



**LITHUANIAN
COURTS**

National Courts
Administration



Documentation

MEDIATION IN THE EU: LANGUAGE, LAW & PRACTICE

- LANGUAGE TRAINING FOR JUDGES, LAWYERS AND MEDIATORS
- FOCUS ON CIVIL AND COMMERCIAL MEDIATION



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DIRECTIVES

DIRECTIVE 2008/52/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 21 May 2008

on certain aspects of mediation in civil and commercial matters

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(c) and the second indent of Article 67(5) thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Economic and Social Committee ⁽¹⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽²⁾,

Whereas:

(1) The Community has set itself the objective of maintaining and developing an area of freedom, security and justice, in which the free movement of persons is ensured. To that end, the Community has to adopt, inter alia, measures in the field of judicial cooperation in civil matters that are necessary for the proper functioning of the internal market.

(2) The principle of access to justice is fundamental and, with a view to facilitating better access to justice, the European Council at its meeting in Tampere on 15 and 16 October 1999 called for alternative, extra-judicial procedures to be created by the Member States.

(3) In May 2000 the Council adopted Conclusions on alternative methods of settling disputes under civil and commercial law, stating that the establishment of basic principles in this area is an essential step towards enabling the appropriate development and operation of extrajudicial procedures for the settlement of disputes in civil and commercial matters so as to simplify and improve access to justice.

(4) In April 2002 the Commission presented a Green Paper on alternative dispute resolution in civil and commercial law, taking stock of the existing situation as concerns alternative dispute resolution methods in the European Union and initiating widespread consultations with Member States and interested parties on possible measures to promote the use of mediation.

(5) The objective of securing better access to justice, as part of the policy of the European Union to establish an area of freedom, security and justice, should encompass access to judicial as well as extrajudicial dispute resolution methods. This Directive should contribute to the proper functioning of the internal market, in particular as concerns the availability of mediation services.

(6) Mediation can provide a cost-effective and quick extrajudicial resolution of disputes in civil and commercial matters through processes tailored to the needs of the parties. Agreements resulting from mediation are more likely to be complied with voluntarily and are more likely to preserve an amicable and sustainable relationship between the parties. These benefits become even more pronounced in situations displaying cross-border elements.

(7) In order to promote further the use of mediation and ensure that parties having recourse to mediation can rely on a predictable legal framework, it is necessary to introduce framework legislation addressing, in particular, key aspects of civil procedure.

(8) The provisions of this Directive should apply only to mediation in cross-border disputes, but nothing should prevent Member States from applying such provisions also to internal mediation processes.

⁽¹⁾ OJ C 286, 17.11.2005, p. 1.

⁽²⁾ Opinion of the European Parliament of 29 March 2007 (OJ C 27 E, 31.1.2008, p. 129). Council Common Position of 28 February 2008 (not yet published in the Official Journal) and Position of the European Parliament of 23 April 2008 (not yet published in the Official Journal).

(9) This Directive should not in any way prevent the use of modern communication technologies in the mediation process.

- (10) This Directive should apply to processes whereby two or more parties to a cross-border dispute attempt by themselves, on a voluntary basis, to reach an amicable agreement on the settlement of their dispute with the assistance of a mediator. It should apply in civil and commercial matters. However, it should not apply to rights and obligations on which the parties are not free to decide themselves under the relevant applicable law. Such rights and obligations are particularly frequent in family law and employment law.
- (11) This Directive should not apply to pre-contractual negotiations or to processes of an adjudicatory nature such as certain judicial conciliation schemes, consumer complaint schemes, arbitration and expert determination or to processes administered by persons or bodies issuing a formal recommendation, whether or not it be legally binding as to the resolution of the dispute.
- (12) This Directive should apply to cases where a court refers parties to mediation or in which national law prescribes mediation. Furthermore, in so far as a judge may act as a mediator under national law, this Directive should also apply to mediation conducted by a judge who is not responsible for any judicial proceedings relating to the matter or matters in dispute. This Directive should not, however, extend to attempts made by the court or judge seized to settle a dispute in the context of judicial proceedings concerning the dispute in question or to cases in which the court or judge seized requests assistance or advice from a competent person.
- (13) The mediation provided for in this Directive should be a voluntary process in the sense that the parties are themselves in charge of the process and may organise it as they wish and terminate it at any time. However, it should be possible under national law for the courts to set time-limits for a mediation process. Moreover, the courts should be able to draw the parties' attention to the possibility of mediation whenever this is appropriate.
- (14) Nothing in this Directive should prejudice national legislation making the use of mediation compulsory or subject to incentives or sanctions provided that such legislation does not prevent parties from exercising their right of access to the judicial system. Nor should anything in this Directive prejudice existing self-regulating mediation systems in so far as these deal with aspects which are not covered by this Directive.
- (15) In order to provide legal certainty, this Directive should indicate which date should be relevant for determining whether or not a dispute which the parties attempt to settle through mediation is a cross-border dispute. In the absence of a written agreement, the parties should be deemed to agree to use mediation at the point in time when they take specific action to start the mediation process.
- (16) To ensure the necessary mutual trust with respect to confidentiality, effect on limitation and prescription periods, and recognition and enforcement of agreements resulting from mediation, Member States should encourage, by any means they consider appropriate, the training of mediators and the introduction of effective quality control mechanisms concerning the provision of mediation services.
- (17) Member States should define such mechanisms, which may include having recourse to market-based solutions, and should not be required to provide any funding in that respect. The mechanisms should aim at preserving the flexibility of the mediation process and the autonomy of the parties, and at ensuring that mediation is conducted in an effective, impartial and competent way. Mediators should be made aware of the existence of the European Code of Conduct for Mediators which should also be made available to the general public on the Internet.
- (18) In the field of consumer protection, the Commission has adopted a Recommendation⁽¹⁾ establishing minimum quality criteria which out-of-court bodies involved in the consensual resolution of consumer disputes should offer to their users. Any mediators or organisations coming within the scope of that Recommendation should be encouraged to respect its principles. In order to facilitate the dissemination of information concerning such bodies, the Commission should set up a database of out-of-court schemes which Member States consider as respecting the principles of that Recommendation.
- (19) Mediation should not be regarded as a poorer alternative to judicial proceedings in the sense that compliance with agreements resulting from mediation would depend on the good will of the parties. Member States should therefore ensure that the parties to a written agreement resulting from mediation can have the content of their agreement made enforceable. It should only be possible for a Member State to refuse to make an agreement enforceable if the content is contrary to its law, including its private international law, or if its law does not provide for the enforceability of the content of the specific agreement. This could be the case if the obligation specified in the agreement was by its nature unenforceable.

⁽¹⁾ Commission Recommendation 2001/310/EC of 4 April 2001 on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes (OJ L 109, 19.4.2001, p. 56).

- (20) The content of an agreement resulting from mediation which has been made enforceable in a Member State should be recognised and declared enforceable in the other Member States in accordance with applicable Community or national law. This could, for example, be on the basis of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ⁽¹⁾ or Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility ⁽²⁾.
- (21) Regulation (EC) No 2201/2003 specifically provides that, in order to be enforceable in another Member State, agreements between the parties have to be enforceable in the Member State in which they were concluded. Consequently, if the content of an agreement resulting from mediation in a family law matter is not enforceable in the Member State where the agreement was concluded and where the request for enforceability is made, this Directive should not encourage the parties to circumvent the law of that Member State by having their agreement made enforceable in another Member State.
- (22) This Directive should not affect the rules in the Member States concerning enforcement of agreements resulting from mediation.
- (23) Confidentiality in the mediation process is important and this Directive should therefore provide for a minimum degree of compatibility of civil procedural rules with regard to how to protect the confidentiality of mediation in any subsequent civil and commercial judicial proceedings or arbitration.
- (24) In order to encourage the parties to use mediation, Member States should ensure that their rules on limitation and prescription periods do not prevent the parties from going to court or to arbitration if their mediation attempt fails. Member States should make sure that this result is achieved even though this Directive does not harmonise national rules on limitation and prescription periods. Provisions on limitation and prescription periods in international agreements as implemented in the Member States, for instance in the area of transport law, should not be affected by this Directive.
- (25) Member States should encourage the provision of information to the general public on how to contact mediators and organisations providing mediation services. They should also encourage legal practitioners to inform their clients of the possibility of mediation.
- (26) In accordance with point 34 of the Interinstitutional agreement on better law-making ⁽³⁾, Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.
- (27) This Directive seeks to promote the fundamental rights, and takes into account the principles, recognised in particular by the Charter of Fundamental Rights of the European Union.
- (28) Since the objective of this Directive cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the action, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (29) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom and Ireland have given notice of their wish to take part in the adoption and application of this Directive.
- (30) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark does not take part in the adoption of this Directive and is not bound by it or subject to its application.
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- ⁽¹⁾ OJ L 12, 16.1.2001, p. 1. Regulation as last amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).
- ⁽²⁾ OJ L 338, 23.12.2003, p. 1. Regulation as amended by Regulation (EC) No 2116/2004 (OJ L 367, 14.12.2004, p. 1).
- ⁽³⁾ OJ C 321, 31.12.2003, p. 1.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Objective and scope

1. The objective of this Directive is to facilitate access to alternative dispute resolution and to promote the amicable settlement of disputes by encouraging the use of mediation and by ensuring a balanced relationship between mediation and judicial proceedings.

2. This Directive shall apply, in cross-border disputes, to civil and commercial matters except as regards rights and obligations which are not at the parties' disposal under the relevant applicable law. It shall not extend, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority (*acta iure imperii*).

3. In this Directive, the term 'Member State' shall mean Member States with the exception of Denmark.

Article 2

Cross-border disputes

1. For the purposes of this Directive a cross-border dispute shall be one in which at least one of the parties is domiciled or habitually resident in a Member State other than that of any other party on the date on which:

- (a) the parties agree to use mediation after the dispute has arisen;
- (b) mediation is ordered by a court;
- (c) an obligation to use mediation arises under national law; or
- (d) for the purposes of Article 5 an invitation is made to the parties.

2. Notwithstanding paragraph 1, for the purposes of Articles 7 and 8 a cross-border dispute shall also be one in which judicial proceedings or arbitration following mediation between the parties are initiated in a Member State other than that in which the parties were domiciled or habitually resident on the date referred to in paragraph 1(a), (b) or (c).

3. For the purposes of paragraphs 1 and 2, domicile shall be determined in accordance with Articles 59 and 60 of Regulation (EC) No 44/2001.

Article 3

Definitions

For the purposes of this Directive the following definitions shall apply:

- (a) 'Mediation' means a structured process, however named or referred to, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a mediator. This process may be initiated by the parties or suggested or ordered by a court or prescribed by the law of a Member State.

It includes mediation conducted by a judge who is not responsible for any judicial proceedings concerning the dispute in question. It excludes attempts made by the court or the judge seized to settle a dispute in the course of judicial proceedings concerning the dispute in question.

- (b) 'Mediator' means any third person who is asked to conduct a mediation in an effective, impartial and competent way, regardless of the denomination or profession of that third person in the Member State concerned and of the way in which the third person has been appointed or requested to conduct the mediation.

Article 4

Ensuring the quality of mediation

1. Member States shall encourage, by any means which they consider appropriate, the development of, and adherence to, voluntary codes of conduct by mediators and organisations providing mediation services, as well as other effective quality control mechanisms concerning the provision of mediation services.

2. Member States shall encourage the initial and further training of mediators in order to ensure that the mediation is conducted in an effective, impartial and competent way in relation to the parties.

Article 5

Recourse to mediation

1. A court before which an action is brought may, when appropriate and having regard to all the circumstances of the case, invite the parties to use mediation in order to settle the dispute. The court may also invite the parties to attend an information session on the use of mediation if such sessions are held and are easily available.

2. This Directive is without prejudice to national legislation making the use of mediation compulsory or subject to incentives or sanctions, whether before or after judicial proceedings have started, provided that such legislation does not prevent the parties from exercising their right of access to the judicial system.

Article 6

Enforceability of agreements resulting from mediation

1. Member States shall ensure that it is possible for the parties, or for one of them with the explicit consent of the others, to request that the content of a written agreement resulting from mediation be made enforceable. The content of such an agreement shall be made enforceable unless, in the case in question, either the content of that agreement is contrary to the law of the Member State where the request is made or the law of that Member State does not provide for its enforceability.

2. The content of the agreement may be made enforceable by a court or other competent authority in a judgment or decision or in an authentic instrument in accordance with the law of the Member State where the request is made.

3. Member States shall inform the Commission of the courts or other authorities competent to receive requests in accordance with paragraphs 1 and 2.

4. Nothing in this Article shall affect the rules applicable to the recognition and enforcement in another Member State of an agreement made enforceable in accordance with paragraph 1.

Article 7

Confidentiality of mediation

1. Given that mediation is intended to take place in a manner which respects confidentiality, Member States shall ensure that, unless the parties agree otherwise, neither mediators nor those involved in the administration of the mediation process shall be compelled to give evidence in civil and commercial judicial proceedings or arbitration regarding information arising out of or in connection with a mediation process, except:

(a) where this is necessary for overriding considerations of public policy of the Member State concerned, in particular when required to ensure the protection of the best interests of children or to prevent harm to the physical or psychological integrity of a person; or

(b) where disclosure of the content of the agreement resulting from mediation is necessary in order to implement or enforce that agreement.

2. Nothing in paragraph 1 shall preclude Member States from enacting stricter measures to protect the confidentiality of mediation.

Article 8

Effect of mediation on limitation and prescription periods

1. Member States shall ensure that parties who choose mediation in an attempt to settle a dispute are not subsequently prevented from initiating judicial proceedings or arbitration in relation to that dispute by the expiry of limitation or prescription periods during the mediation process.

2. Paragraph 1 shall be without prejudice to provisions on limitation or prescription periods in international agreements to which Member States are party.

Article 9

Information for the general public

Member States shall encourage, by any means which they consider appropriate, the availability to the general public, in particular on the Internet, of information on how to contact mediators and organisations providing mediation services.

Article 10

Information on competent courts and authorities

The Commission shall make publicly available, by any appropriate means, information on the competent courts or authorities communicated by the Member States pursuant to Article 6(3).

Article 11

Review

Not later than 21 May 2016, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Directive. The report shall consider the development of mediation throughout the European Union and the impact of this Directive in the Member States. If necessary, the report shall be accompanied by proposals to adapt this Directive.

*Article 12***Transposition**

1. Member States shall bring into force the laws, regulations, and administrative provisions necessary to comply with this Directive before 21 May 2011, with the exception of Article 10, for which the date of compliance shall be 21 November 2010 at the latest. They shall forthwith inform the Commission thereof.

When they are adopted by Member States, these measures shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 13***Entry into force**

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

*Article 14***Addressees**

This Directive is addressed to the Member States.

Done at Strasbourg, 21 May 2008.

For the European Parliament

The President

H.-G. PÖTTERING

For the Council

The President

J. LENARČIČ

EN

EN

EN

EUROPEAN CODE OF CONDUCT FOR MEDIATORS

This code of conduct sets out a number of principles to which individual mediators may voluntarily decide to commit themselves, under their own responsibility. It may be used by mediators involved in all kinds of mediation in civil and commercial matters.

Organisations providing mediation services may also make such a commitment by asking mediators acting under the auspices of their organisation to respect the code of conduct. Organisations may make available information on the measures, such as training, evaluation and monitoring, they are taking to support the respect of the code by individual mediators.

For the purposes of the code of conduct, mediation means any structured process, however named or referred to, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a third person – hereinafter “the mediator”.

Adherence to the code of conduct is without prejudice to national legislation or rules regulating individual professions.

Organisations providing mediation services may wish to develop more detailed codes adapted to their specific context or the types of mediation services they offer, as well as to specific areas such as family mediation or consumer mediation.

European Code of Conduct for Mediators

1. COMPETENCE, APPOINTMENT AND FEES OF MEDIATORS AND PROMOTION OF THEIR SERVICES

1.1. Competence

Mediators must be competent and knowledgeable in the process of mediation. Relevant factors include proper training and continuous updating of their education and practice in mediation skills, having regard to any relevant standards or accreditation schemes.

1.2. Appointment

Mediators must confer with the parties regarding suitable dates on which the mediation may take place. Mediators must verify that they have the appropriate background and competence to conduct mediation in a given case before accepting the appointment. Upon request, they must disclose information concerning their background and experience to the parties.

1.3. Fees

Where not already provided, mediators must always supply the parties with complete information as to the mode of remuneration which they intend to apply. They must not agree to act in a mediation before the principles of their remuneration have been accepted by all parties concerned.

1.4. Promotion of mediators' services

Mediators may promote their practice provided that they do so in a professional, truthful and dignified way.

2. INDEPENDENCE AND IMPARTIALITY

2.1. Independence

If there are any circumstances that may, or may be seen to, affect a mediator's independence or give rise to a conflict of interests, the mediator must disclose those circumstances to the parties before acting or continuing to act.

Such circumstances include:

- any personal or business relationship with one or more of the parties;
- any financial or other interest, direct or indirect, in the outcome of the mediation;
- the mediator, or a member of his firm, having acted in any capacity other than mediator for one or more of the parties.

In such cases the mediator may only agree to act or continue to act if he is certain of being able to carry out the mediation in full independence in order to ensure complete impartiality and the parties explicitly consent.

The duty to disclose is a continuing obligation throughout the process of mediation.

2.2. Impartiality

Mediators must at all times act, and endeavour to be seen to act, with impartiality towards the parties and be committed to serve all parties equally with respect to the process of mediation.

European Code of Conduct for Mediators

3. THE MEDIATION AGREEMENT, PROCESS AND SETTLEMENT

3.1. Procedure

The mediator must ensure that the parties to the mediation understand the characteristics of the mediation process and the role of the mediator and the parties in it.

The mediator must in particular ensure that prior to commencement of the mediation the parties have understood and expressly agreed the terms and conditions of the mediation agreement including any applicable provisions relating to obligations of confidentiality on the mediator and on the parties.

The mediation agreement may, upon request of the parties, be drawn up in writing.

The mediator must conduct the proceedings in an appropriate manner, taking into account the circumstances of the case, including possible imbalances of power and any wishes the parties may express, the rule of law and the need for a prompt settlement of the dispute. The parties may agree with the mediator on the manner in which the mediation is to be conducted, by reference to a set of rules or otherwise.

The mediator may hear the parties separately, if he deems it useful.

3.2. Fairness of the process

The mediator must ensure that all parties have adequate opportunities to be involved in the process.

The mediator must inform the parties, and may terminate the mediation, if:

- a settlement is being reached that for the mediator appears unenforceable or illegal, having regard to the circumstances of the case and the competence of the mediator for making such an assessment, or
- the mediator considers that continuing the mediation is unlikely to result in a settlement.

3.3. The end of the process

The mediator must take all appropriate measures to ensure that any agreement is reached by all parties through knowing and informed consent, and that all parties understand the terms of the agreement.

The parties may withdraw from the mediation at any time without giving any justification.

The mediator must, upon request of the parties and within the limits of his competence, inform the parties as to how they may formalise the agreement and the possibilities for making the agreement enforceable.

4. CONFIDENTIALITY

The mediator must keep confidential all information arising out of or in connection with the mediation, including the fact that the mediation is to take place or has taken place, unless compelled by law or grounds of public policy to disclose it. Any information disclosed in confidence to mediators by one of the parties must not be disclosed to the other parties without permission, unless compelled by law.



TEXTS ADOPTED

P8_TA(2017)0321

Implementation of the Mediation Directive

European Parliament resolution of 12 September 2017 on the implementation of Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (the ‘Mediation Directive’) (2016/2066(INI))

The European Parliament,

- having regard to Directive 2008/52/EC of the European Parliament and the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters¹ (the ‘Mediation Directive’),
- having regard to the Commission report to the European Parliament, the Council and the European Economic and Social Committee on the application of Directive 2008/52/EC of the European Parliament and of the Council on certain aspects of mediation in civil and commercial matters (COM(2016)0542),
- having regard to the compilation of in-depth analyses by its Directorate-General for Internal Policies entitled ‘The implementation of the Mediation Directive – 29 November 2016’²,
- having regard to the Commission study entitled ‘Study for an evaluation and implementation of Directive 2008/52/EC – the “Mediation Directive”’ of 2014³,
- having regard to the study by its Directorate-General for Internal Policies entitled ‘Rebooting the Mediation Directive: Assessing the limited impact of its implementation and proposing measures to increase the number of mediations in the EU’⁴,
- having regard to the European Implementation Assessment on the Mediation Directive by the Ex-Post Impact Assessment Unit of the European Parliamentary Research Service (EPRS)⁵,

¹ OJ L 136, 24.5.2008, p. 3.

² PE 571.395.

³ <http://bookshop.europa.eu/en/study-for-an-evaluation-and-implementation-of-directive-2008-52-ec-the-mediation-directive--pbDS0114825/>

⁴ PE 493.042.

⁵ PE 593.789.

- having regard to the study by its Directorate-General for Internal Policies entitled ‘Quantifying the cost of not using mediation – a data analysis’¹,
 - having regard to Articles 67 and 81(2)(g) of the Treaty on the Functioning of the European Union (TFEU),
 - having regard to Rule 52 of its Rules of Procedure as well as Article 1(1)(e) of, and Annex 3 to, the decision of the Conference of Presidents of 12 December 2002 on the procedure for granting authorisation to draw up own-initiative reports,
 - having regard to the report of the Committee on Legal Affairs (A8-0238/2017),
- A. whereas Directive 2008/52/EC has been an important milestone with regard to the introduction and use of mediation procedures in the European Union; whereas nevertheless its implementation has differed greatly among the Member States, depending on the prior existence or not of national mediation systems, with some Member States opting for a relatively literal implementation of its provisions, others for an in-depth revision of alternative ways to resolve disputes (such as Italy, for instance, which uses mediation at a rate six times higher than the rest of Europe), and others deeming their existing laws to be already in line with the Mediation Directive;
 - B. whereas most Member States have extended the scope of application of their national transposing measures to domestic cases too – with only three Member States having chosen to transpose the Directive with respect to cross-border cases only², – which has had a decisively positive impact on the laws of the Member States and the categories of disputes concerned;
 - C. whereas the difficulties which have emerged at the transposition stage of the directive largely reflect the differences in legal culture across the national legal systems; whereas priority should therefore be given to a change in the legal mind-set through the development of a mediation culture based on friendly dispute settlement – an issue that has repeatedly been raised by European networks of legal professionals since the inception of the Union directive and subsequently during its transposition by the Member States;
 - D. whereas the implementation of the Mediation Directive has provided EU added value by raising awareness among national legislators of the advantages of mediation and bringing about a degree of alignment with regard to procedural law and diverse practices in the Member States;
 - E. whereas mediation, as an alternative, voluntary and confidential out-of-court procedure, can be a useful tool for alleviating overloaded court systems in certain cases and subject to the necessary safeguards, since it can enable natural and legal persons to settle disputes out of court quickly and cheaply – bearing in mind that excessively long court proceedings violate the Charter of Fundamental Rights –, while ensuring better access to justice and contributing to economic growth;
 - F. whereas the objectives stated in Article 1 of the Mediation Directive aimed at encouraging the use of mediation and in particular at achieving a ‘balanced relationship between

¹ PE 453.180.

² See COM(2016)0542, p. 5.

mediation and judicial proceedings' have clearly not been achieved, as mediation is used in less than 1 % of the cases in court on average in the majority of Member States¹;

- G. whereas the Mediation Directive has not created a Union system for out-of-court dispute resolution in the strictest sense, with the exception of the introduction of specific provisions in the field of expiration of limitation and prescription periods in legal proceedings when mediation is attempted and in the field of confidentiality obligations for the mediators and their administrative staff;

Main conclusions

1. Welcomes the fact that in many Member States mediation systems have recently been subject to changes and revisions, and in others amendments to the applicable legislation are envisaged²;
2. Deplores the fact that only three Member States have chosen to transpose the directive with respect to cross-border cases only, and notes that certain difficulties exist in relation to the functioning of the national mediation systems in practice, mainly related to the adversarial tradition and the lack of a mediation culture in the Member States, the low level of awareness of mediation in the majority of Member States, insufficient knowledge of how to deal with cross-border cases, and the functioning of the quality control mechanisms for mediators³;
3. Stresses that all Member States make provision for the possibility for courts to invite the parties to use mediation or at least to attend information sessions on mediation; notes that, in some Member States, participation in such information sessions is obligatory, on a judge's initiative⁴, or in relation to specific disputes prescribed by law, such as family matters⁵; indicates, likewise, that some Member States require lawyers to inform their clients of the possibility of using mediation, or that applications to the court confirm whether mediation has been attempted or whether there are any reasons which would stand in the way of such an attempt; notes however that Article 8 of the Mediation Directive ensures that parties that choose mediation in an attempt to settle a dispute are not subsequently prevented from having their day in court as a result of the time spent in mediation; highlights that no particular issue seems to have been raised by Member States in relation to this point;
4. Notes also that many Member States provide financial incentives for parties to use mediation, either in the form of cost reductions, legal aid, or sanctions for unjustified refusal to consider mediation; observes that the results achieved in these countries prove that mediation can provide a cost-effective and quick extra-judicial resolution of disputes through processes tailored to the needs of the parties;
5. Considers that the adoption of codes of conduct constitutes an important tool for ensuring the quality of mediation; observes in this regard that the European Code of Conduct for Mediators is either directly used by stakeholders or has inspired national or sectoral codes;

¹ PE 571.395, p. 25.

² Croatia, Estonia, Greece, Hungary, Ireland, Italy, Lithuania, the Netherlands, Poland, Portugal, Slovakia and Spain.

³ See COM(2016)0542, p. 4.

⁴ For example in the Czech Republic.

⁵ For example in Lithuania, Luxembourg, England and Wales.

observes also that most Member States have obligatory accreditation procedures for mediators and/or run registries of mediators;

6. Regrets the difficulty of obtaining comprehensive statistical data on mediation, including the number of mediated cases, the average length and success rates of mediation processes; notes that without a reliable database it is very difficult to further promote mediation and increase public trust in its effectiveness; underlines on the other hand the increasing role of the European Judicial Network in civil and commercial matters in improving national data collection on the application of the Mediation Directive;
7. Welcomes the particular importance of mediation in the field of family law (especially in proceedings concerning child custody, access rights and child abduction cases), where it can create a constructive atmosphere for discussions and ensure fair dealings between parents; notes, further, that amicable solutions are likely to be long-lasting and in the child's best interests as they can address, in addition to the child's primary residence, visitation arrangements or agreements concerning the child's maintenance; highlights in this context the important role played by the European Judicial Network in civil and commercial matters in drawing up recommendations aimed at enhancing the use of family mediation in a cross-border context, in particular in child abduction cases;
8. Stresses the significance of the development and maintenance of a separate section on the European e-Justice Portal dedicated to cross-border mediation in family matters and providing information on national mediation systems;
9. Welcomes the Commission's dedication therefore to co-financing various projects aimed at the promotion of mediation and training for judges and practitioners in the Member States;
10. Stresses that, despite the voluntary nature of mediation, further steps must be taken to ensure the enforceability of mediated agreements in a quick and affordable manner, with full respect for fundamental rights, as well as Union and national law; recalls in that respect that the domestic enforceability of an agreement reached by the parties in a Member State is, as a general rule, subject to homologation by a public authority, which gives rise to additional costs, is time consuming for the parties to the settlement, and could therefore negatively affect the circulation of foreign mediation settlements, especially in cases of small disputes;

Recommendations

11. Calls on the Member States to step up their efforts to encourage the use of mediation in civil and commercial disputes, including through appropriate information campaigns providing citizens and legal persons with appropriate, comprehensive information regarding the thrust of the procedure and its advantages in terms of economising time and money and to ensure improved cooperation between legal professionals for that purpose; stresses in this context the need for an exchange of best practices in the various national jurisdictions, supported by appropriate measures at Union level, in order to boost awareness of how useful mediation is;
12. Calls on the Commission to assess the need to develop EU-wide quality standards for the provision of mediation services, especially in the form of minimum standards ensuring consistency, while taking into account the fundamental right of access to justice as well as

local differences in mediation cultures, as a means to further promote the use of mediation;

13. Calls on the Commission also to assess the need for Member States to create and maintain national registers of mediated proceedings, which could be a source of information for the Commission but also used by national mediators to benefit from best practices across Europe; stresses that any such register must be established in full compliance with the General Data Protection Regulation (Regulation (EU) 2016/679)¹;
14. Requests that the Commission undertake a detailed study on the obstacles to the free circulation of foreign mediation agreements in the Union and on various options to promote the use of mediation as a sound, affordable and effective way to solve conflicts in internal and cross-border disputes in the Union, taking into account the rule of law and ongoing international developments in this field;
15. Calls on the Commission, in its review of the rules, to find solutions in order to extend effectively the scope of mediation also to other civil or administrative matters, where possible; stresses, however, that special attention must be paid to the implications that mediation could have on certain social issues, such as family law; recommends in this context that the Commission and the Member States apply and implement appropriate safeguards in mediation processes to limit the risks for weaker parties and to protect them against any possible abuse of process or position by the more powerful parties, and to provide relevant comprehensive statistical data; underlines also the importance of ensuring that fair criteria are complied with in terms of costs, especially in order to protect the interests of disadvantaged groups; notes however that mediation may lose its attractiveness and added value if excessively stringent standards for the parties are introduced;

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16. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States.

¹ OJ L 119, 4.5.2016, p. 1.

DIRECTIVES

DIRECTIVE 2013/11/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 21 May 2013

on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC

(Directive on consumer ADR)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

(1) Article 169(1) and point (a) of Article 169(2) of the Treaty on the Functioning of the European Union (TFEU) provide that the Union is to contribute to the attainment of a high level of consumer protection through measures adopted pursuant to Article 114 TFEU. Article 38 of the Charter of Fundamental Rights of the European Union provides that Union policies are to ensure a high level of consumer protection.

(2) In accordance with Article 26(2) TFEU, the internal market is to comprise an area without internal frontiers in which the free movement of goods and services is ensured. The internal market should provide consumers with added value in the form of better quality, greater variety, reasonable prices and high safety standards for goods and services, which should promote a high level of consumer protection.

(3) Fragmentation of the internal market is detrimental to competitiveness, growth and job creation within the Union. Eliminating direct and indirect obstacles to the proper functioning of the internal market and improving citizens' trust is essential for the completion of the internal market.

(4) Ensuring access to simple, efficient, fast and low-cost ways of resolving domestic and cross-border disputes which arise from sales or service contracts should benefit consumers and therefore boost their confidence in the market. That access should apply to online as well as to offline transactions, and is particularly important when consumers shop across borders.

(5) Alternative dispute resolution (ADR) offers a simple, fast and low-cost out-of-court solution to disputes between consumers and traders. However, ADR is not yet sufficiently and consistently developed across the Union. It is regrettable that, despite Commission Recommendations 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes ⁽³⁾ and 2001/310/EC of 4 April 2001 on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes ⁽⁴⁾, ADR has not been correctly established and is not running satisfactorily in all geographical areas or business sectors in the Union. Consumers and traders are still not aware of the existing out-of-court redress mechanisms, with only a small percentage of citizens knowing how to file a complaint with an ADR entity. Where ADR procedures are available, their quality levels vary considerably in the Member States and cross-border disputes are often not handled effectively by ADR entities.

(6) The disparities in ADR coverage, quality and awareness in Member States constitute a barrier to the internal market and are among the reasons why many consumers abstain from shopping across borders and why they lack confidence that potential disputes with traders can be resolved in an easy, fast and inexpensive way. For the same reasons, traders might abstain from

⁽¹⁾ OJ C 181, 21.6.2012, p. 93.

⁽²⁾ Position of the European Parliament of 12 March 2013 (not yet published in the Official Journal) and decision of the Council of 22 April 2013.

⁽³⁾ OJ L 115, 17.4.1998, p. 31.

⁽⁴⁾ OJ L 109, 19.4.2001, p. 56.

selling to consumers in other Member States where there is no sufficient access to high-quality ADR procedures. Furthermore, traders established in a Member State where high-quality ADR procedures are not sufficiently available are put at a competitive disadvantage with regard to traders that have access to such procedures and can thus resolve consumer disputes faster and more cheaply.

- (7) In order for consumers to exploit fully the potential of the internal market, ADR should be available for all types of domestic and cross-border disputes covered by this Directive, ADR procedures should comply with consistent quality requirements that apply throughout the Union, and consumers and traders should be aware of the existence of such procedures. Due to increased cross-border trade and movement of persons, it is also important that ADR entities handle cross-border disputes effectively.
- (8) As advocated by the European Parliament in its resolutions of 25 October 2011 on alternative dispute resolution in civil, commercial and family matters and of 20 May 2010 on delivering a single market to consumers and citizens, any holistic approach to the single market which delivers results for its citizens should as a priority develop simple, affordable, expedient and accessible system of redress.
- (9) In its Communication of 13 April 2011 entitled 'Single Market Act — Twelve levers to boost growth and strengthen confidence — "Working together to create new growth"', the Commission identified legislation on ADR which includes an electronic commerce (e-commerce) dimension, as one of the twelve levers to boost growth, strengthen confidence and make progress towards completing the Single Market.
- (10) In its conclusions of 24-25 March and 23 October 2011, the European Council invited the European Parliament and the Council to adopt, by the end of 2012, a first set of priority measures to bring a new impetus to the Single Market. Moreover, in its Conclusions of 30 May 2011 on the Priorities for relaunching the Single Market, the Council of the European Union highlighted the importance of e-commerce and agreed that consumer ADR schemes can offer low-cost, simple and quick redress for both consumers and traders. The successful implementation of those schemes requires sustained political commitment and support from all actors, without compromising the affordability, transparency, flexibility, speed and quality of decision-making by the ADR entities falling within the scope of this Directive.
- (11) Given the increasing importance of online commerce and in particular cross-border trade as a pillar of Union economic activity, a properly functioning ADR infrastructure for consumer disputes and a properly integrated

online dispute resolution (ODR) framework for consumer disputes arising from online transactions are necessary in order to achieve the Single Market Act's aim of boosting citizens' confidence in the internal market.

- (12) This Directive and Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes⁽¹⁾ are two interlinked and complementary legislative instruments. Regulation (EU) No 524/2013 provides for the establishment of an ODR platform which offers consumers and traders a single point of entry for the out-of-court resolution of online disputes, through ADR entities which are linked to the platform and offer ADR through quality ADR procedures. The availability of quality ADR entities across the Union is thus a precondition for the proper functioning of the ODR platform.
- (13) This Directive should not apply to non-economic services of general interest. Non-economic services are services which are not performed for economic consideration. As a result, non-economic services of general interest performed by the State or on behalf of the State, without remuneration, should not be covered by this Directive irrespective of the legal form through which those services are provided.
- (14) This Directive should not apply to health care services as defined in point (a) of Article 3 of Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare⁽²⁾.
- (15) The development within the Union of properly functioning ADR is necessary to strengthen consumers' confidence in the internal market, including in the area of online commerce, and to fulfil the potential for and opportunities of cross-border and online trade. Such development should build on existing ADR procedures in the Member States and respect their legal traditions. Both existing and newly established properly functioning dispute resolution entities that comply with the quality requirements set out in this Directive should be considered as 'ADR entities' within the meaning of this Directive. The dissemination of ADR can also prove to be important in those Member States in which there is a substantial backlog of cases pending before the courts, preventing Union citizens from exercising their right to a fair trial within a reasonable time.
- (16) This Directive should apply to disputes between consumers and traders concerning contractual obligations stemming from sales or services contracts, both online and offline, in all economic sectors, other than the

⁽¹⁾ See page 1 of this Official Journal.

⁽²⁾ OJ L 88, 4.4.2011, p. 45.

- exempted sectors. This should include disputes arising from the sale or provision of digital content for remuneration. This Directive should apply to complaints submitted by consumers against traders. It should not apply to complaints submitted by traders against consumers or to disputes between traders. However, it should not prevent Member States from adopting or maintaining in force provisions on procedures for the out-of-court resolution of such disputes.
- (17) Member States should be permitted to maintain or introduce national provisions with regard to procedures not covered by this Directive, such as internal complaint handling procedures operated by the trader. Such internal complaint handling procedures can constitute an effective means for resolving consumer disputes at an early stage.
- (18) The definition of ‘consumer’ should cover natural persons who are acting outside their trade, business, craft or profession. However, if the contract is concluded for purposes partly within and partly outside the person’s trade (dual purpose contracts) and the trade purpose is so limited as not to be predominant in the overall context of the supply, that person should also be considered as a consumer.
- (19) Some existing Union legal acts already contain provisions concerning ADR. In order to ensure legal certainty, it should be provided that, in the event of conflict, this Directive is to prevail, except where it explicitly provides otherwise. In particular, this Directive should be without prejudice to Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters⁽¹⁾, which already sets out a framework for systems of mediation at Union level for cross-border disputes, without preventing the application of that Directive to internal mediation systems. This Directive is intended to apply horizontally to all types of ADR procedures, including to ADR procedures covered by Directive 2008/52/EC.
- (20) ADR entities are highly diverse across the Union but also within the Member States. This Directive should cover any entity that is established on a durable basis, offers the resolution of a dispute between a consumer and a trader through an ADR procedure and is listed in accordance with this Directive. This Directive may also cover, if Member States so decide, dispute resolution entities which impose solutions which are binding on the parties. However, an out-of-court procedure which is created on an ad hoc basis for a single dispute between a consumer and a trader should not be considered as an ADR procedure.
- (21) Also ADR procedures are highly diverse across the Union and within Member States. They can take the form of procedures where the ADR entity brings the parties together with the aim of facilitating an amicable solution, or procedures where the ADR entity proposes a solution or procedures where the ADR entity imposes a solution. They can also take the form of a combination of two or more such procedures. This Directive should be without prejudice to the form which ADR procedures take in the Member States.
- (22) Procedures before dispute resolution entities where the natural persons in charge of dispute resolution are employed or receive any form of remuneration exclusively from the trader are likely to be exposed to a conflict of interest. Therefore, those procedures should, in principle, be excluded from the scope of this Directive, unless a Member State decides that such procedures can be recognised as ADR procedures under this Directive and provided that those entities are in complete conformity with the specific requirements on independence and impartiality laid down in this Directive. ADR entities offering dispute resolution through such procedures should be subject to regular evaluation of their compliance with the quality requirements set out in this Directive, including the specific additional requirements ensuring their independence.
- (23) This Directive should not apply to procedures before consumer-complaint handling systems operated by the trader, nor to direct negotiations between the parties. Furthermore, it should not apply to attempts made by a judge to settle a dispute in the course of a judicial proceeding concerning that dispute.
- (24) Member States should ensure that disputes covered by this Directive can be submitted to an ADR entity which complies with the requirements set out in this Directive and is listed in accordance with it. Member States should have the possibility of fulfilling this obligation by building on existing properly functioning ADR entities and adjusting their scope of application, if needed, or by providing for the creation of new ADR entities. This Directive should not preclude the functioning of existing dispute resolution entities operating within the framework of national consumer protection authorities of Member States where State officials are in charge of dispute resolution. State officials should be regarded as representatives of both consumers’ and traders’ interests. This Directive should not oblige Member States to create a specific ADR entity in each retail sector. When necessary, in order to ensure full sectoral and geographical coverage by and access to ADR, Member States should have the possibility to provide for the creation of a residual ADR entity that deals with disputes for the resolution of which no specific ADR entity is competent. Residual ADR entities are intended to be a safeguard for consumers and traders by ensuring that there are no gaps in access to an ADR entity.

⁽¹⁾ OJ L 136, 24.5.2008, p. 3.

- (25) This Directive should not prevent Member States from maintaining or introducing legislation on procedures for out-of-court resolution of consumer contractual disputes which is in compliance with the requirements set out in this Directive. Furthermore, in order to ensure that ADR entities can operate effectively, those entities should have the possibility of maintaining or introducing, in accordance with the laws of the Member State in which they are established, procedural rules that allow them to refuse to deal with disputes in specific circumstances, for example where a dispute is too complex and would therefore be better resolved in court. However, procedural rules allowing ADR entities to refuse to deal with a dispute should not impair significantly consumers' access to ADR procedures, including in the case of cross-border disputes. Thus, when providing for a monetary threshold, Member States should always take into account that the real value of a dispute may vary among Member States and, consequently, setting a disproportionately high threshold in one Member State could impair access to ADR procedures for consumers from other Member States. Member States should not be required to ensure that the consumer can submit his complaint to another ADR entity, where an ADR entity to which the complaint was first submitted has refused to deal with it because of its procedural rules. In such cases Member States should be deemed to have fulfilled their obligation to ensure full coverage of ADR entities.
- (26) This Directive should allow traders established in a Member State to be covered by an ADR entity which is established in another Member State. In order to improve the coverage of and consumer access to ADR across the Union, Member States should have the possibility of deciding to rely on ADR entities established in another Member State or regional, transnational or pan-European ADR entities, where traders from different Member States are covered by the same ADR entity. Recourse to ADR entities established in another Member State or to transnational or pan-European ADR entities should, however, be without prejudice to Member States' responsibility to ensure full coverage by and access to ADR entities.
- (27) This Directive should be without prejudice to Member States maintaining or introducing ADR procedures dealing jointly with identical or similar disputes between a trader and several consumers. Comprehensive impact assessments should be carried out on collective out-of-court settlements before such settlements are proposed at Union level. The existence of an effective system for collective claims and easy recourse to ADR should be complementary and they should not be mutually exclusive procedures.
- (28) The processing of information relating to disputes covered by this Directive should comply with the rules on the protection of personal data laid down in the laws, regulations and administrative provisions of the Member States adopted pursuant to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ⁽¹⁾.
- (29) Confidentiality and privacy should be respected at all times during the ADR procedure. Member States should be encouraged to protect the confidentiality of ADR procedures in any subsequent civil or commercial judicial proceedings or arbitration.
- (30) Member States should nevertheless ensure that ADR entities make publicly available any systematic or significant problems that occur frequently and lead to disputes between consumers and traders. The information communicated in this regard could be accompanied by recommendations as to how such problems can be avoided or resolved in future, in order to raise traders' standards and to facilitate the exchange of information and best practices.
- (31) Member States should ensure that ADR entities resolve disputes in a manner that is fair, practical and proportionate to both the consumer and the trader, on the basis of an objective assessment of the circumstances in which the complaint is made and with due regard to the rights of the parties.
- (32) The independence and integrity of ADR entities is crucial in order to gain Union citizens' trust that ADR mechanisms will offer them a fair and independent outcome. The natural person or collegial body in charge of ADR should be independent of all those who might have an interest in the outcome and should have no conflict of interest which could impede him or it from reaching a decision in a fair, impartial and independent manner.
- (33) The natural persons in charge of ADR should only be considered impartial if they cannot be subject to pressure that potentially influences their attitude towards the dispute. In order to ensure the independence of their actions, those persons should also be appointed for a sufficient duration, and should not be subject to any instructions from either party or their representative.
- (34) In order to ensure the absence of any conflict of interest, natural persons in charge of ADR should disclose any circumstances that might affect their independence and impartiality or give rise to a conflict of interest with either party to the dispute they are asked to resolve. This could be any financial interest, direct or indirect, in the outcome of the ADR procedure or any personal or business relationship with one or more of the parties during the three years prior to assuming the post, including any capacity other than for the purposes of ADR in which the person concerned has acted for one or more of the parties, for a professional organisation or a business association of which one of the parties is a member or for any other member thereof.

⁽¹⁾ OJ L 281, 23.11.1995, p. 31.

- (35) There is a particular need to ensure the absence of such pressure where the natural persons in charge of ADR are employed or receive any form of remuneration from the trader. Therefore, specific requirements should be provided for in the event that Member States decide to allow dispute resolution procedures in such cases to qualify as ADR procedures under this Directive. Where natural persons in charge of ADR are employed or receive any form of remuneration exclusively from a professional organisation or a business association of which the trader is a member, they should have at their disposal a separate and dedicated budget sufficient to fulfil their tasks.
- (36) It is essential for the success of ADR, in particular in order to ensure the necessary trust in ADR procedures, that the natural persons in charge of ADR possess the necessary expertise, including a general understanding of law. In particular, those persons should have sufficient general knowledge of legal matters in order to understand the legal implications of the dispute, without being obliged to be a qualified legal professional.
- (37) The applicability of certain quality principles to ADR procedures strengthens both consumers' and traders' confidence in such procedures. Such quality principles were first developed at Union level in Recommendations 98/257/EC and 2001/310/EC. By making some of the principles established in those Commission Recommendations binding, this Directive establishes a set of quality requirements which apply to all ADR procedures carried out by an ADR entity which has been notified to the Commission.
- (38) This Directive should establish quality requirements of ADR entities, which should ensure the same level of protection and rights for consumers in both domestic and cross-border disputes. This Directive should not prevent Member States from adopting or maintaining rules that go beyond what is provided for in this Directive.
- (39) ADR entities should be accessible and transparent. In order to ensure the transparency of ADR entities and of ADR procedures it is necessary that the parties receive the clear and accessible information they need in order to take an informed decision before engaging in an ADR procedure. The provision of such information to traders should not be required where their participation in ADR procedures is mandatory under national law.
- (40) A properly functioning ADR entity should conclude online and offline dispute resolution proceedings expeditiously within a timeframe of 90 calendar days starting on the date on which the ADR entity has received the complete complaint file including all relevant documentation pertaining to that complaint, and ending on the date on which the outcome of the ADR procedure is made available. The ADR entity which has received a complaint should notify the parties after receiving all the documents necessary to carry out the ADR procedure. In certain exceptional cases of a highly complex nature, including where one of the parties is unable, on justified grounds, to take part in the ADR procedure, ADR entities should be able to extend the timeframe for the purpose of undertaking an examination of the case in question. The parties should be informed of any such extension, and of the expected approximate length of time that will be needed for the conclusion of the dispute.
- (41) ADR procedures should preferably be free of charge for the consumer. In the event that costs are applied, the ADR procedure should be accessible, attractive and inexpensive for consumers. To that end, costs should not exceed a nominal fee.
- (42) ADR procedures should be fair so that the parties to a dispute are fully informed about their rights and the consequences of the choices they make in the context of an ADR procedure. ADR entities should inform consumers of their rights before they agree to or follow a proposed solution. Both parties should also be able to submit their information and evidence without being physically present.
- (43) An agreement between a consumer and a trader to submit complaints to an ADR entity should not be binding on the consumer if it was concluded before the dispute has materialised and if it has the effect of depriving the consumer of his right to bring an action before the courts for the settlement of the dispute. Furthermore, in ADR procedures which aim at resolving the dispute by imposing a solution, the solution imposed should be binding on the parties only if they were informed of its binding nature in advance and specifically accepted this. Specific acceptance by the trader should not be required if national rules provide that such solutions are binding on traders.
- (44) In ADR procedures which aim at resolving the dispute by imposing a solution on the consumer, in a situation where there is no conflict of laws, the solution imposed should not result in the consumer being deprived of the protection afforded to him by the provisions that cannot be derogated from by agreement by virtue of the law of the Member State where the consumer and the trader are habitually resident. In a situation involving a conflict of laws, where the law applicable to the sales or service contract is determined in accordance with Article 6(1) and (2) of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to

contractual obligations (Rome I) ⁽¹⁾, the solution imposed by the ADR entity should not result in the consumer being deprived of the protection afforded to him by the provisions that cannot be derogated from by agreement by virtue of the law of the Member State in which the consumer is habitually resident. In a situation involving a conflict of laws, where the law applicable to the sales or service contract is determined in accordance with Article 5(1) to (3) of the Rome Convention of 19 June 1980 on the law applicable to contractual obligations ⁽²⁾, the solution imposed by the ADR entity should not result in the consumer being deprived of the protection afforded to the consumer by the mandatory rules of the law of the Member State in which the consumer is habitually resident.

- (45) The right to an effective remedy and the right to a fair trial are fundamental rights laid down in Article 47 of the Charter of Fundamental Rights of the European Union. Therefore, ADR procedures should not be designed to replace court procedures and should not deprive consumers or traders of their rights to seek redress before the courts. This Directive should not prevent parties from exercising their right of access to the judicial system. In cases where a dispute could not be resolved through a given ADR procedure whose outcome is not binding, the parties should subsequently not be prevented from initiating judicial proceedings in relation to that dispute. Member States should be free to choose the appropriate means to achieve this objective. They should have the possibility to provide, *inter alia*, that limitation or prescription periods do not expire during an ADR procedure.
- (46) In order to function efficiently, ADR entities should have sufficient human, material and financial resources at their disposal. Member States should decide on an appropriate form of funding for ADR entities on their territories, without restricting the funding of entities that are already operational. This Directive should be without prejudice to the question of whether ADR entities are publicly or privately funded or funded through a combination of public and private funding. However, ADR entities should be encouraged to specifically consider private forms of funding and to utilise public funds only at Member States' discretion. This Directive should not affect the possibility for businesses or for professional organisations or business associations to fund ADR entities.
- (47) When a dispute arises it is necessary that consumers are able to identify quickly which ADR entities are competent to deal with their complaint and to know whether or not the trader concerned will participate in proceedings submitted to an ADR entity. Traders who commit to use ADR entities to resolve disputes with consumers should inform consumers of the address and website of the ADR entity or entities by which they are covered. That information should be provided

in a clear, comprehensible and easily accessible way on the trader's website, where one exists, and if applicable in the general terms and conditions of sales or service contracts between the trader and the consumer. Traders should have the possibility of including on their websites, and in the terms and conditions of the relevant contracts, any additional information on their internal complaint handling procedures or on any other ways of directly contacting them with a view to settling disputes with consumers without referring them to an ADR entity. Where a dispute cannot be settled directly, the trader should provide the consumer, on paper or another durable medium, with the information on relevant ADR entities and specify if he will make use of them.

- (48) The obligation on traders to inform consumers about the ADR entities by which those traders are covered should be without prejudice to provisions on consumer information on out-of-court redress procedures contained in other Union legal acts, which should apply in addition to the relevant information obligation provided for in this Directive.
- (49) This Directive should not require the participation of traders in ADR procedures to be mandatory or the outcome of such procedures to be binding on traders, when a consumer has lodged a complaint against them. However, in order to ensure that consumers have access to redress and that they are not obliged to forego their claims, traders should be encouraged as far as possible to participate in ADR procedures. Therefore, this Directive should be without prejudice to any national rules making the participation of traders in such procedures mandatory or subject to incentives or sanctions or making their outcome binding on traders, provided that such legislation does not prevent the parties from exercising their right of access to the judicial system as provided for in Article 47 of the Charter of Fundamental Rights of the European Union.
- (50) In order to avoid an unnecessary burden being placed on ADR entities, Member States should encourage consumers to contact the trader in an effort to solve the problem bilaterally before submitting a complaint to an ADR entity. In many cases, doing so would allow consumers to settle their disputes swiftly and at an early stage.
- (51) Member States should involve the representatives of professional organisations, business associations and consumer organisations when developing ADR, in particular in relation to the principles of impartiality and independence.
- (52) Member States should ensure that ADR entities cooperate on the resolution of cross-border disputes.

⁽¹⁾ OJ L 177, 4.7.2008, p. 6.

⁽²⁾ OJ L 266, 9.10.1980, p. 1.

- (53) Networks of ADR entities, such as the financial dispute resolution network 'FIN-NET' in the area of financial services, should be strengthened within the Union. Member States should encourage ADR entities to become part of such networks.
- (54) Close cooperation between ADR entities and national authorities should strengthen the effective application of Union legal acts on consumer protection. The Commission and the Member States should facilitate cooperation between the ADR entities, in order to encourage the exchange of best practice and technical expertise and to discuss any problems arising from the operation of ADR procedures. Such cooperation should be supported, inter alia, through the Union's forthcoming Consumer Programme.
- (55) In order to ensure that ADR entities function properly and effectively, they should be closely monitored. For that purpose, each Member State should designate a competent authority or competent authorities which should perform that function. The Commission and competent authorities under this Directive should publish and update a list of ADR entities that comply with this Directive. Member States should ensure that ADR entities, the European Consumer Centre Network, and, where appropriate, the bodies designated in accordance with this Directive publish that list on their website by providing a link to the Commission's website, and whenever possible on a durable medium at their premises. Furthermore, Member States should also encourage relevant consumer organisations and business associations to publish the list. Member States should also ensure the appropriate dissemination of information on what consumers should do if they have a dispute with a trader. In addition, competent authorities should publish regular reports on the development and functioning of ADR entities in their Member States. ADR entities should notify to competent authorities specific information on which those reports should be based. Member States should encourage ADR entities to provide such information using Commission Recommendation 2010/304/EU of 12 May 2010 on the use of a harmonised methodology for classifying and reporting consumer complaints and enquiries ⁽¹⁾.
- (56) It is necessary for Member States to lay down rules on penalties for infringements of the national provisions adopted to comply with this Directive and to ensure that those rules are implemented. The penalties should be effective, proportionate and dissuasive.
- (57) Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for
- the enforcement of consumer protection laws (the Regulation on consumer protection cooperation) ⁽²⁾ should be amended to include a reference to this Directive in its Annex so as to reinforce cross-border cooperation on enforcement of this Directive.
- (58) Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests ⁽³⁾ (Injunctions Directive) should be amended to include a reference to this Directive in its Annex so as to ensure that the consumers' collective interests laid down in this Directive are protected.
- (59) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents ⁽⁴⁾, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (60) Since the objective of this Directive, namely to contribute, through the achievement of a high level of consumer protection and without restricting consumers' access to the courts, to the proper functioning of the internal market, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (61) This Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and specifically Articles 7, 8, 38 and 47 thereof.
- (62) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ⁽⁵⁾ and delivered an opinion on 12 January 2012 ⁽⁶⁾,

⁽¹⁾ OJ L 136, 2.6.2010, p. 1.

⁽²⁾ OJ L 364, 9.12.2004, p. 1.

⁽³⁾ OJ L 110, 1.5.2009, p. 30.

⁽⁴⁾ OJ C 369, 17.12.2011, p. 14.

⁽⁵⁾ OJ L 8, 12.1.2001, p. 1.

⁽⁶⁾ OJ C 136, 11.5.2012, p. 1.

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

The purpose of this Directive is, through the achievement of a high level of consumer protection, to contribute to the proper functioning of the internal market by ensuring that consumers can, on a voluntary basis, submit complaints against traders to entities offering independent, impartial, transparent, effective, fast and fair alternative dispute resolution procedures. This Directive is without prejudice to national legislation making participation in such procedures mandatory, provided that such legislation does not prevent the parties from exercising their right of access to the judicial system.

Article 2

Scope

1. This Directive shall apply to procedures for the out-of-court resolution of domestic and cross-border disputes concerning contractual obligations stemming from sales contracts or service contracts between a trader established in the Union and a consumer resident in the Union through the intervention of an ADR entity which proposes or imposes a solution or brings the parties together with the aim of facilitating an amicable solution.

2. This Directive shall not apply to:

- (a) procedures before dispute resolution entities where the natural persons in charge of dispute resolution are employed or remunerated exclusively by the individual trader, unless Member States decide to allow such procedures as ADR procedures under this Directive and the requirements set out in Chapter II, including the specific requirements of independence and transparency set out in Article 6(3), are met;
- (b) procedures before consumer complaint-handling systems operated by the trader;
- (c) non-economic services of general interest;
- (d) disputes between traders;
- (e) direct negotiation between the consumer and the trader;
- (f) attempts made by a judge to settle a dispute in the course of a judicial proceeding concerning that dispute;
- (g) procedures initiated by a trader against a consumer;

(h) health services provided by health professionals to patients to assess, maintain or restore their state of health, including the prescription, dispensation and provision of medicinal products and medical devices;

(i) public providers of further or higher education.

3. This Directive establishes harmonised quality requirements for ADR entities and ADR procedures in order to ensure that, after its implementation, consumers have access to high-quality, transparent, effective and fair out-of-court redress mechanisms no matter where they reside in the Union. Member States may maintain or introduce rules that go beyond those laid down by this Directive, in order to ensure a higher level of consumer protection.

4. This Directive acknowledges the competence of Member States to determine whether ADR entities established on their territories are to have the power to impose a solution.

Article 3

Relationship with other Union legal acts

1. Save as otherwise set out in this Directive, if any provision of this Directive conflicts with a provision laid down in another Union legal act and relating to out-of-court redress procedures initiated by a consumer against a trader, the provision of this Directive shall prevail.

2. This Directive shall be without prejudice to Directive 2008/52/EC.

3. Article 13 of this Directive shall be without prejudice to provisions on consumer information on out-of-court redress procedures contained in other Union legal acts which shall apply in addition to that Article.

Article 4

Definitions

1. For the purposes of this Directive:

(a) 'consumer' means any natural person who is acting for purposes which are outside his trade, business, craft or profession;

(b) 'trader' means any natural persons, or any legal person irrespective of whether privately or publicly owned, who is acting, including through any person acting in his name or on his behalf, for purposes relating to his trade, business, craft or profession;

- (c) 'sales contract' means any contract under which the trader transfers or undertakes to transfer the ownership of goods to the consumer and the consumer pays or undertakes to pay the price thereof, including any contract having as its object both goods and services;
- (d) 'service contract' means any contract other than a sales contract under which the trader supplies or undertakes to supply a service to the consumer and the consumer pays or undertakes to pay the price thereof;
- (e) 'domestic dispute' means a contractual dispute arising from a sales or service contract where, at the time the consumer orders the goods or services, the consumer is resident in the same Member State as that in which the trader is established;
- (f) 'cross-border dispute' means a contractual dispute arising from a sales or service contract where, at the time the consumer orders the goods or services, the consumer is resident in a Member State other than the Member State in which the trader is established;
- (g) 'ADR procedure' means a procedure, as referred to in Article 2, which complies with the requirements set out in this Directive and is carried out by an ADR entity;
- (h) 'ADR entity' means any entity, however named or referred to, which is established on a durable basis and offers the resolution of a dispute through an ADR procedure and that is listed in accordance with Article 20(2);
- (i) 'competent authority' means any public authority designated by a Member State for the purposes of this Directive and established at national, regional or local level.

2. A trader is established:

- if the trader is a natural person, where he has his place of business,
- if the trader is a company or other legal person or association of natural or legal persons, where it has its statutory seat, central administration or place of business, including a branch, agency or any other establishment.

3. An ADR entity is established:

- if it is operated by a natural person, at the place where it carries out ADR activities,
- if the entity is operated by a legal person or association of natural or legal persons, at the place where that legal person or association of natural or legal persons carries out ADR activities or has its statutory seat,

- if it is operated by an authority or other public body, at the place where that authority or other public body has its seat.

CHAPTER II

ACCESS TO AND REQUIREMENTS APPLICABLE TO ADR ENTITIES AND ADR PROCEDURES

Article 5

Access to ADR entities and ADR procedures

1. Member States shall facilitate access by consumers to ADR procedures and shall ensure that disputes covered by this Directive and which involve a trader established on their respective territories can be submitted to an ADR entity which complies with the requirements set out in this Directive.
2. Member States shall ensure that ADR entities:
 - (a) maintain an up-to-date website which provides the parties with easy access to information concerning the ADR procedure, and which enables consumers to submit a complaint and the requisite supporting documents online;
 - (b) provide the parties, at their request, with the information referred to in point (a) on a durable medium;
 - (c) where applicable, enable the consumer to submit a complaint offline;
 - (d) enable the exchange of information between the parties via electronic means or, if applicable, by post;
 - (e) accept both domestic and cross-border disputes, including disputes covered by Regulation (EU) No 524/2013; and
 - (f) when dealing with disputes covered by this Directive, take the necessary measures to ensure that the processing of personal data complies with the rules on the protection of personal data laid down in the national legislation implementing Directive 95/46/EC in the Member State in which the ADR entity is established.

3. Member States may fulfil their obligation under paragraph 1 by ensuring the existence of a residual ADR entity which is competent to deal with disputes as referred to in that paragraph for the resolution of which no existing ADR entity is competent. Member States may also fulfil that obligation by relying on ADR entities established in another Member State or regional, transnational or pan-European dispute resolution entities, where traders from different Member States are covered by the same ADR entity, without prejudice to their responsibility to ensure full coverage and access to ADR entities.

4. Member States may, at their discretion, permit ADR entities to maintain and introduce procedural rules that allow them to refuse to deal with a given dispute on the grounds that:

- (a) the consumer did not attempt to contact the trader concerned in order to discuss his complaint and seek, as a first step, to resolve the matter directly with the trader;
- (b) the dispute is frivolous or vexatious;
- (c) the dispute is being or has previously been considered by another ADR entity or by a court;
- (d) the value of the claim falls below or above a pre-specified monetary threshold;
- (e) the consumer has not submitted the complaint to the ADR entity within a pre-specified time limit, which shall not be set at less than one year from the date upon which the consumer submitted the complaint to the trader;
- (f) dealing with such a type of dispute would otherwise seriously impair the effective operation of the ADR entity.

Where, in accordance with its procedural rules, an ADR entity is unable to consider a dispute that has been submitted to it, that ADR entity shall provide both parties with a reasoned explanation of the grounds for not considering the dispute within three weeks of receiving the complaint file.

Such procedural rules shall not significantly impair consumers' access to ADR procedures, including in the case of cross-border disputes.

5. Member States shall ensure that, when ADR entities are permitted to establish pre-specified monetary thresholds in order to limit access to ADR procedures, those thresholds are not set at a level at which they significantly impair the consumers' access to complaint handling by ADR entities.

6. Where, in accordance with the procedural rules referred to in paragraph 4, an ADR entity is unable to consider a complaint that has been submitted to it, a Member State shall not be required to ensure that the consumer can submit his complaint to another ADR entity.

7. Where an ADR entity dealing with disputes in a specific economic sector is competent to consider disputes relating to a trader operating in that sector but which is not a member of the organisation or association forming or funding the ADR entity, the Member State shall be deemed to have fulfilled its obligation under paragraph 1 also with respect to disputes concerning that trader.

Article 6

Expertise, independence and impartiality

1. Member States shall ensure that the natural persons in charge of ADR possess the necessary expertise and are independent and impartial. This shall be guaranteed by ensuring that such persons:

- (a) possess the necessary knowledge and skills in the field of alternative or judicial resolution of consumer disputes, as well as a general understanding of law;
- (b) are appointed for a term of office of sufficient duration to ensure the independence of their actions, and are not liable to be relieved from their duties without just cause;
- (c) are not subject to any instructions from either party or their representatives;
- (d) are remunerated in a way that is not linked to the outcome of the procedure;
- (e) without undue delay disclose to the ADR entity any circumstances that may, or may be seen to, affect their independence and impartiality or give rise to a conflict of interest with either party to the dispute they are asked to resolve. The obligation to disclose such circumstances shall be a continuing obligation throughout the ADR procedure. It shall not apply where the ADR entity comprises only one natural person.

2. Member States shall ensure that ADR entities have in place procedures to ensure that in the case of circumstances referred to in point (e) of paragraph 1:

- (a) the natural person concerned is replaced by another natural person that shall be entrusted with conducting the ADR procedure; or failing that
- (b) the natural person concerned refrains from conducting the ADR procedure and, where possible, the ADR entity proposes to the parties to submit the dispute to another ADR entity which is competent to deal with the dispute; or failing that
- (c) the circumstances are disclosed to the parties and the natural person concerned is allowed to continue to conduct the ADR procedure only if the parties have not objected after they have been informed of the circumstances and their right to object.

This paragraph shall be without prejudice to point (a) of Article 9(2).

Where the ADR entity comprises only one natural person, only points (b) and (c) of the first subparagraph of this paragraph shall apply.

3. Where Member States decide to allow procedures referred to in point (a) of Article 2(2) as ADR procedures under this Directive, they shall ensure that, in addition to the general requirements set out in paragraphs 1 and 5, those procedures comply with the following specific requirements:

- (a) the natural persons in charge of dispute resolution are nominated by, or form part of, a collegial body composed of an equal number of representatives of consumer organisations and of representatives of the trader and are appointed as result of a transparent procedure;
- (b) the natural persons in charge of dispute resolution are granted a period of office of a minimum of three years to ensure the independence of their actions;
- (c) the natural persons in charge of dispute resolution commit not to work for the trader or a professional organisation or business association of which the trader is a member for a period of three years after their position in the dispute resolution entity has ended;
- (d) the dispute resolution entity does not have any hierarchical or functional link with the trader and is clearly separated from the trader's operational entities and has a sufficient budget at its disposal, which is separate from the trader's general budget, to fulfil its tasks.

4. Where the natural persons in charge of ADR are employed or remunerated exclusively by a professional organisation or a business association of which the trader is a member, Member States shall ensure that, in addition to the general requirements set out in paragraphs 1 and 5, they have a separate and dedicated budget at their disposal which is sufficient to fulfil their tasks.

This paragraph shall not apply where the natural persons concerned form part of a collegial body composed of an equal number of representatives of the professional organisation or business association by which they are employed or remunerated and of consumer organisations.

5. Member States shall ensure that ADR entities where the natural persons in charge of dispute resolution form part of a collegial body provide for an equal number of representatives of consumers' interests and of representatives of traders' interests in that body.

6. For the purposes of point (a) of paragraph 1, Member States shall encourage ADR entities to provide training for

natural persons in charge of ADR. If such training is provided, competent authorities shall monitor the training schemes established by ADR entities, on the basis of information communicated to them in accordance with point (g) of Article 19(3).

Article 7

Transparency

1. Member States shall ensure that ADR entities make publicly available on their websites, on a durable medium upon request, and by any other means they consider appropriate, clear and easily understandable information on:

- (a) their contact details, including postal address and e-mail address;
- (b) the fact that ADR entities are listed in accordance with Article 20(2);
- (c) the natural persons in charge of ADR, the method of their appointment and the length of their mandate;
- (d) the expertise, impartiality and independence of the natural persons in charge of ADR, if they are employed or remunerated exclusively by the trader;
- (e) their membership in networks of ADR entities facilitating cross-border dispute resolution, if applicable;
- (f) the types of disputes they are competent to deal with, including any threshold if applicable;
- (g) the procedural rules governing the resolution of a dispute and the grounds on which the ADR entity may refuse to deal with a given dispute in accordance with Article 5(4);
- (h) the languages in which complaints can be submitted to the ADR entity and in which the ADR procedure is conducted;
- (i) the types of rules the ADR entity may use as a basis for the dispute resolution (for example legal provisions, considerations of equity, codes of conduct);
- (j) any preliminary requirements the parties may have to meet before an ADR procedure can be instituted, including the requirement that an attempt be made by the consumer to resolve the matter directly with the trader;
- (k) whether or not the parties can withdraw from the procedure;
- (l) the costs, if any, to be borne by the parties, including any rules on awarding costs at the end of the procedure;

- (m) the average length of the ADR procedure;
- (n) the legal effect of the outcome of the ADR procedure, including the penalties for non-compliance in the case of a decision having binding effect on the parties, if applicable;
- (o) the enforceability of the ADR decision, if relevant.

2. Member States shall ensure that ADR entities make publicly available on their websites, on a durable medium upon request, and by any other means they consider appropriate, annual activity reports. Those reports shall include the following information relating to both domestic and cross-border disputes:

- (a) the number of disputes received and the types of complaints to which they related;
- (b) any systematic or significant problems that occur frequently and lead to disputes between consumers and traders; such information may be accompanied by recommendations as to how such problems can be avoided or resolved in future, in order to raise traders' standards and to facilitate the exchange of information and best practices;
- (c) the rate of disputes the ADR entity has refused to deal with and the percentage share of the types of grounds for such refusal as referred to in Article 5(4);
- (d) in the case of procedures referred to in point (a) of Article 2(2), the percentage shares of solutions proposed or imposed in favour of the consumer and in favour of the trader, and of disputes resolved by an amicable solution;
- (e) the percentage share of ADR procedures which were discontinued and, if known, the reasons for their discontinuation;
- (f) the average time taken to resolve disputes;
- (g) the rate of compliance, if known, with the outcomes of the ADR procedures;
- (h) cooperation of ADR entities within networks of ADR entities which facilitate the resolution of cross-border disputes, if applicable.

Article 8

Effectiveness

Member States shall ensure that ADR procedures are effective and fulfil the following requirements:

- (a) the ADR procedure is available and easily accessible online and offline to both parties irrespective of where they are;

- (b) the parties have access to the procedure without being obliged to retain a lawyer or a legal advisor, but the procedure shall not deprive the parties of their right to independent advice or to be represented or assisted by a third party at any stage of the procedure;
- (c) the ADR procedure is free of charge or available at a nominal fee for consumers;
- (d) the ADR entity which has received a complaint notifies the parties to the dispute as soon as it has received all the documents containing the relevant information relating to the complaint;
- (e) the outcome of the ADR procedure is made available within a period of 90 calendar days from the date on which the ADR entity has received the complete complaint file. In the case of highly complex disputes, the ADR entity in charge may, at its own discretion, extend the 90 calendar days' time period. The parties shall be informed of any extension of that period and of the expected length of time that will be needed for the conclusion of the dispute.

Article 9

Fairness

1. Member States shall ensure that in ADR procedures:
 - (a) the parties have the possibility, within a reasonable period of time, of expressing their point of view, of being provided by the ADR entity with the arguments, evidence, documents and facts put forward by the other party, any statements made and opinions given by experts, and of being able to comment on them;
 - (b) the parties are informed that they are not obliged to retain a lawyer or a legal advisor, but they may seek independent advice or be represented or assisted by a third party at any stage of the procedure;
 - (c) the parties are notified of the outcome of the ADR procedure in writing or on a durable medium, and are given a statement of the grounds on which the outcome is based.
2. In ADR procedures which aim at resolving the dispute by proposing a solution, Member States shall ensure that:
 - (a) The parties have the possibility of withdrawing from the procedure at any stage if they are dissatisfied with the performance or the operation of the procedure. They shall be informed of that right before the procedure commences. Where national rules provide for mandatory participation by the trader in ADR procedures, this point shall apply only to the consumer.

- (b) The parties, before agreeing or following a proposed solution, are informed that:
- (i) they have the choice as to whether or not to agree to or follow the proposed solution;
 - (ii) participation in the procedure does not preclude the possibility of seeking redress through court proceedings;
 - (iii) the proposed solution may be different from an outcome determined by a court applying legal rules.
- (c) The parties, before agreeing to or following a proposed solution, are informed of the legal effect of agreeing to or following such a proposed solution.
- (d) The parties, before expressing their consent to a proposed solution or amicable agreement, are allowed a reasonable period of time to reflect.

3. Where, in accordance with national law, ADR procedures provide that their outcome becomes binding on the trader once the consumer has accepted the proposed solution, Article 9(2) shall be read as applicable only to the consumer.

Article 10

Liberty

1. Member States shall ensure that an agreement between a consumer and a trader to submit complaints to an ADR entity is not binding on the consumer if it was concluded before the dispute has materialised and if it has the effect of depriving the consumer of his right to bring an action before the courts for the settlement of the dispute.

2. Member States shall ensure that in ADR procedures which aim at resolving the dispute by imposing a solution the solution imposed may be binding on the parties only if they were informed of its binding nature in advance and specifically accepted this. Specific acceptance by the trader is not required if national rules provide that solutions are binding on traders.

Article 11

Legality

1. Member States shall ensure that in ADR procedures which aim at resolving the dispute by imposing a solution on the consumer:

- (a) in a situation where there is no conflict of laws, the solution imposed shall not result in the consumer being deprived of the protection afforded to him by the provisions that cannot be derogated from by agreement by virtue of the law of the Member State where the consumer and the trader are habitually resident;

- (b) in a situation involving a conflict of laws, where the law applicable to the sales or service contract is determined in accordance with Article 6(1) and (2) of Regulation (EC) No 593/2008, the solution imposed by the ADR entity shall not result in the consumer being deprived of the protection afforded to him by the provisions that cannot be derogated from by agreement by virtue of the law of the Member State in which he is habitually resident;
- (c) in a situation involving a conflict of laws, where the law applicable to the sales or service contract is determined in accordance with Article 5(1) to (3) of the Rome Convention of 19 June 1980 on the law applicable to contractual obligations, the solution imposed by the ADR entity shall not result in the consumer being deprived of the protection afforded to him by the mandatory rules of the law of the Member State in which he is habitually resident.

2. For the purposes of this Article, 'habitual residence' shall be determined in accordance with Regulation (EC) No 593/2008.

Article 12

Effect of ADR procedures on limitation and prescription periods

1. Member States shall ensure that parties who, in an attempt to settle a dispute, have recourse to ADR procedures the outcome of which is not binding, are not subsequently prevented from initiating judicial proceedings in relation to that dispute as a result of the expiry of limitation or prescription periods during the ADR procedure.

2. Paragraph 1 shall be without prejudice to provisions on limitation or prescription contained in international agreements to which Member States are party.

CHAPTER III

INFORMATION AND COOPERATION

Article 13

Consumer information by traders

1. Member States shall ensure that traders established on their territories inform consumers about the ADR entity or ADR entities by which those traders are covered, when those traders commit to or are obliged to use those entities to resolve disputes with consumers. That information shall include the website address of the relevant ADR entity or ADR entities.

2. The information referred to in paragraph 1 shall be provided in a clear, comprehensible and easily accessible way on the traders' website, where one exists, and, if applicable, in the general terms and conditions of sales or service contracts between the trader and a consumer.

3. Member States shall ensure that, in cases where a dispute between a consumer and a trader established in their territory could not be settled further to a complaint submitted directly by the consumer to the trader, the trader provides the consumer with the information referred to in paragraph 1, specifying whether he will make use of the relevant ADR entities to settle the dispute. That information shall be provided on paper or on another durable medium.

Article 14

Assistance for consumers

1. Member States shall ensure that, with regard to disputes arising from cross-border sales or service contracts, consumers can obtain assistance to access the ADR entity operating in another Member State which is competent to deal with their cross-border dispute.

2. Member States shall confer responsibility for the task referred to in paragraph 1 on their centres of the European Consumer Centre Network, on consumer organisations or on any other body.

Article 15

General information

1. Member States shall ensure that ADR entities, the centres of the European Consumer Centre Network and, where appropriate, the bodies designated in accordance with Article 14(2) make publicly available on their websites, by providing a link to the Commission's website, and whenever possible on a durable medium at their premises, the list of ADR entities referred to in Article 20(4).

2. Member States shall encourage relevant consumer organisations and business associations to make publicly available on their websites, and by any other means they consider appropriate, the list of ADR entities referred to in Article 20(4).

3. The Commission and Member States shall ensure appropriate dissemination of information on how consumers can access ADR procedures for resolving disputes covered by this Directive.

4. The Commission and the Member States shall take accompanying measures to encourage consumer organisations and professional organisations, at Union and at national level, to raise awareness of ADR entities and their procedures and to promote ADR take-up by traders and consumers. Those bodies shall also be encouraged to provide consumers with information about competent ADR entities when they receive complaints from consumers.

Article 16

Cooperation and exchanges of experience between ADR entities

1. Member States shall ensure that ADR entities cooperate in the resolution of cross-border disputes and conduct regular exchanges of best practices as regards the settlement of both cross-border and domestic disputes.

2. The Commission shall support and facilitate the networking of national ADR entities and the exchange and dissemination of their best practices and experiences.

3. Where a network of ADR entities facilitating the resolution of cross-border disputes exists in a sector-specific area within the Union, Member States shall encourage ADR entities that deal with disputes in that area to become a member of that network.

4. The Commission shall publish a list containing the names and contact details of the networks referred to in paragraph 3. The Commission shall, when necessary, update this list.

Article 17

Cooperation between ADR entities and national authorities enforcing Union legal acts on consumer protection

1. Member States shall ensure cooperation between ADR entities and national authorities entrusted with the enforcement of Union legal acts on consumer protection.

2. This cooperation shall in particular include mutual exchange of information on practices in specific business sectors about which consumers have repeatedly lodged complaints. It shall also include the provision of technical assessment and information by such national authorities to ADR entities where such assessment or information is necessary for the handling of individual disputes and is already available.

3. Member States shall ensure that cooperation and mutual information exchanges referred to in paragraphs 1 and 2 comply with the rules on the protection of personal data laid down in Directive 95/46/EC.

4. This Article shall be without prejudice to provisions on professional and commercial secrecy which apply to the national authorities enforcing Union legal acts on consumer protection. ADR entities shall be subject to rules of professional secrecy or other equivalent duties of confidentiality laid down in the legislation of the Member States where they are established.

CHAPTER IV

THE ROLE OF COMPETENT AUTHORITIES AND THE COMMISSION

Article 18

Designation of competent authorities

1. Each Member State shall designate a competent authority which shall carry out the functions set out in Articles 19 and 20. Each Member State may designate more than one competent authority. If a Member State does so, it shall determine which of the competent authorities designated is the single point of contact for the Commission. Each Member State shall communicate the competent authority or, where appropriate, the competent authorities, including the single point of contact it has designated, to the Commission.

2. The Commission shall establish a list of the competent authorities including, where appropriate, the single point of contact communicated to it in accordance with paragraph 1, and publish that list in the *Official Journal of the European Union*.

Article 19

Information to be notified to competent authorities by dispute resolution entities

1. Member States shall ensure that dispute resolution entities established on their territories, which intend to qualify as ADR entities under this Directive and be listed in accordance with Article 20(2), notify to the competent authority the following:

- (a) their name, contact details and website address;
- (b) information on their structure and funding, including information on the natural persons in charge of dispute resolution, their remuneration, term of office and by whom they are employed;
- (c) their procedural rules;
- (d) their fees, if applicable;
- (e) the average length of the dispute resolution procedures;
- (f) the language or languages in which complaints can be submitted and the dispute resolution procedure conducted;
- (g) a statement on the types of disputes covered by the dispute resolution procedure;
- (h) the grounds on which the dispute resolution entity may refuse to deal with a given dispute in accordance with Article 5(4);

- (i) a reasoned statement on whether the entity qualifies as an ADR entity falling within the scope of this Directive and complies with the quality requirements set out in Chapter II.

In the event of changes to the information referred to in points (a) to (h), ADR entities shall without undue delay notify those changes to the competent authority.

2. Where Member States decide to allow procedures as referred to in point (a) of Article 2(2), they shall ensure that ADR entities applying such procedures notify to the competent authority, in addition to the information and statements referred to in paragraph 1, the information necessary to assess their compliance with the specific additional requirements of independence and transparency set out in Article 6(3).

3. Member States shall ensure that ADR entities communicate to the competent authorities every two years information on:

- (a) the number of disputes received and the types of complaints to which they related;
- (b) the percentage share of ADR procedures which were discontinued before an outcome was reached;
- (c) the average time taken to resolve the disputes received;
- (d) the rate of compliance, if known, with the outcomes of the ADR procedures;
- (e) any systematic or significant problems that occur frequently and lead to disputes between consumers and traders. The information communicated in this regard may be accompanied by recommendations as to how such problems can be avoided or resolved in future;
- (f) where applicable, an assessment of the effectiveness of their cooperation within networks of ADR entities facilitating the resolution of cross-border disputes;
- (g) where applicable, the training provided to natural persons in charge of ADR in accordance with Article 6(6);
- (h) an assessment of the effectiveness of the ADR procedure offered by the entity and of possible ways of improving its performance.

Article 20

Role of the competent authorities and of the Commission

1. Each competent authority shall assess, in particular on the basis of the information it has received in accordance with Article 19(1), whether the dispute resolution entities notified to it qualify as ADR entities falling within the scope of this Directive and comply with the quality requirements set out in Chapter II and in national provisions implementing it, including national provisions going beyond the requirements of this Directive, in conformity with Union law.

2. Each competent authority shall, on the basis of the assessment referred to in paragraph 1, list all the ADR entities that have been notified to it and fulfil the conditions set out in paragraph 1.

That list shall include the following:

- (a) the name, the contact details and the website addresses of the ADR entities referred to in the first subparagraph;
- (b) their fees, if applicable;
- (c) the language or languages in which complaints can be submitted and the ADR procedure conducted;
- (d) the types of disputes covered by the ADR procedure;
- (e) the sectors and categories of disputes covered by each ADR entity;
- (f) the need for the physical presence of the parties or of their representatives, if applicable, including a statement by the ADR entity on whether the ADR procedure is or can be conducted as an oral or a written procedure;
- (g) the binding or non-binding nature of the outcome of the procedure; and
- (h) the grounds on which the ADR entity may refuse to deal with a given dispute in accordance with Article 5(4).

Each competent authority shall notify the list referred to in the first subparagraph of this paragraph to the Commission. If any changes are notified to the competent authority in accordance with the second subparagraph of Article 19(1), that list shall be updated without undue delay and the relevant information notified to the Commission.

If a dispute resolution entity listed as ADR entity under this Directive no longer complies with the requirements referred to in paragraph 1, the competent authority concerned shall contact that dispute resolution entity, stating the requirements the dispute resolution entity fails to comply with and requesting it to ensure compliance immediately. If the dispute resolution entity after a period of three months still does not fulfil the requirements referred to in paragraph 1, the competent authority shall remove the dispute resolution entity from the list referred to in the first subparagraph of this paragraph. That list shall be updated without undue delay and the relevant information notified to the Commission.

3. If a Member State has designated more than one competent authority, the list and its updates referred to in paragraph 2 shall be notified to the Commission by the

single point of contact referred to in Article 18(1). That list and those updates shall relate to all ADR entities established in that Member State.

4. The Commission shall establish a list of the ADR entities notified to it in accordance with paragraph 2 and update that list whenever changes are notified to the Commission. The Commission shall make publicly available that list and its updates on its website and on a durable medium. The Commission shall transmit that list and its updates to the competent authorities. Where a Member State has designated a single point of contact in accordance with Article 18(1), the Commission shall transmit that list and its updates to the single point of contact.

5. Each competent authority shall make publicly available the consolidated list of ADR entities referred to in paragraph 4 on its website by providing a link to the relevant Commission website. In addition, each competent authority shall make publicly available that consolidated list on a durable medium.

6. By 9 July 2018, and every four years thereafter, each competent authority shall publish and send to the Commission a report on the development and functioning of ADR entities. That report shall in particular:

- (a) identify best practices of ADR entities;
- (b) point out the shortcomings, supported by statistics, that hinder the functioning of ADR entities for both domestic and cross-border disputes, where appropriate;
- (c) make recommendations on how to improve the effective and efficient functioning of ADR entities, where appropriate.

7. If a Member State has designated more than one competent authority in accordance with Article 18(1), the report referred to in paragraph 6 of this Article shall be published by the single point of contact referred to in Article 18(1). That report shall relate to all ADR entities established in that Member State.

CHAPTER V

FINAL PROVISIONS

Article 21

Penalties

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted in particular pursuant to Article 13 and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

Article 22

Amendment to Regulation (EC) No 2006/2004

In the Annex to Regulation (EC) No 2006/2004, the following point is added:

- '20. Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes (OJ L 165, 18.6.2013, p. 63): Article 13.'

Article 23

Amendment to Directive 2009/22/EC

In Annex I to Directive 2009/22/EC the following point is added:

- '14. Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes (OJ L 165, 18.6.2013, p. 63): Article 13.'

Article 24

Communication

1. By 9 July 2015, Member States shall communicate to the Commission:

- (a) where appropriate, the names and contact details of the bodies designated in accordance with Article 14(2); and
- (b) the competent authorities including, where appropriate, the single point of contact, designated in accordance with Article 18(1).

Member States shall inform the Commission of any subsequent changes to this information.

2. By 9 January 2016, Member States shall communicate to the Commission the first list referred to in Article 20(2).

3. The Commission shall transmit to the Member States the information referred to in point (a) of paragraph 1.

Article 25

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 9 July 2015. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 26

Report

By 9 July 2019, and every four years thereafter, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Directive. That report shall consider the development and the use of ADR entities and the impact of this Directive on consumers and traders, in particular on the awareness of consumers and the level of adoption by traders. That report shall be accompanied, where appropriate, by proposals for amendment of this Directive.

Article 27

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 28

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 21 May 2013.

For the European Parliament

The President

M. SCHULZ

For the Council

The President

L. CREIGHTON

I

(Legislative acts)

REGULATIONS

REGULATION (EU) No 524/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 21 May 2013****on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

(1) Article 169(1) and point (a) of Article 169(2) of the Treaty on the Functioning of the European Union (TFEU) provide that the Union is to contribute to the attainment of a high level of consumer protection through measures adopted pursuant to Article 114 TFEU. Article 38 of the Charter of Fundamental Rights of the European Union provides that Union policies are to ensure a high level of consumer protection.

(2) In accordance with Article 26(2) TFEU, the internal market is to comprise an area without internal frontiers in which the free movement of goods and services is ensured. In order for consumers to have confidence in and benefit from the digital dimension of the internal market, it is necessary that they have access to simple, efficient, fast and low-cost ways of resolving disputes which arise from the sale of goods or the supply of services online. This is particularly important when consumers shop cross-border.

(3) In its Communication of 13 April 2011 entitled 'Single Market Act — Twelve levers to boost growth and strengthen confidence — "Working together to create new growth"', the Commission identified legislation on alternative dispute resolution (ADR) which includes an electronic commerce dimension as one of the twelve levers to boost growth and strengthen confidence in the Single Market.

(4) Fragmentation of the internal market impedes efforts to boost competitiveness and growth. Furthermore, the uneven availability, quality and awareness of simple, efficient, fast and low-cost means of resolving disputes arising from the sale of goods or provision of services across the Union constitutes a barrier within the internal market which undermines consumers' and traders' confidence in shopping and selling across borders.

(5) In its conclusions of 24-25 March and 23 October 2011, the European Council invited the European Parliament and the Council to adopt, by the end of 2012, a first set of priority measures to bring a new impetus to the Single Market.

(6) The internal market is a reality for consumers in their daily lives, when they travel, make purchases and make payments. Consumers are key players in the internal market and should therefore be at its heart. The digital dimension of the internal market is becoming vital for both consumers and traders. Consumers increasingly make purchases online and an increasing number of traders sell online. Consumers and traders should feel confident in carrying out transactions online so it is essential to dismantle existing barriers and to boost consumer confidence. The availability of reliable and efficient online dispute resolution (ODR) could greatly help achieve this goal.

⁽¹⁾ OJ C 181, 21.6.2012, p. 99.

⁽²⁾ Position of the European Parliament of 12 March 2013 (not yet published in the Official Journal) and Decision of the Council of 22 April 2013.

- (7) Being able to seek easy and low-cost dispute resolution can boost consumers' and traders' confidence in the digital Single Market. Consumers and traders, however, still face barriers to finding out-of-court solutions in particular to their disputes arising from cross-border online transactions. Thus, such disputes currently are often left unresolved.
- (8) ODR offers a simple, efficient, fast and low-cost out-of-court solution to disputes arising from online transactions. However, there is currently a lack of mechanisms which allow consumers and traders to resolve such disputes through electronic means; this leads to consumer detriment, acts as a barrier, in particular, to cross-border online transactions, and creates an uneven playing field for traders, and thus hampers the overall development of online commerce.
- (9) This Regulation should apply to the out-of-court resolution of disputes initiated by consumers resident in the Union against traders established in the Union which are covered by Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes (Directive on consumer ADR) ⁽¹⁾.
- (10) In order to ensure that the ODR platform can also be used for ADR procedures which allow traders to submit complaints against consumers, this Regulation should also apply to the out-of-court resolution of disputes initiated by traders against consumers where the relevant ADR procedures are offered by ADR entities listed in accordance with Article 20(2) of Directive 2013/11/EU. The application of this Regulation to such disputes should not impose any obligation on Member States to ensure that the ADR entities offer such procedures.
- (11) Although in particular consumers and traders carrying out cross-border online transactions will benefit from the ODR platform, this Regulation should also apply to domestic online transactions in order to allow for a true level playing field in the area of online commerce.
- (12) This Regulation should be without prejudice to Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters ⁽²⁾.
- (13) The definition of 'consumer' should cover natural persons who are acting outside their trade, business, craft or profession. However, if the contract is concluded for purposes partly within and partly outside the person's trade (dual purpose contracts) and the trade purpose is so limited as not to be predominant in the overall context of the supply, that person should also be considered as a consumer.
- (14) The definition of 'online sales or service contract' should cover a sales or service contract where the trader, or the trader's intermediary, has offered goods or services through a website or by other electronic means and the consumer has ordered those goods or services on that website or by other electronic means. This should also cover cases where the consumer has accessed the website or other information society service through a mobile electronic device such as a mobile telephone.
- (15) This Regulation should not apply to disputes between consumers and traders that arise from sales or service contracts concluded offline and to disputes between traders.
- (16) This Regulation should be considered in conjunction with Directive 2013/11/EU which requires Member States to ensure that all disputes between consumers resident and traders established in the Union which arise from the sale of goods or provisions of services can be submitted to an ADR entity.
- (17) Before submitting their complaint to an ADR entity through the ODR platform, consumers should be encouraged by Member States to contact the trader by any appropriate means, with the aim of resolving the dispute amicably.
- (18) This Regulation aims to create an ODR platform at Union level. The ODR platform should take the form of an interactive website offering a single point of entry to consumers and traders seeking to resolve disputes out-of-court which have arisen from online transactions. The ODR platform should provide general information regarding the out-of-court resolution of contractual disputes between traders and consumers arising from online sales and service contracts. It should allow consumers and traders to submit complaints by filling in an electronic complaint form available in all the official languages of the institutions of the Union and to attach relevant documents. It should transmit complaints to an ADR entity competent to deal with the dispute concerned. The ODR platform should offer, free of charge, an electronic case management tool which enables ADR entities to conduct the dispute resolution procedure with the parties through the ODR platform. ADR entities should not be obliged to use the case management tool.

⁽¹⁾ See page 63 of this Official Journal.

⁽²⁾ OJ L 136, 24.5.2008, p. 3.

- (19) The Commission should be responsible for the development, operation and maintenance of the ODR platform and provide all technical facilities necessary for the functioning of the platform. The ODR platform should offer an electronic translation function which enables the parties and the ADR entity to have the information which is exchanged through the ODR platform and is necessary for the resolution of the dispute translated, where appropriate. That function should be capable of dealing with all necessary translations and should be supported by human intervention, if necessary. The Commission should also provide, on the ODR platform, information for complainants about the possibility of requesting assistance from the ODR contact points.
- (20) The ODR platform should enable the secure interchange of data with ADR entities and respect the underlying principles of the European Interoperability Framework adopted pursuant to Decision 2004/387/EC of the European Parliament and of the Council of 21 April 2004 on interoperable delivery of pan-European eGovernment services to public administrations, businesses and citizens (IDABC) ⁽¹⁾.
- (21) The ODR platform should be made accessible, in particular, through the 'Your Europe portal' established in accordance with Annex II to Decision 2004/387/EC, which provides access to pan-European, multilingual online information and interactive services to businesses and citizens in the Union. The ODR platform should be given prominence on the 'Your Europe portal'.
- (22) An ODR platform at Union level should build on existing ADR entities in the Member States and respect the legal traditions of the Member States. ADR entities to which a complaint has been transmitted through the ODR platform should therefore apply their own procedural rules, including rules on cost. However, this Regulation intends to establish some common rules applicable to those procedures that will safeguard their effectiveness. This should include rules ensuring that such dispute resolution does not require the physical presence of the parties or their representatives before the ADR entity, unless its procedural rules provide for that possibility and the parties agree.
- (23) Ensuring that all ADR entities listed in accordance with Article 20(2) of Directive 2013/11/EU are registered with the ODR platform should allow for full coverage in online out-of-court resolution for disputes arising from online sales or service contracts.
- (24) This Regulation should not prevent the functioning of any existing dispute resolution entity operating online or of any ODR mechanism within the Union. It should not prevent dispute resolution entities or mechanisms from dealing with online disputes which have been submitted directly to them.
- (25) ODR contact points hosting at least two ODR advisors should be designated in each Member State. The ODR contact points should support the parties involved in a dispute submitted through the ODR platform without being obliged to translate documents relating to that dispute. Member States should have the possibility to confer the responsibility for the ODR contact points on their centres of the European Consumer Centres Network. Member States should make use of that possibility in order to allow ODR contact points to fully benefit from the experience of the centres of the European Consumer Centres Network in facilitating the settlement of disputes between consumers and traders. The Commission should establish a network of ODR contact points to facilitate their cooperation and work and provide, in cooperation with Member States, appropriate training for ODR contact points.
- (26) The right to an effective remedy and the right to a fair trial are fundamental rights laid down in Article 47 of the Charter of Fundamental Rights of the European Union. ODR is not intended to and cannot be designed to replace court procedures, nor should it deprive consumers or traders of their rights to seek redress before the courts. This Regulation should not, therefore, prevent parties from exercising their right of access to the judicial system.
- (27) The processing of information under this Regulation should be subject to strict guarantees of confidentiality and should comply with the rules on the protection of personal data laid down in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ⁽²⁾ and in Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ⁽³⁾. Those rules should apply to the processing of personal data carried out under this Regulation by the various actors of the ODR platform, whether they act alone or jointly with other such actors.
- (28) Data subjects should be informed about, and give their consent to, the processing of their personal data in the ODR platform, and should be informed about their rights with regard to that processing, by means of a comprehensive privacy notice to be made publicly available by the Commission and explaining, in clear and simple language, the processing operations performed under the responsibility of the various actors of the platform, in accordance with Articles 11 and 12 of Regulation (EC) No 45/2001 and with national legislation adopted pursuant to Articles 10 and 11 of Directive 95/46/EC.

⁽¹⁾ OJ L 144, 30.4.2004, p. 62.

⁽²⁾ OJ L 281, 23.11.1995, p. 31.

⁽³⁾ OJ L 8, 12.1.2001, p. 1.

- (29) This Regulation should be without prejudice to provisions on confidentiality in national legislation relating to ADR.
- (30) In order to ensure broad consumer awareness of the existence of the ODR platform, traders established within the Union engaging in online sales or service contracts should provide, on their websites, an electronic link to the ODR platform. Traders should also provide their email address so that consumers have a first point of contact. A significant proportion of online sales and service contracts are concluded using online marketplaces, which bring together or facilitate online transactions between consumers and traders. Online marketplaces are online platforms which allow traders to make their products and services available to consumers. Such online marketplaces should therefore have the same obligation to provide an electronic link to the ODR platform. This obligation should be without prejudice to Article 13 of Directive 2013/11/EU concerning the requirement that traders inform consumers about the ADR procedures by which those traders are covered and about whether or not they commit to use ADR procedures to resolve disputes with consumers. Furthermore, that obligation should be without prejudice to point (t) of Article 6(1) and to Article 8 of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights⁽¹⁾. Point (t) of Article 6(1) of Directive 2011/83/EU stipulates for consumer contracts concluded at a distance or off premises, that the trader is to inform the consumer about the possibility of having recourse to an out-of-court complaint and redress mechanism to which the trader is subject, and the methods for having access to it, before the consumer is bound by the contract. For the same consumer awareness reasons, Member States should encourage consumer associations and business associations to provide an electronic link to the website of the ODR platform.
- (31) In order to take into account the criteria by which the ADR entities define their respective scopes of application the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to adapt the information which a complainant is to provide in the electronic complaint form made available on the ODR platform. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (32) In order to ensure uniform conditions for the implementation of this Regulation implementing powers should be conferred on the Commission in respect of the functioning of the ODR platform, the modalities for the submission of a complaint and cooperation within the network of ODR contact points. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers⁽²⁾. The advisory procedure should be used for the adoption of implementing acts relating to the electronic complaint form given its purely technical nature. The examination procedure should be used for the adoption of the rules concerning the modalities of cooperation between the ODR advisors of the network of ODR contact points.
- (33) In the application of this Regulation, the Commission should consult, where appropriate, the European Data Protection Supervisor.
- (34) Since the objective of this Regulation, namely to set up a European ODR platform for online disputes governed by common rules, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (35) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and specifically Articles 7, 8, 38 and 47 thereof.
- (36) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 and delivered an opinion on 12 January 2012⁽³⁾.

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

The purpose of this Regulation is, through the achievement of a high level of consumer protection, to contribute to the proper functioning of the internal market, and in particular of its digital dimension by providing a European ODR platform ('ODR platform') facilitating the independent, impartial, transparent, effective, fast and fair out-of-court resolution of disputes between consumers and traders online.

⁽¹⁾ OJ L 304, 22.11.2011, p. 64.

⁽²⁾ OJ L 55, 28.2.2011, p. 13.

⁽³⁾ OJ C 136, 11.5.2012, p. 1.

Article 2

Scope

1. This Regulation shall apply to the out-of-court resolution of disputes concerning contractual obligations stemming from online sales or service contracts between a consumer resident in the Union and a trader established in the Union through the intervention of an ADR entity listed in accordance with Article 20(2) of Directive 2013/11/EU and which involves the use of the ODR platform.

2. This Regulation shall apply to the out-of-court resolution of disputes referred to in paragraph 1, which are initiated by a trader against a consumer, in so far as the legislation of the Member State where the consumer is habitually resident allows for such disputes to be resolved through the intervention of an ADR entity.

3. Member States shall inform the Commission about whether or not their legislation allows for disputes referred to in paragraph 1, which are initiated by a trader against a consumer, to be resolved through the intervention of an ADR entity. Competent authorities shall, when they notify the list referred to in Article 20(2) of Directive 2013/11/EU, inform the Commission about which ADR entities deal with such disputes.

4. The application of this Regulation to disputes referred to in paragraph 1, which are initiated by a trader against a consumer, shall not impose any obligation on Member States to ensure that ADR entities offer procedures for the out-of-court resolution of such disputes.

Article 3

Relationship with other Union legal acts

This Regulation shall be without prejudice to Directive 2008/52/EC.

Article 4

Definitions

1. For the purposes of this Regulation:

- (a) 'consumer' means a consumer as defined in point (a) of Article 4(1) of Directive 2013/11/EU;
- (b) 'trader' means a trader as defined in point (b) of Article 4(1) of Directive 2013/11/EU;
- (c) 'sales contract' means a sales contract as defined in point (c) of Article 4(1) of Directive 2013/11/EU;
- (d) 'service contract' means a service contract as defined in point (d) of Article 4(1) of Directive 2013/11/EU;

(e) 'online sales or service contract' means a sales or service contract where the trader, or the trader's intermediary, has offered goods or services on a website or by other electronic means and the consumer has ordered such goods or services on that website or by other electronic means;

(f) 'online marketplace' means a service provider, as defined in point (b) of Article 2 of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce')⁽¹⁾, which allows consumers and traders to conclude online sales and service contracts on the online marketplace's website;

(g) 'electronic means' means electronic equipment for the processing (including digital compression) and storage of data which is entirely transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means;

(h) 'alternative dispute resolution procedure' ('ADR procedure') means a procedure for the out-of-court resolution of disputes as referred to in Article 2 of this Regulation;

(i) 'alternative dispute resolution entity' ('ADR entity') means an ADR entity as defined in point (h) of Article 4(1) of Directive 2013/11/EU;

(j) 'complainant party' means the consumer who or the trader that has submitted a complaint through the ODR platform;

(k) 'respondent party' means the consumer against whom or the trader against whom a complaint has been submitted through the ODR platform;

(l) 'competent authority' means a public authority as defined in point (i) of Article 4(1) of Directive 2013/11/EU;

(m) 'personal data' means any information relating to an identified or identifiable natural person ('data subject'); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to that person's physical, physiological, mental, economic, cultural or social identity.

2. The place of establishment of the trader and of the ADR entity shall be determined in accordance with Article 4(2) and (3) of Directive 2013/11/EU, respectively.

⁽¹⁾ OJ L 178, 17.7.2000, p. 1.

CHAPTER II

ODR PLATFORM

Article 5

Establishment of the ODR platform

1. The Commission shall develop the ODR platform (and be responsible for its operation, including all the translation functions necessary for the purpose of this Regulation, its maintenance, funding and data security. The ODR platform shall be user-friendly. The development, operation and maintenance of the ODR platform shall ensure that the privacy of its users is respected from the design stage ('privacy by design') and that the ODR platform is accessible and usable by all, including vulnerable users ('design for all'), as far as possible.

2. The ODR platform shall be a single point of entry for consumers and traders seeking the out-of-court resolution of disputes covered by this Regulation. It shall be an interactive website which can be accessed electronically and free of charge in all the official languages of the institutions of the Union.

3. The Commission shall make the ODR platform accessible, as appropriate, through its websites which provide information to citizens and businesses in the Union and, in particular, through the 'Your Europe portal' established in accordance with Decision 2004/387/EC.

4. The ODR platform shall have the following functions:

- (a) to provide an electronic complaint form which can be filled in by the complainant party in accordance with Article 8;
- (b) to inform the respondent party about the complaint;
- (c) to identify the competent ADR entity or entities and transmit the complaint to the ADR entity, which the parties have agreed to use, in accordance with Article 9;
- (d) to offer an electronic case management tool free of charge, which enables the parties and the ADR entity to conduct the dispute resolution procedure online through the ODR platform;
- (e) to provide the parties and ADR entity with the translation of information which is necessary for the resolution of the dispute and is exchanged through the ODR platform;
- (f) to provide an electronic form by means of which ADR entities shall transmit the information referred to in point (c) of Article 10;
- (g) to provide a feedback system which allows the parties to express their views on the functioning of the ODR platform and on the ADR entity which has handled their dispute;

(h) to make publicly available the following:

- (i) general information on ADR as a means of out-of-court dispute resolution;
- (ii) information on ADR entities listed in accordance with Article 20(2) of Directive 2013/11/EU which are competent to deal with disputes covered by this Regulation;
- (iii) an online guide about how to submit complaints through the ODR platform;
- (iv) information, including contact details, on ODR contact points designated by the Member States in accordance with Article 7(1) of this Regulation;
- (v) statistical data on the outcome of the disputes which were transmitted to ADR entities through the ODR platform.

5. The Commission shall ensure that the information referred to in point (h) of paragraph 4 is accurate, up to date and provided in a clear, understandable and easily accessible way.

6. ADR entities listed in accordance with Article 20(2) of Directive 2013/11/EU which are competent to deal with disputes covered by this Regulation shall be registered electronically with the ODR platform.

7. The Commission shall adopt measures concerning the modalities for the exercise of the functions provided for in paragraph 4 of this Article through implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 16(3) of this Regulation.

Article 6

Testing of the ODR platform

1. The Commission shall, by 9 January 2015 test the technical functionality and user-friendliness of the ODR platform and of the complaint form, including with regard to translation. The testing shall be carried out and evaluated in cooperation with experts in ODR from the Member States and consumer and trader representatives. The Commission shall submit a report to the European Parliament and the Council of the result of the testing and take the appropriate measures to address potential problems in order to ensure the effective functioning of the ODR platform.

2. In the report referred to in paragraph 1 of this Article, the Commission shall also describe the technical and organisational measures it intends to take to ensure that the ODR platform meets the privacy requirements set out in Regulation (EC) No 45/2001.

*Article 7***Network of ODR contact points**

1. Each Member State shall designate one ODR contact point and communicate its name and contact details to the Commission. The Member States may confer responsibility for the ODR contact points on their centres of the European Consumer Centres Network, on consumer associations or on any other body. Each ODR contact point shall host at least two ODR advisors.

2. The ODR contact points shall provide support to the resolution of disputes relating to complaints submitted through the ODR platform by fulfilling the following functions:

(a) if requested, facilitating communication between the parties and the competent ADR entity, which may include, in particular:

(i) assisting with the submission of the complaint and, where appropriate, relevant documentation;

(ii) providing the parties and ADR entities with general information on consumer rights in relation to sales and service contracts which apply in the Member State of the ODR contact point which hosts the ODR advisor concerned;

(iii) providing information on the functioning of the ODR platform;

(iv) providing the parties with explanations on the procedural rules applied by the ADR entities identified;

(v) informing the complainant party of other means of redress when a dispute cannot be resolved through the ODR platform;

(b) submitting, based on the practical experience gained from the performance of their functions, every two years an activity report to the Commission and to the Member States.

3. The ODR contact point shall not be obliged to perform the functions listed in paragraph 2 in the case of disputes where the parties are habitually resident in the same Member State.

4. Notwithstanding paragraph 3, the Member States may decide, taking into account national circumstances, that the ODR contact point performs one or more functions listed in paragraph 2 in the case of disputes where the parties are habitually resident in the same Member State.

5. The Commission shall establish a network of contact points ('ODR contact points network') which shall enable cooperation between contact points and contribute to the performance of the functions listed in paragraph 2.

6. The Commission shall at least twice a year convene a meeting of members of the ODR contact points network in order to permit an exchange of best practice, and a discussion of any recurring problems encountered in the operation of the ODR platform.

7. The Commission shall adopt the rules concerning the modalities of the cooperation between the ODR contact points through implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 16(3).

*Article 8***Submission of a complaint**

1. In order to submit a complaint to the ODR platform the complainant party shall fill in the electronic complaint form. The complaint form shall be user-friendly and easily accessible on the ODR platform.

2. The information to be submitted by the complainant party shall be sufficient to determine the competent ADR entity. That information is listed in the Annex to this Regulation. The complainant party may attach documents in support of the complaint.

3. In order to take into account the criteria by which the ADR entities, that are listed in accordance with Article 20(2) of Directive 2013/11/EU and that deal with disputes covered by this Regulation, define their respective scopes of application, the Commission shall be empowered to adopt delegated acts in accordance with Article 17 of this Regulation to adapt the information listed in the Annex to this Regulation.

4. The Commission shall lay down the rules concerning the modalities for the electronic complaint form by means of implementing acts. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 16(2).

5. Only data which are accurate, relevant and not excessive in relation to the purposes for which they are collected shall be processed through the electronic complaint form and its attachments.

*Article 9***Processing and transmission of a complaint**

1. A complaint submitted to the ODR platform shall be processed if all the necessary sections of the electronic complaint form have been completed.

2. If the complaint form has not been fully completed, the complainant party shall be informed that the complaint cannot be processed further, unless the missing information is provided.

3. Upon receipt of a fully completed complaint form, the ODR platform shall, in an easily understandable way and without delay, transmit to the respondent party, in one of the official languages of the institutions of the Union chosen by that party, the complaint together with the following data:

- (a) information that the parties have to agree on an ADR entity in order for the complaint to be transmitted to it, and that, if no agreement is reached by the parties or no competent ADR entity is identified, the complaint will not be processed further;
- (b) information about the ADR entity or entities which are competent to deal with the complaint, if any are referred to in the electronic complaint form or are identified by the ODR platform on the basis of the information provided in that form;
- (c) in the event that the respondent party is a trader, an invitation to state within 10 calendar days:
 - whether the trader commits to, or is obliged to use, a specific ADR entity to resolve disputes with consumers, and
 - unless the trader is obliged to use a specific ADR entity, whether the trader is willing to use any ADR entity or entities from those referred to in point (b);
- (d) in the event that the respondent party is a consumer and the trader is obliged to use a specific ADR entity, an invitation to agree within 10 calendar days on that ADR entity or, in the event that the trader is not obliged to use a specific ADR entity, an invitation to select one or more ADR entities from those referred to in point (b);
- (e) the name and contact details of the ODR contact point in the Member State where the respondent party is established or resident, as well as a brief description of the functions referred to in point (a) of Article 7(2).

4. Upon receipt from the respondent party of the information referred to in point (c) or point (d) of paragraph 3, the ODR platform shall in an easily understandable way and without delay communicate to the complainant party, in one of the official languages of the institutions of the Union chosen by that party, the following information:

- (a) the information referred to in point (a) of paragraph 3;
- (b) in the event that the complainant party is a consumer, the information about the ADR entity or entities stated by the

trader in accordance with point (c) of paragraph 3 and an invitation to agree within 10 calendar days on an ADR entity;

- (c) in the event that the complainant party is a trader and the trader is not obliged to use a specific ADR entity, the information about the ADR entity or entities stated by the consumer in accordance with point (d) of paragraph 3 and an invitation to agree within 10 calendar days on an ADR entity;
- (d) the name and contact details of the ODR contact point in the Member State where the complainant party is established or resident, as well as a brief description of the functions referred to in point (a) of Article 7(2).

5. The information referred to in point (b) of paragraph 3 and in points (b) and (c) of paragraph 4 shall include a description of the following characteristics of each ADR entity:

- (a) the name, contact details and website address of the ADR entity;
- (b) the fees for the ADR procedure, if applicable;
- (c) the language or languages in which the ADR procedure can be conducted;
- (d) the average length of the ADR procedure;
- (e) the binding or non-binding nature of the outcome of the ADR procedure;
- (f) the grounds on which the ADR entity may refuse to deal with a given dispute in accordance with Article 5(4) of Directive 2013/11/EU.

6. The ODR platform shall automatically and without delay transmit the complaint to the ADR entity that the parties have agreed to use in accordance with paragraphs 3 and 4.

7. The ADR entity to which the complaint has been transmitted shall without delay inform the parties about whether it agrees or refuses to deal with the dispute in accordance with Article 5(4) of Directive 2013/11/EU. The ADR entity which has agreed to deal with the dispute shall also inform the parties of its procedural rules and, if applicable, of the costs of the dispute resolution procedure concerned.

8. Where the parties fail to agree within 30 calendar days after submission of the complaint form on an ADR entity, or the ADR entity refuses to deal with the dispute, the complaint shall not be processed further. The complainant party shall be informed of the possibility of contacting an ODR advisor for general information on other means of redress.

*Article 10***Resolution of the dispute**

An ADR entity which has agreed to deal with a dispute in accordance with Article 9 of this Regulation shall:

- (a) conclude the ADR procedure within the deadline referred to in point (e) of Article 8 of Directive 2013/11/EU;
- (b) not require the physical presence of the parties or their representatives, unless its procedural rules provide for that possibility and the parties agree;
- (c) without delay transmit the following information to the ODR platform:
 - (i) the date of receipt of the complaint file;
 - (ii) the subject-matter of the dispute;
 - (iii) the date of conclusion of the ADR procedure;
 - (iv) the result of the ADR procedure;
- (d) not be required to conduct the ADR procedure through the ODR platform.

*Article 11***Database**

The Commission shall take the necessary measures to establish and maintain an electronic database in which it shall store the information processed in accordance with Article 5(4) and point (c) of Article 10 taking due account of Article 13(2).

*Article 12***Processing of personal data**

1. Access to information, including personal data, related to a dispute and stored in the database referred to in Article 11 shall be granted, for the purposes referred to in Article 10, only to the ADR entity to which the dispute was transmitted in accordance with Article 9. Access to the same information shall be granted also to ODR contact points, in so far as it is necessary, for the purposes referred to in Article 7(2) and (4).

2. The Commission shall have access to information processed in accordance with Article 10 for the purposes of monitoring the use and functioning of the ODR platform and drawing up the reports referred to in Article 21. It shall process personal data of the users of the ODR platform in so far as it is necessary for the operation and maintenance of the ODR platform, including for the purposes of monitoring the use of the ODR platform by ADR entities and ODR contact points.

3. Personal data related to a dispute shall be kept in the database referred to in paragraph 1 of this Article only for the time necessary to achieve the purposes for which they were collected and to ensure that data subjects are able to access their personal data in order to exercise their rights, and shall be automatically deleted, at the latest, six months after the date of conclusion of the dispute which has been transmitted to the ODR platform in accordance with point (iii) of point (c) of Article 10. That retention period shall also apply to personal data kept in national files by the ADR entity or the ODR contact point which dealt with the dispute concerned, except if the procedural rules applied by the ADR entity or any specific provisions of national law provide for a longer retention period.

4. Each ODR advisor shall be regarded as a controller with respect to its data processing activities under this Regulation, in accordance with point (d) of Article 2 of Directive 95/46/EC, and shall ensure that those activities comply with national legislation adopted pursuant to Directive 95/46/EC in the Member State of the ODR contact point hosting the ODR advisor.

5. Each ADR entity shall be regarded as a controller with respect to its data processing activities under this Regulation, in accordance with point (d) of Article 2 of Directive 95/46/EC, and shall ensure that those activities comply with national legislation adopted pursuant to Directive 95/46/EC in the Member State where the ADR entity is established.

6. In relation to its responsibilities under this Regulation and the processing of personal data involved therein, the Commission shall be regarded as a controller in accordance with point (d) of Article 2 of Regulation (EC) No 45/2001.

*Article 13***Data confidentiality and security**

1. ODR contact points shall be subject to rules of professional secrecy or other equivalent duties of confidentiality laid down in the legislation of the Member State concerned.

2. The Commission shall take the appropriate technical and organisational measures to ensure the security of information processed under this Regulation, including appropriate data access control, a security plan and a security incident management, in accordance with Article 22 of Regulation (EC) No 45/2001.

*Article 14***Consumer information**

1. Traders established within the Union engaging in online sales or service contracts, and online marketplaces established within the Union, shall provide on their websites an electronic link to the ODR platform. That link shall be easily accessible for consumers. Traders established within the Union engaging in online sales or service contracts shall also state their e-mail addresses.

2. Traders established within the Union engaging in online sales or service contracts, which are committed or obliged to use one or more ADR entities to resolve disputes with consumers, shall inform consumers about the existence of the ODR platform and the possibility of using the ODR platform for resolving their disputes. They shall provide an electronic link to the ODR platform on their websites and, if the offer is made by e-mail, in that e-mail. The information shall also be provided, where applicable, in the general terms and conditions applicable to online sales and service contracts.

3. Paragraphs 1 and 2 of this Article shall be without prejudice to Article 13 of Directive 2013/11/EU and the provisions on consumer information on out-of-court redress procedures contained in other Union legal acts, which shall apply in addition to this Article.

4. The list of ADR entities referred to in Article 20(4) of Directive 2013/11/EU and its updates shall be published in the ODR platform.

5. Member States shall ensure that ADR entities, the centres of the European Consumer Centres Network, the competent authorities defined in Article 18(1) of Directive 2013/11/EU, and, where appropriate, the bodies designated in accordance with Article 14(2) of Directive 2013/11/EU provide an electronic link to the ODR platform.

6. Member States shall encourage consumer associations and business associations to provide an electronic link to the ODR platform.

7. When traders are obliged to provide information in accordance with paragraphs 1 and 2 and with the provisions referred to in paragraph 3, they shall, where possible, provide that information together.

Article 15

Role of the competent authorities

The competent authority of each Member State shall assess whether the ADR entities established in that Member State comply with the obligations set out in this Regulation.

CHAPTER III

FINAL PROVISIONS

Article 16

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

4. Where the opinion of the committee under paragraphs 2 and 3 is to be obtained by written procedure, that procedure shall be terminated without result when, within the time-limit for delivery of the opinion, the chair of the committee so decides or a simple majority of committee members so request.

Article 17

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 8(3) shall be conferred for an indeterminate period of time from 8 July 2013.

3. The delegation of power referred to in Article 8(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 8(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 18

Penalties

Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

Article 19

Amendment to Regulation (EC) No 2006/2004

In the Annex to Regulation (EC) No 2006/2004 of the European Parliament and of the Council ⁽¹⁾ the following point is added:

- '21. Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes (Regulation on consumer ODR) (OJ L 165, 18.6.2013, p. 1): Article 14.'

Article 20

Amendment to Directive 2009/22/EC

Directive 2009/22/EC of the European Parliament and of the Council ⁽²⁾ is amended as follows:

(1) in Article 1(1) and (2) and point (b) of Article 6(2), the words 'Directives listed in Annex I' are replaced with the words 'Union acts listed in Annex I';

(2) in the heading of Annex I, the words 'LIST OF DIRECTIVES' are replaced by the words 'LIST OF UNION ACTS';

(3) in Annex I, the following point is added:

- '15. Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes (Regulation on consumer ODR) (OJ L 165, 18.6.2013, p. 1): Article 14.'

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 21 May 2013.

For the European Parliament
The President
M. SCHULZ

For the Council
The President
L. CREIGHTON

Article 21

Reports

1. The Commission shall report to the European Parliament and the Council on the functioning of the ODR platform on a yearly basis and for the first time one year after the ODR platform has become operational.

2. By 9 July 2018 and every three years thereafter the Commission shall submit to the European Parliament and the Council a report on the application of this Regulation, including in particular on the user-friendliness of the complaint form and the possible need for adaptation of the information listed in the Annex to this Regulation. That report shall be accompanied, if necessary, by proposals for adaptations to this Regulation.

3. Where the reports referred to in paragraphs 1 and 2 are to be submitted in the same year, only one joint report shall be submitted.

Article 22

Entry into force

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

2. This Regulation shall apply from 9 January 2016, except for the following provisions:

— Article 2(3) and Article 7(1) and (5), which shall apply from 9 July 2015,

— Article 5(1) and (7), Article 6, Article 7(7), Article 8(3) and (4) and Articles 11, 16 and 17, which shall apply from 8 July 2013.

⁽¹⁾ OJ L 364, 9.12.2004, p. 1.

⁽²⁾ OJ L 110, 1.5.2009, p. 30.

ANNEX

Information to be provided when submitting a complaint

- (1) Whether the complainant party is a consumer or a trader;
 - (2) The name and e-mail and geographical address of the consumer;
 - (3) The name and e-mail, website and geographical address of the trader;
 - (4) The name and email and geographical address of the complainant party's representative, if applicable;
 - (5) The language(s) of the complainant party or representative, if applicable;
 - (6) The language of the respondent party, if known;
 - (7) The type of good or service to which the complaint relates;
 - (8) Whether the good or service was offered by the trader and ordered by the consumer on a website or by other electronic means;
 - (9) The price of the good or service purchased;
 - (10) The date on which the consumer purchased the good or service;
 - (11) Whether the consumer has made direct contact with the trader;
 - (12) Whether the dispute is being or has previously been considered by an ADR entity or by a court;
 - (13) The type of complaint;
 - (14) The description of the complaint;
 - (15) If the complainant party is a consumer, the ADR entities the trader is obliged to or has committed to use in accordance with Article 13(1) of Directive 2013/11/EU, if known;
 - (16) If the complainant party is a trader, which ADR entity or entities the trader commits to or is obliged to use.
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II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2015/1051

of 1 July 2015

on the modalities for the exercise of the functions of the online dispute resolution platform, on the modalities of the electronic complaint form and on the modalities of the cooperation between contact points provided for in Regulation (EU) No 524/2013 of the European Parliament and of the Council on online dispute resolution for consumer disputes

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR) ⁽¹⁾, and in particular Articles 5(7), 7(7) and 8(4) thereof,

After consulting the European Data Protection Supervisor,

Whereas:

- (1) Regulation (EU) No 524/2013 provides for the establishment of an online dispute resolution platform at Union level (ODR platform). The ODR platform should take the form of an interactive and multilingual website offering a single point of entry to consumers and traders seeking to resolve out-of-court disputes concerning contractual obligations stemming from online sales and service contracts.
- (2) Article 8(1) of Regulation (EU) No 524/2013 provides that the electronic complaint form shall be user-friendly. Therefore, complainants should be able to complete the electronic complaint form as a draft before submitting a complaint. It should be ensured that drafts that are not submitted by complainants are automatically deleted from the ODR platform after an appropriate period of time.
- (3) In order to ensure the proper functioning of the ODR platform, it is necessary to establish how the respondent party should be informed that a complaint has been submitted to the ODR platform as well as what information should be used from the electronic complaint form to facilitate the identification of the competent alternative dispute resolution entities (ADR entities).
- (4) For the same purpose and in order to ensure the consistent application of Regulation (EU) No 524/2013, it is necessary to clarify at which point ADR entities should provide information to the ODR platform concerning the handling of a dispute.
- (5) It is necessary to establish the date of conclusion of certain disputes where a complaint cannot be processed further, in order to ensure that personal data related to those disputes can be deleted at the latest six months after that date of conclusion. This includes disputes where the parties cannot agree on an ADR entity due to the lack of response from the respondent party or when an ADR entity refuses to deal with a dispute.
- (6) National competent authorities should notify to the Commission and update the list of national ADR entities in a uniform way to streamline the registration of these entities with the ODR platform under Regulation (EU) No 524/2013.

⁽¹⁾ OJ L 165, 18.6.2013, p. 1.

- (7) It is appropriate to determine when the parties to a dispute handled through the ODR platform should be able to provide their feedback on the functioning of the ODR platform and on the ADR entity which has handled their dispute.
- (8) Regulation (EU) No 524/2013 provides for the designation of one ODR contact point in each Member State to provide support to the parties involved in a dispute and to the ADR entities handling a dispute through the ODR platform. In order to facilitate the cooperation between the ODR contact points it is appropriate to define a common set of principles to underpin that cooperation.
- (9) The measures provided for in this Regulation are in accordance with the opinion of the Committee on Online Dispute Resolution, set up under Article 16(1) of Regulation (EU) No 524/2013,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation lays down the modalities for:

- (a) the electronic complaint form;
- (b) the exercise of the functions of the ODR platform;
- (c) the cooperation between the ODR contact points.

Article 2

Electronic complaint form

The electronic complaint form to be submitted to the ODR platform shall be accessible to consumers and traders in all the official languages of the institutions of the Union. The complainant party shall be able to save a draft of the electronic complaint form on the ODR platform. The draft shall be accessible and editable by the complainant party prior to submission of the final fully completed electronic complaint form. The draft of the electronic complaint form that is not fully completed and submitted shall be automatically deleted from the ODR platform six months after its creation.

Article 3

Informing the respondent party

Upon receipt of the fully completed electronic complaint form, the ODR platform shall transmit a standard electronic message to the respondent party's electronic address indicated by the complainant party in the electronic complaint form, informing that a complaint has been submitted against it and making available the information according to Article 9(3) of Regulation (EU) No 524/2013.

Article 4

Identification of the alternative dispute resolution (ADR) entity

1. The ODR platform shall display to the respondent party an indicative list of ADR entities, where no competent ADR entity is identified in the electronic complaint form, to facilitate the identification of the competent ADR entity. This list shall be based on the following criteria:

- (a) the geographical address of the parties to the dispute as provided for in the electronic complaint form pursuant to the Annex to Regulation (EU) No 524/2013; and
- (b) the sector that the dispute relates to.

2. The parties shall at any time have access to the list of all ADR entities registered with the ODR platform pursuant to Article 5(6) of Regulation (EU) No 524/2013. A search tool, offered by the ODR platform, shall help the parties to identify the ADR entity competent to deal with their dispute among the ADR entities registered with the ODR platform.

*Article 5***Information to be provided by ADR entities**

1. ADR entities to which a complaint has been transmitted through the ODR platform and which have agreed to deal with a dispute shall, without delay upon receipt of the complete complaint file related to that dispute, transmit to the ODR platform the date of receipt of the complete complaint file and the subject matter of the dispute.
2. The date of receipt of the complete complaint file starts the 90-calendar day period referred to in point (e) of Article 8 of Directive 2013/11/EU of the European Parliament and of the Council ⁽¹⁾.
3. ADR entities to which a complaint has been transmitted through the ODR platform and which refuse to deal with a dispute shall transmit the refusal to the ODR platform without delay upon taking that decision in line with Article 5(4) of Directive 2013/11/EU.
4. ADR entities to which a complaint has been transmitted through the ODR platform shall, without delay upon conclusion of the dispute, transmit to the ODR platform the date of conclusion of the ADR procedure as well as its result. This shall include the situation where both or one of the parties withdraw from the procedure in accordance with point (a) of Article 9(2) of Directive 2013/11/EU.

*Article 6***Conclusion of certain disputes and deletion of personal data**

1. A dispute submitted through the ODR platform shall not be processed further in particular where:
 - (a) the respondent party states that it is not willing to use an ADR entity;
 - (b) the parties fail to agree on an ADR entity to deal with their dispute within 30 calendar days after submission of the electronic complaint form;
 - (c) the ADR entity agreed on by the parties refuses to deal with the dispute,and shall be considered as concluded. The date of the occurrence of any of the events referred to in points (a) to (c) shall be the date of conclusion of the respective dispute.
2. The personal data related to the disputes referred to in points (a) to (c) of the first paragraph shall be deleted from the platform at the latest six months after their conclusion.

*Article 7***Electronic notification of the list of ADR entities**

1. Competent authorities as defined under point (i) of Article 4(1) of Directive 2013/11/EU, in order to notify the list of ADR entities referred to in Article 20(2) of Directive 2013/11/EU, shall use a standardised electronic form provided by the Commission.
2. The completed standardised electronic form will include the information as referred to in Article 20(2) of Directive 2013/11/EU and the information on the average length of the ADR procedure as referred to in point (d) of Article 9(5) of Regulation (EU) No 524/2013 and point (e) of Article 19(1) of Directive 2013/11/EU.

*Article 8***Feedback system**

The ODR platform shall give the possibility to the parties involved in a dispute to give their feedback pursuant to point (g) of Article 5(4) of Regulation (EU) No 524/2013 upon conclusion of the ADR procedure and for six months thereafter.

⁽¹⁾ Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR) (OJ L 165, 18.6.2013, p. 63).

*Article 9***Cooperation between ODR contact points**

1. ODR contact points shall provide support to the resolution of disputes relating to complaints submitted through the ODR platform as provided for by Article 7(2) of Regulation (EU) No 524/2013 to the best of their ability.
2. ODR advisors shall without delay provide assistance to and exchange information with advisors in other ODR contact points in order to facilitate the performance of their functions listed in Article 7(2) of Regulation (EU) No 524/2013.
3. ODR advisors who have access to information concerning a dispute including personal data shall grant access to this information to advisors in other ODR contact points in so far as it is necessary for the purpose of fulfilling the functions referred to in Article 7(2) of Regulation (EU) No 524/2013.

*Article 10***Entry into force**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 1 July 2015.

For the Commission
The President
Jean-Claude JUNCKER



Brussels, 13.12.2017
COM(2017) 744 final

**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

**on the functioning of the European Online Dispute Resolution platform established
under Regulation (EU) No 524/2013 on online dispute resolution for consumer disputes**

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

on the functioning of the European Online Dispute Resolution platform established under Regulation (EU) No 524/2013 on online dispute resolution for consumer disputes

Introduction

Facilitating cross-border e-commerce, in particular for SMEs, and strengthening consumers' trust when shopping online is an important part of the Commission's Digital Single Market (DSM) strategy, one of the European Commission's top ten political priorities. Promoting access to efficient and effective redress mechanisms through alternative dispute resolution procedures has been identified as a way to achieve this goal. The 2017 edition of the Consumer Conditions Scoreboard¹ shows that more and more EU consumers are shopping online and that their trust in e-commerce has increased. It is the first time consumers have expressed a strong increase in trust in buying goods and services from other EU countries. This is a significant development since a lack of trust in cross-border e-commerce has, for a number of years, been the main barrier to tapping the full potential of the DSM.

To enable easily accessible and efficient out-of-court redress for consumer disputes, including in disputes arising from cross-border e-commerce, a comprehensive legal framework on *Alternative Dispute Resolution (ADR)*² and *Online Dispute Resolution (ODR)*³ was adopted at EU level in 2013 and has been in place since 2016. The two legislative instruments establishing that framework are interlinked and complementary. Based on consumers' access to a comprehensive landscape of quality ADR bodies, the ODR platform contributes to strengthening consumers' and traders' confidence in shopping and trading online both in their country and abroad: consumers can solve disputes with traders that arise from online transactions in a simple, fast and inexpensive way, while traders avoid costly litigation procedures and maintain good customer relations. The Online Dispute Resolution platform (hereinafter the "ODR platform") is an online platform that channels complaints to ADR bodies. Those ADR bodies have been notified to the Commission by national authorities following a positive assessment of their compliance with the quality requirements mandated in the ADR/ODR legal framework. They can therefore be trusted by both consumers and traders.

The present Communication complies with the obligation laid down in Article 21 of the ODR Regulation to report on the functioning of the ODR platform. It details the steps taken for the establishment of the ODR platform and provides the European Parliament and the Council with an overview of its first year of operation. It also describes the actions planned by the Commission to ensure the platform's continued proper functioning and to further enhance its contribution to the development of the Digital Single Market.

¹ Consumers conditions scoreboard – Edition 2017.

² Directive 2013/11/EU of the European parliament and of the Council on Alternative Dispute Resolution for consumers, OJ L 165, 18.6.2013, p. 63–79.

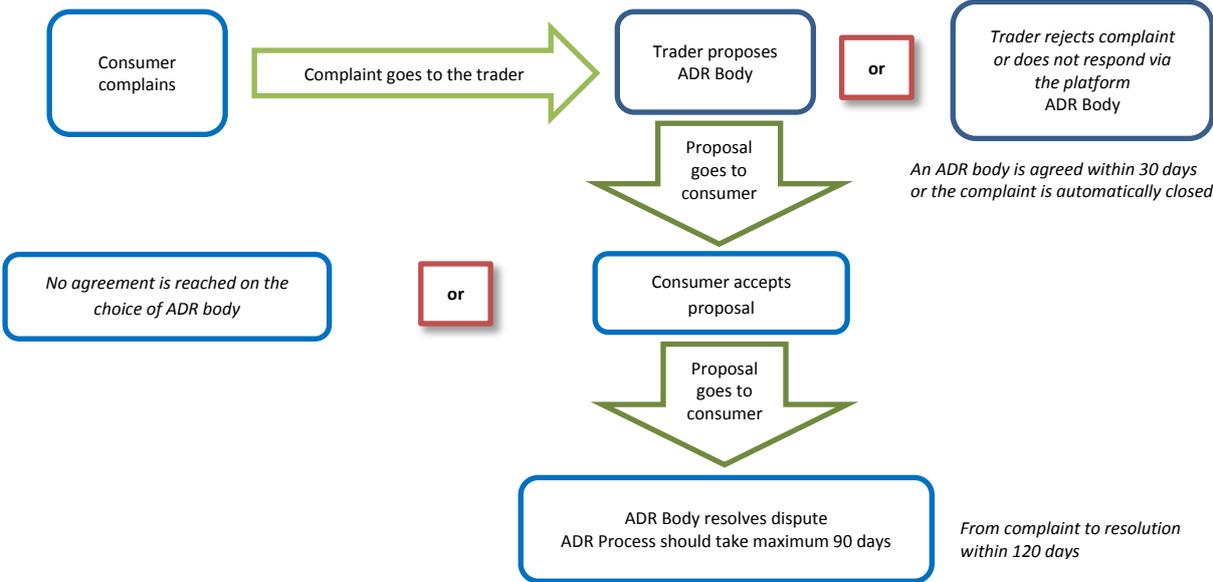
³ Regulation (EU) No 524/2013 of the European parliament and of the Council on online dispute resolution for consumers, OJ L 165, 18.6.2013, p. 1–12.

The ODR platform

The ODR platform was launched in January 2016 and opened to the public on 15 February 2016. The platform's aim is to facilitate the online resolution of disputes between consumers and traders over online transactions. The platform has the following key characteristics:

- Consumers and traders can choose any of the EU official languages for their interaction with the platform (e.g. submitting their complaints, receiving notifications). An automatic translation tool is available for free text communication.
- The platform identifies which notified ADR bodies are competent to handle the case and refers the dispute the ADR body on which the parties agree.
- ADR bodies can use the platform's case management system to conduct the ADR procedure entirely online.
- The parties can request that the outcome of the ADR procedure is translated by a professional translator.
- Clear deadlines are built into the platform to ensure a fast process.

The process on the ODR platform



The ODR platform is fully functional and has been developed as an interactive web-interface offering a single point of entry to consumers and traders seeking to resolve disputes arising from online transactions without going to court. More specifically, the platform's functions have been designed and developed in compliance with Article 5 paragraph 4 of the ODR Regulation, to allow the parties to conduct the dispute resolution procedure online through electronic case management. The ODR platform allows consumers to initiate a procedure by submitting a complaint electronically to a trader, allows the trader to identify the competent ADR entity and, in case of agreement of both parties on the ADR body, transmits the complaint to that body. In addition, it provides all relevant actors with the free translation of information necessary for the resolution of the dispute.

In building the ODR platform, the Commission was supported by an expert group composed of ODR experts designated by the Member States. Furthermore, the Commission conducted three comprehensive testing exercises where 120 ODR experts designated by the Member States, consumer organisations, trader associations and the European Disability Forum tested the platform's various interfaces on the basis of real-life scenarios. The feedback received from those exercises directly fed into the platform's development and was important in ensuring its user-friendliness and accessibility. The platform's workflow is prescribed in the ODR Regulation; the Commission therefore designed the platform's various interfaces in full respect of those legal requirements.

The legal framework for consumer ADR and ODR

The ODR Regulation builds on the Directive on consumer ADR and thus the legal framework for the operation of the platform includes both pieces of legislation. The ADR Directive ensures that EU consumers can turn to certified ADR bodies when they have a problem with a trader over the purchase of a product or a service in virtually all retail sectors both domestically and across borders irrespective of whether the purchase was made online or offline. The certified ADR bodies are required to respect binding quality requirements such as impartiality, fairness, transparency and effectiveness. Member States need to establish national lists of certified ADR bodies and communicate those lists to the Commission. The details of the ADR bodies (name, sectoral coverage and information on fees) are translated in all the official languages of the Union and are subsequently electronically registered and made publically available on the ODR platform.

The ADR/ODR legal framework applies to consumer disputes involving traders established in the EU and in EEA countries. The ODR platform processes disputes that stem from online sales or online service contracts between consumers and traders resident/established in the Union and EEA countries.⁴ The platform does not address disputes between consumers (C2C) or between traders (B2B), nor does it provide a technical framework for direct negotiation between the parties, settlement attempts made by a judge in the course of judicial proceedings, or disputes concerning health services or public providers of further or higher education.

The ODR Regulation provides that Member States should designate ODR contact points to provide one-to-one support to users of the ODR platform when necessary. Online traders are required to provide a link to the ODR platform and state their e-mail address, on which they can be reached via the platform, on their website.

Implementation of the ADR Directive

It is important to stress that Member States' compliance with the legal framework governing ADR/ODR is an essential condition for the functioning and effective operation of the ODR platform. To date, all Member States with the exception of Spain⁵ have communicated to the

⁴ The platform deals with complaints by consumers against traders in all Member States and also with disputes submitted by traders against consumers in such contracts if the legislation of the Member State of the consumer allows for such disputes to be solved. Belgium, Poland, Luxembourg and Germany allow for business to consumer complaints.

⁵ At the moment this report was finalised the relevant Spanish national transposition legislation was in its last stages of the legislative procedure.

Commission that they have fully implemented the Directive on consumer ADR. To date a significant number of ADR bodies have been registered on the platform showing that the system is fully operational: currently more than 300 ADR bodies from 26 Member States⁶ can be accessed through the platform. Moreover, all 28 Member States have designated their national ODR contact points to assist the users of the platform and inform consumers about their options to obtain redress. On 1 July 2017 the ADR/ODR legislation became applicable to the EEA/EFTA States (Norway, Iceland and Lichtenstein). In order to facilitate the submission of complaints from these States the interfaces of the platform are also available in the Norwegian and Icelandic languages. ADR bodies from those states can also be electronically registered with the ODR platform. The ADR bodies registered on the ODR platform have been assessed (and are being monitored) by the national competent authorities for their compliance with the quality requirements established by the ADR Directive. It is important to stress that while there is no obligation for traders to use ADR in respect of individual consumer complaints, online traders are under an obligation to include a link to the ODR platform on their website. In order to check traders' compliance with this obligation the Commission has conducted a scraping of more than 20,000 web shops across the EU. The analysis of traders' compliance with the obligation to provide an easily accessible link to the platform and their email address on their website shows encouraging results that can however be significantly improved. The results showed a compliance rate of 30% where the ODR link has been found on the web shops of e-commerce traders' established in the EU. The presence of the ODR link differs across countries, sectors and differently-sized web shops. The Commission will liaise with Member States to support them in the coming months to enhance traders' compliance in this regard.

Complaints lodged on the ODR platform in its first year of implementation

The Commission conducted an analysis of a complete data set related to all complaints lodged on the platform between 15 February 2016 and 15 February 2017. The analysis focuses solely on complaints that are generated within the platform's workflow and does not take into consideration complaints received by ADR entities directly, i.e. outside the platform. The ODR platform is part of a wider framework aiming to help the parties access qualified bodies for alternative dispute resolution.

During the 12 months covered by this report some 1.9 million people visited the platform. On average the website received over 160,000 unique visitors per month, and more than 2,000 complaints were submitted per month on average.⁷ These data show that the platform has reached a considerable level of coverage and uptake; it also illustrates the significant awareness and interest the platform enjoys with EU consumers and business. More than 24,000 complaints were submitted on the platform in its first year of operation. Table 1 below shows the trend of complaints submitted per month which indicates a regular increase with a peak in December 2016 and January 2017 which corresponds to a seasonal peak in online shopping.

⁶ Dispute resolution bodies are currently not available in Romania and Spain.

⁷ Current statistics show a steady increase in unique visitors from February 2017 – August 2017 to over 180,000 per month, with over 2,300 complaints being filled per month.

Complaints submitted per month

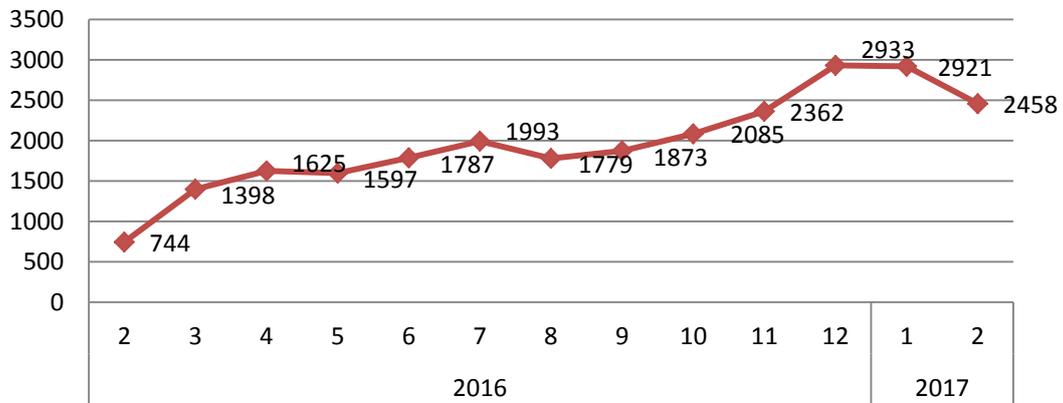


Table 1

The geographical distribution of complaints in the top 10 Member States is presented in table 2 below.

Number of complaints made in top 10 countries

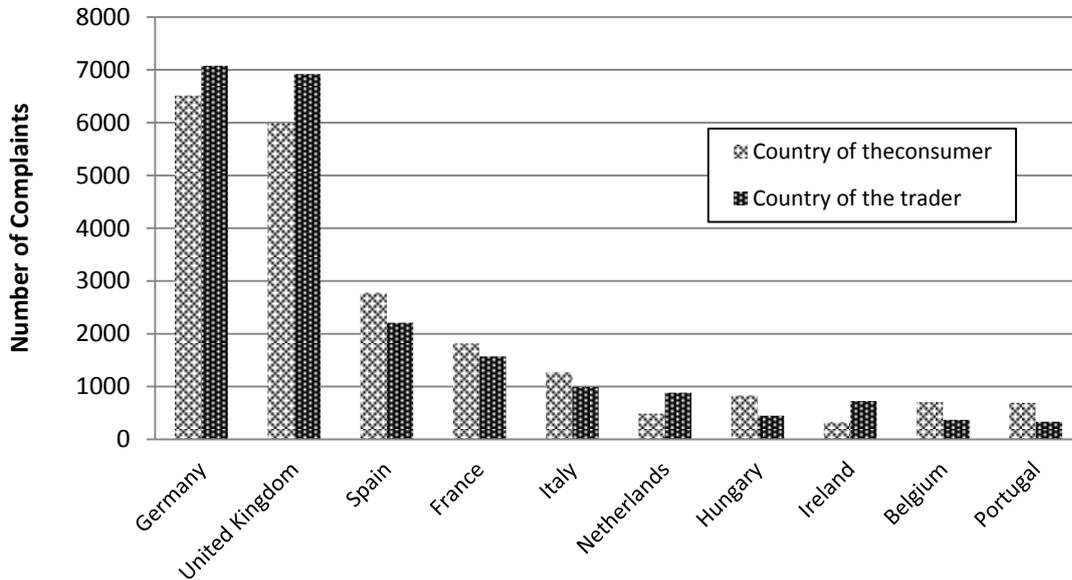


Table 2

Overview of disputes in the ODR platform during the first year of operation:

- The most complained about sectors were consumer clothing and footwear (11.5%), airline tickets (8.5%), and information and communication technology goods (8%) which also represent the main e-commerce sectors in EU⁸.
- The main reasons why consumers complained were linked to problems with the delivery of the goods (21%), followed by non-conformity with the order (15%) and problems with defective goods (12%).
- 1/3 of complaints related to a cross-border issue.
- Germany and UK, where the proportion of e-shoppers is the highest in EU⁹, are the two countries where most complaints have been lodged and also where most traders concerned are located.

Table 3

A detailed analysis of the complaint life-cycle on the platform, as shown in table 4 below, reveals that in a considerable number of cases (85%) complaints were automatically closed within 30 calendar days after submission (i.e. deadline for the consumer and trader to agree on a competent ADR body). In order to understand the significance of these data and evaluate traders' interest in ADR procedures, the Commission carried out a specific survey to get feedback from consumers whose case was automatically closed. The survey revealed that, although a large number of traders did not follow through using the ODR platform, 40% of consumers who submitted a complaint on the ODR platform that was automatically closed after 30 days had been contacted directly by the trader to solve the problem without any further progression of the complaint on the platform. Hence, even in such cases it has to be recognised that the ODR platform helps consumers and traders to solve their disputes, as consumers' mere recourse to the ODR platform has a preventive effect on traders that are more inclined to settle the dispute rapidly without taking the complaint to a dispute resolution body through the ODR platform workflow.

There are also technical reasons for the traders' lack of responsiveness on the platform. For example, when a complaint is submitted against a trader for the first time and the trader is not yet registered on the platform, the automatic notification may reach an incorrect email address. Other reasons could be that the origin of the notification message is unclear to traders or that the notification ends in the spam folder of the trader's mailbox and remains unread. The Commission developed technical measures to mitigate these technical shortcomings and subsequent negative effects after the completion of the statistical analysis in July 2017.

9% of complaints were not automatically closed by the system but were refused by the trader. In 2/3 of these cases, however, traders indicated that they made direct contact with the consumer and solved the issue or were planning to do so (around 6% of the overall submitted complaints).

For 4% of the submitted complaints the data show that both parties have used the possibility to withdraw from the procedure before their agreement to use a specific ADR body.

⁸ Source: Eurostat statistics - Online purchases, EU28, 2016.

⁹ Source: Eurostat statistics - Internet use and online purchases, 2016.

Finally only 2% of complaints were submitted to a specific ADR body. However in around half of these cases the ADR bodies refused to deal with the case on procedural grounds such as lack of competence or the consumer's failure to attempt to contact the trader first. Furthermore, either consumers or traders in some instances withdrew from the procedure before it was completed. This explains why the ADR procedure reached a final outcome in less than 1% of cases. Nevertheless, in 2/3 of those cases the final outcome was reached within the 90-day deadline.

The complaints life-cycle

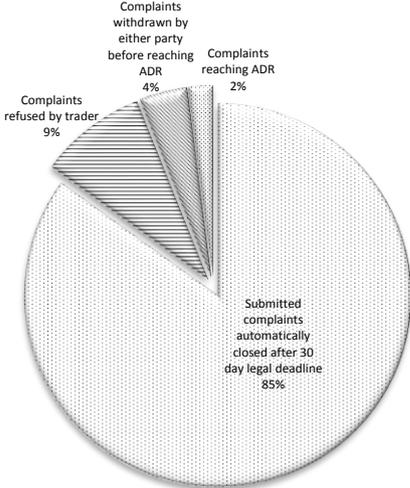


Table 4

Performance of the ODR platform

The significant number of complaints and the uptake of the ODR platform in all Member States are very positive elements which show that the ODR platform was well received and is considered as a useful tool by consumers. A user feedback survey conducted in July and August 2017 indicated that 71% of visitors to the ODR platform found it useful.

Furthermore, available information reveals that 44% of submitted cases were settled bilaterally outside the platform¹⁰.

ODR platform achievements:

- Very high level of consumer visits: the platform received an average of over 160,000 unique visitors per month.
- Large number of complaints submitted: over 2000 complaints per month on average.
- About 44% of the overall number of complaints was solved in successful bilateral negotiation between traders and consumers.

¹⁰ 40% of the complaints automatically closed after 30 days (85% of the total number of complaints) resulted in bilateral settlement. This is 34% of the overall complaints. This 34% figure may be added to the 6% of traders that refused ADR and settled directly with the consumer and the 4% of complaints where the parties withdrew from ADR presumably because they had reached a settlement.

Conclusions

Overall, the platform's structural functionality and its impressive reach among consumers in its first year of operation is very positive. The platform's main functions work properly, it operates as an interactive multilingual web-based IT tool, it provides a user-friendly means to submit complaints online, it contains a multilingual register of ADR entities, and it offers information on consumer redress. However, it is mainly due to its incentive effects that it contributes to solving cases outside of the platform.

In the coming months, it will be important to improve traders' engagement so as to ensure that the complaints that cannot be settled bilaterally (i.e. outside of the platform or through traders' internal complaint systems) are effectively channelled through the ODR platform and dealt with by a competent ADR body. To this end the Commission will work with national authorities to improve compliance by traders with their obligation to link to the ODR platform on their website. The Commission has also started to take action to encourage traders to cooperate more on the platform including by giving feedback when they solve the issues outside the platform, and technical measures are being rolled out with the objective to improve the platform's interface and messaging and to better communicate the various ways of handling complaints that are available to consumers.

Communication activities to further promote the ODR platform amongst consumers and traders will be launched in 2017. In addition, the Commission organised two high-level events with traders active in the top online retail sectors, the clothing and footwear¹¹ and the airlines sector¹², to discuss the potential that ADR and ODR hold for increasing consumer confidence in online trading.

Finally, it is worth mentioning that the ODR platform is also supported by the Connecting Europe Facility financial instrument (CEF Telecoms) established by Regulation 1316/2013/EU¹³. The projects supported aim at maintaining the ODR platform and improving its interoperability with other systems with a view to facilitate communication between traders' complaints systems and the ODR platform.

¹¹ A round-table discussion with representatives of e-retailers in the clothing and footwear sector is scheduled to take place in Brussels in December 2017. The event will discuss important policy developments in online trading and support traders' effort and commitment to responsible trading and the respect of consumer rights in the digital marketplace.

¹² In cooperation with the German Conciliation Body for Public Transport - SÖP (Schlichtungsstelle für den öffentlichen Personenverkehr e.V) the Commission hosted a special event in Berlin on 10 November 2017. The event marked the launch of "TRAVEL-NET", a network of ADR entities from various Member States that handle disputes in the public transport and travel sector.

¹³ OJ L 348, 20.12.2013, p. 129–171.



Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

27 June 2013*

(Judicial cooperation in civil matters — Mediation in civil and commercial matters — Directive 2008/52/EC — National legislation providing for a compulsory mediation procedure — No need to adjudicate)

In Case C-492/11,

REQUEST for a preliminary ruling under Article 267 TFEU from the Giudice di pace di Mercato San Severino (Italy), made by decision of 21 September 2011, received at the Court on 26 September 2011, in the proceedings

Ciro Di Donna

v

Società imballaggi metallici Salerno srl (SIMSA),

THE COURT (Third Chamber),

composed of M. Ilešič, President of the Chamber, E. Jarašiūnas, A. Ó Caoimh, C. Toader (Rapporteur) and C. G. Fernlund, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Italian Government, by G. Palmieri, acting as Agent, assisted by S. Varone, avvocato dello Stato,
- the French Government, by G. de Bergues and J.-S. Pilczer, acting as Agents,
- the Austrian Government, par A. Posch, acting as Agent,
- the European Commission, by F. Moro and M. Wilderspin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 11 April 2013,

gives the following

* Language of the case: Italian.

Judgment

- 1 The request for a preliminary ruling concerns the interpretation of Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (OJ 2008 L 136, p. 3), Articles 6 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950, and Article 47 of the Charter of Fundamental Rights of the European Union.
- 2 This request has been made in proceedings between Mr Di Donna and the Società imballaggi metallici Salerno (SIMSA) srl ('SIMSA') concerning compensation for the damage caused to his motor vehicle and in respect of which the Giudice di pace di Mercato San Severino intends to apply the compulsory mediation procedure provided for under Italian law.

Legal context

European Union legislation

- 3 Recitals 8 and 10 in the preamble to Directive 2008/48 are worded as follows:

'(8) The provisions of this Directive should apply only to mediation in cross-border disputes, but nothing should prevent Member States from applying such provisions also to internal mediation processes.

...

(10) This Directive should apply to processes whereby two or more parties to a cross-border dispute attempt by themselves, on a voluntary basis, to reach an amicable agreement on the settlement of their dispute with the assistance of a mediator. It should apply in civil and commercial matters. ...'

- 4 Article 1(1) of Directive 2008/52/EC provides:

'The objective of this Directive is to facilitate access to alternative dispute resolution and to promote the amicable settlement of disputes by encouraging the use of mediation and by ensuring a balanced relationship between mediation and judicial proceedings.'

- 5 Article 3(a) of Directive 2008/52/EC states:

'... the following definitions shall apply:

(a) "Mediation" means a structured process, however named or referred to, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a mediator. This process may be initiated by the parties or suggested or ordered by a court or prescribed by the law of a Member State.

...'

6 Article 5(2) of Directive 2008/52 provides:

‘This Directive is without prejudice to national legislation making the use of mediation compulsory or subject to incentives or sanctions, whether before or after judicial proceedings have started, provided that such legislation does not prevent the parties from exercising their right of access to the judicial system.’

7 Article 7(1) of Directive 2008/52 is worded as follows:

‘Given that mediation is intended to take place in a manner which respects confidentiality, Member States shall ensure that, unless the parties agree otherwise, neither mediators nor those involved in the administration of the mediation process shall be compelled to give evidence in civil and commercial judicial proceedings or arbitration regarding information arising out of or in connection with a mediation process, except:

- (a) where this is necessary for overriding considerations of public policy of the Member State concerned, in particular when required to ensure the protection of the best interests of children or to prevent harm to the physical or psychological integrity of a person: or
- (b) where disclosure of the content of the agreement resulting from mediation is necessary in order to implement or enforce that agreement.

...’

Italian law

Legislative Decree No 28/2010

8 Legislative Decree No 28 of 4 March 2010 implementing Article 60 of Law No 69 of 18 June 2009 on mediation for the purposes of conciliation in civil and commercial litigation (GURI No 53 of 5 March 2010; ‘Legislative Decree No 28/2010’) was communicated to the European Commission as a national measure implementing Directive 2008/52.

9 Article 5(1) of Legislative Decree No 28/2010 provides:

‘Any person who intends to bring legal proceedings concerning a dispute over joint ownership, property rights, division, inheritance rights, family contracts, leases, loans-for-use, leases of businesses, compensation for damage resulting from vehicle and boat traffic, medical liability and defamation through the press and other media, or insurance, banking and financial contracts, shall be required, as a preliminary step, to use mediation within the meaning of the present decree ... The carrying out of mediation shall be a precondition for bringing legal proceedings. Any objection of inadmissibility on this ground must be raised by the defendant, failing which it shall be barred, or may be raised by the court of its own motion, before the conclusion of the first hearing. Where a court finds that mediation has been initiated but not concluded, it shall fix a further hearing after the period referred to in Article 6 has expired. It shall do likewise where mediation has not been initiated, granting the parties, at the same time, a period of 15 days within which to submit the request for mediation.’

10 Article 6 of Legislative Decree No 28/2010 reads as follows:

‘1. A mediation procedure shall last no longer than four months.

...’

11 Article 8 of Legislative Decree No 28/2010, as amended by Law No 148 of 14 September 2011 (GURI No 216 of 16 September 2011, p. 1), governs the carrying out of the mediation procedure. That article lays down as follows:

‘1. On submission of a request for mediation, the person responsible within the relevant body shall designate a mediator and shall arrange a first meeting between the parties within 15 days of the submission of the request. ...

...’

12 Article 11 of Legislative Decree No 28/2010 states:

‘1. Where an amicable settlement has been reached, the mediator shall draw up a record to which the text of the agreement shall be annexed. Where no agreement is reached, the mediator may draw up a proposal for conciliation. In any event, the mediator shall draw up a proposal for conciliation where the parties make a joint request for him to do so at any point during the mediation process. Before drawing up the proposal, the mediator shall inform the parties of the possible consequences referred to in Article 13.

...

4. Where the attempt at conciliation is unsuccessful, the mediator shall draw up a report setting out the proposal, which shall be signed by the parties and by the mediator, who shall certify the signatures of the parties so signing, or their inability to sign. The mediator shall also mention in his report the failure of any party to participate in the mediation.’

13 Article 13 of Legislative Decree No 28/2010, concerning the costs of the procedure, provides:

‘1. Where the order made in the judgment concluding the proceedings corresponds entirely to the content of the proposal, the court shall disallow recovery of the costs incurred by the successful party who has rejected the proposal, in respect of the period following the drawing up of the proposal, and order that party to reimburse the costs incurred by the unsuccessful party in respect of that period and also to pay to the State treasury a further sum equal to the single payment due. Articles 92 and 96 of the Code of Civil Procedure [Codice di procedura civile] continue to apply. The provisions of this paragraph shall also apply to the remuneration paid to the mediator and to the fees of any expert as referred to in Article 8(4).

2. Where the order made in the judgment concluding the proceedings does not correspond entirely to the content of the proposal, the court may, if there are serious and exceptional reasons for doing so, none the less disallow recovery of the costs incurred by the successful party in respect of the remuneration paid to the mediator and the fees of any expert as referred to in Article 8(4).’

Ministerial Decree No 180/2010

14 By legislative act, the Italian Government adopted Ministerial Decree No 180 of 18 October 2010, as amended by Ministerial Decree No 145 of 6 July 2011 (‘Ministerial Decree No 180/2010’). For the purposes of the present case, Article 16 of Ministerial Decree No 180/2010 provides:

‘1. The fees shall include the cost of initiating the mediation procedure and the costs of the mediation.

2. A mediation initiation cost of EUR 40, which is part of the overall fee, shall be paid by each party requesting the mediation on lodging an application for mediation, and by any other party who joins mediation when joining that procedure.

3. Each party shall be liable to pay the costs of the mediation as set out in Table A annexed to this decree.

4. The maximum costs of mediation for each reference category, as set out in Table A:

- (a) may be increased by up to one-fifth to take account of the particular importance, complexity or difficulty of the matter;
- (b) shall be increased by up to one-quarter in the event of a successful outcome to the mediation;
- (c) shall be increased by one-fifth in the event that a proposal is formulated within the meaning of Article 11 of Legislative Decree [No 28/2010];
- (d) as regards the matters referred to in Article 5(1) of Legislative Decree [No 28/2010], shall be reduced by one-third for the first six categories and by half for the remaining categories, without prejudice to the reduction contemplated under point (e) of the present paragraph, and no other increase provided for in the present article shall be applied except for that referred to in point (b) of the present paragraph;
- (e) shall be reduced to EUR 40 for the first category and EUR 50 for all other categories, without prejudice to the application of point (c) of the present paragraph, when none of the opponents of the party who has requested the mediation participates in the mediation procedure.

...

14. The minimum fee amounts indicated for each of the reference categories as set out in Table A annexed to this decree may be varied.'

15 Table A, referred to in Article 16(4) of Ministerial Decree No 180/2010, states as follows:

Value of the claim	Costs (for each party)
Up to € 1 000	€ 65
From € 1 001 to € 5 000	€ 130
From € 5 001 to € 10 000	€ 240
From € 10 001 to € 25 000	€ 360
From € 25 001 to € 50 000	€ 600
From € 50 001 to € 250 000	€1 000
From € 250 001 to € 500 000	€2 000
From € 500 001 to € 2 500 000	€3 800
From € 2 500 001 to € 5 000 000	€5 200
Over € 5 000 000	€9 200

The dispute in the main proceedings and the questions referred for a preliminary ruling

16 Mr Di Donna instituted legal proceedings against SIMSA seeking compensation from it for the damage caused to his motor vehicle by a fork-lift truck belonging to that company. According to the file, SIMSA did not contest the facts but requested that the first hearing be adjourned so that the insurance company with which it has a policy insuring covering it for delictual liability could be

joined in the proceedings. It however argued, in that regard, that it was necessary, before that insurance company could be joined in proceedings, to submit the case to the compulsory mediation procedure provided for under Legislative Decree No 28/2010.

17 The referring court considers that that decree is applicable to the facts in the main proceedings to the extent that the contractual link between SIMSA and the insurance company called upon to join the proceedings falls within the scope of insurance matters for which the mediation procedure is, applying Article 5(1) of that decree, compulsory and in the absence of which any court action will be rendered inadmissible. The Giudice di pace di Mercato San Severino nevertheless raises the question whether, for the purposes of fixing the date of the next hearing, it is necessary to take into account the 45-day period allowed for the insurance company to submit to the court's jurisdiction or also the four-month period necessary for the attempt at mediation. In addition, the referring court shares SIMSA's doubts concerning the compatibility of the provisions of Legislative Decree No 28/2010 with European Union law.

18 It was in that context that the Giudice di pace di Mercato San Severino decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'Do Articles 6 and 13 of the [European] Convention for the Protection of Human Rights and Fundamental Freedoms, Article 47 of the Charter of Fundamental Rights of the European Union ..., Directive 2008/52/EC ..., the general European Union law principle of effective judicial protection and, in general, European Union law as a whole preclude the introduction in a Member State of the European Union of a set of rules [such as] Legislative Decree No 28/2010 and Ministerial Decree No 180/2010 ... which provide that:

1. a court hearing subsequent legal proceedings may infer evidence against a party who, without valid reason, has failed to participate in compulsory mediation;
2. where legal proceedings brought after the rejection of a conciliation proposal are concluded by a judgment in precisely the same terms as those of the rejected proposal, the court must disallow recovery of the costs sustained by a successful party who rejected the conciliation proposal in respect of the period following the making of the proposal and must order that party to pay the costs of the unsuccessful party in respect of the same period and to make a further payment to the State treasury in the same amount as that already paid in respect of fees (single payment);
3. where there are serious and exceptional reasons, a court may disallow recovery of the costs incurred by the successful party in respect of the remuneration paid to the mediator and the fees of any expert, even where the judgment concluding legal proceedings is not in exactly the same terms as those of the conciliation proposal;
4. the court must order any party who has failed without valid reason to participate in mediation to pay to the State treasury a sum equal to the single payment in respect of the proceedings;
5. the mediator may, or must, make a proposal for conciliation even in the absence of any agreement between the parties and even where the parties fail to participate in mediation;
6. the period within which the attempt at mediation must be completed may be up to four months;
7. an action may be proceeded with, even after expiry of the period of four months from the commencement of the mediation procedure, only after a report confirming that no agreement has been reached has been obtained from the secretariat of the mediation body concerned, drafted by the mediator and setting out the proposal that has been rejected;

8. there may be more than one attempt at mediation – and the period allowed for resolving the dispute will be multiplied accordingly – whenever a new application is legitimately made in the course of legal proceedings that have, in the meantime, been instituted;
9. the costs of compulsory mediation are at least twice those of the legal proceedings that mediation is designed to avoid, a disparity which increases exponentially as the amount involved in the case increases (to such an extent that the costs of mediation may reach more than six times those of legal proceedings) and the complexity of the case increases (such as to require the appointment of an expert, paid by the parties to the mediation, to assist the mediator in disputes that call for specific technical knowledge, even though any technical report prepared by the expert [or] the information he has obtained may not be used in any subsequent legal proceedings)?

Developments since the making of the request for a preliminary ruling

- 19 Following a request for clarification by the Court of the grounds justifying the necessity of the present request for a preliminary ruling in order to decide the case in the main proceedings, the referring court, in its reply of 9 March 2012, stated that, were the Court to decide that the national legislation was incompatible with European Union law, it would be obliged not to refer the dispute in the main proceedings to mediation, with consequences for the calculation of the time-limits applicable to the fixing of the hearing.
- 20 By judgment No 272/2012, delivered on 24 October 2012, the Corte costituzionale (Constitutional Court) declared certain articles of Decree No 28/2010 unconstitutional, including Articles 5(1), 8(5) and 13, with the exception, regarding the latter article, of the reference to Articles 92 and 96 of the Italian Code of Civil Procedure, which are however irrelevant to the case in the main proceedings.
- 21 It follows from that judgment, *inter alia*, that, following the finding that Article 5(1) of Legislative Decree No 28/2010 is unconstitutional, the prior initiation of mediation in Italy is no longer a precondition for the admissibility of legal proceedings and the parties are henceforth no longer bound to resort to mediation.
- 22 By letter of 14 December 2012, the Registry of the Court requested the referring court to inform it of the consequences of judgment No 272/2012, both on the national proceedings pending before it and on the request for a preliminary ruling.
- 23 By letter of 17 January 2013, that court replied that it would maintain its request for a preliminary ruling but it did not take a position on the bearing of that judgment on the decision in the main proceedings or on the relevance of the questions referred to the Court for a preliminary ruling.

Consideration of the request for a preliminary ruling

- 24 According to the Court's settled case-law, in the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, it is solely for the national court before which a dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted by the national court concern the interpretation of European Union law, the Court of Justice is, in principle, bound to give a ruling (see, *inter alia*, Case C-415/93 *Bosman* [1995] ECR I-4921, paragraph 59; Case C-379/98 *PreussenElektra* [2001] ECR I-2099, paragraph 38; and Case C-241/09 *Fluxys* [2010] ECR I-12773, paragraph 28).

- 25 However, the Court has also held that, in exceptional circumstances, it can examine the conditions in which the case was referred to it by the national court in order to establish whether it has jurisdiction. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of European Union law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, in particular, *PreussenElektra*, paragraph 39; Case C-544/07 *Rüffler* [2009] ECR I-3389, paragraph 38; Case C-314/08 *Filipiak* [2009] ECR I-11049, paragraph 42; and Case C-399/11 *Melloni* [2013] ECR, paragraph 29).
- 26 Thus, on the basis of settled case-law, it is clear from both the wording and the scheme of Article 267 TFEU that a national court or tribunal is not empowered to bring a matter before the Court by way of a reference for a preliminary ruling unless a case is pending before it, in which it is called upon to give a decision which is capable of taking account of the preliminary ruling (see to that effect, *inter alia*, Case C-225/02 *García Blanco* [2005] ECR I-523, paragraph 27 and case-law cited).
- 27 In the case in the main proceedings, following the judgment of the Corte costituzionale of 24 October 2012, the national legislation applicable to the dispute in the main proceedings is no longer that under consideration in the context of the request for a preliminary ruling (see, by analogy, *Fluxys*, paragraph 32). That judgment, declaring some of the provisions of Decree No 28/2010 incompatible with the constitution, has the effect of removing them from the national legal system.
- 28 While the referring court, in its letter of 17 January 2013, admittedly stated that it wished to maintain its request for a preliminary ruling, it did not however indicate in what way the questions referred by it remained relevant for the decision in the main proceedings.
- 29 As stated by the Advocate General in points 20 and 23 of her Opinion, the nine questions referred to the Court have now become hypothetical.
- 30 The first four questions refer to the compatibility with European Union law of national legislation which entitles the court, first, to infer evidence against a party who, without valid reason, has failed to participate in compulsory mediation and to order any party who has failed without valid reason to participate in mediation to pay to the State treasury a sum equal to the single payment payable in respect of the costs (Article 8(5) of Legislative Decree No 28/2010) and, second, to disallow recovery of the costs sustained by a successful party who rejected the conciliation proposal and to order that party to pay the costs of mediation (Article 13 of that decree). Thus, those questions refer exclusively to provisions which were declared unconstitutional. Accordingly, those questions have become devoid of purpose as a result of the changes which have occurred concerning the applicability of the national legislative provisions.
- 31 With regard to the final five questions concerning the carrying out of the mediation procedure, the time-limits for the procedure and its cost, it must be observed, as stated in paragraph 27 above, that the national legal context of the dispute in the main proceedings is no longer that described by the national court in its order for reference. Following the finding that Article 5(1) of Legislative Decree No 28/2010 is unconstitutional, the parties are henceforth no longer bound to participate in mediation. Consequently, as stated by the Advocate General in point 29 of her Opinion, those questions are no longer of any relevance for the purposes of the decision in the main proceedings.
- 32 It follows that, taking into account the development of the dispute before the referring court from the point of view of the applicable law, the Court is no longer in a position to give a ruling on the questions which have been referred to it (see, to that effect, *Fluxys*, paragraph 34).

Costs

- ³³ Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

There is no need to answer the question referred by the Giudice di pace di Mercato San Severino (Italy) by decision of 21 September 2011 for a preliminary ruling in Case C-492/11.

[Signatures]

JUDGMENT OF THE COURT (First Chamber)

14 June 2017 (*)

(Reference for a preliminary ruling — Consumer protection — Alternative dispute resolution (ADR) procedures — Directive 2008/52/EC — Directive 2013/11/EU — Article 3(2) — Applications by consumers to set an order aside in the context of payment order proceedings instituted by a credit institution — Right of access to the judicial system — National legislation providing for mandatory recourse to a mediation procedure — Obligation to be assisted by a lawyer — Condition for the admissibility of proceedings before the courts)

In Case C-75/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunale Ordinario di Verona (Verona District Court, Italy), made by decision of 28 January 2016, received at the Court on 10 February 2016, in the proceedings

Livio Menini,

Maria Antonia Rampanelli

v

Banco Popolare Società Cooperativa,

THE COURT (First Chamber),

composed of R. Silva de Lapuerta (Rapporteur), President of the Chamber, E. Regan, J.-C. Bonichot, C.G. Fernlund and S. Rodin, Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: R. Schiano, Administrator,

having regard to the written procedure and further to the hearing on 24 November 2016,

after considering the observations submitted on behalf of:

- the Italian Government, by G. Palmieri, acting as Agent, and D. Del Gaizo, avvocato dello Stato,
- the German Government, by M. Hellmann and T. Henze, acting as Agents,
- the European Commission, by E. Montaguti, C. Valero and M. Wilderspin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 16 February 2017,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive

2009/22/EC (Directive on consumer ADR) (OJ 2013 L 165, p. 63), and of Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (OJ 2008 L 136, p. 3).

- 2 The request has been made in proceedings between (i) Livio Menini and Maria Antonia Rampanelli and (ii) Banco Popolare Società Cooperativa concerning payment of the debit balance on a current account held by Mr Menini and Ms Rampanelli at the Banco Popolare, following the grant of credit facilities by the latter.

Legal context

EU law

Directive 2008/52

- 3 Recitals 8 and 13 of Directive 2008/52 state as follows:

'(8) The provisions of this Directive should apply only to mediation in cross-border disputes, but nothing should prevent Member States from applying such provisions also to internal mediation processes.

...

(13) The mediation provided for in this Directive should be a voluntary process in the sense that the parties are themselves in charge of the process and may organise it as they wish and terminate it at any time. ...'

- 4 Article 1 of that directive provides as follows:

'1. The objective of this Directive is to facilitate access to alternative dispute resolution and to promote the amicable settlement of disputes by encouraging the use of mediation and by ensuring a balanced relationship between mediation and judicial proceedings.

2. This Directive shall apply, in cross-border disputes, to civil and commercial matters except as regards rights and obligations which are not at the parties' disposal under the relevant applicable law. It shall not extend, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority (*acta iure imperii*).

...'

- 5 Article 2(1) of that directive provides as follows:

'For the purposes of this Directive a cross-border dispute shall be one in which at least one of the parties is domiciled or habitually resident in a Member State other than that of any other party on the date on which:

- (a) the parties agree to use mediation after the dispute has arisen;
- (b) mediation is ordered by a court;
- (c) an obligation to use mediation arises under national law; or
- (d) for the purposes of Article 5 an invitation is made to the parties.'

- 6 Article 3(a) of that directive defines the term 'mediation' as a structured process, however named or referred to, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance

of a mediator. This process may be initiated by the parties or suggested or ordered by a court or prescribed by the law of a Member State.

7 Article 5(2) of Directive 2008/52 provides as follows:

'This Directive is without prejudice to national legislation making the use of mediation compulsory or subject to incentives or sanctions, whether before or after judicial proceedings have started, provided that such legislation does not prevent the parties from exercising their right of access to the judicial system.'

Directive 2013/11

8 Recitals 16, 19 and 45 of Directive 2013/11 state:

(16) ... This Directive should apply to complaints submitted by consumers against traders. It should not apply to complaints submitted by traders against consumers or to disputes between traders. However, it should not prevent Member States from adopting or maintaining in force provisions on procedures for the out-of-court resolution of such disputes.

...

(19) Some existing Union legal acts already contain provisions concerning [alternative dispute resolution (ADR)]. In order to ensure legal certainty, it should be provided that, in the event of conflict, this Directive is to prevail, except where it explicitly provides otherwise. In particular, this Directive should be without prejudice to Directive [2008/52], which already sets out a framework for systems of mediation at Union level for cross-border disputes, without preventing the application of that Directive to internal mediation systems. This Directive is intended to apply horizontally to all types of ADR procedures, including to ADR procedures covered by Directive [2008/52].

...

(45) The right to an effective remedy and the right to a fair trial are fundamental rights laid down in Article 47 of the Charter of Fundamental Rights of the European Union. Therefore, ADR procedures should not be designed to replace court procedures and should not deprive consumers or traders of their rights to seek redress before the courts. This Directive should not prevent parties from exercising their right of access to the judicial system. In cases where a dispute could not be resolved through a given ADR procedure whose outcome is not binding, the parties should subsequently not be prevented from initiating judicial proceedings in relation to that dispute. Member States should be free to choose the appropriate means to achieve this objective. They should have the possibility to provide, *inter alia*, that limitation or prescription periods do not expire during an ADR procedure.'

9 Article 1 of that directive is worded as follows:

'The purpose of this Directive is, through the achievement of a high level of consumer protection, to contribute to the proper functioning of the internal market by ensuring that consumers can, on a voluntary basis, submit complaints against traders to entities offering independent, impartial, transparent, effective, fast and fair [ADR] procedures. This Directive is without prejudice to national legislation making participation in such procedures mandatory, provided that such legislation does not prevent the parties from exercising their right of access to the judicial system.'

10 Article 3 of that directive provides as follows:

'1. Save as otherwise set out in this Directive, if any provision of this Directive conflicts with a provision laid down in another Union legal act and relating to out-of-court redress procedures initiated by a consumer against a trader, the provision of this Directive shall prevail.'

2. This Directive shall be without prejudice to Directive [2008/52].

...'

11 Article 4 of Directive 2013/11 is worded as follows:

1. For the purposes of this Directive:

- (a) "consumer" means any natural person who is acting for purposes which are outside his trade, business, craft or profession;
- (b) "trader" means any natural persons, or any legal person irrespective of whether privately or publicly owned, who is acting, including through any person acting in his name or on his behalf, for purposes relating to his trade, business, craft or profession;
- (c) "sales contract" means any contract under which the trader transfers or undertakes to transfer the ownership of goods to the consumer and the consumer pays or undertakes to pay the price thereof, including any contract having as its object both goods and services;
- (d) "service contract" means any contract other than a sales contract under which the trader supplies or undertakes to supply a service to the consumer and the consumer pays or undertakes to pay the price thereof;
- (e) "domestic dispute" means a contractual dispute arising from a sales or service contract where, at the time the consumer orders the goods or services, the consumer is resident in the same Member State as that in which the trader is established;
- (f) "cross-border dispute" means a contractual dispute arising from a sales or service contract where, at the time the consumer orders the goods or services, the consumer is resident in a Member State other than the Member State in which the trader is established;
- (g) "ADR procedure" means a procedure, as referred to in Article 2, which complies with the requirements set out in this Directive and is carried out by an ADR entity;
- (h) "ADR entity" means any entity, however named or referred to, which is established on a durable basis and offers the resolution of a dispute through an ADR procedure and that is listed in accordance with Article 20(2);
- (i) "competent authority" means any public authority designated by a Member State for the purposes of this Directive and established at national, regional or local level.

2. A trader is established:

- if the trader is a natural person, where he has his place of business,
- if the trader is a company or other legal person or association of natural or legal persons, where it has its statutory seat, central administration or place of business, including a branch, agency or any other establishment.

3. An ADR entity is established:

- if it is operated by a natural person, at the place where it carries out ADR activities,
- if the entity is operated by a legal person or association of natural or legal persons, at the place where that legal person or association of natural or legal persons carries out ADR activities or has its statutory seat,

- if it is operated by an authority or other public body, at the place where that authority or other public body has its seat.'

12 Article 8 of Directive 2013/11 is worded as follows:

'Member States shall ensure that ADR procedures are effective and fulfil the following requirements:

- (a) the ADR procedure is available and easily accessible online and offline to both parties irrespective of where they are;
- (b) the parties have access to the procedure without being obliged to retain a lawyer or a legal advisor, but the procedure shall not deprive the parties of their right to independent advice or to be represented or assisted by a third party at any stage of the procedure;
- (c) the ADR procedure is free of charge or available at a nominal fee for consumers;

...'

13 Article 9 of that directive provides as follows:

'1. Member States shall ensure that in ADR procedures:

...

- (b) the parties are informed that they are not obliged to retain a lawyer or a legal advisor, but they may seek independent advice or be represented or assisted by a third party at any stage of the procedure;

...

2. In ADR procedures which aim at resolving the dispute by proposing a solution, Member States shall ensure that:

- (a) The parties have the possibility of withdrawing from the procedure at any stage if they are dissatisfied with the performance or the operation of the procedure. They shall be informed of that right before the procedure commences. Where national rules provide for mandatory participation by the trader in ADR procedures, this point shall apply only to the consumer.

...

3. Where, in accordance with national law, ADR procedures provide that their outcome becomes binding on the trader once the consumer has accepted the proposed solution, Article 9(2) shall be read as applicable only to the consumer.'

14 Article 12 of that directive states:

'1. Member States shall ensure that parties who, in an attempt to settle a dispute, have recourse to ADR procedures the outcome of which is not binding, are not subsequently prevented from initiating judicial proceedings in relation to that dispute as a result of the expiry of limitation or prescription periods during the ADR procedure.

2. Paragraph 1 shall be without prejudice to provisions on limitation or prescription contained in international agreements to which Member States are party.'

Italian law

15 Article 4(3) of decreto legislativo n. 28 Attuazione dell'articolo 60 della legge 18 giugno 2009, n. 69, in materia di mediazione finalizzata alla conciliazione delle controversie civili e

commerciali (Legislative Decree No 28 implementing Article 60 of Law No 69 of 18 June 2009 on mediation in civil and commercial matters) of 4 March 2010 (GURI No 53 of 5 March 2010, p. 1) ('Legislative Decree No 28/2010'), which transposes Directive 2008/52 into Italian law, provides in the version applicable at the material time as follows:

'On appointment, the lawyer must inform the client of the possibility of having recourse to the mediation procedure governed by the present decree and the tax concessions laid down in Articles 17 and 20. Furthermore, the lawyer shall inform the client of the cases in which initiating the mediation procedure is a condition for the admissibility of legal proceedings. That information must be provided clearly and in writing. In the event of breach of the obligations to provide information, the contract between the lawyer and the client may be declared invalid. ...'

16 Article 5 of Legislative Decree No 28/2010 provides as follows:

' ...

1bis. Any person who intends to bring legal proceedings concerning a dispute over ... insurance, banking or financial contracts, shall be required, as a preliminary step, assisted by a lawyer, to use the mediation procedure within the meaning of the present decree or the settlement procedure provided for in Legislative Decree No 179 of 8 October 2007, or the procedure established under Article 128bis of the Consolidated Law on banking and credit referred to in Legislative Decree No 385 of 1 September 1993, as subsequently amended, in respect of the fields regulated therein. Use of the mediation procedure shall be a condition for the admissibility of legal proceedings. ...

...

2bis. Where the use of a mediation procedure constitutes a condition for the admissibility of legal proceedings, that condition shall be regarded as fulfilled if the first meeting with the mediator ends without agreement.

...

4. Paragraphs 1bis and 2 shall not apply:

(a) in enforcement procedures, including applications to set aside, until a decision has been handed down on the requests for the grant and stay of provisional enforcement;

' ...'

17 Article 8 of that legislative decree is worded as follows:

'1. On submission of a request for mediation, the person responsible within the relevant body shall designate a mediator and shall arrange a first meeting between the parties on a date no later than 30 days after the filing of the request. The request and the date of the first meeting shall be communicated to the other party by any appropriate means to ensure receipt thereof, including by the requesting party. At the initial and subsequent meetings, and until conclusion of the procedure, the parties shall take part assisted by a lawyer. ...

...

4bis. Where a party fails without a valid reason to participate in mediation, a court may infer evidence from that in the subsequent judgment, within the meaning of the second paragraph of Article 116 of the Code of Civil Procedure. The court shall order any party who, in the cases mentioned in Article 5, has failed without a valid reason to participate in mediation to pay the State Treasury a sum equal to the single payment payable in respect of the proceedings.

' ...'

- 18 Decreto legislativo n. 130 Attuazione della direttiva 2013/11/UE sulla risoluzione alternativa delle controversie dei consumatori, che modifica il regolamento (CE) n. 2006/2004 e la direttiva 2009/22/CE (Legislative Decree No 130, transposing Directive 2013/11/EU on alternative resolution of consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC) of 4 August 2015 (GURI No 191 of 19 August 2015) ('Legislative Decree No 130/2015') inserted a new Title IIbis entitled 'Out-of-court resolution of disputes' in decreto legislativo n. 206, recante Codice del consumo (Legislative Decree No 206 on the Consumer Code) of 6 September 2005 (GURI No 235 of 8 October 2005) ('the Consumer Code'). Article 141 of that code, as amended by Legislative Decree No 130/2015, which appears in the new title, provides as follows:

\ ...

4. The provisions of the present title shall apply to voluntary out-of-court settlement procedures for the settlement, including via electronic means, of national and cross-border disputes between consumers and traders resident and established in the European Union, in the context of which the ADR entity offers a solution or brings the parties together in order to facilitate an amicable settlement, and, in particular, to the mediation entities for consumer matters referred to in the special section provided for in Article 16(2) and (4) of [Legislative Decree No 28/2010], and to the other ADR entities set up or listed in the registers held and supervised by the authorities referred to in paragraph 1(i), following verification of the existence of the conditions and of the conformity of their organisation and their procedures with the present title. ...

...

6. The present text shall be without prejudice to the following provisions under which out-of-court dispute resolution procedures are mandatory in nature:

- (a) Article 5(1bis) of [Legislative Decree No 28/2010], which governs situations in which mediation for the purposes of settlement in civil and commercial litigation is a condition of admissibility;

...'

The dispute in the main proceedings and the questions referred for a preliminary ruling

- 19 Banco Popolare granted Mr Menini and Ms Rampanelli current-account credit facilities on the basis of three successive contracts, for the purposes of enabling them to buy shares, including those issued by Banco Popolare itself and other companies belonging to it.
- 20 On 15 June 2015, Banco Popolare obtained an order for payment requiring Mr Menini and Ms Rampanelli to pay a sum of EUR 991 848.21, corresponding to the balance which, it claimed, remained outstanding under a contract signed on 16 July 2009 for the opening of a current account guaranteed by a mortgage. Mr Menini and Ms Rampanelli applied to have that order for payment set aside and sought a stay of the relevant provisional enforcement measures.
- 21 The referring court, the Tribunale Ordinario di Verona (Verona District Court, Italy), notes that, under national law, such an application to have an order set aside is admissible only on condition that the parties have first initiated a mediation procedure, pursuant to Article 5(1bis) and (4) of Legislative Decree No 28/2010. The referring court also establishes that the dispute before it falls within the scope of the Consumer Code, as amended by Legislative Decree No 130/2015 transposing Directive 2013/11 into Italian law. Mr Menini and Ms Rampanelli should be regarded as 'consumers', within the meaning of Article 4(a) of that directive, having concluded contracts which may be classified as 'service contracts' within the meaning of Article 4(d) of that directive.

- 22 According to the referring court, it is not clear that the fact that Directive 2013/11 expressly refers to Directive 2008/52 means that the first of those directives was intended to entitle Member States to provide for mandatory use of a mediation procedure rather than the ADR procedure provided for by Directive 2013/11 as regards disputes involving consumers. When Article 5(2) of Directive 2008/52 permits Member States to provide for mediation as a condition for the admissibility of legal proceedings, it is not mandatory since it leaves that choice to the Member States.
- 23 That said, the referring court takes the view that the provisions of Italian law on mandatory mediation are contrary to Directive 2013/11. According to the referring court, that directive establishes a single, exclusive and harmonised system for disputes involving consumers, binding the Member States as to achievement of the objective pursued by that directive. That directive should therefore apply also to the procedures covered by Directive 2008/52.
- 24 The referring court also points out that Article 9 of Directive 2013/11 leaves the parties the choice not only of whether or not to take part in the ADR procedure, but also of withdrawing from it at any stage, with the result that mandatory use of mediation, provided for by national law, would put the consumer in a less favourable position than if such use were merely optional.
- 25 Finally, according to the referring court, the mandatory mediation procedure provided for in national law is contrary to Article 9(2) of Directive 2013/11, in so far as, in the national procedure, the parties may not withdraw from the mediation procedure at any time unconditionally if they are not satisfied with the performance or operation of that procedure. They may do so only by relying on a valid reason; otherwise they will be liable to a fine which the court is required to impose, even if the party who withdrew from the mediation procedure was successful at the end of the legal proceedings.
- 26 In those circumstances, the Tribunale Ordinario di Verona (District Court, Verona) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- (1) In so far as it provides that Directive [2013/11] "shall be without prejudice to Directive [2008/52]", must Article 3(2) of Directive 2013/11 be construed as meaning that it is without prejudice to the possibility for individual Member States of providing for compulsory mediation solely in those cases which do not fall within the scope of Directive 2013/11, that is to say the cases referred to in Article 2(2) of Directive 2013/11, contractual disputes arising out of contracts other than sales or service contracts, as well as those which do not concern consumers?
- (2) In so far as it guarantees consumers the possibility of submitting complaints against traders to appropriate entities offering alternative dispute resolution procedures, must Article 1 of Directive 2013/11 be interpreted as meaning that it precludes a national rule which requires the use of mediation in one of the disputes referred to in Article 2(1) of Directive 2013/11 as a precondition for the admissibility of legal proceedings by the consumer, and, in any event, as precluding a national rule that requires a consumer taking part in mediation relating to one of the abovementioned disputes to be assisted by a lawyer and to bear the related costs, and allows a party not to participate in mediation only on the basis of a valid reason?

Consideration of the questions referred

Admissibility of the request for a preliminary ruling

- 27 The Italian and German Governments contest the admissibility of the request for a preliminary ruling on the ground that Directive 2013/11 is not applicable to the dispute in the main proceedings. The Italian Government claims that that dispute follows on from order for payment proceedings instituted by a trader against a consumer and, as such, falls outside the scope of Directive 2013/11. The German Government considers that the referring court has not specified whether the mediation procedure established by Legislative Decree No 28/2010

is an 'ADR procedure' before an 'ADR entity', as defined by Directive 2013/11, which is the only situation in which that directive would apply.

- 28 According to the Court's settled case-law, the Court may refuse to rule on a question submitted by a national court only where it is quite obvious that the interpretation of EU law that is sought is unrelated to the actual facts of the main action or its subject matter, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 14 March 2013, *Allianz Hungária Biztosító and Others*, C-32/11, EU:C:2013:160, paragraph 26 and the case-law cited).
- 29 In the present case, it is apparent, however, that the question whether Directive 2013/11 is applicable to the dispute in the main proceedings is inextricably linked to the answers to be given to the present request for a preliminary ruling. In those circumstances, the Court has jurisdiction to answer that request (see, by analogy, judgment of 7 March 2017, *X and X*, C-638/16 PPU, EU:C:2017:173, paragraph 37 and the case-law cited).

The first question

- 30 By its first question, the referring court asks, in essence, whether Article 3(2) of Directive 2013/11, in so far as it provides that that directive applies 'without prejudice to' Directive 2008/52, must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which provides for a mandatory mediation procedure in the disputes referred to in Article 2(1) of Directive 2013/11.
- 31 It should be noted that Article 1(1) of Directive 2008/52 provides that the latter's objective is to facilitate access to alternative dispute resolution and to promote the amicable settlement of disputes by encouraging the use of mediation. Article 1(2) provides that that directive is to apply to cross-border disputes in civil and commercial matters, that is to say, in accordance with Article 2 of that directive, any dispute in which at least one of the parties is domiciled or habitually resident in a Member State other than that of any other party.
- 32 In the present case, it is common ground that the dispute in the main proceedings is not such a cross-border dispute.
- 33 It is true that, as stated in recital 8 of Directive 2008/52, nothing prevents Member States from applying that directive to internal mediation processes, an option which, as is apparent from the request for a preliminary ruling, was selected by the Italian legislature. To that effect, recital 19 of Directive 2013/11 recalls that Directive 2008/52 sets out a framework for systems of mediation at Union level for cross-border disputes, without preventing the application of that directive to internal mediation systems.
- 34 However, as the Advocate General observed in point 60 of his Opinion, the decision of the Italian legislature to extend the application of Legislative Decree No 28/2010 to include national disputes cannot have the effect of widening the scope of Directive 2008/52, as defined in Article 1(2) thereof.
- 35 It follows that since Directive 2008/52 is not applicable in a dispute such as that in the main proceedings, it is not necessary, in the present case, to rule on the question of the relationship between that directive and Directive 2013/11. The question whether Directive 2013/11 precludes national legislation such as that at issue in the main proceedings is precisely the subject of the second question raised by the referring court and must, accordingly, be examined in that context.
- 36 Having regard to the foregoing considerations, there is no need to reply to the first question referred.

The second question

- 37 By its second question, the referring court asks, in essence, whether Directive 2013/11 must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which provides, first, for mandatory recourse to a mediation procedure, in disputes referred to in Article 2(1) of that directive, as a condition for the admissibility of legal proceedings relating to those disputes, secondly, that, in the context of such mediation, consumers must be assisted by a lawyer and, thirdly, that consumers may avoid prior recourse to mediation only if they demonstrate the existence of a valid reason in support of that decision.
- 38 In replying to that question, it is necessary to examine, first of all, whether Directive 2013/11 may apply to legislation such as that at issue in the main proceedings.
- 39 In that regard, it should be noted that, in accordance with Article 1 of Directive 2013/11, the objective of that directive is that consumers can, on a voluntary basis, submit complaints against traders by using ADR procedures.
- 40 Directive 2013/11 does not apply to all disputes involving consumers, but only to procedures which satisfy the following cumulative conditions, that is to say, (i) the procedure must have been initiated by a consumer against a trader concerning contractual obligations arising from sales or service contracts, (ii) in accordance with Article 4(1)(g) of Directive 2013/11, that procedure must comply with the requirements laid down in that directive and, in particular, in that respect, be independent, impartial, transparent, effective, fast and fair, and (iii) that procedure must be entrusted to an ADR entity, that is to say, in accordance with Article 4(1)(h) of that directive, an entity, however named or referred to, which is established on a durable basis and offers the resolution of a dispute through an ADR procedure and which is entered on the list drawn up in accordance with Article 20(2) of Directive 2013/11, a list which is notified to the European Commission.
- 41 In order to determine whether Directive 2013/11 is applicable to an ADR procedure such as that at issue in the main proceedings, it is necessary to examine whether those conditions are met.
- 42 As regards the first condition, the question whether an ADR procedure, such as that at issue in the main proceedings, must be regarded as having been initiated not by a trader but by a consumer is a matter for the national court to determine and falls within the scope of the national law of each Member State. Consequently, as regards the main proceedings, it is for the referring court to determine whether an application to have an order for payment set aside and an application for a stay of provisional enforcement associated with that measure constitute a complaint by a consumer, of an independent nature in relation to the order for payment proceedings instituted by a trader working in credit, such as the trader at issue in the main proceedings.
- 43 As regards the second and third conditions, the request for a preliminary ruling does not specify whether the mediation procedure provided for in Italian legislation takes place before an ADR entity, in accordance with Directive 2013/11. Likewise, it is for the referring court to assess whether the entity referred to in Article 141(4) of the Consumer Code, as amended by Legislative Decree No 130/2015, is an ADR entity which satisfies the conditions laid down in Directive 2013/11, since that is a condition for the application of that directive.
- 44 It follows that Directive 2013/11, subject to the checks to be carried out by the referring court, may apply to legislation such as that at issue in the main proceedings.
- 45 As regards the three elements contained in the question raised by the referring court and, in the first place, as regards the requirement for a mediation procedure as a condition for the admissibility of legal proceedings concerning the dispute forming the subject matter of that procedure, as provided for in Article 5(1bis) of Legislative Decree No 28/2010, it is true that the first sentence of Article 1 of Directive 2013/11 provides for an option for consumers to submit, 'on a voluntary basis', complaints against traders to ADR entities.
- 46 In that regard, the referring court asks whether, according to a literal interpretation of the first sentence of Article 1, Member States are entitled to maintain such prior and mandatory

recourse to mediation only for types of disputes which do not fall within the scope of that directive.

- 47 However, it is settled case-law of the Court that, in interpreting a provision of EU law, it is necessary to consider not only its wording, but also the context in which it occurs and the objectives pursued by the rules of which it is part (judgment of 15 October 2014, *Hošťická and Others*, C-561/13, EU:C:2014:2287, paragraph 29 and the case-law cited).
- 48 In that regard, although the first sentence of Article 1 of Directive 2013/11 uses the expression 'on a voluntary basis', it must be noted that the second sentence of that article expressly provides for the possibility, for the Member States, of making participation in ADR procedures mandatory, provided that such legislation does not prevent the parties from exercising their right of access to the judicial system.
- 49 That interpretation is supported by Article 3(a) of Directive 2008/52 which defines mediation as a structured process, however named or referred to, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute. This process may be initiated by the parties or suggested or ordered by a court, but also prescribed by the law of a Member State. Furthermore, in accordance with Article 5(2) thereof, Directive 2008/52 is without prejudice to national legislation making the use of mediation compulsory, provided that such legislation does not prevent the parties from exercising their right of access to the judicial system.
- 50 As stated in recital 13 of Directive 2008/52, the voluntary nature of the mediation lies, therefore, not in the freedom of the parties to choose whether or not to use that process but in the fact that 'the parties are themselves in charge of the process and may organise it as they wish and terminate it at any time'.
- 51 Accordingly, what is important is not whether the mediation system is mandatory or optional, but the fact that the parties' right of access to the judicial system is maintained. To that end, as the Advocate General observed in point 75 of his Opinion, Member States retain their full legislative autonomy, on condition that Directive 2013/11 remains effective.
- 52 Accordingly, the fact that national legislation, such as that at issue in the main proceedings, has not only put in place an out-of-court mediation procedure, but has also made it mandatory to have recourse to that procedure before bringing an action before a judicial body, is not such as to jeopardise the attainment of the objective of Directive 2013/11 (see, by analogy, judgment of 18 March 2010, *Alassini and Others*, C-317/08 to C-320/08, EU:C:2010:146, paragraph 45).
- 53 It is, admittedly, common ground that, by making the admissibility of legal proceedings brought in the areas referred to in Article 5(1bis) of Legislative Decree No 28/2010 conditional upon the implementation of a mandatory attempt at mediation, the national legislation at issue in the main proceedings introduces an additional step to be overcome before being entitled to access the courts. That condition might prejudice implementation of the principle of effective judicial protection (see, to that effect, judgment of 18 March 2010, *Alassini and Others*, C-317/08 to C-320/08, EU:C:2010:146, paragraph 62).
- 54 Nevertheless, it is settled case-law of the Court that fundamental rights do not constitute unfettered prerogatives and may be restricted, provided that the restrictions in fact correspond to objectives of general interest pursued by the measure in question and that they do not involve, with regard to the objectives pursued, a disproportionate and intolerable interference which infringes upon the very substance of the rights guaranteed (judgment of 18 March 2010, *Alassini and Others*, C-317/08 to C-320/08, EU:C:2010:146, paragraph 63 and the case-law cited).
- 55 As the Advocate General observed in point 81 of his Opinion, although the judgment of 18 March 2010, *Alassini and Others* (C-317/08 to C-320/08, EU:C:2010:146) concerns a settlement procedure, the reasoning adopted by the Court in that judgment can be transposed to national legislation making recourse to other out-of-court procedures mandatory, such as the mediation procedure at issue in the main proceedings.

- 56 That said, as recital 45 of Directive 2013/11 in essence states, Member States are free to choose the means they deem appropriate for the purposes of ensuring that access to the judicial system is not hindered. The fact, first, that the outcome of the ADR procedure is not binding on the parties and, secondly, the fact that the limitation periods do not expire during such a procedure are two means which, amongst others, would be appropriate for the purposes of achieving that objective.
- 57 As regards the binding nature of the outcome of the ADR procedure, Article 9(2)(a) of Directive 2013/11 requires Member States to ensure that, in the context of that procedure, the parties have the possibility of withdrawing from the procedure at any stage if they are dissatisfied with its performance or operation. Furthermore, in accordance with Article 9(2)(b) of that directive, at the end of the ADR procedure, a solution is merely proposed to the parties and they have the choice as to whether or not to agree to or follow it.
- 58 Even though Article 9(3) of Directive 2013/11 establishes the possibility for national legislation to provide that the outcome of ADR procedures is binding on traders, such a possibility requires that the consumer has previously accepted the proposed solution.
- 59 As regards limitation periods. Article 12 of Directive 2013/11 provides that Member States are to ensure that parties who have recourse to an ADR procedure in an attempt to settle a dispute are not subsequently prevented from initiating judicial proceedings as a result of the expiry of the limitation period during that procedure.
- 60 Moreover, under Article 8(a) of Directive 2013/11, the ADR procedure must be accessible online and offline to both parties, irrespective of where they are.
- 61 Accordingly, the requirement for a mediation procedure as a condition for the admissibility of proceedings before the courts may prove compatible with the principle of effective judicial protection, provided that that procedure does not result in a decision which is binding on the parties, that it does not cause a substantial delay for the purposes of bringing legal proceedings, that it suspends the period for the time-barring of claims and that it does not give rise to costs — or gives rise to very low costs — for the parties, and only if electronic means are not the only means by which the settlement procedure may be accessed and interim measures are possible in exceptional cases where the urgency of the situation so requires (see, to that effect, judgment of 18 March 2010, *Alassini and Others*, C-317/08 to C-320/08, EU:C:2010:146, paragraph 67).
- 62 It is therefore for the referring court to establish whether the national legislation at issue in the main proceedings, in particular Article 5 of Legislative Decree No 28/2010 and Article 141 of the Consumer Code, as amended by Legislative Decree No 130/2015, does not prevent the parties from exercising their right of access to the judicial system, in accordance with the requirement of Article 1 of Directive 2013/11, in that that legislation meets the requirements set out in the previous paragraph.
- 63 To that extent, the requirement for a mediation procedure as a condition for the admissibility of proceedings before the courts would be compatible with Article 1 of Directive 2013/11.
- 64 In the second place, as regards the obligation, on the part of the consumer, to be assisted by a lawyer in order to initiate a mediation procedure, the answer to that question derives from the wording of Article 8(b) of Directive 2013/11. That article, relating to the effectiveness of the procedure, provides that the Member States are to ensure that the parties have access to the ADR procedure without being obliged to retain a lawyer or a legal advisor. Furthermore, Article 9(1)(b) of that directive provides that each party must be informed that they are not obliged to retain a lawyer or a legal advisor.
- 65 Accordingly, national legislation may not require a consumer taking part in an ADR procedure to be assisted by a lawyer.
- 66 Finally, in the third place, as regards the question whether Directive 2013/11 must be interpreted as precluding a provision of national law to the effect that consumers may withdraw from a mediation procedure only in the event that they demonstrate the existence

of a valid reason in support of that decision, on pain of penalties in the context of subsequent legal proceedings, it is necessary to take the view that such a limitation restricts the parties' right of access to the judicial system, contrary to the objective of Directive 2013/11, recalled in Article 1 thereof. Any withdrawal from an ADR procedure by a consumer must not have unfavourable consequences for that consumer in the context of proceedings before the courts relating to the dispute which formed, or which ought to have formed, the subject matter of that procedure.

- 67 The latter consideration is supported by the wording of Article 9(2)(a) of Directive 2013/11 which, as regards ADR procedures which seek to resolve the dispute by proposing a solution, requires Member States to ensure that the parties have the possibility of withdrawing from the procedure at any stage if they are dissatisfied with the performance or the operation of the procedure.
- 68 The same provision also specifies that, where national legislation provides for the mandatory participation of traders in ADR procedures, the consumer, and only the consumer, must always benefit from that right to withdraw.
- 69 Consequently, Directive 2013/11 must be interpreted as precluding national legislation which entitles consumers to withdraw from a mediation procedure only in the event that they demonstrate the existence of a valid reason in support of that decision.
- 70 However, it must be noted that, at the hearing, the Italian Government declared that the imposition of a fine by the court in subsequent proceedings is provided for only in the event of failure to participate in the mediation procedure without a valid reason and not in the event of withdrawal from it. If that is the case, which it is for the referring court to determine, Directive 2013/11 does not preclude national legislation which entitles a consumer to refuse to participate in a prior mediation procedure only on the basis of a valid reason, to the extent that he may bring it to an end without restriction immediately after the first meeting with the mediator.
- 71 In view of the foregoing considerations the answer to the second question is as follows:
- Directive 2013/11 must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which prescribes recourse to a mediation procedure, in disputes referred to in Article 2(1) of that directive, as a condition for the admissibility of legal proceedings relating to those disputes, to the extent that such a requirement does not prevent the parties from exercising their right of access to the judicial system.
 - On the other hand, that directive must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which provides that, in the context of such mediation, consumers must be assisted by a lawyer and that they may withdraw from a mediation procedure only if they demonstrate the existence of a valid reason in support of that decision.

Costs

- 72 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR) must be interpreted as not precluding national legislation, such as that at issue in the

main proceedings, which prescribes recourse to a mediation procedure, in disputes referred to in Article 2(1) of that directive, as a condition for the admissibility of legal proceedings relating to those disputes, to the extent that such a requirement does not prevent the parties from exercising their right of access to the judicial system.

On the other hand, that directive must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which provides that, in the context of such mediation, consumers must be assisted by a lawyer and that they may withdraw from a mediation procedure only if they demonstrate the existence of a valid reason in support of that decision.

[Signatures]

* Language of the case: Italian.