial, e.g. if the businesses' representative must travel long distance to attend the hearing, given the mandatory nature of participation (see below). In such situations ADR entities may decide to proceed in writing, but this is not a common practice.<sup>23</sup> In addition, costs may be boosted by the fees for expert opinions easily amounting to more than the value of the dispute.<sup>24</sup> The loser pays rule can therefore make ADR an unattractive option for consumers, a financially not viable route to justice that is against the spirit of the ADR Directive (Rec. 41).<sup>25</sup> The CPA provides for a possibility of joined complaints by more consumers, a sort of collective ADR process (s 20(4) CPA). This option could be used to minimise expenses by sharing costs. Consumers should therefore be made aware of this possibility, and consumer organizations should take a role in connecting consumers that are affected by the practice of the same business.

## VII. Fairness

Guarantees of a fair process are well established. During the process, as a rule, parties are treated equally, and they are provided with an opportunity to present their views and evidence in support of their claims, and to respond to the other side's claims and evidence (s 30(2) CPA, s 111(2) HNBA). The CPA and the HNBA regulate in detail the content of the claim and the answer to the claim (s 28& 29(8) CPA, s 104 & 108 HNBA). Importantly, the statutes guarantee that parties can express their views in writing and subsequently argue their case in a hearing (s 29 (3)&(7) CPA, s 112 HNBA). Parties are free to modify or supplement their submissions during the process (s 31 CPA, s 112(1) HNBA).

Hearings are an important element in the Hungarian ADR system. As a rule, hearings will take place, and only exceptionally, upon the consent of both parties, the process will be conducted in writing (s 29(7) CPA, s 106(5) HNBA). However, hearings can be conducted without the presence of a party. If either of the properly notified parties fails to appear at the hearing or provide the necessary evidence, the FAB and the CAB will conduct the process in the absence of the party and decide on the merits of the case based on the available information in written submissions (s 31(2) CPA, s 112 (2) HNBA). To motivate the business to cooperate, hearings are normally private (s 30(3) CPA, s 112 (3) HNBA), so businesses that cooperate with ADR entities will obtain the benefit of both the confidentiality of the process and, as we shall see below, its result.

ADR processes in Hungary normally have two steps; they are a sort of mediation-arbitration process. The proceeding panel first aims to mediate any differences between the parties in order to reach a settlement, and only after an unsuccessful attempt they will proceed to deciding on the merits of the case (s 18(1) CPA, s 96(1) HNBA). These features of the process go to the heart of the arguably most

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<sup>22</sup> The process lasts on average 30-50 days in front of CABs and 52 days in front of the FAB. HCCI, note 16, p. 28; Annual report of the FAB [Jelentés a Pénzügyi Békéltető Testület éves tevékenységéről], 2016, p. 17 at <https://www.mnb.hu/letoltes/pbt-eves-jelentes-2016-vegleges.pdf>.

<sup>23</sup> In 2014 e.g. the CABs conducted a total number of 9742 proceedings out of which only 135 in writing. HCCI, note 16, p. 46.

<sup>24</sup> A. Fejős, note 5, p. 463.

<sup>25</sup> Costs are a recurring problem with various solutions over the years. See A. Fejős, note 5, p. 461, 463.

important aspects of the ADR process: the nature of the businesses participation and the nature of the result of the process.

Initially participation in the ADR process was voluntary for business. Business frequently refused to participate in the process and this raised serious concerns as to the utility of the entire ADR system,<sup>26</sup> ultimately leading to participation being made mandatory for business. Businesses are now obliged to 'cooperate' (*együttműködési kötelezettség*) (s 29(11) CPA, s 108(2) HNBA). They must attend the hearing to attempt settlement and must submit their answers to the consumer's claim. A declaration must also be attached to the answer if they accept the consumer's claims (s 29 (8) CPA, s 108(2) HNBA). Failing to do so triggers an administrative fine, imposed by the competent consumer protection authority or the HNB (s 29(12) CPA, s 108(2) HNBA). Exceptionally, businesses will be relieved from the obligation to attend the hearing when the seat of the business is not in the same region as the consumers' residence. In this case businesses must not attend the hearing, but must submit a settlement proposal in their answer to the claim (s 29(11) CPA, s 108(5) HNBA). Mandatory participation is a great step forward in achieving a high level of consumer protection in Hungary. Now businesses tend to attend hearings and the overall number of settlements has increased. It seems that once the businesses were compelled to participate in the process, they were also willing to compromise and to solve the disputed matter.<sup>27</sup>

The ADR process can end in three ways. First, if the initial phase of the process is successful, parties will reach a mutually acceptable agreement. The panel will approve the settlement if it complies with the relevant statutory rules (s 30 CPA, s 111(1) HNBA). Once approved, it is binding on the business. Second, the ADR process may end with a recommendation. Following an unsuccessful settlement attempt, the panel will proceed to decide on the merits of the case. As a rule, the decision is a non-binding recommendation for both parties. It is merely a suggestion as to how the dispute should be solved without being enforceable at courts (s 32 CPA, s 113 HNBA), although businesses can set aside recommendations. Finally, the decision is binding on the business if the business accepts it as such.<sup>28</sup> This acceptance can be given during the process or in advance. Advance consents can be for the particular dispute at hand, or they can be general for all future disputes of a given business. General consents can be limited by time-bars or monetary limits (s 36/C CPA, s 103(1) HNBA). ADR entities maintain (and publish) lists of businesses that accept their decisions as mandatory (s 36/C CPA, s 103(2) HNBA).

In addition to express declaration, businesses may also be held to have given their consent provided they did so in their pre-contractual commercial communication. Consumers will have to prove that this communication was one of the main reasons for concluding their contracts. Business will be relieved from the binding force of their declaration if they are able to prove that the statement has been withdrawn prior to the conclusion of the contract (s 36/C(4) CPA, s 103(3) HNBA).

Exceptionally, the FAB can divert from the above rules on consent, and render a binding decision even in the absence of such explicit acceptance, provided the claim is justified and the value of the dispute is below 1 million forints [around 3150 EUR] (s113(2) HNBA). This possibility of a binding decision without an explicit consent of the business combined with the businesses' mandatory participation raises the important question of compatibility of these two elements the businesses' right to judicial protection that the ADR Directive seeks to protect.<sup>29</sup>

In terms of formal requirements, binding decisions resemble a court judgment. They must address all claims, justify the reasons for the decision (s 33(1) CPA, s 114(1) HNBA), and extending to the costs

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<sup>26</sup> See e.g. HCCI, note 16, p. 28; A. Fejős, note 5, p. 463.

<sup>27</sup> Arbitration Board of Győr-Moson-Sopron County, note 14.

<sup>28</sup> The comparably few binding decisions signals reluctance of businesses to accept decisions as binding at least those businesses that are frequently party of an ADR process. In 2014 e.g. there were only 130 binding decisions, compared to 2775 recommendations and 1088 settlements. HCCI, note 16, p. 25.

<sup>29</sup> A. Fejős, C. Willett (2016) Consumer Access to Justice: The Role of the ADR Directive and the Member States, 24(1) European Review of Private Law 33-60.

of the process (s 33(2) CPA, s 114(2) HNBA). The legal basis of decisions will be frequently present, although it does not seem to be a mandatory element.<sup>30</sup>

Finally, there are rules on the relationship of courts and ADR entities. Binding decisions are subject to judicial review limited to procedural grounds (e.g. lack of competence of ADR body) (s 34(3) CPA, s 103(3) HNBA). Interestingly, businesses can also challenge non-binding recommendations, not only on procedural grounds but also on substantive grounds, asking the court to review whether the law has been applied properly (s 34(4) CPA, s103 (3)&(4) HNBA).

In financial disputes, businesses have a right to object to the decision that is binding on them. The objection is directed to the FAB (s 121 HNBA). Should the FAB reject the objection, the business can appeal to the competent court based on the permanent or habitual residence of the consumer. Should the FAB find that the objection is justified, it will forward the necessary paperwork to the competent court and to the consumer, inviting the consumer to start a court process within 15 days from the receipt of the documents. Should the consumer fail to do so, the court will discontinue the process (s 122 HNBA). If the consumer decides to act upon the invitation, the ADR dispute will transform into a court process. Consumers may therefore be quickly tied up in a court process without being ready for it. Proper consumer protection would surely require that consumers are informed of this feature of the process. However, such requirement seems to be missing from the current legal framework.

### **VIII. Liberty**

Under the principle of liberty, ADR processes are not mandatory for consumers. Although there is no special ban on pre-dispute ADR clauses in relevant statutes, an initiative to refer the dispute to an ADR entity can only originate from the consumer. What influences the consumers' decision is a distinct problem. To this effect, a scenario where a consumer notices the clause in the contract and feels compelled by the binding force of the contract to start an ADR process is theoretically possible, so this provision might need some reconsideration in the light of Art. 10(1) ADR Directive.

As a rule, the results of the process are not binding neither on consumers nor on businesses. As explained above, businesses are free to decide whether to accept the ADR entities' decision as binding (with an exception of the FAB's discretion). There may be of course various reasons why a business would give their consent, and various pressures why they may feel that they must consent. Any form of pressure is allowed as long as they are lawful.<sup>31</sup> The binding decisions and non-binding recommendations of the ADR processes are never binding on consumers. The route to judicial protection remains open for consumers (s 34(1) CPA, s 116(1) HNBA).

### **IX. Legality**

ADR entities must base their decisions on the applicable statutory and other rules. The statutes refer to the importance of legal rules at several places, e.g. ADR entities can only make enforceable those settlement agreements that are compliant with the applicable law, and the non-binding recommendations of ADR entities can be challenged on points of law, as explained above. Having to observe the applicable law especially mandatory consumer law certainly contributes to a high level of protection and access to justice. However, not every member of the proceeding panel in the CABs must have a legal qualification and this may cast some doubt on their ability to apply the law, especially in complex disputes.<sup>32</sup>

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<sup>30</sup> FAB rules and procedures, note 4, point 11.16.

<sup>31</sup> See s 6:91 on duress of Act V of 2013 on the Civil Code.

<sup>32</sup> See on this aspect e.g. M. Knigge, C. Pavillon (2016) The legality requirement of the ADR Directive: just another paper tiger? 4 Journal of European Consumer and Market Law 155-163

Interestingly, the FAB can conduct a distinct ‘fairness procedure’ (*méltanyossági eljárás*). These procedures must be specially requested by consumers. In these claims consumers plead for compassion based remedies such as price discounts, given their personal or financial situation.<sup>33</sup> This process must end with settlement; the FAB is unable to make a decision on the merits of the case.<sup>34</sup>

## X. Compliance and sanctions

In addition to the above aspects of the process, the relevant statutes also contain rules on compliance with the rules and on sanctions for non-compliance.

First, businesses are given time to voluntarily comply with the outcomes of the process, normally around 15 days (s 33(4) CPA). Consumers must notify the relevant ADR entity about the business’s failure to comply (s 36(5) CPA, s 120(3) HNBA),<sup>35</sup> following which they may decide to publish the non-binding recommendation, naming the business (s 36(1) CPA, s 119 (1) HNBA). Interestingly, binding decisions are not published; rather, consumers can apply for a writ of execution to the competent court (s 36(3) CPA, s 120(1) HNBA). ADR entities will also publish the names of businesses that failed to cooperate with consumers (s 36/B CPA, s 130/A HNBA) in addition to businesses being subject to an administrative fine, as mentioned above.

Given the importance of enforcement,<sup>36</sup> stipulating these aspects of the process is a positive step towards a high level of consumer protection and consumer access to justice. Unfortunately, the effectiveness of these sanctions especially ‘naming and shaming’ by publication is doubtful.<sup>37</sup>

## XI. Conclusion

ADR is an important part of the Hungarian legal framework of consumer protection. It provides consumers with a viable avenue for access to justice, especially now that participation in the processes is mandatory for businesses.

The Hungarian ADR system has many interesting, perhaps somewhat unique solutions. It is however not a perfect system, and some of its elements need attention in the future. Some aspects of the system may need better alignment with EU law, while others need to be made more effective. The ADR process is carefully structured showing strong similarities with judicial process, especially the rules on independence and impartiality of the ADR entities, the rules on the role of statutory law in the ADR entities decision making, and the requirement of expertise of their members. However, these aspects are being challenged by the absence of sufficient funding of the key actors in the ADR process, the ADR entities/ and or consumer protection organizations. The first step in making the process more effective is therefore to increase funding for CABs and consumer organizations. Increased funding should enable ADR entities to operate independently and secure legal expertise for their work.

ADR has a tradition of almost two decades, and it is becoming more recognized by both consumers and businesses as an effective means of dispute resolution. However, this paper has identified key points to bear in mind to ensure that ADR provides access to justice that represents a high level of consumer protection.

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<sup>33</sup> FAB Rules and Procedures, note 4, point 5.1.

<sup>34</sup> FAB Rules and Procedures, note 4, point 3.2.

<sup>35</sup> Consumers often fail to communicate this information to CAB. Arbitration Board of Győr-Moson-Sopron County, note 14.

<sup>36</sup> See on importance of enforcement e.g. A. Fejős (2013). The Impact of EU Norms and Policies on Consumer Protection Enforcement in Serbia. *Journal of Consumer Policy*. 36 (3).

<sup>37</sup> A. Fejős, C. Willett, note 29, p. 55-58; A. Fejős, note 5, p. 468.