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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE**

Alternative dispute resolution for consumer disputes in the Single Market

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1. NEED FOR ACCESS TO EFFECTIVE REDRESS SYSTEMS

The "Europe 2020 strategy" states that a stronger, deeper and extended single market is vital for growth and job creation. In order to live up to this challenge, the Single Market must adapt to a new reality characterised, in particular, by the increasing recourse to internet as a retail channel and the emergence of new types of services. The consumers' trust in the Single Market is affected by the lack of confidence that their problems related to purchases of goods and services can be addressed efficiently. This Communication explains how the Commission's proposals on alternative dispute resolution ('ADR') and Online Dispute Resolution ('ODR') contribute to promoting access to swift, cheap and effective dispute resolution through alternative dispute resolution procedures as means to empower consumers and put them at the heart of the single market. The proposals form part of the twelve key actions of the Single Market Act¹.

As indicated in the Monti Report on a "New Strategy for the Single Market"² and as also reflected in the Single Market Act, the Single Market embodies an ideal; a space across national boundaries where citizens and businesses can move and exercise their rights freely. This naturally includes being able to enter into cross-border transactions. However, for consumers and businesses, the Single Market still presents many challenges.

In the EU, we have achieved a high level of consumer protection, but it is still difficult for the consumers to enforce their rights. Recent studies show that the number of disputes submitted to ADR, including ODR, has increased in the EU from 410.000 in 2006 to 530.000 in 2008³. However, only 5% of European consumers took their case to an ADR entity in 2010⁴ and only 9% of businesses report ever having used ADR⁵. The number of disputes relating to cross-border transactions is increasing.⁶ Yet the majority of consumer complaints currently remain unresolved. Recourse to simple, efficient and low-cost means of resolving disputes through ADR procedures is not yet fully explored. .

Evidence shows that consumers fail to fully exploit the opportunities that the single market offers in terms of a wider choice of products or more effective competition on price and quality. When buying cross-border, consumers are worried that finding a solution if they have

¹ Communication from the Commission to the European Parliament, the Council, the economic and social Committee and the Committee of the Regions: Single Market Act – Twelve levers to boost growth and strengthen confidence, "Working together to create new growth", COM (2011) 206 final, p. 9.

² Report by Mario Monti to the President of the European Commission: "A New Strategy for the Single Market" of 9 June 2010.

³ ADR study, p. 8; http://ec.europa.eu/consumers/redress_cons/adr_study.pdf

⁴ Eurobarometer (EB) 342, p. 184.

⁵ EB 300, p. 76.

⁶ The number of cross-border complaints received by European Consumer Centres (ECCs) totalled 35.000 in 2009, an increase of 55% compared with 2005. The share of complaints relating to e-commerce transactions amounted to more than 55% in 2009 and 2010 and this share has doubled since 2006⁶. In 2009, 38 FIN-NET members reported having handled 1542 disputes while, in 2010, 32 members reported 1800 disputes.

a problem will be difficult⁷ and as a result, consumers are currently reluctant to buy cross-border.

Empirical data shows that before bringing a case to court, a consumer estimates how much time, money and effort will be required to obtain redress and then weighs these considerations against the value of the claim⁸. Faced with the complexity of the laws governing their disputes, in particular disputes relating to cross-border transactions, consumers are frequently not convinced that going to court would offer them a viable solution, and hence in most cases, they will discard this option if an initial contact with the trader has proved to be unsuccessful.

Similarly, businesses, in particular small businesses, are concerned by the risk that they may have to deal with legal and judicial systems with which they are unfamiliar⁹. Therefore, traders often abstain from venturing into new markets which would give them access to new customers and the chance to expand. This lack of confidence has an impact on the competitiveness of businesses.

The growth in e-commerce has increased the scale of missed opportunities: the internet offers any business a shopping window open to the world, and consumers can just as easily shop from their laptops as they can on their local high streets. However, e-commerce, and cross-border e-commerce in particular, has been persistently slow to take off in Europe.

Among other initiatives to be taken by the Commission to remedy this situation, one way to improve redress in the internal market is to improve the availability and make further use of out-of-court dispute resolution entities. ADR is a low-cost and fast alternative for consumers and businesses seeking to resolve disputes. The vast majority of ADR procedures are free of charge for consumers or of moderate costs (below €50). Most disputes submitted to ADR entities are decided within 90 days.¹⁰

Most consumers who have used ADR recall it as a straightforward and transparent process where support and advice was provided¹¹. Hence, consumers are more willing to resolve disputes through ADR than through court proceedings. Businesses also prefer resolving disputes through ADR, and those businesses which have already used ADR would use it again in the future¹².

However, the diversity and uneven geographical and sectoral availability of ADR entities prevent consumers and businesses from fully exploiting their potential. In some Member

⁷ EB 252, p. 55: 71% of consumers considers the resolution of problems as being more difficult when shopping abroad.

⁸ EB 342: 39% of European consumers did not go to court after a problem they encountered because the sums involved were too small or the procedure would be too expensive with respect to the sum involved.

⁹ Flash EB 224 "Business attitudes towards cross-border sales and consumer protection", The Gallup Organisation, 2008 http://ec.europa.eu/public_opinion/flash/fl_224_en.pdf: 59% of businesses stated that an important/very important obstacle to them selling cross-border is the potentially higher costs involved in resolving complaints and conflicts cross-border compared to domestic disputes.

¹⁰ See: ADR study, p. 8.

¹¹ See: Study on "consumer redress in the EU: consumer experiences, perceptions and choices", TNS qual, 2009, p. 48.

¹² EB 300, p.79: 54% preferred ADR and 82% of the businesses which have already used ADR would use it again in the future. This evidence is further reinforced when looking at the satisfaction of businesses; of those who used ADR, 76% found it a satisfactory way to settle the dispute European Business Test Panel, http://ec.europa.eu/yourvoice/ebtp/consultations/2010/adr/index_en.htm).

States ADR entities are not yet developed. In other Member States existing ADR entities cover only part of the territory or are only competent in specific sectors in the retail market. This has generated complexity, which has an adverse impact on their efficiency and dissuades consumers and businesses from using them. Furthermore, consumers and businesses are often not aware of the possibility of referring their disputes to an existing ADR entity, or they do not know whether their dispute would fall within the scope of application of a given ADR entity.

The Commission has been active in promoting ADR for more than 10 years. The two Recommendations adopted by the Commission in 1998¹³ and 2001¹⁴ have had a positive effect, in particular by setting out a number of core quality criteria that ADR entities should respect. However, as illustrated above, they are not sufficient for granting consumers confidence in the Single Market.

In order to develop the full potential of the Single Market as the growth engine for the European economy we need legislative action that ensures that every consumer in the EU can bring a dispute, regardless of the sector in which it has arisen, and regardless of whether it relates to a domestic or a cross-border transaction, to an appropriate ADR entity.

As part of the strategy for addressing the problem related to the slow take off of e-commerce in Europe, the 'Digital Agenda for Europe' called for EU-wide measures to improve ADR systems and announced that the Commission intended to "*propose a EU-wide online redress tool for e-commerce*" in order to build the much-needed confidence in online shopping.

To reach these objectives without imposing excessive and unnecessary burdens on the Member States, the Commission proposes legislative measures which build on the entities that already exist in Member States.

This approach is needed not only because dispute resolution entities are more effective when based on local realities, but also with a view to leaving Member States the necessary margin for deciding how best to fulfil their obligation. In particular, where ADR entities do not exist, Member States are not obliged to ensure that a specific ADR entity is created in each retail sector. They may instead decide to create a single or residual cross-sectoral entity to '*fill the gaps*' in ADR coverage on their territory.

This communication on "Alternative dispute resolution for consumer disputes in the Single Market" is therefore accompanied by two legislative proposals on ADR and ODR. These proposals aim at making it easier for consumers to secure redress in the Single Market whether they are buying online or offline and, therefore, they effectively contribute to growth and economic stability through enhanced consumer demand.

The 2011 Commission Work Programme identified consumer ADR as one of the strategic Commission proposals for 2011¹⁵. The Single Market Act¹⁶, identified legislation on

¹³ Commission Recommendation 98/257/EC on the principles applicable to the bodies responsible for the out-of-court settlement of consumer disputes, OJ 115, 17.4.1998, p. 31.

¹⁴ Commission Recommendation 2001/310/EC on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes, OJ 109, 19.4.2001, p.56.

¹⁵ Commission Legislative Work Programme for 2011, COM(2010) 623.

¹⁶ "Single Market Act" COM (2011) 206, p. 9.

Alternative Dispute Resolution and Online Dispute Resolution as one of the key actions for re-launching growth and strengthening consumer confidence in the Single Market.

Political support for this approach has been expressed at the highest level. The European Parliament¹⁷ and the Council¹⁸ have both endorsed the forthcoming EU legislative action in the area of ADR and ODR. Furthermore, the 2011 Spring and October European Council called for adoption of the proposals by the end of 2012 as part of the coordinated efforts to provide a new impetus to the Single Market¹⁹.

The proposed legislation covers contractual disputes between consumers and traders arising from the sale of goods or the provision of services. This includes complaints filed by consumers against traders but also complaints filed by traders against consumers. However, the proposals do not cover disputes between businesses (business-to-business disputes). The relationship between consumers and businesses is different from the one between businesses: the asymmetries in the relationship between traders and consumers have given rise to specific rules on consumer protection, including rules on consumer information, which govern those transactions. During the public consultations conducted by the Commission all stakeholders (businesses, consumers, national authorities) expressed the view that these specificities should also be reflected in EU legislation on ADR which should provide for specific measures on ADR for consumer disputes.

It is also important to encourage the development of European networks of ADR entities in order to facilitate the resolution of cross-border disputes. National ADR entities should become part of existing sector-specific European networks so as to allow them to function efficiently and provide appropriate ADR coverage for cross-border disputes arising in those sectors (e.g. *'FIN-NET - Network for settling cross-border financial disputes out-of-court'*²⁰ consists of ADR entities handling cross-border disputes between consumers and financial services providers).

In addition, in recent years, a number of initiatives have emerged which aim at developing transnational ADR entities within the EU where traders from different Member States adhere to the same ADR entity located in a single Member State²¹. The development of those initiatives should be further encouraged.

The proposed legislation is a key step in the construction of effective and efficient out-of-court redress systems. As such, it should be seen as paving the way for further measures that will complement this framework, namely the development of collective ADR and a European approach to collective redress.

The Commission is proposing two interlinked initiatives, a Directive on ADR and a Regulation on ODR. The two proposals complement each other. The implementation of the Directive will make quality ADR entities available across the EU for all consumer complaints

¹⁷ EP resolution of 6 April 2011 on Governance and Partnership in the Single Market [2010/2289(INI)].

¹⁸ Conclusions of the Competitiveness Council of 30 May 2011 on the priorities for re-launching the Single Market (Doc.10993/11).

¹⁹ Conclusions of the European Council of 24-25 March 2011 (Doc. EUCO 10/11) and of 23 October 2011 (Doc. EUCO 52/11).

²⁰ http://ec.europa.eu/internal_market/finservices-retail/finnet/index_en.htm

²¹ See for instance "European Car Rental Conciliation Service (ECRCS)", a pilot project launched in July 2010 dealing with disputes linked to cross-border vehicle rentals within Europe (<http://www.leaseurope.org/index.php?page=consumer-redress-service>).

related to contractual disputes arising from the sale of goods or the provision of services. This is a key requirement for the functioning of the ODR platform which will be set up by the regulation.

1.1. DIRECTIVE ON ADR

A Directive on consumer ADR to ensure that quality ADR entities exist to deal with contractual disputes arising from the sale of goods and the provision of services by traders.

The Directive tackles the three main problem areas that have been identified after consultation with interested parties and using studies that have been carried out on behalf of the Commission. The problem areas are:

- (a) Gaps in the coverage of ADR entities at both sector-specific and geographical level;
- (b) Lack of awareness and insufficient information preventing consumers and businesses from using ADR entities; and
- (c) Variable quality of ADR: a significant number of ADR entities are not in line with the core principles laid down by the two Commission Recommendations.

Firstly, it will be important to ensure that ADR entities are available for all consumer disputes that arise from transactions in the Single Market. The Directive aims at ensuring that ADR entities are in place across the EU covering any contractual consumer dispute arising from the sale of goods or the provision of services.

In addition, the lack of detailed information constitutes for consumers, but also for traders, a significant barrier to the use of ADR. Traders will be required to provide consumers with information on which ADR entity is competent to deal with potential contractual consumer disputes involving them. Traders will also be obliged to inform consumers on whether or not they commit to use ADR in relation to complaints lodged against them by consumers.

The Directive also aims at ensuring that ADR entities respect a number of quality principles, such as impartiality, transparency, effectiveness and fairness. Competent authorities in the Member States will monitor the ADR entities and ensure that they function properly.

Following the proper implementation of the Directive, any consumer, wherever he is resident in the EU, will have access to quality ADR entities when problems arise from any purchase of goods or services from a trader established in the EU.

1.2. REGULATION ON ODR

A Regulation on consumer ODR to enable consumers and traders to access directly an online platform which will help to resolve contractual disputes arising from cross-border online transactions through the intervention of an ADR entity complying with the Directive.

The Regulation establishes a European online dispute resolution platform' ('ODR platform'). This platform, established by the Commission, will be directly accessible by consumers and traders and will transmit their complaints to an ADR entity which is competent to deal with their dispute. The platform will thus build on the availability of ADR for consumer disputes in all Member States.

The ODR platform will be an interactive website offering to consumers and traders a single point of entry for the resolution of contractual disputes arising from cross-border e-commerce transactions. The platform will be accessible in all official languages of the EU and its use will be free of charge. Its operation will be eased by a network of ODR facilitators.

Consumers and traders will be able to submit complaints through an electronic complaint form which will be available on the platform's website in all official languages of the EU. Through the data submitted in the electronic complaint form, the platform will be able to identify the ADR entities which are potentially competent to deal with the dispute and automatically transmit the complaint to the ADR entity on the competence of which the parties have agreed. That ADR entity will seek to resolve the dispute in accordance with its own rules of procedure. However, all complaints handled via the ODR platform, being related to e-commerce, will need to be dealt with quickly. Therefore, the Regulation sets a time limit which is shorter than what it normally takes to resolve an offline dispute.

The platform will also provide information on ADR entities and general information on ADR as a means of out-of-court dispute resolution. Consumers will be able to find information about the ODR platform, including an electronic link to the platform, on traders' websites. When consumers search for goods or services on relevant websites they will thus be able to find out, before entering into a transaction, about possible means of redress for problems potentially arising from the transaction envisaged. This will give confidence to consumers in their decision to buy online and across borders.

The Regulation will thus tackle a primary concern about buying and selling online cross-border, unlocking the full potential of e-commerce. In a digital world, it will be important to enable consumers and traders to file their complaints online and to deal with disputes by electronic means. This will create economies of scale, make life easier and speed up the resolution of cross-border cases.

2. RESULTS OF THE IMPLEMENTATION OF THE LEGISLATIVE PACKAGE

These examples are based on real disputes between businesses and consumers:

Anna, a European citizen, ordered furniture for her new apartment from a seller established in her Member State. She agreed with the seller to have the furniture delivered to her home and to pay half the price upfront and the remainder on delivery. When the furniture was delivered, Anna noticed that the surface of the table was badly scratched and the sofa stained. She now refuses to pay the outstanding amount and demands that the seller replaces the table and the sofa. The seller believes that the furniture was delivered in perfect condition and insists that Anna must fulfil her obligations. Taking their dispute to a court will be expensive and time-consuming for Anna and the seller. Both parties are looking for a cheap and quick way to resolve their dispute²².

²² Fictitious story based on real problems.

Oliver and Eloise, two European citizens, booked a one-week holiday package for a trip for two to another Member State online. The package which was offered by a service provider in that Member State included the plane fare, hotel accommodation with a double room, and breakfast. A 20% deposit for the hotel reservation was charged.

Upon arrival at the hotel, Oliver and Eloise were told that there were no double rooms available. They were also informed that they had to pay an extra 10 euros each for the breakfast. They expressed their disappointment and asked for the hotel management to provide them with the services as described on the website. The management of the hotel was unable to do that or to offer them an alternative solution. Oliver and Eloise requested the return of their deposit but the hotel management refused to make a refund. They had to find alternative accommodation thus incurring extra expenses.

On their return, Oliver and Eloise made several attempts to contact both the hotel and the provider of the holiday package to reclaim their deposit. However, they were unsuccessful in getting their money back. As Oliver and Eloise did not know where to turn to for finding an easy way to resolve their dispute, they contacted the European Consumer Centre (ECC) in their Member State and filed a complaint explaining the situation. The ECC then contacted the ECC in the service provider's Member State in an attempt to find a way of resolving the dispute with the hotel. The ADR entity in the service provider's Member State which deals with these kinds of disputes worked on the case once the service provider agreed to use this procedure. After 6 months and a number of letters and phone calls, the trader agreed to pay back the deposit.

Although Oliver and Eloise finally got the money back, the procedure took them very long. They are therefore very keen on finding a faster and more effective solution to their dispute²³.

Going back to the consumers whose stories are reported above, let us now see how their stories would unfold after the implementation of the Commission's proposals.

Anna and the furniture company were able to identify the competent ADR entity to deal with their dispute through the receipt that she was given upon payment of the first instalment. Thanks to the intervention of the ADR entity, the facts were clarified and an amicable solution was found for the parties. The seller agreed to replace the damaged goods and Anna, in her turn, agreed to pay the outstanding amount.

²³ Fictitious story based on real problems.

Once the holiday was finished and upon their return home Oliver and Eloise accessed the website they had used to book the holiday package. In the section of the website titled "consumer complaints" they found a statement by the trader about the ADR entity by which he is covered and that he committed to use ADR for resolving consumer disputes. The statement also included a link to the EU-wide ODR platform. Oliver and Eloise clicked on that link and were automatically directed to the EU-wide ODR platform. There, they found an electronic complaint form which they filled in in their mother tongue. The platform identified a competent ADR entity and provided detailed information about it, including information on its rules of procedure and on the fees to be paid. As all this information was provided in their mother tongue, Oliver and Eloise easily found out all they needed to know to decide whether they should start an ADR procedure. Given the procedure before the ADR entity was free of charge for consumers, they decided to give it a go.

The whole process was conducted online via the ODR platform and Oliver and Eloise were kept informed throughout the process.

30 days later, Oliver and Eloise received a message via the EU-wide ODR platform that a decision had been taken and that the service provider agreed to return the deposit. Their dispute was resolved in a speedy manner without any further expenses on their part. A few weeks later the whole amount of the deposit was transferred to their bank account.

3. GOVERNANCE OF THE PACKAGE

In order to ensure a smooth implementation of the Directive, the proper functioning of ADR entities providing quality services for consumers and traders will be closely monitored in each Member State. National competent authorities will, *inter alia*, assess whether a given ADR entity respects the quality requirements laid down by the Directive. In addition, they will publish regular reports on the development and functioning of ADR entities. Finally, the Commission will draw up every three years a report on the application of the Directive and communicate it to the European Parliament and the Council.

As already mentioned, the functioning of the ODR platform is linked to the proper implementation of the Directive. Once full coverage of ADR entities dealing with contractual consumer disputes linked to the sale of goods or provision of services has been accomplished in all Member States, the ODR platform will be able to function fully and serve its purpose.

The ODR platform will therefore become operational after the deadline for Member States to implement the directive on ADR.

The operation of the platform requires the elaboration of IT applications that will, *inter alia*, allow for the electronic submission of complaints and the management of cases on the platform. Relevant IT applications will be developed and ready for use when the ODR platform becomes operational.

4. FLANKING MEASURES

In addition to and in parallel with these actions, the Commission will implement a number of flanking measures which will enhance the access to and the use of quality ADR entities by consumers and traders.

4.1. INFORMATION

The provision of precise and targeted information on the new measures to consumers, traders, national ADR entities and Member States' authorities is crucial for raising awareness levels and ensuring that consumers and traders make full use of quality ADR entities.

Consumers

As far as consumers are concerned, the Commission will organise information campaigns in coordination with national consumer organisations. Information will also be transmitted through websites and brochures. Moreover, audiovisual means will be used to attract the attention of interested parties and to stimulate consumers' interest to search for more information on ADR. The Commission will display those audiovisual means on its website which will be equipped with all relevant information.

Traders

National and EU business organisations will be invited to coordinate and organise workshops and conferences providing information to traders, particularly SMEs, on their obligations under the new legislation. Moreover, bringing together traders, particularly SMEs, from across the EU will result in an exchange of best practices, promote competition and improve corporate complaint handling.

For SMEs, additional focus will be put on disseminating information and on training measures regarding ADR and ODR procedures, as well as consumers' rights and the obligations of economic operators. Networks, such as the EEN (European Enterprise Network) will provide specific support on training and information on cross-border issues in this context. Better informed traders, and in particular SMEs, will not only contribute to the success of ADR schemes and of the ODR platform but also prevent or minimise the arising of disputes.

National ADR entities

ADR entities will be informed about the changes introduced with the implementation of the legislative package through direct contact with other ADR entities or the ministry departments responsible for EU consumer affairs in the Member States.

Member States

Under the proposed Directive, Member States will have to ensure that the provisions on the coverage and quality of ADR entities established on their territories as well as the information requirements are properly and promptly implemented within the prescribed deadline. The Commission is aware that, in order to reach this goal, cooperation with national authorities must be developed at a very early stage.

4.2. TRAINING

A key measure ensuring that the Directive will be fully implemented and the ODR platform immediately operational is the training of national ADR entities: ADR entities will be provided information about the quality criteria that they have to respect and the obligation to register with the ODR platform. Furthermore, the European Consumer Centres Network (ECC-Net)²⁴ will also be used as a channel of communication for consumers which will assist them to obtain information about the functioning of the ODR platform.

5. TIME FOR ACTION

The two proposed legal instruments are designed to build confidence in the Single Market and simplify the lives of consumers.

Once these proposals are adopted and implemented, consumers are expected to have access to quality ADR entities for contractual disputes resulting from transactions, whether online or offline, cross-border or domestic. They will be able to easily identify the ADR entity which is competent to deal with their dispute. The confidence of consumers to engage in cross-border transactions and to extend their sphere of interest beyond the borders of their Member States will be strengthened.

The implementation of the legislative package will have significant advantages also for traders. They will be able to avoid time-consuming and expensive court procedures while maintaining and enhancing their business reputation. Traders can be expected to have better opportunities to offer a greater variety of products and services via the internet when knowing that an effective online system for redress is in place. Consequently, businesses, and in particular SMEs, will have more incentives to also improve their internal complaint handling systems. This will also secure better competition in the Single Market.

The co-legislators are invited to adopt the two legislative proposals by the end of 2012 in order to ensure that this key action of the Single Market Act, alongside with its other eleven key actions, will be agreed at EU level to mark the 30th anniversary of the Single Market. By offering consumers and traders the possibility of using, if they so choose, out-of-court means to resolve their disputes, the EU is taking an additional step towards strengthening the Single Market that puts consumers at its heart.

²⁴ http://ec.europa.eu/consumers/ecc/index_en.htm