Implementing the Consumer ADR Directive 2013/11/EU in United Kingdom and Greece

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I hereby declare that the work submitted is mine and that where I have made use of another’s work, I have attributed the source(s) according to the Regulations set in the Student’s Handbook.

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Abstract

This dissertation was written as part of the LLM in Transnational and European Commercial Law, Mediation, Arbitration and Energy Law at the International Hellenic University.

The dissertation will outline the background and key features of ADR Directive and ODR Regulation with respect to its national implementation in Greece and United Kingdom. As consumers and traders were not fully aware of the existing out-of court redress mechanisms, the Council of European Union agreed that consumer ADR schemes can offer low-cost, simple and quick redress for both consumers and traders. For this reason ADR Directive and its successful implementation was necessary in order to strengthen consumers’ confidence in the internal market, including the area of online commerce, by ensuring access to simple, efficient, fast and low - cost ways of resolving domestic and cross-border disputes which arise from sales or service contracts.

A comparative study on different regulatory frameworks of Greece and United Kingdom will be attempted providing substantial analysis of the law and practice in relation to implementation of the Directive as well as analyze the possibilities provided by the ADR Directive and the way by which the above Member States exploited or not exploited these possibilities.

The aim of this dissertation is to provide an in depth evaluation of English and Greek legislation towards the compliance with the specified standards set out in EU Directive (2013/11/EU) on alternative dispute resolution for consumer disputes. An article by article analysis of the legislation from the beginning to the end will be used to identify key constructive points for consideration in understanding the level of harmonization with the Directive and the future possible adoption of new legal provisions on procedures for the out-of-court resolution of disputes between consumers and traders.

Briefly, this study aims to meet the need of a proper and adequate implementation by UK and Greece, through the following specific research objectives: a) Comparative legal analysis of current national implementation of the ADR Directive by United Kingdom and Greece. And b) Comprehensive legal analysis of the possible attempts that would have to be made by UK and Greece to increase uniformity, in order to achieve the maximum benefits of the ADR Directive.

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TABLE OF CONTENTS

ACKNOWLEDGEMENTS............................................................................................................III

ABSTRACT.................................................................................................................................IV

TABLE OF CONTENTS ........................................................................................................... VII

INTRODUCTION .........................................................................................................................1

CHAPTER I: THE ADR DIRECTIVE 2013/11/EU IN GENERAL.............................................3

CHAPTER II: THE ODR REGULATION 523/2013 IN GENERAL...........................................4

CHAPTER III: THE IMPLEMENTATION OF THE CONSUMER ADR DIRECTIVE IN GREECE.6
  1. ADR Background for consumers in Greece before the implementation..............6
  2. Implementing the ADR Directive into Greek law ..............................................7
     2.1 Systematic structure of the Joint Ministerial Decision..............................8
     2.2 Scope of the JMD – Exceptions ..............................................................8
     2.3 Relationship between the JMD and other provisions ..........................12
     2.4 Legal definitions ..................................................................................12
     2.5 Designation of competent authority and single point of contact...........13
     2.6 General Principles and Guarantees ......................................................14
     2.7 Effect of ADR procedures on limitation and prescription periods.......18
     2.8 Consumer information by traders and cooperation between ADR entities and
        national authorities ..............................................................................18
     2.9 The special register for ADR entities ....................................................20
     2.10 Final Provisions - Penalties ................................................................22
     2.11 Amendments, Transposition and entry into force ..............................23
  3. Concluding remarks .................................................................................................23

Chapter IV: The Implementation of the Consumer ADR Directive in United Kingdom.................................................................24
  1. ADR Background for consumers in United Kingdom before the implementation ..........................................................................................................................24
  2. Implementing the ADR Directive into English law ......................................25
2.1. The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015

2.1.1 Systematic structure and territorial extent
2.1.2 Entry into force – Scope – Legal Definitions
2.1.3 Exceptions
2.1.4 Designation of competent authority
2.1.5 Trader Information Requirements and General principles and Guarantees
2.1.6 The special List of ADR entities
2.1.7 Penalties for non-compliance
2.1.8 Non-Implementation

2.2. The Alternative Dispute Resolution for Consumer Disputes (Amendment) Regulations 2015

2.2.1 Systematic structure and territorial application
2.2.2 Basic amendments to the UK Regulations 2015

2.3. The Alternative Dispute Resolution for Consumer Disputes (Amendment) (No.2) Regulations 2015

2.3.1 Systematic structure and territorial and temporal application
2.3.2 Amendments to Primary and Secondary Legislation

3. Concluding Remarks

Chapter V: Conclusions - Comparative Observations between the Implementation of Consumer ADR Directive by the Greek and English legislation

BIBLIOGRAPHY

APPENDIX

I. THE CONSUMER ADR DIRECTIVE 2013/11/EU
II. THE CONSUMER ODR REGULATION 524/2013
Introduction

Alternative Dispute Resolution (ADR) offers a simple, fast and low-cost out-of-court solution\(^1\) to disputes between consumers and traders. However, the years before, ADR was not yet sufficiently and consistently developed across the European Union. 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\(^2\) and 2001/310/EC of 4 April 2001 on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes\(^3\), ADR had not been correctly established across the European Union.

In order to improve this situation, the European Commission took a series of actions, including the launch of an EU-wide strategy to improve the Alternative Dispute Resolution (ADR) systems and the creation of an EU-wide online redress tool for electronic commerce and improve the access to justice online\(^4\). The movement away from courts to more modern structures could be seen as a normal and inevitable gradual evolutionary process. It is fascinating to recall how prescient was Cappelleti’s prediction that ADR would be the third (and final) “wave” in the development of consumer access to justice\(^5\). The public consultation procedure aimed to identify the difficulties and improve the use of ADR in the European Union took place between 18\(^{th}\) January 2011 and 15\(^{th}\) March 2011\(^6\).

Consequently, on 29th November 2011, European Commission presented a legislative package, which was consisted of a Proposal for a Directive on alternative

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\(^2\) OJ L 115, 17.4.1998, p. 31
\(^3\) OJ L 109, 19.4.2001, P.56
\(^6\) Ibid.
dispute resolution for consumer disputes (Directive on consumer ADR) (EC 2011b)\(^7\) and a Proposal for a regulation on online dispute resolution for consumer disputes (Regulation on consumer ODR) (EC 2011c)\(^8\). These two proposals were adopted on 21\(^{st}\) May 2013 and respectfully became the EU Directive on Consumer Alternative Dispute Resolution (“the ADR Directive”)\(^9\) and the EU Regulation on Consumer Online Dispute Resolution (“the ODR Regulation”)\(^10\), while they came into force in July 2013. The ADR Directive was to be implemented into national laws by Member States by 9th July 2015, whilst the ODR Regulation is directly applicable in Member States from 9th January 2016 (with the exceptions of Article 2(3) and Article 7(1), which apply from 9 of July 2015).

The principal obligation on the Member States under the ADR Directive is to ensure that ADR provided by a certified ADR body is available for any dispute concerning contractual obligations between a consumer and a business\(^11\). At the same time, the ODR Regulation obliges the European Commission to establish an online platform (the ODR platform) to facilitate communication between the parties and a certified ADR provider, in the event of a contractual dispute arising from an online transaction. Under this obligation, Member States have to designate an ODR contact point to assist with disputes submitted via the ODR platform\(^12\).

As described in Recital 12 of the ADR Directive, the ADR Directive and the ODR Regulation constitute two interlinked and complementary legislative instruments, which are necessary to strengthen consumers’ confidence in the internal market\(^13\) and their appropriate implementation by Member States will guarantee the so-called

\(^{7}\) Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A3A32013L0011
\(^{8}\) Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011PC0794&from=EN
\(^{11}\) Article 5 of the ADR Directive.
\(^{12}\) Article 7 of the ODR Regulation.
\(^{13}\) Recital 15 of the ADR Directive.
Implementing the Consumer ADR Directive 2013/11/EU in United Kingdom and Greece

«acquis communautaire of consumer protection» (acquis consommateur)\textsuperscript{14} to a satisfactory standard. However, as all EU Member States have different levels of existing ADR bodies, they face issues specific to their national context\textsuperscript{15}. The aim of this Dissertation is to shortly examine the legal background on consumer ADR existed in Greece as well as in the UK before the implementation of ADR Directive into Greek and English law, with a short reference to the gaps existed in the above sector and it will focuses on an article by article analysis of the legislation from the beginning to the end in order to identify key constructive points for consideration in understanding the level of harmonization of Greek and English law with the Directive. Finally, a comparative analysis will be provided in order to be identified to what extend the above two different national legislations complied with the ADR Directive and to what extent they exploited the choices provided by the European legislator.

Chapter I
The ADR Directive 2013/11/EU in general:

The ADR Directive was adopted, having as legal basis the Article 169(1) and point (a) of Article 169(2) of the Treaty on the Functioning of the European Union (TFEU), which provide that the Union’s aim is to contribute to the attainment of a high level of consumer protection through measures adopted pursuant to Article 114 TFEU.

This European Directive falls into the category of European Directives, which constitute Directives of non-full harmonization\textsuperscript{16}, as the ADR entities, having already been established and operating in Member States, are already invested with provisions of institutional, operational and organizational character, thus it is impossible to

\textsuperscript{16} Critical E.Tziva, in E.Alexandridou, Consumer protection Law (Nomiki Bibliothiki, 2\textsuperscript{nd} edition, 2015), 766 [in Greek]
eliminate a consolidated judicial system\textsuperscript{17}. The ADR Directive allows the diversity of
national laws and the conservation of stricter national provisions regarding consumer
protection.

All the existed specificities have been taken into consideration by the European
legislator, which provides Member States the possibility to adopt a different approach.
However, the ADR Directive is non-negotiable in the full adoption of the principles of
the ADR entities’ function, principles the compliance to which become binding
(indicatively the principle of transparency, impartiality, fairness, legality).

\textbf{Chapter II}

\textbf{The ODR Regulation 524/2013 in general:}

The Online Dispute Resolution (ODR)\textsuperscript{18} has been drawn by many scholars since
late 1990s. By 2000, the E-commerce Directive\textsuperscript{19} had already required national laws to
be compatible with the use of ODR techniques\textsuperscript{20}. Nevertheless, the use of ADR did not
turn out as hoped for by the EU. A decade later, the European Commission proposed
the development of the legislative instruments herein, i.e. the ADR Directive and the
ODR Regulation, with the objective of increasing the ODR options available to
European consumers to be justified.

More specifically, the ODR Regulation requires the creation of an ODR Platform\textsuperscript{21}
that will enable consumers to submit complaints in their own language while
nationally approved ADR entities (i.e. those complying with the requirements set out in
the ADR Directive) will be able to deliver their services through the Platform using an
online case management tool\textsuperscript{22}. The ODR Platform is created by the European Union

\textsuperscript{17} See: Recital 20, 21 and 25 of the Preamble of the ADR Directive.
\textsuperscript{21} Article 5 of the ODR Regulation
\textsuperscript{22} Recital 22 of the ODR Platform
and it is made accessible, in particular through the portal “Your Europe”\textsuperscript{23}, established in accordance with Annex II to Decision 2004/387/EC, whilst it provides general information regarding the out-of-court resolution of contractual disputes between traders and consumers arising from online sales and service contracts. Moreover, according to Article 7 of the ODR Regulation, each Member State designates one ODR contact point and communicates its name and contact details to the Commission.

Particular intention is allocated by ODR Regulation to protection of personal data, which constitute the content of the principle of confidentiality. Specifically Articles 11, 12 and 13 of the ODR Regulation ensure that the access to information, including personal data, stored in the electronic database, is granted only to the ADR entity to which the dispute was transmitted and to ODR contact points, when it is necessary. As far as the Commission is concerned, it has access to information, only for the purposes of monitoring the use of the ODR platform and drawing up the reports referred to its function. At the same time, it is provided that the ODR contact points are subject to rules of professional secrecy or other equivalent duties of confidentiality laid down in the legislation of the Member State concerned\textsuperscript{24}.

However, it must be referred that there is nothing in the ODR Regulation that provides a concrete definition of the ODR, in a way that is consistent with the general use of the term as developed by researchers, experts and operators in the field\textsuperscript{25}. In addition, there is no reference to standards of the technology tools to be utilized, something already covered in depth by a CEN (European Committee on Standardization) Workshop Agreement (CEN, 2009) that appears to have been overlooked\textsuperscript{26}.

Notwithstanding the above, it must not be ignored that the previous mobility of the EU legislative initiative, through the ADR Directive and ODR Regulation, has also

\textsuperscript{23} Recital 21 of the ODR Regulation
\textsuperscript{24} Article 13 of the ODR Regulation
\textsuperscript{26} Ibid
been confirmed by a new Implementing, as characterized, Regulation, issued on the 1\textsuperscript{st} July 2015\textsuperscript{27}, which is referred to the conditions of the performance of the operations of the ODR platform and to the cooperation of the national points of contact\textsuperscript{28}.

Thus, it is generally recognized that the ODR Regulation with the complementary ADR Directive 2013/11/EU and the Implementing Regulation 1051/2015 constitute an important step towards the consolidation, admission and legal function of ADR in the electronic environment.

Chapter III
The Implementation of the Consumer ADR Directive in Greece:

1. ADR Background for consumers in Greece before the implementation

The Hellenic Consumer Ombudsman, established by Law 3297/2004\textsuperscript{29}, is operating as ADR entity for consumer disputes in Greece for the last thirteen years and constitutes the basic ADR entity for these disputes. Before the Hellenic Consumer Ombudsman, the Amicable Settlement Committees were established by article 11 of Law 2251/1994\textsuperscript{30} and they nowadays fall under the scope of the regulatory authority of the Hellenic Consumer Ombudsman\textsuperscript{31}. They must also be mentioned, among others, the National Consumer and Market Council operating as consultative and advisory body of the Ministry of Commerce for issues concerning the consumer protection, as well as the Hellenic Ombudsman of Banking-Investment Services. Moreover, the Hellenic Ombudsman, established by Law 2477/1977, constitutes an independent authority competent for the resolution of disputes between the Greek citizens and State actors and agencies.

\textsuperscript{27} Regulation (EU) 1051/2015 (non-legislative act) on the Modalities for the Exercise of the Functions of the Online Dispute Resolution Platform, OJ L 171/02.07.2015
\textsuperscript{28} Critical E.Tziva, in E.Alexandridou, \textit{Consumer protection Law} (Nomiki Bibliothiki, 2\textsuperscript{nd} edition, 2015), 765 [in Greek]
\textsuperscript{29} Law 3297/2004 (Official Gazette of the Hellenic Republic A’259/23-12-2004)
However, despite the existence of the above bodies, surveys report awareness of the use of ADR procedures by consumers, who still show significant reluctance to raise complaints.

2. Implementing the ADR Directive into Greek law

In Greece the ADR Directive was implemented by the “Joint Ministerial Decision (“JMD”) 70330iok/2015”\(^3\), entering into force on 9\(^{th}\) of July 2015, being in compliance with the time-limits set by the former. At the same time, taking into consideration that on the 9\(^{th}\) of January 2016 the ODR Regulation 524/2013 would be enter into force, the JMD took all the necessary additional measures for its implementation. In this context, it has to be noted that the ODR platform has started operating on 9\(^{th}\) of January 2016, but it became accessible to consumers and traders on 15\(^{th}\) of February 2016 through the website “http://ec.europa.eu/odr”.

This new piece of legislation repeals, from the day of its publication\(^3\), the paragraphs 1 to 9 of the article 11a of Law 2251/1994, the core legislation on consumer protection in Greece, and from the 10\(^{th}\) of September 2015 the rest two paragraphs of the above article, by making the article a past (article). Nevertheless, the Law 2251/1994 was only slightly affected by the JMD.\(^4\) In this regard, the legislator decided to refrain from introducing an important change in the architecture of Law 2251/1994\(^5\), failing to address the lack of uniformity in the regulation of Greek consumer law. However, the inclusion of consumer ADR provisions in Law 2251/1994 would have been beneficial and preferable for systematic and methodological reasons.

As aforesaid, the ADR Directive constitutes a minimum harmonization instrument and, consequently, Member States may choose to maintain or introduce rules that go beyond these established in the Directive in order to ensure a higher level of consumer protection\(^6\). Notwithstanding the aforesaid, the Greek legislature has

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\(^{3}\) Official Gazette of the Hellenic Republic B’ 1421/09.07.2015

\(^{4}\) 09.07.2015

\(^{5}\) See article 20 JMD

\(^{6}\) Critical E.Tziva, in E.Alexandridou, Consumer protection Law (Nomiki Bibliothiki, 2\(^{nd}\) edition, 2015), 763 [in Greek]

\(^{6}\) Article 2(3) of the ADR Directive
opted to maintain a mostly verbatim transposition of the Greek language version of the ADR Directive\textsuperscript{37}, missing the chance to regulate existing gaps, a point that will be discussed below.

The word-for-word transposition of Article 2(3) of the ADR Directive led the Greek legislature to unintentionally opt for a maximalist approach in Article 2(3) of the JMD\textsuperscript{38} by providing that the JMD “establishes harmonized quality requirements for ADR entities and ADR procedures in order to ensure that consumers have access to high-quality, transparent, effective and fair out-of-court redress mechanisms “\textit{no matter where they reside in the Union}”.

\subsection*{2.1 Systematic structure of the Joint Ministerial Decision (“JMD”)}

The systematic structure of the JMD corresponds to that of the ADR Directive. More specifically, the JMD is divided into five chapters: the first chapter contains the general provisions (Articles 1 to 5), the second chapter deals with access to and requirements applicable to ADR entities and ADR procedures (Articles 6 to 11), the third chapter contains provisions concerning information and cooperation (Articles 12 to 16), chapter four focuses on the role of the Greek competent authority which carries out the functions set out in Articles 19 and 20 of the ADR Directive (Articles 17-18) and chapter five contains the final provisions (Articles 19 to 21).

\subsection*{2.2 Scope of the JMD – Exceptions}

The scope of the JMD according to Article 1 is twofold: a) the transposition of the ADR Directive into Greek law and b) the adoption of specific measures for the application of the ODR Regulation. Moreover, the provision of Article 2 defines the subjective and objective scope of the JMD, having literally transposed the corresponding ADR provisions.

\textsuperscript{37} K. Komnios, \textit{The Implementation of the Consumer ADR Directive in Greece}, (EuCML, Issue 6/2016), 244
\textsuperscript{38} K. Komnios, \textit{The Implementation of the Consumer ADR Directive in Greece}, (EuCML, Issue 6/2016), 244
Specifically, JMD applies 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 consumer resident in the EU and a supplier established in the EU through the intervention of an ADR entity, which proposes a solution or brings the parties together with the aim of facilitating an amicable solution. Disputes arising from the sale or provision of digital content for remuneration are also included, while disputes initiated by a consumer who receives a product for free are not covered.

The broad wording of the above first paragraph of Article 2 shrinks with the exceptions included in the second paragraph of Article 2. However, the wording of Article 2 does not provide a sufficient basis for clarifying which ADR procedures are actually covered, especially taking into account that the ADR Directive considers the ADR sector as a “homogenous entity”, intending to apply horizontally to all types of ADR procedures.

Analyzing the exception provided by Article 2(2) of the JMD, it has to be noted that in comparison with the ADR Directive, as far as the scope of the legislation is concerned, the Greek law differs from the European Directive in the sense that ADR entities, which impose a solution, are excluded from the scope of the JMD. ADR schemes that impose a solution only to supplier, leaving the consumer free to agree are also excluded. Thus arbitration, as well as Med-Arb, is not considered as an “ADR

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39 Recital 16 of the ADR Directive
41 Article 2(2) JMD: “This Decision 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 supplier;
   (b) Procedures before consumer complaint-handling systems operated by the supplier;
   (c) Non-economic services of general interest;
   (d) Disputes between suppliers;
   (e) Direct negotiation between the consumer and the supplier;
   (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 supplier 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.
42 Recital 19 of the ADR Directive.
procedure” according to the JMD\textsuperscript{43}, despite the fact that the prevailing ADR method in Greece for non-consumer issues is arbitration.

Consequently, due to the fact that it refers to ADR procedures with binding results, there is no transposition\textsuperscript{44} of Art.10 of the ADR Directive, which provides that agreements between a consumer and a trader to submit complaints to an ADR entity will not be binding if the agreement was concluded before the dispute materialized, and has the effect of depriving the consumer of the right to bring an action before the courts.

However, the aforementioned exclusion of arbitration from the Greek consumer ADR scheme\textsuperscript{45} does not constitute an infringement of the ADR Directive, given that the 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”\textsuperscript{46}.

In contrast to arbitration, the issue of full inclusion of mediation procedure of Law 3898/2010 to the category of ADR consumer schemes is not very clear\textsuperscript{47}. The Law 3898/2010 introduced in Greece, for the first time, the concept of mediation\textsuperscript{48} in national and cross-border disputes, as this concept is described and analyzed in European Directive 2008/52/EU\textsuperscript{49}. Nevertheless, the Law 3898/2010, despite the fact that it has set the base for a new concept for the Greek legal and social reality, has to be transformed in compliance with the ODR Regulation, in order to constitute a scheme more flexible, cheap, effective and compatible with the consensual consumer disputes resolution\textsuperscript{50}.

\textsuperscript{43} Article 4(1)(f) JMD.
\textsuperscript{44} K. Komnios, The Implementation of the Consumer ADR Directive in Greece, (EuCML, Issue 6/2016), 246
\textsuperscript{45} For the exception of arbitration from the scope of JMD, see also: K.Komnios, Critical Approach to the European legislation for alternative and online consumer dispute resolution, EPoD 2016, [in Greek], p.165
\textsuperscript{46} Article 2(4) of the ADR Directive.
\textsuperscript{47} Critical E.Tziva, in E.Alexandridou, Consumer protection Law (Nomiki Bibliothiki, 2\textsuperscript{nd} edition, 2015), 780 [in Greek]
\textsuperscript{48} See indicatively for mediation: K.Komnios, ONLINE Mediation, Efarmoges astikou dikaiou 2013, 419 et seq., K.Komnios, Introduction to the Law of Mediation, D 38, 31 et seq.
\textsuperscript{50} For indicative amendments, see: Critical E.Tziva, in E.Alexandridou, Consumer protection Law (Nomiki Bibliothiki, 2\textsuperscript{nd} edition, 2015), 783 [in Greek].
Moreover, despite the fact that the ADR Directive, allows Member States to exercise their discretion to cover complaints submitted by traders against consumers or to disputes between traders\(^{51}\), the JMD does not apply to dispute resolution procedures initiated by a supplier against a consumer, “B2C”\(^{52}\) nor to disputes between suppliers (business to business, “B2B”)\(^{53}\).

The methods of alternative dispute resolution considered by the JMD are limited to those relying on the intervention of a third party; direct negotiations between the parties or judge’s endeavors to encourage settlement of the dispute in the context of judicial proceedings are, therefore, excluded\(^{54}\). Nevertheless, judicial mediation as provided by Article 214B of the Greek Code of Civil Procedure (“GrCCP”) is not excluded per se\(^{55}\).

Last but not least, the JMD omits from its scope procedures before ADR entities where: the natural persons in charge of dispute resolution are employed or remunerated exclusively by the individual supplier (e.g. in-house mediation); consumer complaint-handling systems are operated by the supplier. Alternatively, the exclusion applies to certain procedures based on their scope: non-economic services of general interest; 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; or services provided by public providers or further or higher education.

### 2.3 Relationship between the JMD and other provisions

The relationship between the JMD and other provisions of national law is determined in Article 3. In order to ensure legal certainty, it is provided that, if any

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\(^{51}\) Recital 16 of the ADR Directive  
^{52} Article 2(2)(g) JMD  
^{53} Article 2(2)(d) JMD  
^{54} Article 2(2)(e) and (f) JMD  
provision of the JMD conflicts with a provision laid down in another legal act or provision, which serves to implement EU legislation and relates to out-of-court redress procedures initiated by a consumer against a supplier, the provision of this JMD shall prevail. However, Article 3 (2) stipulates that the JMD is without prejudice to the Greek Mediation Law 3898/2010, which constitutes lex specialis regarding mediation in Greece. Therefore, although the JMD applies to all ADR procedures, the GrML prevails in the event of conflict between the two legal acts.

Moreover, Article 12 JMD on consumer information by suppliers shall be without prejudice to provisions on consumer information in out-of-court redress procedures contained in other Union legal acts, which shall apply in addition to that Article.

### 2.4 Legal definitions

With regard to the legal definitions, it is worth mentioning that the JMD opted for the exclusion of legal persons in the definition of consumers\textsuperscript{56}, adopting an approach which complies with the ADR Directive but differs from that contained in Law 2251/1994. More specifically, according to article 1(4)(a) of Law 2251/1994, a consumer is defined as “every physical or legal entity, or unions of entities without a legal personality, who constitute the target group of products or services offered in the market, and who use products or services being their end user”. Thus, the definition introduced in the JMD is narrower since legal persons don’t fall within its scope.

Moreover, the JMD has replaced the term “trader” of the ADR Directive with the term “supplier”, that is: “...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 liberal profession”. As a consequence, liberal professions, such as lawyer, notary, auditor, tax

\textsuperscript{56} See article 4(1)(a) JMD: “consumer means any natural person who is acting for purposes which are outside his trade, business, craft or profession".
consultant etc., are covered by the scope of the JMD, as they fall within the definition of a “supplier”\textsuperscript{57}.

In addition, the definition of the ADR procedure provided in Article 4(1)(g) JMD is not clear\textsuperscript{58}. Accordingly, the wording of Article 2 JMD does not provide a sufficient basis for clarifying which ADR procedures are actually covered.

Finally, the definition of the ADR entities provided in Article 4(1)(h) JMD\textsuperscript{59} does not refer to their legal form, in accordance with the nature and function of ADR entities in European and global level. Therefore, an ADR entity might be an independent Authority, Committees of several composition, civil companies without legal personality, networks active on the Internet. The above diversity also reflects the character of ADR, which is not harmonized with the typical and strictly designated function of the public entities of the civil justice\textsuperscript{60}.

\textbf{2.5 Designation of competent authority and single point of contact}

The ADR Directive requires that each Member State shall designate one or more competent authorities and if more than one competent authority is appointed, Article 18 of the ADR Directive imposes the obligation of identification of a single point of contact. According to Article 5 of the JMD, Greece designates the General Directorate of Consumer Protection and Market Supervision of the General Secretariat of Trade and Consumer Protection as the competent authority for the purposes of the JMD. Furthermore, the designated ODR contact point according to Article 7 of the ODR Regulation is the Hellenic Consumer Ombudsman – European Consumer Centre Greece.

\textsuperscript{57} K. Komnios, \textit{The Implementation of the Consumer ADR Directive in Greece}, (EuCML, Issue 6/2016), 245

\textsuperscript{58} Article 4(1)(g): “ADR procedure” means a procedure as referred to in Article 2, which complies with the requirements set out in this decision and is carried out by an alternative dispute resolution entity”.

\textsuperscript{59} Article 4(1)(h) JMD: “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 the special Register of ADR entities (“the Register”) in accordance with article 18 (2) and (3) of this Decision”.

\textsuperscript{60} Critical E.Tziva, in E.Alexandridou, \textit{Consumer protection Law} (Nomiki Bibliothiki, 2\textsuperscript{nd} edition, 2015), 784 [in Greek]
2.6 General Principles and Guarantees

Chapter II (articles 6-10) of the JMD sets out the requirements applicable to ADR entities and ADR procedures using the wording of the ADR Directive. The function principles of ADR entities are: The principle of independence, impartiality, effectiveness, transparency, fairness, the principle of free participation, of equality, of entity’s permanence and the principle of confidentiality. The above principles are explicitly described in JMD with the same content as they are described in the ADR Directive. Therefore, Article 7 JMD describes the principles of expertise, independence and impartiality, Article 8 analyses the principle of transparency and Article 9 describes the principle of effectiveness. The principle of fairness is analyzed in Article 10 while other principles are described in other provisions, specifically those principles regarding the access to ADR entities and ADR procedures (Article 6), as well as the cooperation of these entities with national authorities entrusted with the enforcement of legal acts on consumer protection in Greece (Article 16).

More specifically, the provision of article 6 JMD requires ADR entities to provide easy access to information concerning the ADR procedure via electronic means or in a durable medium. At the same time, article 6(2) JMD introduces the possibility for the ADR entities to maintain or introduce procedural rules that allow them to refuse to deal with a given dispute on the grounds that, for example, 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 or in case the dispute is frivolous or vexatious. However, it is highlighted that the procedural rules that will justify the refusal of ADR entities to deal with a dispute shall not significantly impair consumers’ access to ADR procedures, including in the case of cross-border disputes.

Subsequently, according to Article 7 JMD, natural persons in charge of the ADR have to be independent and impartial, even bearing a disclosure obligation. Furthermore, they must process the necessary knowledge and skills in the field of alternative or judicial resolution of consumer disputes, as well as a general

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61 Article 7(1)(e) JMD
understanding of law, which does not mean that they should necessarily be lawyers or accredited mediators. In any case, ADR entities have to provide training for natural persons in charge of ADR.

The provision of Article 8 JMD introduces the principle of transparency, as it provides that the ADR entities shall make publicly available on their website and in a durable medium, information relating to the entity and its ADR procedure. They have to be transparent regarding their composition, procedural rules, financing and activities. However, the principle of transparency of the Article 7 of the ADR Directive, is minor\(^62\) in comparison to publicity of judicial decisions, as it imposes only the obligation to publish statistical data and not, for example, a indicative publication of the content of proposed solutions or even agreements or decisions, an option that, unfortunately, was not be followed by the Greek legislator.

In addition, on this point, it must not be omitted the problematic issue of the language in which complaints can be submitted to the ADR entity and in which the ADR procedure is conducted\(^63\). Specifically, since the ADR entity is not located in the consumer’s country of residence but in the trader’s country of establishment, the chances are that the trader can communicate in his own language, in which he is less fluent than he is in his native tongue\(^64\). The Greek legislator did not expressly identify the language of procedure’s conduction and placed the relevant option to the ADR entities\(^65\). Moreover, the JMD does not identify the language in which ADR entities must “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”\(^66\).

\(^{62}\) K.Komnios, Critical Approach to the European legislation for alternative and online consumer dispute resolution, EPoD 2016, [in Greek], p. 166

\(^{63}\) Article 7(h) of the ADR Directive and Article 8(g) of the JMD

\(^{64}\) M. B.M. Loos, Consumer ADR after implementation of the ADR Directive: enforcing European consumer rights at the detriment of European consumer law, Centre for the Study of European Contract Law, Working Paper Series No. 2015-11, p. 11-12

\(^{65}\) K.Komnios, Critical Approach to the European legislation for alternative and online consumer dispute resolution, EPoD 2016, p.170, [in Greek] for more details concerning the problem of language and other critical observations.

\(^{66}\) Article 6(1)(a) JMD
The principle of effectiveness adopted by the Article 9 JMD, according to which, ADR procedures are effective by fulfilling a number of requirements including, inter alia, that the parties have access to the procedure without being obliged to appoint a lawyer or a legal advisor, the procedure is easily accessible, free of charge for consumers and is completed within 90 days. Since there is no similar provision covering the cost for the suppliers, unless the ADR entity is funded by the state, it is expected that the costs of the ADR procedure shall be paid by the suppliers or by their respective associations67.

The Article 10 JMD, which is entitled “Fairness” sets out the criteria in order to ensure the fairness of the ADR procedure and specific criteria for ADR procedures where a solution is proposed. The JMD provides that ADR entities 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 thereon; 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 in the form of a durable medium, and are given a statement of the grounds on which the outcome is based.

However, it has to be mentioned that the last two provisions are hardly in conformity with the Greek Mediation Law (GrML)68, as according to Article 8(1) GrML the parties shall attend the mediation procedure accompanied by authorized attorneys while, according to Article 8(3)(b) GrML, no minutes or records are kept69.

After all, both the ADR Directive and the JMD require natural persons in charge of the ADR to only have a general understanding of law, a qualification that cannot

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69 According to Article 9 GrML, when the mediation procedure is complete the mediator shall draft a proceedings record. However, the GrML does not provide that the above mentioned record should contain a statement of the grounds on which the outcome of mediation is based.
guarantee adherence to the rule of law in the strict sense. This is probably why the JMD, following the example of the ADR Directive, merely raises awareness of the fact that outcomes of ADR may differ from those reached in courts, where legal rules are applied.

Another problematic area concerns the regulation of confidentiality. In this regard, it must be noted that the JMD does not regulate confidentiality, an issue that is generally recognized as vital for the effectiveness of ADR. Despite the fact that according to Recital 29 of the ADR Directive, Member States must be encouraged to protect the confidentiality of ADR procedures in any subsequent civil or commercial judicial proceedings or arbitration, in the JMD there is no reference to confidentiality (with the exception of Article 16(4)) and how is shall be protected. Therefore, it will be left to the parties to fill in the above mentioned gap. In this regard, all participants may bind themselves in writing to undertake their respective confidentiality obligations.

2.7 Effect of ADR procedures on limitation and prescription periods

The provision of Article 11 JMD puts forward the effect of ADR procedures on limitation and prescription periods. More specifically, the filing of a petition for recourse to ADR procedure interrupts the limitation and prescription periods, during the ADR procedure, which begin, without prejudice to provisions of articles 261 seq. of the Greek Civil Code, from the completion of the procedure. In this context, it is

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71 Article 10(2)(b)(iii) GrML
72 Article 9(2)(b)(iii) of the ADR Directive
73 See however Recital 31 of the Directive: “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.
74 See however J. Luzak, The ADR Directive: Designed to fail? A Hole-Ridden Stairway to Consumer Justice, (2016) ERPL 97; Luzak argues that confidentiality of ADR procedures may even cause distrust in consumers, since in many countries consumers are accustomed to open court proceedings.
75 Article 16(4) JMD: “This Article shall be without prejudice to provisions on professional and commercial secrecy or other equivalent duties of confidentiality laid down in the Greek legislation.”
provided that an ADR procedure is concluded with the refusal of the ADR entity to deal with it or with the recording of a failure paper or with a recording of a settlement agreement.

2.8 Consumer information by traders and cooperation between ADR entities and national authorities

Chapter III of the JMD is referred to information provided to consumers and cooperation between ADR entities and competent authorities. Due to the fact that participation in ADR proceedings is normally voluntary\(^76\), ADR is an option for consumers only if the supplier agrees to it, as well.

Accordingly, the JMD requires all suppliers to inform consumers about the ADR entities under which they are covered and whether these suppliers commit to or are obliged to use those entities to resolve disputes between themselves and consumers. This information shall include the website addresses of the ADR entities and must be included on the suppliers’ website, where one exists, and, if applicable, also in the general terms and conditions of sales or service contracts applying between the supplier and the consumer\(^77\). In case of non-compliance, an administrative fine up to 1,000 € may be imposed on suppliers.

Moreover, it must be noted that the JMD does not require the participation of suppliers in ADR procedures to be mandatory or the outcome of such procedures to be binding on suppliers, when a consumer has lodged a complaint against them\(^78\). A different solution is given by English legislator, as it will be analyzed below.

The provision of Article 13 JMD provides that regarding disputes arising from cross-border sales or service contracts, when the supplier is resident in another Member State, then consumers can obtain assistance to access the ADR entity operating in this other Member State from the European Consumer Center in Greece.

\(^{76}\) With the exception of national or EU provisions that require suppliers in particular sectors to participate mandatorily.

\(^{77}\) Article 12(1) and (2) JMD

\(^{78}\) On the UK statutory ombudsmen model, which provides that the outcome of the ADR procedures may be binding on both parties if the consumer accepts it, see C. Hodges and N. Creutzfeldt, Implementing the EU Consumer ADR Directive. The Foundation for Law, Justice and Society, University of Oxford, Policy Brief (2013) 5.
The following Article 14 JMD, in accordance with Article 15 of the ADR Directive, specifies the general information that the ADR entities and the European Consumer Center in Greece are obliged to make publicly available on their websites.

Another objective of the European legislator was the cooperation between ADR entities on the resolution of cross-border disputes, as well as between ADR entities and competent authorities, in order to encourage the exchange of best practice and technical expertise and to discuss any problems arising from the operation of ADR procedures. This objective is also revealed in articles 15 and 16 JMD, which provide for mutual cooperation and exchange of information without prejudice to rules on the protection of personal data of Law 2472/1997 (Official Gazette of the Hellenic Republic A’ 50) and to provisions on professional and commercial secrecy.

Nevertheless, regarding the commercial secrecy, the Greek legislator did not exploit the possibility to introduce more specific provisions, as the ADR Directive is also silent in this matter, despite Recital 29 of the Directive.

2.9 The special register for ADR entities

Concerning the obligation of ADR entities to be listed in a special register, this is introduced by the articles 17 and 18 JMD, which also refer to the function of the register. Specifically, in order for a dispute resolution entity in Greece to be listed in the special register for ADR entities, it has to file an application with the General Directorate of Consumer Protection and Market Supervision. The aforesaid application includes all elements necessary to show that the above stipulated quality requirements are met. If this is the case, the General Directorate of Consumer Protection and Market Supervision has to list the entity in the special register for ADR entities, with no discretionary power to do otherwise (ex-ante control of the

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79 Recital 52 kai 54 of the ADR Directive
80 Article 16(3) and (4) JMD
81 For secrecy in mediation procedure, see: K. Komnios, Thoughts about confidentiality of Mediation, ENOPION, Vol.76, (January-March 2015), p. 26 et seq.
82 Article 62 of the Presidential Decree 116/2014
competent authority). If an ADR entity does no longer meet the respective requirements, such a notification should be made to the General Directorate of Consumer Protection and Market Supervision, which will decide whether or not to strike it off the register (ex-post control of the competent authority).

Currently, there are four (4) ADR entities in Greece that meet the above-mentioned requirements and qualify as ADR entities under the JMD:

1) The independent authority, “The Hellenic Consumer Ombudsman” covering all trade sectors. The complaints may be submitted in Greek or English language but the ADR procedure is conducted only in Greek language. The above independent authority may refuse to deal with a given dispute on three grounds according to the article 6(2) JMD. In the meantime, it is worth mentioning that the Amicable Settlement Committees, established by article 11 of Law 2251/1994 fall under the scope of the regulatory authority of the Hellenic Consumer Ombudsman and they both operate to specific local municipalities, pursuing the alternative dispute resolution of consumer disputes, while the above independent authority has also the responsibility of the functioning and support of the European Consumer Center.

2) The “Hellenic Ombudsman of Banking-Investment Services” focusing on banking and investment services. In the meantime, this entity is also operating in the FIN-NET network, an EU-wide network, which brings together ADR entities, which handle cross-border disputes between consumers and financial service providers. In this type of ADR entity the ADR procedure is conducted in both Greek

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84 Ibid
85 Table of the Register provided by the Department of Legal Support of the Political and Consumer Informing Directorate of the Greek Ministry of Economy, Development and Tourism.
86 Specifically, it may refuse to deal with the dispute, on the grounds that: a) the dispute/case is pending before a judicial authority, b) the dispute is frivolous or vexatious or it has been abusively exercised or against the principle of good faith, c) the consumer has not submitted the complaint to the Hellenic Consumer Ombudsman within one year from the date upon which the consumer submitted the complaint to the trader.
and English language and there are five grounds on which it may refuse to deal with a dispute according to the article 6(2) JMD\textsuperscript{89}.

3) The “ADR Point P.C. – Alternative Dispute Resolution Center” covering a wide range of economic and commercial disputes, e.g. resolving conflicts in the workplace environment, resolving disputes between trading partners with different cultural backgrounds, managing corporate bankruptcy consequences etc. The main languages of the ADR procedure are the Greek and English language; however, the ADR point ensures a multilingual environment for all national and cross-border disputes. Finally, the above ADR entity may refuse to deal with a given dispute on five grounds provided by Article 6(2) JMD\textsuperscript{90}.

4) The “European Institute for Conflict Resolution”, which is mainly competent for disputes in consumer goods, education, financial services, leisure services, electronic communications and transport services and is handling the ADR procedure both in Greek and English language. Finally, the above ADR entity may refuse to deal with a given dispute on five grounds provided by Article 6(2) JMD\textsuperscript{91}.

The ADR Directive’s requirement stipulated in Article 5 (1) for full-sector coverage is provided in Greece by the nationally well-known Hellenic Consumer

\textsuperscript{89} These grounds are: a) The consumer did not attempt to contact the trader concerned in order to discuss his complaint and seek, as first step, to resolve the matter directly with the trader, b) the dispute is frivolous or vexatious, c) the dispute is being or has been previously considered by another ADR entity or by a court, d) the consumer has not submitted the complaint to the Hellenic Ombudsman of Banking-Investment Services within one year from the date upon which the consumer submitted the complaint to the trader and e) dealing with such a dispute would otherwise seriously impair the effective operation of this ADR entity.

\textsuperscript{90} These grounds are: a) The consumer did not attempt to contact the trader concerned in order to discuss his complaint and seek, as first step, to resolve the matter directly with the trader, b) the dispute is frivolous or vexatious, c) the dispute is being or has been previously considered by another ADR entity or by a court, d) the consumer has not submitted the complaint to the ADR point within one year from the date upon which the consumer submitted the complaint to the trader and e) dealing with such a dispute would otherwise seriously impair the effective operation of the ADR point.

\textsuperscript{91} These grounds are: a) The consumer did not attempt to contact the trader concerned in order to discuss his complaint and seek, as first step, to resolve the matter directly with the trader, b) the dispute is frivolous or vexatious, c) the dispute is being or has been previously considered by another ADR entity or by a court, d) the consumer has not submitted the complaint to the dispute resolution entity within one year from the date upon which the consumer submitted the complaint to the trader and e) dealing with such a dispute would otherwise seriously impair the effective operation of this ADR entity.
Ombudsman, which makes it relatively easy for the consumers to remember and access this form of the ADR\textsuperscript{92}.

### 2.10 Final Provisions - Penalties

Concerning the obligation of Member States to lay down rules on penalties for infringements of the national provisions adopted to comply with the ADR Directive\textsuperscript{93}, the Greek legislator specifies those penalties in Article 19 JMD, providing that in case the suppliers are not comply with the provisions of Article 12 JMD, the Minister of Economy, Infrastructure, Shipping and Tourism will impose them the penalty of recommendation for compliance and if the supplier does not comply in the reasonable time, an administrative fine up to 1.000 € may be imposed on him.

### 2.11 Amendments, Transposition and entry into force

The provision of Article 20 JMD provides for the necessary amendments in Law 2251/1994 on consumer protection, in order to include a reference to ADR Directive so as to reinforce cross-border cooperation on enforcement of the Directive, and concerning the ADR entities that has already established and are operating before the publication of the JMD, the last shall comply with its regulations and be listed in the special Register until the 9\textsuperscript{th} of September 2015.

The JMD entered into force from its publication on the Official Gazette of the Hellenic Republic on the 30rd of June 2015, with the exception of the Articles 12 (4), 14(1)(b) and (2)(d) and the Article 18(4)(b) which entered into force on 9\textsuperscript{th} of January 2016.

### 3. Concluding remarks


\textsuperscript{93} Recital 56 ADR Directive and Article 21 of the ADR Directive
As it is concluded from the above, the mainly verbatim transposition of the Greek language version of the ADR Directive has not proved to be a step towards modernization of Greek structure on consumer dispute resolution system, but rather a missed opportunity.\textsuperscript{94} Moreover, consumer arbitration as well as in-house mediation is omitted from the scope of the JMD.

In addition, the Greek legislator did not exploit the flexibility given by ADR on the options for implementation concerning the possibility to provide for the creation of a residual ADR entity or to make the use of ADR compulsory, or even to provide for an effective protection of the principle of confidentiality of ADR procedure. In view of this, Greek legislator may proceed to legal reforms or enact a supplementary legal instrument, which will fill in the abovementioned gaps.

\textbf{Chapter IV: The Implementation of the Consumer ADR Directive in United Kingdom}

1. ADR Background for consumers in United Kingdom before the implementation.

Before the implementation of the ADR Directive, there was a diverse approach to ADR in the UK, with several different models in operation. ADR was mandatory in certain sectors where there was a high potential for consumer detriment or complex disputes, with a single public body operating as an ombudsman in some of these sectors (e.g. financial services, legal services) and several private ADR bodies operating in others (e.g. telecommunications and estate agents)\textsuperscript{95}. Furthermore, voluntary schemes were operating in some sectors which businesses could choose to join and these were often linked to trade associations. Sometimes there were several voluntary

\textsuperscript{94} K. Komnios, \textit{The Implementation of the Consumer ADR Directive in Greece}, (EuCML, Issue 6/2016), 249

\textsuperscript{95} See: Government Response to the consultation on implementing the Alternative Dispute Resolution Directive and the Online Dispute Resolution Regulation, Department of Business, Innovation and Skills, (November 2014)
ADR schemes which were operating in the same sector. In UK, there are Ombudsman Services which deals with consumers’ complaints about energy, communications, property, copyright and retail.

In addition there were several small independent bodies who offered mediation services, often at a local level. However, although these services were available to consumers, they mainly focused on commercial or family disputes.

Besides, the UK Government was and continue to constitute a keen advocate of ADR, as illustrated by the inclusion in the Civil Procedure Rules 1998 (the “CPR”) of a number of measures designed to encourage ADR. In fact, the use of ADR, as a dispute resolution process has been given a boost in recent years by a number of cases in which the courts have sanction greater use of ADR in England and Wales.

Nevertheless, although over 70 ADR schemes were operating in the UK, prior to the ADR Directive, by a range of ADR providers, in reality, the number of ADR bodies that, finally, met the requirements of the ADR Directive, is much lower, as the ADR landscape in the UK had to be reformed in order to comply with the provisions of the European Directive. Currently, there are 43 ADR approved bodies in UK, which continue to meet the specified quality requirements set out in ADR Directive.

2. Implementing the ADR Directive into English law

As aforesaid, the deadline for the implementation of the ADR Directive was 9th July 2015. In order to meet this implementation deadline the UK, in particular, the Department for Business, Innovation and Skills, laid before Parliament by Command of Her Majesty prepared the Alternative Dispute Resolution for Consumer Disputes

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96 For example, glazing installers could choose to join either the Glazing Ombudsman, the Double Glazing and Conservatory Ombudsman Scheme or become a member of the Glazing and Glass Federation, who will refer disputes involving their members to an independent ADR scheme.
97 P. Cortes, The New Regulatory Framework for Consumer Dispute Resolution, Oxford University Press, (2016), p.120
98 Alternative Dispute Resolution in England and Wales, H. Lovells, (January 2016),
99 Department for Business, Innovation and Skills, Consultation on Alternative Dispute Resolution, (March 2014), pp. 15-16 and Annex B.
100 For a complete list of all ADR approved entities in the UK, see: the website of the Chartered Trading Standards Institute (CTSI), at: https://webgate.ec.europa.eu/odr/main/index.cfm?event=main.adr.show
Implementing the Consumer ADR Directive 2013/11/EU in United Kingdom and Greece

(Competent Authorities and Information) Regulations 2015 (“The UK Regulations”)\(^1\) by No. 542/2015, which went before Parliament in April 2015\(^2\). The UK Regulations implemented the core provisions of the ADR Directive, e.g. those relating to the designation of competent authorities and the approval process for the providers of alternative dispute resolution, in Parts 1 to 3, which came into force on 7\(^{th}\) April 2015 and those provisions regarding the trader information requirements came into force on 9\(^{th}\) July 2015, but no provisions of the ODR Regulation were implemented in this instrument.

However, the Regulations have been further amended and supplemented by The Alternative Dispute Resolution for Consumer Disputes (Amendment) Regulations 2015 (“the Amended Regulations”)\(^3\) by No. 1392/2015. This instrument effects the implementation of the remaining provisions of the ADR Directive and the ODR Regulation by amending the Regulations, so that most of the provisions implementing the ADR Directive and ODR Regulation are located in a single Statutory Instrument. The Amended Regulations also make consequential amendments to certain other Acts and Statutory Instruments. Moreover, those regulations that implemented the ADR Directive or made corrections to the Regulations came into force on 9\(^{th}\) July 2015, while those regulations that implemented the ODR Regulation came into force on 9\(^{th}\) January 2016.

In addition, to provide more time for traders to prepare their business operations for the new requirements imposed in them under Part 4 of the Regulations, this instrument amended regulation 1(3) of the Regulations so that the trader

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\(^2\) Before the above, the Department has performed the procedure of public consultation from 11\(^{th}\) March until 3\(^{rd}\) June 2014, in 1\(^{st}\) phase making public two documents: a document of the “Green Paper” type, which presents in detail the main issues of transposition and the questions asked by the Government to the interested parties and an impact assessment study (BIS 2014). Later, on 18\(^{th}\) November 2014, a summary of the 85 responses received, together with the government’s position on each issue subject to public debate was published (BIS 2014b).

information requirements commence on 1st October 2015 rather than 9th July 2015. This constitutes late implementation of Article 13 of the ADR Directive, but according to Department’s view this was the only viable way of ensuring a smooth implementation of the trader information requirements.

Finally, the Alternative Dispute Resolution for Consumer Disputes (Amendment) (No.2) Regulations 2015\textsuperscript{104} by No. 1972/2015, which came into force on 9th January 2016, implemented an article of the ODR Regulation that required implementation into domestic law in order to make the obligation it contains enforceable, as it will be analyzed below, and made certain corrections to the UK Regulations.

Last but not least, the UK Government also published detailed Guidance for Business\textsuperscript{105} on the new rules.

\textbf{2.1 The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015}

\textbf{2.1.1 Systematic structure and territorial extent of the Regulations}

First of all, it must be noted that the UK Regulations apply to all of the United Kingdom and although the ADR Directive could have been implemented by Northern Ireland, as consumer protection policy is within the competence of the Northern Ireland Assembly, the Northern Ireland Departments concerned have agreed the implementation of the Directive can be carried forward on a UK basis.

The systematic structure of the UK Regulations, in contrast with the structure of the JMD, is totally different from that of the ADR Directive. More specifically, the UK Regulations are divided into five Parts: Parts 1 to 3 relate to the designation of competent authorities and the approval process for the providers of alternative


dispute resolution (Regulations 1 to 18), and Parts 4 and 5 contain provisions regarding the trader information requirements and came into force on 9\textsuperscript{th} July 2015 (Regulations 19-20). There are also 8 Schedules which specify the regulations. Schedule 1 contains two Parts which specify the Competent Authorities and the ADR entities in respect of which a competent authority exercises its functions, while Schedule 2 provides in detail the information that an ADR applicant must supply to the relevant competent authority. The requirements that a competent authority must be satisfied are detailed in Schedule 3. In addition, Schedules 4, 5 and 6 respectively specify the information that must be included in the list maintained by a competent authority, in an ADR entity’s annual activity report and that information that an ADR entity must communicate to the relevant competent authority every two years. Schedule 7 makes consequential amendments to the Financial Services and Markets Act 2000 and Schedule 8 specifies the UK law for the purposes of section 212 of the Enterprise Act 2002 to the extent that it gives effect to the listed Directive set out in that Schedule.

\subsection*{2.1.2 Entry into force – Scope – Legal Definitions}

Regulation 1 of UK Regulations divides in two different dates the application of the five Parts. Specifically, it provides that Parts 1 to 3 will come into force on 7\textsuperscript{th} April 2015 while Parts 4 and 5 will come into force on 9\textsuperscript{th} July 2015. This legislative proposal had as its scope most of the provisions of the Regulations come into force earlier, i.e. on 7\textsuperscript{th} April, so that the newly designated competent authorities be able to complete the vetting of ADR providers prior to the implementation date on 9\textsuperscript{th} July, so that as of 9\textsuperscript{th} July the UK has in place sufficient ADR providers to enable any trader to access ADR. However, as it will be analyzed below, the UK Regulations, in order to ensure the smooth introduction of the new information requirements on traders, were been amended so that the coming into force date of the information requirements on traders is 1\textsuperscript{st} October 2015, than 9\textsuperscript{th} July 2015.
Furthermore, it is provided that the Secretary of State has an obligation to review the Regulations and publish a report setting out the objectives and the extent to which those objectives have been achieved\textsuperscript{106}.

With regard to the legal definitions, it is worth mentioning that the UK Regulations opted for the exclusion of legal persons in the definition of consumers\textsuperscript{107}, adopting an approach which complies with the ADR Directive. However, it inserts the detail that the individual’s purpose might be wholly or mainly outside his trade, business or profession, adopting a broader interpretation regarding the ADR Directive which implies in Article 4(1)(a) a total and non partial exclusion of consumer’s purposes which are connected with his trade, business, craft or profession.

Equally crucial is the definition of a “domestic dispute”: a dispute concerning contractual obligations arising from a sales contract or a service contract where, at the time the consumer orders the goods or services, the consumer is resident, and the trader is established, in the United Kingdom; “cross-border dispute” means a dispute concerning contractual obligations arising from a sales contract or service contract where, at the time the consumer orders the goods or services, the trader is established in the United Kingdom and the consumer is resident in another Member State. In accordance with Article 5(2)(e) of the ADR Directive, the UK Regulations ensure that ADR entities accept both domestic and cross-border disputes. However, the Regulations, as well as the JMD, do not require ADR entities to accept claims against suppliers located in other Member States.

Moreover, The UK Regulations contain no definition of the ADR procedure in comparison with the ADR Directive while the definition of the ADR entity provided in regulation 4 is general and not very clear\textsuperscript{108}. On the contrary, the Regulations specify

\textsuperscript{106} Regulation 2 of UK Regulations
\textsuperscript{107} See Regulation 3 of UK Regulations: “Consumer” means an individual acting for purposes which are wholly or mainly outside that individual’s trade, business, craft or profession.
\textsuperscript{108} Regulation 4 of UK Regulations: “ADR entity” means a body whose name appears on a list maintained in accordance with regulation 10."
some legal terms which are not provided in ADR Directive, i.e. definitions of ADR applicant, ADR official, sales and service contract, durable medium.\textsuperscript{109}

\subsection*{2.1.3 Exceptions}

Analyzing the exception provided by Regulation 7 of the UK Regulations, it has to be noted that in comparison with the ADR Directive (Article 2(2)), as far as the scope of the legislation is concerned, the English law differs from the European Directive in the sense that paragraphs (b) to (g) and (i) of the ADR Directive have not been expressly transposed and only article 2(2)(h) referring to health services provided by health professionals is transposed in regulation 7. Moreover, Article 2(2)(a) of the ADR Directive is transposed in Schedule 3 par. 1(c) of the Regulations, which also excludes from its scope procedures before ADR entities where the natural persons in charge of dispute resolution are employed or remunerated directly by a trader who is a party to the dispute.

In addition, article 2(4) and Recital 20 of the ADR Directive allow Member States to determine whether or not to allow certified ADR providers to make decisions that are binding. In contrast with the Greek ADR landscape, where ADR entities can only propose a solution, thus, consumer arbitration is excluded from JMD’s scope, several UK ADR schemes operate a model whereby a decision is binding on one or both parties if the consumer accepts the decision. Therefore, the UK intended to recognize ADR models that arrive at a binding decision for one or both of the parties as a valid model for the purposes of the ADR Directive.

Finally, it must be underlined that “in-house mediation” is not included as part of the UK’s implementation of the ADR Directive, because such an inclusion would undermine the independence of the service. The same path was also followed by the Greek legislator in article 2(2)(a) of the JMD.

\subsection*{2.1.4 Designation of competent authority}

\textsuperscript{109} See regulation 5 of UK Regulations
Complying with the Article 18 of the ADR Directive, regulation 8 and Schedule 1 of UK Regulations designate the UK competent authorities, which are the Financial Conduct Authority, the Financial Ombudsman Service, the Legal Services Board and the Office for Legal Complaints, while the entities specified in Part 2 of Schedule 1 constitute the competent authorities in relation to the area for which they have regulatory responsibility and the Secretary of State is the relevant competent authority in cases referred in regulation 8(4)(a) and (b) of UK Regulations.

2.1.5 Trader Information Requirements and General principles and Guarantees

Regulation 9 of the UK Regulations requires an entity seeking to be an approved provider of ADR services to provide certain information, specified in Schedule 2, to the relevant competent authority, which may only grant approval to an ADR entity if it is satisfied that it meets the requirements specified in Schedule 3 and in certain cases additional requirements, as provided in paragraph (5). More specifically, regulation 9(4) and Schedule 3 para.2 analyzing the basic obligations of ADR entities being harmonized with the articles 5(2)(a) to (e) of the ADR Directive.

However, regarding the option provided to Member States by the ADR Directive to maintain or introduce higher standards provided those rules are in order to ensure a higher level of consumer protection\(^\text{110}\), UK Regulations, with the exception of the provision found in Schedule 3, para.13(e), do not themselves set any higher requirements, but regulation 9(5) recognizes that a competent authority may impose additional requirements if it has the power under another enactment to do so.

Furthermore, as far as the grounds permitted for an ADR entity to refuse to deal with a dispute are concerned which are analyzed in articles 5(4) and (5) of the ADR Directive, the same grounds for refusal are provided by regulation 9(4) and Schedule 3 para. 13 to 15. In this respect, it should be pointed out that UK legislator transposed Article 5(4)(e) in Schedule 3 para. 13 (e) by referencing the 12 month minimum period to the date on which the trader informs the consumer that the trader is unable to

\(^{110}\) See Article 2(3) of the ADR Directive
resolve the complaint, rather than by reference to the date on which the consumer first submitted the complaint to the trader, to ensure that a consumer is not time barred from accessing an ADR Entity due to protracted negotiations with the trader.

The requirements for expertise, independence and impartiality of the persons in charge of alternative dispute resolution procedures provided by the ADR Directive\textsuperscript{111}, are also provided by regulation 9(4) and Schedule 3 para. 3(a) to (f) of UK ADR Regulations. Concerning article 6(1)(c) of ADR Directive, the last have been transposed in Schedule 3(3)(c) by referring to an ADR official discharging his or her duties in a way that is “biased”, rather than being “subject to any instructions from either party”, because there are times when a party may legitimately instruct the ADR official to act in a particular way (e.g. release documents to other side).

In addition, the UK Regulations comply with Article 19(3) of the ADR Directive, as they require an ADR entity to produce an annual activity report which contains the information specified in Schedule 5 and to publish it on its website\textsuperscript{112}. Every two years, the ADR entity must provide the competent authority which approved it with the information set out in Schedule 6, and Regulation 12 places an obligation on the competent authority to assess whether the ADR entity still meets the requirements for approval set out in Schedule 3 when it receives that information.

### 2.1.6 The special List of ADR entities

As mentioned above, the ADR Directive provides that competent authority is required to list approved ADR entities and to notify the single point of contact, which is required to notify the Commission. Moreover, the competent authority is required to remove an ADR entity from the list if it is no longer complies with the requirements of

\textsuperscript{111} See Article 6(1) of the ADR Directive

\textsuperscript{112} Regulation 11(3) and Schedule 6 of the UK Regulations
the Directive. The English legislator implemented the above requirement, whilst, at the same time, making some additions. Specifically, in Regulation 13(1), the legislator added the concept that the competent authority can only commence the removal of approval process if it considers that the breach on the part of the ADR entity is in relation to something which is within the ADR entity’s control, as these are the only matters which the ADR entity can be expected to rectify.

In addition, in Regulation 13(2), the English legislator added the concept that the competent authority can only withdraw its approval from the ADR entity if it believes that the ADR entity’s failure is sufficiently serious: breach of certain provisions in Schedule 3 would have no impact on consumer protection.

However, The UK Regulations is virtually silent\textsuperscript{113} on the standard setting duties of the competent authorities. Indeed, the UK Regulations only include a brief reference at Regulation 18 to the duties of the UK’s “Point of contact”, which is the Secretary of State, to “identify best practices”, “shortcomings” in the functioning of ADR schemes and “recommendations on how to improve the effective and efficient functioning”\textsuperscript{114}.

\textbf{2.1.7 Penalties for non-compliance}

The ADR Directive requires that Member States ensure “effective, proportionate and dissuasive penalties” for infringements of the provisions relating to the information obligations on traders. This is achieved by adding Article 13 of the ADR Directive and Regulation 19 of UK Regulations to the Community infringements regime under Part 8 of the Enterprise Act 2002. An enforcer under the Enterprise Act 2002 can apply for an enforcement order from the court if the enforcer believes that a trader is not complying with its obligations under Regulation 19 of UK Regulations.

\textbf{2.1.8 Non-Implementation}

\textsuperscript{114} Regulation 18(3)(a) to (c) of the UK Regulations
As it can be concluded from the above, the provisions of ADR Directive that were not implemented by UK Regulations 2015 were the following:

- Article 3(1) and (2) of the ADR Directive referring to the relationship of the ADR Directive with other EU legislation.

- Article 5(1) of the ADR Directive which refers to Member State obligation to facilitate access by consumers to ADR procedures and ensure that disputes relating to consumer contracts involving a trader established in that Member State can be submitted to an approved ADR entity.

- Article 5(2)(f) of the ADR Directive regarding the compliance with Directive 95/46/EC as regards processing of personal data, as no implementation required in these Regulations, because the ADR entities were already required to comply with the Data Protection Act 1998 which implements the Directive 95/46/EC.

- Article 5(3) of the ADR Directive concerning the existence of a residual ADR entity, as well as Articles 5(6) and (7), as no implementation was required in national legislation.

- Article 6(3) of the ADR Directive regarding the additional requirements where the dispute resolution procedure is run by an individual remunerated exclusively by the trader, because the UK Government has decided not to exercise the option set out in Article 2(2)(a) of the Directive.

- Article 6(6) of the ADR Directive, as the first sentence of Article 6(6) does not oblige Member States to require ADR entities to provide training for its ADR officials. The second sentence is implemented via the requirement to prepare a report every two years under regulation 11(3) and Schedule 6, para(g).

- Articles 7(1)(d) concerning the information requirement of the ADR entity regarding the impartiality and independence of the natural persons in charge of ADR and the Article 7(2)(d), as well as the Article 19(2) of the ADR Directive, as the above three articles are related to the member state option in Article 2(2)(a) which the UK has not exercised.
- Article 10 regarding the non-binding nature of a pre-agreement to use ADR and Article 12 concerning limitation and prescription periods.
- Articles 14, 15, 16 and 17 of the ADR Directive referring to assistance for consumers and cooperation between ADR entities and national authorities.
- Finally, UK had no implement articles 20(4), 22, 23, 24-28, as no implementation was required in national legislation.

2.2 The Alternative Dispute Resolution for Consumer Disputes (Amendment) Regulations 2015

As aforesaid, the core provisions of ADR Directive were implemented in the UK Regulations, most whose provisions came into force on 7th April 2015. The Amendment Regulations 2015, effects the implementation of the remaining provisions of the Directive and the ODR Regulation, by amending the UK Regulations, so that most of the provisions implementing the Directive and ODR Regulation are located in a single Statutory Instrument. This instrument also makes consequential amendments to certain other Acts and Statutory Instruments.

2.2.1 Systematic structure and territorial and temporal application

As well as UK Regulations, this instrument also applies to all of the United Kingdom and it is divided into four (4) Parts: Part 1 contains general information concerning transitional provision and extent, Part 2 makes amendments to UK Regulations and corrects some legal definitions, while Part 3 and Part 4 make amendments to Primary and Secondary UK legislation. Furthermore, it must be noted that the Amendment Regulations contain no regulation obliging the Secretary of State to carry out a review of the instrument in five year’s time.

As far as the temporal application of this instrument, those regulations that implement the Directive or make corrections to the UK Regulations came into force on 9th July 2015, while those regulations that implement the ODR Regulation came into force on 9th January 2016.
2.2.2 Basic amendments to the UK Regulations 2015

First of all, the English legislator decided to make some corrections in terminology and legal definitions provided in UK Regulations. Specifically, he substitutes the word “body” with the term “person”, while in Regulation 2(5)(a) substitutes the definition of “ADR official” by providing that “ADR official” means “an individual who (solely or with other persons) is involved in the provision of alternative dispute resolution procedures offered by an ADR entity, or ADR applicant, whether as a case handler or in a management capacity”. Moreover, three additional definitions are inserted by regulation 2(5)(b) and (c), i.e. the definitions of the: “complete complaint file”, “EU listed body” and “ODR platform”.

It must not be omitted that Regulation 2(3) substitutes a new coming into force date for Parts 4 and 5 of UK Regulations, the effect of which was to postpone the commencement of the trader information requirements until 1st October 2015.

In addition, Regulation 2(6) removes the requirement for an ADR entity to be established in UK, while regulations 2(7) and 2(8) place various obligations on ADR entities as regards information they must publish, or those they must give a party if the outcome of the alternative dispute resolution procedure is to have binding effect on a party and requirements for cooperation with other bodies.

Complementing the above, the amendment contained in regulation 2(11) clarifies that the single point of contact must send the consolidated list of ADR entities to the European Commission on the standardized electronic form provided by the European Commission, while regulation 2(13) adds a provision regarding what information online traders must give consumers and regulation 2(15)(j) imposes additional obligations on ADR entities when dealing with complaints it receives through the ODR platform.

Finally, regulations 3, 4, 5 and 7 of Part 3 and regulation 8 of Part 4 make amendments to various Acts and Statutory Instruments to transpose Article 12 of the

115 Regulation 2(2) of the Amendment Regulations

2.3 The Alternative Dispute Resolution for Consumer Disputes (Amendment) (No.2) Regulations 2015

The scope of this instrument was to implement a remaining provision of the ODR Regulation which requires transposition, as other provisions of the ODR Regulation had already been implemented in the UK Regulations 2015 and to make certain corrections to the first Regulations.

2.3.1 Systematic structure and territorial and temporal application

The Amendment (No.2) Regulations 2015 applies through the United Kingdom, it is divided in three Parts and it came into force on 9\textsuperscript{th} January 2016. Specifically, Part 1 contains only one regulation specifying the instrument’s commencement date, while Part 2 consisting of four regulations and Part 3 consisting of three regulations make amendments respectively to Primary and Secondary English legislation.

2.3.2 Amendments to Primary and Secondary Legislation

Regulations 2 to 6 made amendments to four acts and one statutory instrument to omit the definition of “ADR official” as the definition was redundant and regulation 7(2) and (4) introduced a new provision into the ADR UK Regulations to provide that a competent authority and an ADR applicant and ADR entity must provide a link to the ODR platform on its website. Finally, regulation 7(3) corrects a cross-reference in regulation 15(1)(b) of the UK Regulations.

3. Concluding Remarks

As it is concluded from the above, the Department decided to implement the ADR Directive in two phases to ensure that, as of the implementation date, the UK meets
the Directive’s requirement to have in place sufficient ADR provision to enable any trader who wishes to use ADR for a dispute within the scope of the Directive to use a certified ADR provider to resolve that dispute. Phase 1 was affected by means of the UK Regulations, most of whose provisions came into force on 7th April 2015 so that the newly designated competent authorities are able to complete the vetting of ADR providers prior to the implementation date on 9th July 2015. Phase 2, sets out on-going obligations for certified ADR providers, provides the circumstances when an agreement made by the consumer to use ADR is not binding on the consumer and sets out a provision to enable the Financial Conduct Authority to charge fees for its operations as a competent authority.

As far as the implementation of the ODR Regulation is concerned, it is underlined that EU Regulations are directly applicable in a Member State and therefore usually require no further implementation into domestic law. However, since the ODR Regulation requires a member State to lay down the rules on penalties applicable to infringements of the Regulation, the Department felt necessary to expressly implement those provisions of the ODR Regulation that put obligations on certified ADR providers, and on online traders, so that corresponding enforcement provisions can also be provided for.

However in the multiple competent authority model adopted in the UK, no one body has the data to collate best practice on ADR and there is only a minimal incentive for competent authorities to compile such information or act as force for higher standards. Potentially, EU-wide guidance on best practice may come out of the reports that are submitted by competent authorities to the Commission “on the development and functioning of ADR entities”116.

As a general conclusion, it must be noted that in the UK, the ADR Directive’s implementation amounted to a minimal endeavour117 in harmonization because many of its background goals had been already realized. The ADR Directive has been

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116 Article 20(6) of the ADR Directive
implemented by way of secondary legislation (the UK Regulations) and for the UK raises few completely new requirements.

**Chapter V**

**Conclusions - Comparative Observations between the Implementation of Consumer ADR Directive by the Greek and English legislation**

From all the aforementioned, it is concluded that the alternative dispute resolution holds a very important position in the law of consumer protection. The ADR entities for consumer disputes must be contribute to an effective dispute resolution in a climate of mutual cooperation, without precluding consumers’ possibility to recourse to justice. To this extent, the ADR Directive constitutes a strong template, that was previously absent, for providing reassurance that the quality of provision in the sector is sufficient.

Greece, as well as United Kingdom, have dispute resolution systems based on ADR techniques, which are designed to bring parties together to resolve their differences quickly, amicably, cooperatively; to foster redress; and to heal divisions. That approach lies at the heart of the EU’s preference for consumer dispute resolution, and the philosophy has strong links with European ideals of social solidarity within a market economy. However, much more remains to be done.

As Member States tend to have different national architectures and models of consumer dispute resolution, it is obvious that Greece and United Kingdom present significant differences, despite many similarities and groupings, in implementing the ADR Directive and ODR Regulation, except the fact that both legislations have not succeeded a full coverage.

First of all, it became obvious that consumer dispute resolution is a central mechanism in UK for C2B disputes, while in Greece is relatively new. For this reason UK

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Government has chosen to implement its regulatory duties in a minimalist form\textsuperscript{120} by distributing the function of ADR competent authority across a number of pre-existing regulatory mechanisms and in contrast with Greece, which implemented the ADR Directive in one legal instrument in one stage, the implementation in UK evolved in stages.

In addition, subject to some alteration in legal language, the UK Regulations repeat the standards included in the ADR Directive, while the JMD follows almost a word for word transposition of Directive’s provisions.

Moreover, Greece decided to exclude from the scope of the JMD procedures which impose a solution to the parties, such as arbitration, while the UK legislator decided to allow certified ADR providers to make decisions that are binding. However, “in-house” mediation is excluded from the scope of both Greek and English legislation and it is not categorized as an appropriate ADR process when implementing the ADR Directive. Furthermore, the refusal of UK Government to introduce a single competent authority, in contrast with Greek Government, means that the sector lacks a focus point for quality control\textsuperscript{121}.

Those differences have demonstrated that the implementation strategy of Greece and UK Government is likely to be less influential than it could have been.

For this reason, the review of the UK Regulations which will be carried out five years after they come into force and the Government should further simplify the UK ADR landscape and to assess the costs and benefits of making future, structural changes. Respectively, the Greek legislator has also to move to this direction, in order to simplify, consolidate and codify the relevant legislation, taking also into consideration that the codification has already become a part of the responsibilities of the Political Directorate of the “new” General Directorate of Commerce and Consumer Protection, in accordance with the Presidential Decree 116/2014\textsuperscript{122}.

\textsuperscript{120} R. Kirkham, “Regulating ADR: Lessons from the UK” in Pablo Cortes. The New Regulatory Framework for Consumer Dispute Resolution (Oxford University Press, 2016), p.8

\textsuperscript{121} R. Kirkham, “Regulating ADR: Lessons from the UK” in Pablo Cortes. The New Regulatory Framework for Consumer Dispute Resolution (Oxford University Press, 2016), p.30

\textsuperscript{122} See: Presidential Decree 116/2014 on the organisational structure of the Ministry of Development & Competitiveness (Official Gazette of the Hellenic Republic 185/A)
Only in this way the relevant provisions will certainly contribute to consumer protection and they will not constitute only an interminable and abstruse list of practices and at times list of declarations. Only in this way, the aims of the ADR Directive and the ODR Regulation (i.e. offer access to simple, efficient, fast and low-cost ways of resolving domestic and cross-border disputes, develop a simple, affordable, expedient and accessible system of redress and boost citizens’ confidence in the internal market) will be efficiently achieved not only in the above examined Member States but across the European Union.

We may hope that the report on the application of the ADR Directive, which must be submitted to the European Parliament, the Council and the European Economic and Social Committee in 2019, will prepare the way for improvements.
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Appendix

I. THE CONSUMER ADR DIRECTIVE 2013/11/EU

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

of 21 May 2013


(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

-49-
consumer disputes\(^{(1)}\), 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 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.

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 (6).

(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 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 (7), 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.

(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 (8).

(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.

(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 5(1) to (3) of the Rome Convention of 19 June 1980 on
the law applicable to contractual obligations (Rome I) (9), 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 (10), 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.

(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 States 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.

(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) 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.


(59) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents, 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 (15) and delivered an opinion on 12 January 2012 (16),

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.

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**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.

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**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:


Article 23
Amendment to Directive 2009/22/EC
In Annex I to Directive 2009/22/EC the following point is added:


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
II. THE CONSUMER ODR REGULATION 524/2013

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.

(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).\(^3\)

(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.\(^4\)

(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.

(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.
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).  

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’.

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.

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.

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.

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.

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
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[7]. 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.

(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[8]. 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. 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)

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.

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’)[11], 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.
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;
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.


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.

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**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.

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**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, \(^{(12)}\) the following point is added:


**Article 20**
Amendment to Directive 2009/22/EC

Directive 2009/22/EC of the European Parliament and of the Council (13) 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:


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.

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