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DIRECTIVE ON ALTERNATIVE DISPUTE RESOLUTION FOR CONSUMER DISPUTES AND REGULATION ON ONLINE DISPUTE RESOLUTION FOR CONSUMER DISPUTES

June 18, 2013 saw the publication in the Official Journal of the European Union (OJ) of (1) [Directive 2013/11/EU on alternative dispute resolution for consumer disputes](#) and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC, and (2) [Regulation No 524/2013 on online dispute resolution for consumer disputes](#).

The objective of the new Directive is to contribute, through the achievement of a high level of consumer protection, to the proper functioning of the internal market, by ensuring that consumers can submit complaints against traders to entities offering high-quality alternative dispute resolution procedures, without restricting access to the courts, due to the fact 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, and 2001/310/EC of 4 April 2001 on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes, ADR has not been correctly established and is not running satisfactorily in all geographical areas or business sectors in the European Union.

This disparity constitutes a barrier to the internal market. Firstly, because consumers might abstain from shopping across borders if they lack confidence that potential disputes with traders can be resolved in an easy, fast and inexpensive way. Secondly, for the same reasons, traders might abstain from selling their products to consumers from other Member States where ADR procedures are not sufficiently available, and they are placed at a competitive disadvantage with regard to traders from Member States that have high-quality ADR procedures.

For its part, **the objective of the new Regulation**, which is interlinked and complementary to the Directive, **is to create an online ADR platform which offers consumers and traders a single point of entry**, through ADR entities which are linked to the platform and offer quality procedures.

The fact that an increasing number of consumers and traders that are buying and selling online has made it a must to have a reliable and efficient online dispute resolution system, which contributes to removing obstacles in the digital dimension of the internal market and enhances consumer confidence.

The provisions in these instruments are described in greater detail below.

1. DIRECTIVE ON ALTERNATIVE DISPUTE RESOLUTION FOR CONSUMER DISPUTES

1.1 Subject-matter

As indicated above, the **purpose** of the new Directive is 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 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 (Art.1).

It should be noted that the new Directive does not regulate the procedural aspects of ADR or affect existing ADR procedures at EU or Member State level. The Directive expressly provides that it will apply horizontally to all types of ADR procedures, including those regulated by Directive 2008/52/EC of 21 May 2008 on certain aspects of mediation in civil and commercial matters.

The aim of the Directive is to establish harmonized 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.

1.2 Scope

This Directive **will 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 alternative dispute resolution (ADR) entity which proposes or imposes a solution or brings the parties together with the aim of facilitating an amicable solution (Art. 2(1)).

However, **it will not apply** to: (i) procedures before ADR 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 under the Directive; (ii) procedures before consumer complaint-handling systems operated by the trader; (iii) non-economic services of general interest; (iv) disputes between traders; (v) direct negotiation between the consumer and the trader; (vi) attempts made by a judge to settle a dispute in the course of a judicial proceeding; (vii) procedures initiated by a trader against a consumer; (viii) health services provided by health professionals to patients; (ix) public providers of further or higher education (Art. 2(2)).

1.3 Principles applicable to ADR entities and ADR procedures

- **Access to ADR entities and ADR procedures** (Art. 5). The new Directive requires Member States to facilitate access by consumers to ADR procedures and to ensure that disputes covered by the Directive can be submitted to an ADR entity which complies with the requirements set out in the Directive.

Member States can fulfill that obligation by relying on ADR entities established in another Member State or regional, transnational or pan-European dispute resolution entities.

ADR entities must: a) maintain an up-to-date website which provides the parties with easy access to information concerning the ADR procedure and enables consumers to submit complaints online; b) provide the parties with the above information on a durable medium; c) where applicable, enable the consumer to submit a complaint using other means (offline); d) enable the exchange of information between the parties; e) accept both domestic and cross-border disputes; f) 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.

Member States may permit ADR entities to maintain and introduce procedural rules that allow them to refuse to deal with a dispute if: a) the consumer did not make any previous attempts to contact the trader to resolve the matter; 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 must 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 an ADR entity is unable to consider a dispute, in accordance with its procedural rules, it must provide both parties with a reasoned explanation within three weeks of receiving the complaint file.

- **Expertise, independence and impartiality** (Art. 6). The new Directive requires Member States to ensure that the natural persons in charge of ADR possess the necessary expertise and are independent and impartial.
- **Transparency** (Art. 7). Member States must ensure that ADR entities make publicly available on their websites, on a durable medium upon request, and by any other means, information on: a) their contact details; b) the fact that they are included in the list of ADR entities which Member States must send to the European Commission; c) the persons in charge of ADR; d) the expertise, impartiality and independence of those persons, if they are employed or remunerated exclusively by the trader; e) their membership in networks of entities for the alternative resolution of cross-border disputes; f) the types of disputes they are competent to deal with, including any threshold; g) the procedural rules governing the resolution of a dispute; h) the languages in which complaints can be submitted and in which the procedure is conducted; i) the types of rules the ADR entity may use to resolve the dispute (for example legal provisions, equity, codes of conduct); j) any preliminary requirements that must be met before commencing a procedure; 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 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. Member States must also ensure that ADR entities make publicly available their annual activity reports, upon request.

- **Effectiveness of procedures** (Art. 8). Member States must ensure that ADR procedures are effective and fulfill the following requirements: a) they must be accessible online and offline to both parties irrespective of where they are; b) the parties are not obliged to retain a lawyer or legal advisor during the procedure; c) the procedure must be free of charge or available at a nominal fee; d) the parties must be notified of receipt of the documents relating to the complaint; e) the outcome of the procedure must be made available within a period of 90 calendar days from the date on which the ADR entity has received the complete complaint file, a time period that can be extended in the case of complex disputes.
- **Fairness in procedures** (Art. 9). The following requirements must also be met in ADR procedures: a) the parties must have the possibility of expressing their point of view within a reasonable period of time, of being provided with the arguments and evidence put forward by the other party, and of being able to comment on them; b) the parties must be informed that they are not obliged to retain a lawyer or a legal advisor; c) the parties must be notified of the outcome of the procedure in writing or on a durable medium, and must be given a statement of the grounds on which the outcome is based.

In procedures in which the aim is to resolve the dispute by proposing a solution: a) the parties must 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 must be informed of that right before the procedure commences. This will not apply to traders where national rules provide for their mandatory participation in ADR procedures; b) the parties, before agreeing or following a proposed solution, must be informed that: they can accept or reject the proposed solution; participation in the procedure does not preclude the possibility of seeking redress through court proceedings; and 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, must be informed of the legal effect thereof; d) the parties, before expressing their consent to a proposed solution or amicable agreement, must be allowed a reasonable period of time to reflect.

This provision will only apply to the consumer where, in accordance with national law, the outcome of ADR procedures is binding on the trader.

- **Liberty** (Art. 10). Agreements reached prior to the dispute in which the consumer and the trader decide to submit a complaint to an ADR entity will not be binding if the agreement has the effect of depriving the consumer of his right to bring an action before the courts.
- **Legality** (Art. 11). In procedures which aim at resolving a dispute by imposing a solution, the solution imposed must not result in the consumer being deprived of the protection afforded to him by the mandatory rules of the law of the Member State where the consumer and the trader are habitually resident, in a situation where there is no conflict of laws, or by virtue of the law of the Member State where the

consumer is habitually resident, in a situation involving a conflict of laws, where the applicable law is determined in accordance with Art. 6(1) and (2) of Regulation No 593/2008 or Art. 5(1) to (3) of the Rome Convention of 19 June 1980 on the law applicable to contractual obligations.

- **Effect of procedures on limitation and prescription periods** (Art. 12). Member States must ensure that parties who, in an attempt to settle a dispute, have recourse to ADR procedures that do not have a binding outcome are not subsequently prevented from initiating judicial proceedings as a result of the expiry of limitation or prescription periods reached during the ADR procedure.

1.4 Information and cooperation

- **Consumer information by traders** (Art. 13). Traders must inform consumers about the 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, which must include the website address of the ADR entities, must be easily accessible on the traders' website, where one exists, and, if applicable, in the general terms and conditions of the contracts between the trader and consumer.

- **Assistance for consumers** (Art. 14). Member States must ensure that, in disputes arising from cross-border contracts, consumers can obtain assistance—through centers of the European Consumer Centre Network—to access the ADR entity operating in another Member State which is competent to deal with their cross-border dispute.
- **General information** (Art. 15). The Directive contains mechanisms for the provision of general information on the lists of ADR entities notified to the European Commission (through, inter alia, the websites of the ADR entities themselves, the centers of the European Consumer Centre Network, consumer organizations and business associations), as well as the dissemination of information on how consumers can access ADR procedures.
- **Cooperation and exchanges of experience between ADR entities** (Art. 16). The measures included under this article include requiring Member States to 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. In addition, the Commission must support and facilitate the networking of national ADR entities.

Member States are also required to ensure cooperation between ADR entities and the national authorities responsible for the enforcement of Union legal acts on consumer protection (Art. 17) so that, inter alia, those entities are kept abreast of practices in specific business sectors about which consumers have repeatedly lodged complaints.

1.5 Role of competent authorities and the Commission

- Each Member State must appoint one or more **competent authorities** (if more than one is appointed, a single point of contact must be identified). The role of the competent authorities is to receive the information (such as contact details, persons in charge of dispute resolution, procedural rules, fees, languages, volume and types of dispute received) that must be notified by dispute resolution entities which intend to qualify as ADR entities under the Directive, assess that information and draw up a list of entities meeting the requirements set out in the Directive.
- The **Commission**, for its part, must draw up a list of the ADR entities notified to it and update that list whenever changes are notified to the Commission. It must also publish the list on its website and on a durable medium (Arts. 18 through 20).

1.6 Penalties

Member States must lay down the rules on penalties applicable to infringements of the national provisions in relation to consumer information by traders and must take the measures necessary to ensure that they are implemented. The penalties must be effective, proportionate and dissuasive (Art. 21).

1.7 Reports

By July 9, 2019, and every four years thereafter, the Commission must submit a report on the application of the Directive to the European Parliament, the Council and the European Economic and Social Committee. That report may be accompanied, where appropriate, by proposals for amendment of the Directive (Art. 26).

1.8 Amendment to Regulation No 2006/2004 and Directive 2009/22/EC

Both instruments are amended to include reference to the new Directive in their respective annexes (Arts. 22 and 23).

1.9 Communication

By July 9, 2015, Member States must communicate to the Commission the competent authorities they have appointed and, where appropriate, the single point of contact.

By January 9, 2016, Member States must communicate to the Commission the first list of the ADR entities (Art. 24).

1.10 Transposition and entry into force

Member States must bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by July 9, 2015. They must forthwith communicate to the Commission the text of those provisions (Art. 25).

The Directive will enter into force on the twentieth day following that of its publication in the Official Journal of the European Union (Art. 27), that is, on July 8, 2013.

2. REGULATION ON ONLINE DISPUTE RESOLUTION FOR CONSUMER DISPUTES

2.1 Subject-matter

As mentioned above, the purpose of the new Regulation is to contribute, by achieving a high level of consumer protection, to the proper functioning of the internal market, in particular in its digital dimension, by creating an **online dispute resolution (ODR) platform facilitating the out-of-court resolution of disputes arising from online transactions between consumers and traders.**

2.2 Scope

The new Regulation will 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 included in the list of entities communicated to the Commission in accordance with Article 20(2) of Directive 2013/11/EU, and which involves the use of an online dispute resolution platform.

The Regulation will apply to the resolution of disputes initiated by a trader against a consumer, but only in so far as the legislation of the Member State where the consumer is habitually resident allows for such disputes to be resolved through an ADR entity, a fact which must be notified to the Commission (Art. 2).

It is this provision that distinguishes the scope of the Regulation from that of the Directive, as the Directive does not apply to procedures initiated by a trader against a consumer.

2.3 ODR platform

- **Establishment** (Art. 5). The Commission will develop the ODR platform and be responsible for its operation (including translation functions, maintenance, funding and data security). The ODR platform will be a single point of entry for consumers and traders seeking the out-of-court resolution of disputes falling within its scope.

The platform must also be user-friendly, accessible and usable by all, ensuring the privacy of its users.

The Commission will make the platform accessible 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.

The platform will have the following functions:

- To provide an electronic complaint form which can be filled in by the complainant party.
- To inform the respondent party about the complaint.

- To identify the competent ADR entity or entities and transmit the complaint to the ADR entity which the parties have agreed to use.
- 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.
- 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.

Regarding this function, the ODR platform must offer an electronic translation function which enables the parties and the ADR entity to have the information which is exchanged through the platform and is necessary for the resolution of the dispute translated, where appropriate.

- To provide an electronic form by means of which ADR entities will transmit the information relating to the date of receipt of the complaint file, the subject-matter of the dispute and the date of conclusion of the procedure.
 - 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.
 - To make publicly available the following: i) general information on ADR as a means of out-of-court dispute resolution; ii) information on the ADR entities qualified to handle disputes falling within the scope of the Regulation; iii) an online guide on how to submit complaints through the ODR platform; iv) information on the ODR contact points appointed by Member States; v) statistical data on the outcome of the disputes which were transmitted to ADR entities through the ODR platform.
- **Testing** (Art. 6). The Commission must, by January 9, 2015, test the technical functionality and user-friendliness of the ODR platform and of the complaint form, including with regard to translation. The testing must be carried out and evaluated in cooperation with experts from the Member States and consumer and trader representatives.
 - **Contact points.** The Regulation provides (Art. 7) that each Member State must appoint one ODR contact point which will provide support to the resolution of disputes and fulfill the following functions: (i) facilitate communication between the parties and the competent ADR entity; and (ii) submit an activity report to the Commission and the Member States every two years.

In turn, the Commission must establish a network of contact points which will enable cooperation between the contact points and which will meet at least twice a year to exchange best practices and discuss possible problems.

2.4 Complaints

- **Submission** (Art. 8). The complainant party must fill in the electronic complaint form which, according to the Regulation, must be user-friendly and easily accessible on the ODR platform.
- **Processing and transmission of complaints** (Art. 9). Only complaints that have been completed in full will be processed. The platform will transmit completed complaints without delay to the respondent party together with information that the parties have to agree on an ADR entity as otherwise the complaint will not be processed, as well as information on the competent ADR entities, the contact details of the contact point in the Member State where the respondent party resides and an invitation: (a) in the event that the respondent party is a trader, to state within 10 calendar days whether the trader commits to or is obliged to use an ADR entity; or, (b) in the event that the respondent party is a consumer and the trader is obliged to use a specific ADR entity, to agree on that ADR entity within the same time frame or, in the event that the trader is not obliged to use a specific ADR entity, to select one or more entities.

Upon receipt of the information from the respondent party, it will be forwarded to the complainant party for acceptance of the ADR entity within 10 calendar days, together with the contact details of the contact point in the Member State of residence of the complainant.

The platform will automatically and without delay transmit the complaint to the ADR entity that the parties have agreed to use, which will inform the parties about whether it agrees to deal with the dispute, together with its procedural rules and, if applicable, the costs of the procedure, or about its refusal to deal with the dispute.

- **Resolution** (Art. 10). The ADR entity must conclude the procedure within a period of 90 calendar days from the date on which it received the complete complaint file (except in extremely complex disputes, in which case the period may be extended).

2.5 Consumer information

Traders established within the Union engaging in online sales or service contracts, and online marketplaces established within the Union, must provide on their websites an electronic link to the ODR platform which must be easily accessible for consumers (Art. 14).

Furthermore, traders who are committed or obliged to use one or more ADR entities to resolve disputes with consumers, must inform consumers about the existence of the ODR platform and the possibility of using it for resolving their disputes.

The list of ADR entities communicated to the Commission under the Directive discussed above will be published on the platform.

2.6 Penalties

Member States must lay down the rules on penalties applicable to infringements of the Regulation and must take all measures necessary to ensure that they are implemented. The penalties must be effective, proportionate and dissuasive (Art. 18).

2.7 Reports

The Commission must report to the European Parliament and the Council on the functioning of the ODR platform on a yearly basis.

By July 9, 2018 and every three years thereafter, the Commission must submit a report on the application of the Regulation to the European Parliament and the Council. The report may be accompanied, if necessary, by proposals for adaptations to the Regulation (Art. 21).

2.8 Amendment to Regulation No 2006/2004 and Directive 2009/22/EC

Both instruments are amended to include reference to the new Regulation in their respective annexes (Arts. 19 and 20).

2.9 Entry into force

The Regulation will enter into force on the twentieth day following that of its publication in the Official Journal of the European Union (Art. 22), that is, on July 8, 2013. It will apply from January 9, 2016, except for: Art. 2(3) (provision of information to the Commission as to whether domestic legislation allows for disputes initiated by a trader against a consumer to be resolved through an ADR entity) and Art. 7(1) and (5) (appointment of contact points and the notification thereof to the Commission), which will apply from July 9, 2015; and Arts. 5(1) and (7) (development of the ODR platform by the Commission), Art. 6 (testing of the platform), Art. 7(7) (adoption of rules on cooperation between contact points), Art. 8(3) and (4) (adoption of delegated and implementing acts by the Commission in relation to the electronic complaint form), Art. 11 (database to be created by the Commission), Art. 16 (committee that will assist the Commission) and Art. 17 (exercise of powers delegated by the Commission), which will apply from July 8, 2013.

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