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Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

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

{SEC(2011) 1408 final}

{SEC(2011) 1409 final}

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE PROPOSAL**

This present proposal, together with the proposal for a Regulation on Online Dispute Resolution for consumer disputes (Regulation on consumer ODR), has to be seen in the context of efforts to improve the functioning of the retail internal market and more particularly to enhance redress for consumers.

A substantial proportion of European consumers encounter problems when buying goods and services in the internal market. In 2010, this was the case for approximately 20% of European consumers<sup>1</sup>. Despite a generally high level of consumer protection guaranteed by legislation, problems encountered by consumers are often left unresolved. The losses incurred by European consumers because of problems with purchased goods or services are estimated at 0.4% of the EU GDP.

In addition to having recourse to traditional judicial means of redress<sup>2</sup>, consumers and businesses in some Member States have the option to refer their complaints to alternative dispute resolution entities ("ADR entities"). These entities aim at resolving, out-of-court, disputes arising between parties, through the intervention of an entity (e.g. arbitrator, conciliator, mediator, ombudsman, complaints board).

The Commission has adopted two Recommendations on consumer ADR<sup>3</sup> and established two networks dealing with ADR (ECC-NET<sup>4</sup> and FIN-NET<sup>5</sup>). A number of EU sector-specific legislation contains a clause on ADR<sup>6</sup> and the Mediation Directive<sup>7</sup> promotes the amicable settlement of disputes, including consumer disputes. However, the analysis of the current situation identified the following main shortcomings which hinder the effectiveness of ADR: gaps in the coverage, the lack of consumer and business awareness as well as the uneven quality of ADR procedures<sup>8</sup>.

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<sup>1</sup> Eurobarometer 342, "Consumer Empowerment", p. 169.

<sup>2</sup> For example, Regulation No 861/2007 establishing a European Small Claims Procedure, OJ L 199, 31.7.2007, p. 1.

<sup>3</sup> Commission Recommendation 98/257/EC on the principles applicable to the bodies responsible for the out-of-court settlement of consumer disputes, OJ L 115, 17.4.1998, p. 31 and Commission Recommendation 2001/310/EC on the principles for out-of-court bodies involved in the consensual resolution of consumer ADR, OJ L 109, 19.4.2001, p. 56.

<sup>4</sup> The European Consumer Centre network (ECC-Net) helps consumers to access the appropriate ADR entity in another Member State in case of cross-border disputes.

<sup>5</sup> FIN-NET consists of ADR schemes that handle cross-border disputes between consumers and financial services providers.

<sup>6</sup> For example, Directive No 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the Internal Market in electricity and Directive No 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the Internal Market in natural gas (OJ L 211, 14.8.2009, pp. 55 and 94); Directive No 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers (OJ L 133, 22.5.2008, p. 66); Directive No 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') (OJ L 178, 17.7.2000, p. 1).

<sup>7</sup> OJ L 136, 24.5.2008, p. 3.

<sup>8</sup> Cf. Study on the use of Alternative Dispute Resolution in the European Union of 16 October 2009, [http://ec.europa.eu/consumers/redress\\_cons/adr\\_study.pdf](http://ec.europa.eu/consumers/redress_cons/adr_study.pdf), pp. 56-63; 112-115; 120-121.

The lack of effective ADR poses particular challenges in the context of cross-border transactions (e.g. language barriers, potentially higher costs, differences in legislation between Member States).

In view of the problems identified, the Commission undertook to propose measures on ADR that ensure that all consumer complaints can be submitted to an ADR entity and that disputes arising from cross-border transactions could be more easily resolved<sup>9</sup>.

## **2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENT**

### **2.1. Collection of expertise and consultation of interested parties**

The Commission conducted several studies on ADR. These include the 2009 "*Study on the use of Alternative Dispute Resolution in the European Union*"<sup>10</sup> carrying out an in-depth analysis of existing ADR entities and their functioning in all Member States, the study on "*Consumer redress in the EU: consumers' experiences, perceptions and opinions*"<sup>11</sup>, the "*Assessment of the compliance costs including administrative costs/burdens on businesses linked to the use of Alternative Dispute Resolution (ADR)*" (2011) and the study on "*Cross-border ADR in the European Union*" (2011)<sup>12</sup>.

A public consultation on the use of ADR was launched in January 2011<sup>13</sup>. There appeared to be a high degree of consensus as to the subject of ADR: all respondents agreed on the need to further develop ADR in order to improve the functioning of the internal market. The vast majority of respondents also supported action at EU level and stressed the need for quality ADR procedures which should be available particularly for disputes arising from cross-border transactions and in the digital environment. In their view, effective ADR procedures should be guided by a number of common principles, such as impartiality, transparency, effectiveness and fairness. Many respondents supported the improvement of ODR procedures, in particular for e-commerce transactions, where there are an increasing number of complaints especially for low-value cases.

In March 2011, the Commission services together with the European Parliament organised a summit on "Alternative Dispute Resolution for internal market and consumers", which brought together some 200 interested parties. The debate showed general support for the development of ADR, including ODR, for consumers and highlighted the need for EU action. In April 2011, a workshop on "ADR: how to make it work better?" was organised within the European Consumer Summit<sup>14</sup> with 60 stakeholders participating.

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<sup>9</sup> Europe 2020 flagship initiative: "A Digital Agenda for Europe", COM (2010) 245, p. 13; Commission Communication "Single Market Act", COM (2011) 206, p. 9.

<sup>10</sup> Study on the use of Alternative Dispute Resolution in the European Union, Civic Consulting of the Consumer Policy Evaluation Consortium (CPEC), 2009, available at: [http://www.cc.cec/home/dgserv/sg/evaluation/pages/eims\\_en.htm](http://www.cc.cec/home/dgserv/sg/evaluation/pages/eims_en.htm).

<sup>11</sup> "Consumer redress in the European Union: consumers' experiences, perceptions and opinions", 2009 [http://ec.europa.eu/consumers/redress\\_cons/docs/cons\\_redress\\_EU\\_qual\\_study\\_report\\_en.pdf](http://ec.europa.eu/consumers/redress_cons/docs/cons_redress_EU_qual_study_report_en.pdf).

<sup>12</sup> [http://www.europarl.europa.eu/meetdocs/2009\\_2014/documents/imco/dv/adr\\_study/adr\\_study\\_en.pdf](http://www.europarl.europa.eu/meetdocs/2009_2014/documents/imco/dv/adr_study/adr_study_en.pdf).

<sup>13</sup> Public consultation on the use of alternative dispute resolution (ADR) as a means to resolve disputes related to commercial transactions and practices in the EU: [http://ec.europa.eu/consumers/redress\\_cons/Feedback\\_Statement\\_Final.pdf](http://ec.europa.eu/consumers/redress_cons/Feedback_Statement_Final.pdf).

<sup>14</sup> [http://www.european-consumer-summit.eu/workshops3\\_en.asp](http://www.european-consumer-summit.eu/workshops3_en.asp).

Complementary input was provided, in particular, through a business consultation conducted by the Commission services between December 2010 and January 2011 through the European Business Test Panel<sup>15</sup> and a business consultation conducted between March and May 2011 via the SME survey platform<sup>16</sup>.

The European Data Protection Supervisor (EDPS) was also consulted.

## **2.2. Impact assessment**

The Commission has carried out a detailed impact assessment (IA), analysing a range of policy options for both "*ADR coverage, information and quality*" and "*ODR for cross-border e-commerce transactions*". The IA concluded that only a combination of two instruments on ADR and ODR can ensure access to impartial, transparent, effective and fair means to resolve domestic and cross-border consumer disputes out-of-court. In particular, a Framework Directive is the most appropriate way to ensure full ADR coverage in all Member States, to inform consumers about ADR and to ensure that ADR entities respect specific quality principles. Full ADR coverage will create the required framework on the basis of which an EU-wide ODR system can effectively deal with disputes relating to cross-border e-commerce transactions.

## **3. LEGAL ELEMENTS OF THE PROPOSAL**

### **3.1. Main elements of the proposal**

#### *3.1.1. Ensuring that ADR procedures exist for all consumer disputes*

Under the present proposal, Member States shall ensure that all disputes between a consumer and a trader arising from the sale of goods or the provision of services can be submitted to an ADR entity, including through online means. In order to fulfil their obligation, Member States may use existing ADR entities and adjust their scope of application, if needed; or they may create new ADR entities or a residual cross-sectoral entity.

The present proposal covers 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. The present proposal applies to ADR entities that seek to resolve disputes between consumers and traders out-of-court through the intervention of a dispute resolution entity. It covers in particular mediation procedures but also non-judicial procedures of an adjudicatory nature, such as procedures before consumer complaint boards, arbitration and conciliation procedures. The present proposal does not apply to consumer complaint handling systems operated by the trader nor to dispute resolution entities where the natural persons in charge of dispute resolution are employed exclusively by the trader. It also excludes direct negotiations between the parties.

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<sup>15</sup> 335 companies from all EU Member States were consulted on their experiences and views on ADR: [http://ec.europa.eu/yourvoice/ebtp/consultations/2010/adr/index\\_en.htm](http://ec.europa.eu/yourvoice/ebtp/consultations/2010/adr/index_en.htm).

<sup>16</sup> During this consultation 927 small and medium size enterprises responded to questions regarding ADR.

### 3.1.2. *Information on ADR and cooperation*

When disputes arise, consumers must be able to quickly identify which ADR entities are competent to deal with their dispute. To this end, this proposal ensures that consumers will be able to find information on the competent ADR entity in the main commercial documents provided by the trader and, where a trader has a website, on that website. In addition, traders will have to inform consumers on whether or not they commit to use ADR in relation to complaints lodged against them by a consumer. This obligation will act as an incentive for traders to use ADR more frequently.

Under the present proposal, Member States shall ensure that consumers can obtain assistance when they are involved in a cross-border dispute. Member States may delegate responsibility for this task to their centres of the European Consumer Centre Network (ECC-net) which currently performs the function of guiding consumers to the ADR entities competent to deal with their cross-border disputes.

Under the proposal, ADR entities will be encouraged to become members of networks of ADR entities in sector-specific areas when they deal with disputes in that area. In addition, the present proposal encourages cooperation between ADR entities and national authorities entrusted with the enforcement of consumer protection legislation.

The present proposal contains provisions ensuring the respect of strict guarantees of confidentiality and data protection, in compliance with the relevant Union legislation.

### 3.1.3. *Quality of ADR entities*

The present proposal aims at ensuring that ADR entities respect the quality principles of impartiality, transparency, effectiveness and fairness. Such principles have been laid down in two Commission Recommendations. By giving a binding effect to these principles, the present proposal will create a level playing field for ADR and strengthen the confidence of both consumers and traders in ADR procedures.

Transparency of ADR entities should guarantee that the parties receive all the information they need to take an informed decision before engaging in an ADR procedure. ADR procedures should be effective and address certain shortcomings associated with court procedures, such as costs, length and complexity. Based on the results of existing studies, the present proposal requires that disputes should be resolved within 90 days. In order to ensure that ADR procedures remain accessible to all consumers, the present proposal provides that they should be free of charge or of moderate costs for consumers.

### 3.1.4. *Monitoring*

In order to ensure that ADR entities function properly and provide quality services for consumers and traders, they should be closely monitored. In each Member State, a competent authority will be in charge of monitoring the functioning of ADR entities established on its territory. The competent authorities will *inter alia* assess, on the basis of information notified to them by ADR entities, whether a given ADR entity respects the quality requirements laid down by the present proposal. In addition, the competent authorities will publish regular reports on the development and functioning of ADR entities. Every three years, the Commission will report to the European Parliament and the Council on the application of the Directive.

### **3.2. Subsidiarity principle**

The proposal is based on Article 114 of the Treaty on the Functioning of the European Union.

The development of a well-functioning ADR system within the Union, built on existing ADR entities in the Member States and respecting their legal traditions, will strengthen consumer confidence in the retail internal market, including in the area of e-commerce. It will also open up new opportunities for businesses. Action by Member States alone is likely to result in further fragmentation of ADR, which in turn would contribute to unequal treatment for consumers and traders in the internal market and create diverging levels of consumer redress in the Union. Action at Union level, such as proposed, should provide European consumers with the same level of protection and promote competitive practices amongst businesses, thus increasing the exchange of products or services across borders.

Defining at Union level common principles and rules for ADR entities and ADR procedures in all Member States will have the clear advantage of ensuring an effective and adequate treatment of consumer disputes arising from domestic or cross-border transactions. It will also ensure that quality levels of ADR procedures are more homogenous in the Union.

The divergence in national policies on ADR procedures (or the lack thereof) shows that unilateral action by Member States does not lead to a satisfactory solution for consumers and businesses. Efficient and effective ADR for cross-border disputes requires a well-functioning system of domestic ADR entities on which the EU-wide ODR platform will be anchored.

### **3.3. Proportionality**

The proposal complies with the proportionality principle for the following reasons:

The proposal does not go beyond what is strictly necessary to achieve its objectives. It does not regulate all aspects of ADR but focuses on some key aspects of out-of-court dispute resolution. The framework Directive will build on ADR entities that already exist and will leave the choice of form and methods to achieve the results expected to Member States.

The objectives of this proposal will be achieved at the lowest costs to businesses and Member States, while avoiding duplication of expenses and unnecessary administrative burdens.

## **4. BUDGETARY IMPLICATION**

This proposal does not have an impact on the EU budget. Therefore no financial statement is attached to the proposal.

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission<sup>17</sup>,

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

Having regard to the opinion of the European Economic and Social Committee<sup>18</sup>,

After consulting the European Data Protection Supervisor,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Article 169(1) and Article 169(2)(a) 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 the measures adopted pursuant to Article 114 thereof. Article 38 of the Charter of Fundamental Rights of the European Union provides that Union policies shall 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 internal market, it is necessary that they have access to simple and low-cost ways of resolving disputes which arise from the sale of goods or the provision of services. This applies to offline as well as to online transactions, and is particularly important when consumers shop across borders.
- (3) Alternative dispute resolution offers a simple, fast and low-cost out-of-court solution to disputes between consumers and traders. However, alternative dispute resolution is not yet sufficiently developed across the European Union. In order for consumers to fully exploit its potential, it is necessary that alternative dispute resolution is available for all types of consumer disputes, quality levels of ADR procedures are even and

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<sup>17</sup> OJ C ..., ..., p... .

<sup>18</sup> OJ C ..., ..., p... .

consumers and traders are aware of such procedures. It is also necessary that ADR entities handle cross-border disputes effectively.

- (4) In its Single Market Act<sup>19</sup>, the Commission has identified legislation on alternative dispute resolution which includes an electronic commerce dimension as one of the twelve levers to boost growth and strengthen confidence in the Single Market.
- (5) The European Council has invited the 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.<sup>20</sup>
- (6) The development within the European Union of well-functioning alternative dispute resolution is necessary to strengthen consumers' confidence in the internal market, including in the area of e-commerce. Such development should build on existing ADR procedures in the Member States and respect their legal traditions.
- (7) This Directive should apply to contractual disputes between consumers and traders that are arising from the sale of goods or provision of services in all economic sectors. This should include complaints submitted by consumers against traders but also complaints submitted by traders against consumers. This Directive should not apply 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.
- (8) 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.
- (9) 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<sup>21</sup>, Regulation (EC) No 44/2001 of the Council of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters<sup>22</sup>, Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (“Rome II”)<sup>23</sup> and Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (“Rome I”)<sup>24</sup>.
- (10) This Directive should prevail over Union legislation which contains provisions aimed at encouraging the setting up of ADR entities in a specific sector. Where sector-

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<sup>19</sup> 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.

<sup>20</sup> Conclusions of the European Council of 24-25 March 2011, EUCO 10/11, p. 4; see also Conclusions of the European Council of 23 October 2011, EUCO 52/11, pp. 1-2.

<sup>21</sup> OJ L 136, 24.5.2008, p. 3.

<sup>22</sup> OJ L 12, 16.1.2001, p. 32.

<sup>23</sup> OJ L 199, 31.7.2007, p. 40.

<sup>24</sup> OJ L 177, 4.7.2008, p. 6.



specific legislation mandates the setting up of such entities, this Directive should prevail only to the extent that such legislation does not ensure at least an equivalent degree of consumer protection.

- (11) 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 and offers the resolution of a dispute through an ADR procedure. An arbitration procedure which is created outside the framework of an ADR entity on an ad hoc basis for a single dispute between a consumer and a trader should not be considered as an ADR procedure.
- (12) This Directive should not apply to procedures before dispute resolution entities where the natural persons in charge of dispute resolution are employed exclusively by the trader nor to procedures before consumer compliant handling systems operated by the trader. It should not apply 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.
- (13) Member States should ensure that disputes covered by this Directive can be submitted to an ADR entity fulfilling the requirements set out in this Directive. Member States should have the possibility to fulfil this obligation by relying on existing ADR entities and adjusting their scope of application, if needed, or by providing for the creation of new ADR entities. This Directive should not oblige Member States to create a specific ADR entity in each retail sector. 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 entity is competent.
- (14) This Directive should be without prejudice to traders established in a Member State being covered by an ADR entity which is located in another Member State. Member States should encourage the development of such entities.
- (15) 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. Such procedures can be seen as a preliminary step to further developing collective ADR procedures within the Union.
- (16) 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.
- (17) The natural persons in charge of alternative dispute resolution should only be considered impartial if they cannot be subject to pressure that potentially influences their attitude towards the dispute. There is a particular need to ensure the absence of such pressure where ADR entities are financed by one of the parties to the dispute or an organisation of which one of the parties is a member.

- (18) In order to ensure the transparency of ADR entities and of ADR procedures it is necessary that the parties receive all the information they need to take an informed decision before engaging in an ADR procedure.
- (19) ADR procedures should be effective. They should provide for a simple and fast procedure whose duration generally does not exceed 90 days. The ADR entity should be able to extend this time period when the complexity of the dispute in question so demands.
- (20) ADR procedures should be free of charge or of moderate costs for consumers so that it remains economically reasonable for consumers to use such procedures.
- (21) 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.
- (22) 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 should therefore provide such information on their main commercial documents and, where they have a website, on their websites. This obligation should be without prejudice to Articles 6(1)(t), 7(1) and 8 of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights<sup>25</sup>. Article 6(1)(t) of Directive 2011/83/EU stipulates for consumer contracts concluded at a distance or off premises that the trader has 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. Article 7(1) of Directive 2011/83/EU provides that, in the case of off-premises contracts, this information must be provided on paper or, if the consumer agrees, on another durable medium.
- (23) This Directive does not prescribe that participation of traders in ADR procedures be mandatory or that the outcome of such procedures be binding on traders, when a consumer has lodged a complaint against them. However, this Directive is without prejudice to any national rules making the participation of traders in such procedures mandatory or 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 guaranteed in Article 47 of the Charter of Fundamental Rights of the European Union.
- (24) Member States should ensure that ADR entities cooperate on the resolution of cross-border disputes.
- (25) Networks of ADR entities which facilitate the resolution of cross-border disputes, such as 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.
- (26) Close cooperation between ADR entities and national authorities entrusted with the enforcement of Union legislation on consumer protection should strengthen the effective application of such Union legislation.

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<sup>25</sup> OJ L ..., ..., p. ....

- (27) In order to ensure that ADR entities function properly and effectively, they should be closely monitored. The Commission and competent authorities under this Directive should publish and update a list of ADR entities that comply with this Directive. Other bodies, such as ADR entities, consumer associations, business associations and the European Consumer Centre Network, should also publish this list. In addition, competent authorities should publish regular reports on the development and functioning of ADR entities. 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 on the use of a harmonised methodology for classifying and reporting consumer complaints and enquiries<sup>26</sup>.
- (28) It is necessary that Member States lay down penalties for infringements of the provisions of this Directive relating to consumer information by traders and information to be notified to competent authorities by ADR entities and ensure that they are enforced. The penalties should be effective, proportionate and dissuasive.
- (29) 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)<sup>27</sup> 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.
- (30) Directive 2009/22 of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests (Injunctions Directive)<sup>28</sup> should be amended to include a reference to this Directive in its Annex so as to ensure that the consumers' collective interests laid down in this Directive are protected.
- (31) Since the objective of this Directive, namely to contribute to the proper functioning of the internal market by ensuring a high level of consumer protection, 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.
- (32) 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,

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<sup>26</sup> OJ L 136, 2.6.2010, p.1.

<sup>27</sup> OJ L 364, 9.12.2004, p. 1.

<sup>28</sup> OJ L 110, 1.5.2009, pp. 30–36.

HAVE ADOPTED THIS DIRECTIVE:

## **CHAPTER I GENERAL PROVISIONS**

### *Article 1 Subject matter*

This Directive is to contribute to the functioning of the internal market and to the achievement of a high level of consumer protection by ensuring that disputes between consumers and traders can be submitted to entities offering impartial, transparent, effective and fair alternative dispute resolution procedures.

### *Article 2 Scope*

1. This Directive shall apply to procedures for the out-of-court resolution of contractual disputes arising from the sale of goods or provision of services by a trader established in the Union to a consumer resident in the Union through the intervention of a dispute resolution entity which proposes or imposes a solution or brings the parties together with the aim of facilitating an amicable solution, hereinafter ‘ADR procedures’.
2. This Directive shall not apply to:
  - (a) procedures before dispute resolution entities where the natural persons in charge of dispute resolution are employed exclusively by the trader;
  - (b) procedures before consumer complaint handling systems operated by the trader;
  - (c) direct negotiation between the consumer and the trader, whether represented or not;
  - (d) attempts made by a judge to settle a dispute in the course of a judicial proceeding concerning that dispute.

### *Article 3 Relationship with other Union legislation*

1. This Directive is without prejudice to Directive 2008/52/EC, Regulation (EC) No 44/2001, Regulation (EC) No 864/2007 and Regulation (EC) No 593/2008.
2. Article 5(1) of this Directive shall prevail over the provisions referred to in the Annex.

3. This Directive shall prevail over mandatory provisions contained in sector-specific Union legislation which relate to alternative dispute resolution only to the extent that such provisions do not ensure at least an equivalent degree of consumer protection.

*Article 4*  
*Definitions*

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) 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;
- (d) "cross-border dispute" means a contractual dispute arising from the sale of goods or provision of services 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;
- (e) "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;
- (f) an ADR entity is established:
- if the entity is operated by a natural person, at the place where it carries out alternative dispute resolution 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 alternative dispute resolution activities or has its statutory seat;
  - if the entity is operated by an authority or other public body, where that authority or other public body has its seat.

## CHAPTER II

# ACCESS AND PRINCIPLES APPLICABLE TO ALTERNATIVE DISPUTE RESOLUTION

### *Article 5*

#### *Access to alternative dispute resolution*

1. Member States shall ensure that disputes covered by this Directive 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) have a website enabling the parties to submit a complaint online;
  - (b) enable the parties to exchange information with them via electronic means;
  - (c) accept both, domestic and cross-border disputes, including disputes covered by Regulation (EU) No [Office of Publications insert reference number] of the European Parliament and of the Council of [Office of Publications insert date of adoption] on online dispute resolution for consumer disputes (Regulation on consumer ODR)<sup>29</sup>; and
  - (d) 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.
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 paragraph 1 for the resolution of which no existing ADR entity is competent.

### *Article 6*

#### *Expertise and impartiality*

1. Member States shall ensure that the natural persons in charge of alternative dispute resolution possess the necessary expertise and are impartial. This shall be guaranteed by ensuring that they:
  - (a) possess the necessary knowledge, skills and experience in the field of alternative dispute resolution;
  - (b) are not liable to be relieved from their duties without just cause;
  - (c) have no conflict of interest with either party to the dispute.

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<sup>29</sup> OJ L ..., .., p. ...

2. 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.

*Article 7*  
*Transparency*

1. Member States shall ensure that ADR entities make publicly available on their websites and in printed form at their premises information on:
  - (a) the natural persons in charge of alternative dispute resolution, the method of their appointment and the length of their mandate;
  - (b) the source of financing, including percentage share of public and of private financing;
  - (c) where appropriate, their membership in networks of ADR entities facilitating cross-border dispute resolution;
  - (d) the types of disputes they are competent to deal with;
  - (e) the rules of procedure governing the resolution of a dispute;
  - (f) the languages in which complaints can be submitted to the ADR entity and in which the ADR procedure is conducted;
  - (g) the types of rules the ADR entity may use as a basis for the dispute resolution (e.g. rules of law, considerations of equity, codes of conduct);
  - (h) any preliminary requirements the parties may have to meet before an ADR procedure can be instituted;
  - (i) the costs, if any, to be borne by the parties;
  - (j) the approximate length of the ADR procedure;
  - (k) the legal effect of the outcome of the ADR procedure.
2. Member States shall ensure that ADR entities make publicly available on their websites and in printed form at their premises annual activity reports. These 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 recurrent problems leading to disputes between consumers and traders;
  - (c) the rate of dispute resolution procedures which were discontinued before an outcome was reached;

- (d) the average time taken to resolve disputes;
- (e) the rate of compliance, if known, with the outcomes of the ADR procedures;
- (f) where appropriate, their cooperation within networks of ADR entities facilitating the resolution of cross-border disputes.

*Article 8*  
*Effectiveness*

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

- (a) the ADR procedure is easily accessible to both parties irrespective of where the party is situated;
- (b) the parties have access to the procedure without being obliged to use a legal representative; nonetheless parties may be represented or assisted by a third party at any stage of the procedure;
- (c) the ADR procedure is free of charge or at moderate costs for consumers;
- (d) the dispute is resolved within 90 days from the date on which the ADR entity has received the complaint. In the case of complex disputes, the ADR entity may extend this time period.

*Article 9*  
*Fairness*

1. Member States shall ensure that in ADR procedures:
  - (a) the parties have the possibility to express their point of view and hear the arguments and facts put forward by the other party and any experts' statements;
  - (b) the outcome of the ADR procedure is made available to both parties in writing or on a durable medium, stating the grounds on which the outcome is based.
2. Member States shall ensure that in ADR procedures which aim at resolving the dispute by suggesting a solution
  - (a) the consumer, before agreeing to a suggested solution, is informed that:
    - (i) he has the choice as to whether or not to agree to a suggested solution;
    - (ii) the suggested solution may be less favourable than an outcome determined by a court applying legal rules;
    - (iii) before agreeing or rejecting the suggested solution he has the right to seek independent advice;



- (b) the parties, before agreeing to a suggested solution, are informed of the legal effect of such agreement;
- (c) the parties, before expressing their consent to a suggested solution or amicable agreement, are allowed a reasonable period of time to reflect.

## **CHAPTER III**

### **INFORMATION AND COOPERATION**

#### *Article 10*

##### *Consumer information by traders*

1. Member States shall ensure that traders established on their territories inform consumers about the ADR entities by which they are covered and which are competent to deal with potential disputes between themselves and consumers. Such information shall include the addresses of the relevant ADR entities' websites and specify whether or not the trader commits to use these entities to resolve disputes with consumers.
2. The information referred to in paragraph 1 shall be mentioned in an easily, directly, prominently and permanently accessible way on the trader's website, where one exists, in the general terms and conditions of contracts for the sale of goods or provision of services between the trader and a consumer and in invoices and receipts relating to such contracts. It shall specify how further information on the ADR entity concerned and on the conditions for using it can be accessed.
3. The provisions in this Article shall be without prejudice to the provisions in Articles 6, 7 and 8 of Directive 2011/83/EU concerning consumer information for distance and off-premises contracts.

#### *Article 11*

##### *Assistance for consumers*

1. Member States shall ensure that consumers can obtain assistance with regard to their disputes arising from cross-border sales of goods or provision of services. Such assistance shall in particular aim at helping consumers to access the ADR entity operating in another Member State which is competent to deal with their cross-border dispute.
2. Member States may confer responsibility for the task referred to in paragraph 1 on their centres of the European Consumer Centre Network, on consumer associations or on any other body.

*Article 12*  
*General information*

Member States shall ensure that ADR entities, consumer associations, business associations, the centres of the European Consumer Centre Network and, where appropriate, the bodies designated in accordance with Article 11(2) make publicly available at their premises and on their websites the list of ADR entities referred to in Article 17(3).

*Article 13*  
*Cooperation between ADR entities on the resolution of cross-border disputes*

1. Member States shall ensure that ADR entities cooperate on the resolution of cross-border disputes.
2. 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.
3. The Commission shall publish a list containing the names and contact details of the networks referred to in paragraph 1. The Commission shall, if necessary, update this list every two years.

*Article 14*  
*Cooperation between ADR entities and national authorities enforcing Union legislation on consumer protection*

1. Member States shall ensure cooperation between ADR entities and national authorities entrusted with the enforcement of Union legislation on consumer protection.
2. This cooperation shall include mutual exchange of information on business practices by traders about which consumers have 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.
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.

## **CHAPTER IV**

### **MONITORING OF ADR ENTITIES**

#### *Article 15*

##### *Designation of competent authorities*

1. Each Member State shall designate a competent authority in charge of monitoring the functioning and development of ADR entities established on its territory. Each Member State shall communicate the authority it has designated to the Commission.
2. The Commission shall establish a list of the competent authorities communicated to it in accordance with paragraph 1 and publish that list in the *Official Journal of the European Union*.

#### *Article 16*

##### *Information to be notified to competent authorities by ADR entities*

1. Member States shall ensure that ADR entities established on their territories 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 alternative dispute resolution, their funding and by whom they are employed;
  - (c) their rules of procedure;
  - (d) their fees, if applicable;
  - (e) the approximate length of the ADR procedures;
  - (f) the language or languages in which complaints can be submitted and the ADR procedure conducted;
  - (g) a statement on the elements necessary to establish their competence;
  - (h) a reasoned statement, based on a self-assessment by the ADR entity, on whether it qualifies as an ADR entity falling within the scope of this Directive and complies with the requirements set out in chapter II.

In the event of changes to the information referred to in points (a) to (g), ADR entities shall immediately notify these changes to the competent authority.

2. Member States shall ensure that ADR entities communicate to the competent authorities at least once a year the following information:
  - (a) the number of disputes received and the types of complaints to which they related;

- (b) the rate 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) relevant statistics demonstrating the way in which traders use alternative dispute resolution for their disputes with consumers;
- (f) any recurrent problems leading to disputes between consumers and traders;
- (g) where applicable, an assessment of the effectiveness of their cooperation within networks of ADR entities facilitating the resolution of cross-border disputes;
- (h) a self-assessment of the effectiveness of the ADR procedure offered by the entity and of possible ways of improving its performance.

#### *Article 17*

##### *Role of the competent authorities and of the Commission*

1. Each competent authority shall assess, on the basis of the information it has received in accordance with Article 16(1), whether the ADR entities notified to it qualify as ADR entities falling within the scope of this Directive and comply with the requirements set out in chapter II.
2. Each competent authority shall, on the basis of the assessment referred to in paragraph 1, establish a list of the ADR entities that fulfil the conditions set out in paragraph 1.

The list shall include the following:

- (a) the name, the contact details and the website addresses of these ADR entities;
- (b) their fees, if applicable;
- (c) the language or languages in which in which complaints can be submitted and the ADR procedure conducted;
- (d) the elements necessary to establish their competence;
- (e) the need for the physical presence of the parties or of their representatives, if applicable; and
- (f) the binding or non-binding nature of the outcome of the procedure.

Each competent authority shall notify the list to the Commission. In the event that any changes are notified to the competent authority in accordance with the second subparagraph of Article 16(1), the list shall be updated immediately and the relevant information notified to the Commission.

3. The Commission shall establish a list of the ADR entities communicated to it in accordance with paragraph 2 and update this list whenever changes are notified to the Commission in accordance with the second sentence of the third subparagraph of paragraph 2. The Commission shall publish this list and its updates and transmit it to the competent authorities and the Member States.
4. Each competent authority shall publish the consolidated list of ADR entities referred to in paragraph 3 on its website and by any other means it considers appropriate.
5. Every two years, each competent authority shall publish a report on the development and functioning of ADR entities. The report shall in particular:
  - (a) identify areas, if any, where ADR procedures do not yet deal with disputes covered by this Directive;
  - (b) identify best practices of ADR entities;
  - (c) point out the shortcomings, supported by statistics, that hinder the functioning of ADR entities for both domestic and cross-border disputes, where appropriate;
  - (d) make recommendations on how to improve the functioning of ADR entities, where appropriate.

## **CHAPTER V FINAL PROVISIONS**

### *Article 18 Penalties*

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to Article 10 and Article 16(1) and (2) of this Directive 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 the following point is added:

"20. Directive .... of the European Parliament and of the Council of .... on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR) (OJ L..., .., p. ...): Article 10."

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

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

"14. Directive .... of the European Parliament and of the Council of .... on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR) (OJ L..., ....., p. ...): Article 10."

*Article 21*  
*Communication*

1. By [Office of Publications insert same date as in Article 22(1) = date of implementation of the Directive] at the latest Member States shall communicate to the Commission

(a) where appropriate, the names and contact details of the bodies designated in accordance with Article 11(2); and

(b) the competent authorities designated in accordance with Article 15(1).

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

2. By [Office of Publications insert date: six months after the implementation date as to be inserted in Article 22(1)] at the latest, Member States shall communicate to the Commission the first list referred to in Article 17(2).

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

*Article 22*  
*Transposition*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to *comply* with this Directive by [Office of Publications insert date: 18 months after entry into force] at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

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 23*  
*Report*

No later than [*Office of Publications insert date: five years after the entry into force*], and every three 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. The report shall consider the development and the use of ADR entities and the impact of this Directive on consumers and traders. The report shall be accompanied, where appropriate, by proposals for amendment of this Directive.

*Article 24*  
*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 25*  
*Addressees*

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

## ANNEX

1. Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC (Article 14(1)), OJ L 271, 9.10.2002, p. 16.
2. Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts (Article 14(2)), OJ L 33, 3.2.2009, p. 10.
3. Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (Article 53(1)), OJ L 145, 30.4.2004, p. 1.
4. Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation (Article 11(1)), OJ L 9, 15.1.2003, p. 3.
5. Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services (Article 19(1), third subparagraph), OJ L 52, 27.2.2008, p. 3.