

PE-CONS No/YY - 2011/0373 (COD)

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)**

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 Commission¹,

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

Having regard to the opinion of the European Economic and Social Committee²,

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. *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.*
- (2a) *Fragmentation of the internal market is detrimental to competitiveness, growth and job creation within the Union. Eliminating the 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.*
- (2b) *Guaranteeing access to simple, efficient, expedient and low-cost ways of resolving domestic and cross-border disputes which arise from the sales or service contracts should benefit consumers and therefore boost their confidence in the market. That access should apply 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 **and consistently** developed across the ■ Union. *It is regrettable that, despite Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes and 2001/310/EC of 4 April 2001 on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes, alternative dispute resolution mechanisms have not been correctly established and are not running satisfactorily in all geographical areas or business sectors in the Union. Consumers and traders are still not aware of the existing alternative 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.*

(3a) *The disparities in ADR coverage, quality and awareness in Member States constitute a barrier to the Single Market and are among the reasons why many consumers abstain from shopping across border and lack confidence that potential disputes with traders could be resolved in an easy, fast and inexpensive way. For the same reasons, traders may 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 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 cheaper.*

(3b) *In order for consumers to fully exploit 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 standards applying 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.*

- (3c) *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 for its citizens should as a priority develop simple, affordable, expedient and accessible system of redress.*
- (4) In its Single Market Act¹, the Commission has identified legislation on alternative dispute resolution which includes an electronic commerce dimension as one of the twelve levers to boost growth², strengthen confidence **and make progress towards completing** 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. **The European Council has highlighted the importance of e-commerce and agreed that consumer ADR schemes should be able to offer low-cost, simple and quick redress for both consumers and traders. 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.**
- (5a) *Given the increasing importance of online commerce and in particular cross-border trade as a pillar of Union economic activity, a well-functioning ADR infrastructure for consumer disputes and a properly integrated online dispute resolution 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.*

*(5b) This Directive and Regulation ... * of the European Parliament and of the Council of ... ** on online dispute resolution for consumer disputes are two interlinked and complementary legislative instruments. Regulation N°... provides for the establishment of online dispute resolution 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 alternative dispute resolution 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.*

(5c) This Directive does not apply to non economic services of general interest. "Non economic services" are services which are not performed for an economic consideration. As a result, non-economic services of general interest performed by the State or on behalf of the State, without remuneration, are not covered by this Directive irrespective of the legal form through which those services are provided.

Furthermore, the Directive should not apply to health care services as defined in Article 3(a) 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) The development within the ■ Union of well-functioning alternative dispute resolution is necessary to strengthen consumers' confidence in the internal market, including in the area of e-commerce, and to realise the potential 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 well-functioning dispute resolution entities that comply with the quality requirements set out in this Directive should be referred to as "ADR entities". The dissemination of ADR can also prove to be important in those countries 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.

(7) This Directive should apply to ▯ disputes between consumers and traders *concerning contractual obligations stemming from the sales or ▯ services contracts, both offline and online*, in all economic 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.

(7a) Member States may 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.

(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) *Some existing Union acts already contain provisions concerning alternative dispute resolution. In order to ensure legal certainty, it should be provided that in case of conflict this Directive shall 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 ▯, which already sets a framework for systems of mediation at Union level, especially for cross-border disputes, without preventing its application 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.*

▮

- (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 ■, offers the resolution of a dispute *between a consumer and a trader* through an ADR procedure *and is listed in accordance with Article 17(2) of 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.*
- (11a) *ADR procedures are highly diverse across the Union and within Member States. They can take the form of procedures where the dispute resolution entity brings the parties together with the aim of facilitating an amicable solution, of procedures where the dispute resolution entity proposes a solution or of procedures where the dispute resolution 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.*
- (12) *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 and 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.*
- (12a) *This Directive should not apply to procedures before consumer-compliant 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.*

- (13) 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 to fulfil this obligation by *building* on existing *well-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 in the framework of national consumer protection authorities of Member States where the 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 in 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 the access to an ADR entity.*

- (13a) *This Directive should not prevent Member States from introducing or maintaining legislation on procedures for out-of-court resolution of consumer contractual disputes which is in compliance with the requirements set out in it. Furthermore, in order to ensure that ADR entities can operate effectively, they should have the possibility to maintain or introduce, in accordance with the laws of the Member State in which they are established, procedural rules allowing 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, it should be excluded that procedural rules allowing ADR entities to refuse to deal with a dispute significantly impair 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 a 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 it should be deemed that Member States have fulfilled their obligation to ensure full geographical coverage of ADR entities.*

(13b) This Directive should allow traders established in a Member State to be covered by an ADR entity which is located in another Member State. In order to improve the geographical coverage and consumer access to ADR across the Union, Member States may decide to use 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. 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 geographical coverage and access to ADR 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. *Comprehensive impact assessments must be carried out on collective out-of-court settlements before they are proposed at a 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.*

(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.

(16a) 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.

- (16b) *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.*
- (16c) *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.*
- (16d) *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 person or collegial body in charge of the 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.*
- (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. *In order to ensure the independence of their actions, they should also be appointed for a sufficient duration, and should not be subject to any instructions from either party or their representative.*

(17a) 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 last three years prior 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.

(17b) 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 set up where 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 alternative dispute resolution are employed or receive any form of remuneration exclusively from a professional association or business organisation of which the trader is a member, they should dispose of a separate and dedicated budget sufficient to fulfil their tasks.

(17c) It is essential for the success of ADR, in particular in order to ensure the necessary trust in the ADR procedures, that the natural persons in charge of ADR possess the necessary expertise, including a general understanding of law. In particular, the natural 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 law professional.

- (17d) *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 the Commission Recommendation of 30 March 1998 on the principles applicable to the bodies responsible for the out-of-court settlement of consumer disputes and in the Commission Recommendation of 4 April 2001 on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes. By giving a binding nature to some of the principles established in those Commission Recommendations, this Directive establishes a set of quality standards which apply to all ADR procedures carried out by an ADR entity which has been notified to the Commission.*
- (17e) *This Directive should establish standards for the quality of ADR entities, which should guarantee 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.*
- (18) *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 by virtue of national laws.*

- (18a) *A well-functioning ADR entity should resolve online and offline dispute 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 should notify the complainant to the parties after receiving all the documents necessary for the carrying-out of the ADR procedure. In certain exceptional cases of a highly complex nature, or for justified grounds vested in the sphere of the parties to the dispute, 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.*

- (20) *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.*

- (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. The 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.*

- (21a) *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 solutions are binding on traders.*

(21b) *In ADR procedures which aim at resolving the dispute by imposing a solution on the consumer, in a situation where there is no conflict of laws, the solution imposed should not result in the consumer being deprived of the protection afforded to him by the provisions that cannot be derogated from by agreement by virtue of the law of the Member State where the consumer and the trader are habitually resident. In a situation involving a conflict of laws, where the law applicable to the sales or service contract is determined in accordance with Article 6, paragraphs 1 and 2 of Regulation (EC) No 593/2008, 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 he 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, paragraphs 1 to 3 of the Convention on the law applicable to contractual obligations (80/934/EEC), the solution imposed by the ADR entity should 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.*

(21c) *The right to an effective remedy and the right to a fair trial are fundamental rights guaranteed 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. Nothing in this Directive should prevent parties from exercising their right of access to the judicial system. In cases where a dispute the outcome of which is not binding could not be resolved through a given ADR procedure, 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.*

(21d) 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 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 business or professional organisations to fund ADR entities.

(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 who commit to use ADR entities to resolve disputes with consumers should inform consumers about the address and website of the ADR entity or entities by which they are covered. The 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 a consumer. Traders should have the possibility to include 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. Whenever the dispute could not be settled directly, the trader should provide to the consumer, on paper or another durable medium, the information on relevant ADR entities and specify if he will make use of them.

(22a) The obligation to inform consumers about the ADR entities by which they are covered should be without prejudice to provisions on consumer information on out-of-court redress procedures contained in other Union legislation, which should apply in addition to the relevant information obligation established by this Directive.

- (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, ***in order to ensure that consumers have access to redress and that they are not forced to forego their claims, traders should be encouraged as far as possible to participate in ADR procedures. Therefore, this Directive is without prejudice to any national rules making the participation of traders in such procedures mandatory or subject to incentives or sanctions 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.
- (23a) In order to avoid 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.***
- (23b) Member States should involve consumer and business organisations' representatives when ADR systems are established, in particular in relation to the principles of impartiality and independence.***
- (24) Member States should ensure that ADR entities cooperate on the resolution of cross-border disputes.

- (25) Networks of ADR entities **■**, 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 *should strengthen the effective application* of Union legislation on consumer protection. *Member States and the Commission 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. This cooperation should be supported inter alia through the Consumer Programme.*
- (27) In order to ensure that ADR entities function properly and effectively, they should be closely monitored. *To that purpose, each Member State should designate a competent authority or 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 Article 11(2) publish this 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 encourage that relevant consumer associations and business associations also publish this list. Member States should also ensure 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 on the use of a harmonised methodology for classifying and reporting consumer complaints and enquiries **■**.

- (28) It is necessary that Member States lay down **rules on** penalties for infringements of the **national** provisions **adopted to comply with** this Directive ■ and ensure that **those rules** are **implemented**. 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) ■ 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) ■ 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.
- (30a)** *In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011, 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.*

(31) 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.

(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,

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 impartial, transparent, effective, independent, fast and fair alternative dispute resolution procedures. This Directive is without prejudice to Member States legislation making the 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(1b), are met;*

- (b) procedures before consumer complaint handling systems operated by the trader;
 - (ba) non-economic services of general interest;*
 - (bb) disputes between traders;*
 - (c) direct negotiation between the consumer and the trader **■** ;
 - (d) attempts made by a judge to settle a dispute in the course of a judicial proceeding concerning that dispute;
 - (e) procedures initiated by a trader against a consumer;*
 - (f) 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;*
 - (g) public providers of further or higher education.*
- 3. *This Directive establishes harmonised quality standards for ADR entities in order to ensure that, after its implementation, consumers have access to high-quality, transparent, effective and fair redress mechanisms no matter where they reside in the Union. Member States may adopt or maintain 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 Member States' competence to determine whether ADR entities established on their territories should be able to impose a solution.*

Article 3

Relationship with other Union legislation

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- 1a. Save as otherwise provided by this Directive, if any provision of this Directive conflicts with a provision laid down in another Union act and relating to alternative dispute resolution procedures initiated by a consumer against a trader, the provision of this Directive shall prevail.*
- 1b. This Directive is without prejudice to Directive 2008/52/EC.*
- 1c. Article 10 of this Directive shall be without prejudice to the provisions on consumer information on out-of-court redress procedures contained in other Union acts, which shall apply in addition to the provisions in that Article.*

■

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;
- (ca) **“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 in which the trader is established;**
- (d) **“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;**
- (da) **“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;**
- (db) **“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.**
- (dc) **“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;**
- (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 and that is listed in accordance with Article 17(2);**

- (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;

(fa) "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.

CHAPTER II
ACCESS AND PRINCIPLES APPLICABLE
TO ALTERNATIVE DISPUTE RESOLUTION

Article 5

Access to alternative dispute resolution

1. Member States shall *facilitate access by consumers to ADR procedures and shall ensure* that disputes covered by this Directive *and involving a trader established on its territory* 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 also enables consumers to* submit a complaint *and the requisite supporting documents* online;
 - (aa) *provide the parties, at their request, with the information referred to in point (a) on a durable medium;*
 - (ab) *where applicable, enable the consumer to submit a complaint off-line;*

- (b) enable the ■ exchange of information *between the parties* via electronic means *or, if applicable, by post*;
- (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) ■ ; 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 *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 paragraph 1 for the resolution of which no existing ADR entity is competent. *Member States may also fulfil this obligation by using 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 jeopardising their responsibility to ensure full geographical coverage and access to ADR entities.*
4. *Member States may, at their discretion, permit ADR entities to introduce or retain procedural rules allowing 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 solve the problem bilaterally;*
- (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. Time-limits must not be set at less than one year from the date when the consumer has 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 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 on the grounds for not considering the dispute within 3 weeks of receiving the application for ADR.*
- Such procedural rules must 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 the access to ADR procedures, the thresholds should not be set at a level, where 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, Member States 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 related to a trader operating in the sector which is not member of the organisation or association forming or funding the ADR entity, it shall be deemed that the Member State has fulfilled its obligation according to paragraph 1 also with respect to disputes concerning this trader.*

Article 6

Expertise, *independence* and impartiality

1. Member States shall ensure that the natural persons in charge of alternative dispute resolution 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;
 - (ba) 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 individual.
- 1a. 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 is without prejudice to Article 9 paragraph 2 point (-a).*

Where the ADR entity comprises only one individual, only points (b) and (c) shall apply.

- 1b. Where Member States decide to allow procedures referred to in Article 2(2)(a) as ADR procedures under this Directive, they shall ensure that, in addition to the general requirements set out in paragraphs 1 and 2, these 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. The appointment shall be the 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, a professional organisation or business association of which the trader is a member during 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 disposes of a sufficient budget to fulfil its tasks which is separate from the trader's general budget.*

- 1c. Where the natural persons in charge of alternative dispute resolution are employed or remunerated exclusively by a business association or professional organisation of which the trader is a member, Member States shall ensure that, in addition to the general requirements set out in paragraphs 1 and 2, they dispose of a separate and dedicated budget 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 business association or professional organisation by which they are employed or remunerated and of consumer organisations.

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.

3. *For the purposes of paragraph 1, point (a), Member States shall encourage ADR entities to provide training for natural persons in charge of alternative dispute resolution. 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 paragraph 2 point (ga) of Article 16.*

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) contact details including postal address and e-mail address;*
 - (-aa) the fact that they are listed in accordance with Article 17(3) of this Directive;*

- (a) the natural persons in charge of alternative dispute resolution, the method of their appointment and the length of their mandate;

■

(ba) their expertise, impartiality and independence in case the natural persons in charge of alternative dispute resolution is employed or remunerated exclusively by the trader;

- (c) ■ their membership in networks of ADR entities facilitating cross-border dispute resolution, *if applicable*;

- (d) the types of disputes they are competent to deal with, *including any threshold if applicable*;

- (e) the rules of procedure 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)*;

- (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, *including the requirement that an attempt be made by the consumer to reach an amicable resolution of the matter directly with the trader*;

(ha) the possibilities of the parties to withdraw from the procedure;

- (i) the costs, if any, to be borne by the parties, **including any rules on awarding costs at the end of the procedure;**
 - (j) the **average** length of the ADR procedure;
 - (k) 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;**
 - (l) **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. 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 **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, in order to raise traders' standards and to facilitate the exchange of information and best practices;**
 - (ba) **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);**
 - (bb) **in the case of procedures described in Article 2(2)(a) the rate of solutions being proposed or imposed in favour of the consumer, in favour of the trader, or resolved by an amicable solution;**

- (c) the rate of dispute resolution procedures which were discontinued *and if known, the reasons for their discontinuation*;
- (d) the average time taken to resolve disputes;
- (e) the rate of compliance, if known, with the outcomes of the ADR procedures;
- (f) **█** their cooperation within networks of ADR entities facilitating 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 the party is situated;
- (b) the parties have access to the procedure without being obliged to use a *lawyer or a legal advisor. 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;
- (ca) *the ADR entity which has received a complaint notifies the parties of the dispute as soon as it has received all the documents containing the relevant information relating to the complaint*;
- (d) the *outcome of the ADR procedure is made available* within 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' timeframe. 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*, to express their point of view, *be 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 be able to comment on them*;
 - (aa) *parties are informed that they are not obliged to use 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*;
 - (b) 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 to withdraw from the procedure at any stage if they are dissatisfied with the performance or the operation of the procedure. They shall be informed of this right before the procedure commences. Where national rules provide for mandatory participation by the trader in ADR procedures, this provision shall apply only to the consumer*;
 - (a) 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*;
 - (ia) *participation in the procedure does not preclude the possibility of seeking redress through court proceedings*;

(ii) the *proposed* solution may be *different from* an outcome determined by a court applying legal rules;

(b) 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*;

(c) 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 foresee that their outcome becomes binding on the trader once the consumer has accepted the proposed solution, Article 9(2) shall be read as only applying to the consumer.*

Article 9a
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 9b
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 may 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, paragraphs 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, paragraphs 1 to 3 of the Convention on the law applicable to contractual obligations (80/934/ECC), 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 9c

Effect of ADR procedures on limitation and prescription periods

1. *Member States shall ensure that parties who have recourse to ADR procedures, the outcome of which is not binding, in an attempt to settle a dispute 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 10

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 they are covered, *when the trader commits to or is obliged to use these entities to resolve disputes with consumers. The* information shall include the *address* of the relevant *ADR entity or ADR entities' website*.
2. The information referred to in paragraph 1 shall be mentioned 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 ■ .
- 2a. *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 to the consumer information referred to in paragraph 1, specifying whether he will make use of the relevant ADR entities to settle the dispute. This information shall be provided on paper or another durable medium.*

■

Article 11

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 associations or on any other body.

Article 12

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 11(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 17(3)*.

2. *Member States shall encourage that relevant consumer associations and business associations make publicly available on their websites and, by any other means they consider appropriate the list of ADR entities referred to in Article 17(3).*
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 associations and professional organisations, at EU and at national level, to raise awareness about ADR entities and their procedures and to promote ADR take-up by professionals and consumers. These bodies should also be encouraged to provide consumers with information on competent ADR entities when they receive complaints from consumers.*

Article 13

Cooperation and exchanges of experience between ADR entities ■

1. Member States shall ensure that ADR entities cooperate on the resolution of cross-border disputes *and conduct regular exchanges of good practice as regards the settlement of both cross-border and domestic disputes.*
- Ia. The Commission shall support and facilitate the networking of national ADR entities and exchanging and disseminating of their good practice and experiences.*
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 2. The Commission shall, *when* necessary, update this list ■.

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 **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. ***The provisions in this Article shall be without prejudice to provisions on professional and commercial secrecy which apply to the national authorities enforcing Union legislation 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 15

Designation of competent authorities

1. Each Member State shall designate a competent authority *which shall carry out the functions set out in Articles 16 and 17. Each Member State may designate more than one competent authority. If a Member State does so, it shall determine which one of the competent authorities designated is the single point of contact for the Commission.* Each Member State shall communicate the 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 16

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 17(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 alternative dispute resolution, their funding, *remuneration, term of office* and by whom they are employed;
 - (c) their rules of procedure;
 - (d) their fees, if applicable;

- (e) the *average* length of the ADR procedures;
- (f) the language or languages in which complaints can be submitted and the ADR procedure conducted;
- (fa) a statement on the *types of disputes covered by the ADR procedure*;
- (fb) *the grounds on which the dispute resolution entity may refuse to deal with a given dispute in accordance with Article 5(4)*;

■

- (h) a reasoned statement ■ on whether *the entity* qualifies as an ADR entity falling within the scope of this Directive and complies with the *quality criteria* set out in

Chapter II.

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

- 1a. *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.*

- 2. 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 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;
-
- (f) 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;***
- (g) where applicable, an assessment of the effectiveness of their cooperation within networks of ADR entities facilitating the resolution of cross-border disputes;
- (ga) ***where applicable, information on the training provided to natural persons in charge of ADR in accordance with Article 6(3);***
- (h) ***an*** 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, ***in particular*** on the basis of the information it has received in accordance with Article 16(1), whether the ***dispute resolution*** 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 of this Directive 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.

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 ■ complaints can be submitted and the ADR procedure conducted;
- (ca) *types of disputes covered by the ADR procedure;*
- (cb) *the sectors and categories of disputes covered by each ADR entity;*
-
- (e) 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;* ■

- (f) the binding or non-binding nature of the outcome of the procedure; **and**
- (g) ***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 to the Commission. In accordance with the second subparagraph of Article 16(1), ***if any changes are notified to the competent authority, the 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.

The list shall be updated without undue delay and the relevant information notified to the Commission.

- 2a. ***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. The list and the updates shall relate to all ADR entities established in that Member State.***

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 █. The Commission shall publish this list and its updates *on its website and on a durable medium. The Commission shall transmit the list and its updates 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 *by providing a link to the relevant Commission website. In addition, each competent authority shall publish the consolidated list on a durable medium.*
5. *No later than... * 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. The report shall in particular:
 - █
 - (b) identify best practices of ADR entities;

* *OJ please insert date: three years after the end of the transposition period as set out in Article 22(1),*

- (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 *effective and efficient* functioning of ADR entities, where appropriate.

- 6. *If a Member State has designated more than one competent authority, the report shall be published by the single point of contact. The report shall relate to all ADR entities established in that Member State.*

CHAPTER V

FINAL PROVISIONS

Article 18

Penalties

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted *in particular* pursuant to Article 10 ▯ 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 **Annex I** 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 ***including, where appropriate, the single point of contact,*** 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: **24** months after entry into force] at the latest. 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 23
Report

No later than [Office of Publications insert date: *four* years after the *end of the transposition period as set out in Article 22(1)*], 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. The 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*. 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

For the Council

The President

The President

■

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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,

After consulting the European Data Protection Supervisor,

Acting in accordance with the ordinary legislative procedure,

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 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 digital dimension of the Internal Market, it is necessary that they have access to easy 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 Single Market Act ¹, 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.

(3a) The fragmentation of the Single Market impedes efforts to boost competitiveness and growth. Furthermore, the uneven availability, quality and awareness of simple, efficient 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 Single Market which undermines consumers' and traders' confidence in shopping and selling across borders.

(4) 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. ■

(5) The Internal Market is a reality for consumers in their daily lives, when they travel, buy 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 over the internet 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 could greatly help achieve this goal.*

(6) Being able to seek easy and low-cost dispute resolution can boost consumers' and traders' confidence in the digital market. Consumers and traders, however, still face barriers to finding out-of-court solutions in particular to their disputes arising from a cross-border online transaction. Thus, such disputes currently are often left unresolved.

(7) Online dispute resolution offers a simple, *effective* and low-cost out-of-court solution to disputes arising from ■ online transactions. However, there is currently a lack of mechanisms that allow consumers and traders to resolve such disputes via electronic means. This leads to consumer detriment, acts as a barrier, *in particular*, to cross-border online transactions, creates an uneven playing field for traders and thus hampers the *overall* development of *online* commerce.

■

(8a) This Regulation should apply to the out-of-court resolution of disputes submitted by consumers resident in the Union against traders established in the Union which are covered by Directive..../.... EU [Office of Publications please insert number of Directive of the European Parliament and the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/ED (Directive on consumer ADR)].

(8b) 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 submitted by traders against consumers where the relevant ADR procedures are offered by ADR entities listed in accordance with article 17(2) of the Directive..../.... EU [Office of Publications please insert number of Directive of the European Parliament and the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/ED (Directive on consumer ADR)]. The application of this Regulation to such disputes does not establish any obligation on Member States to ensure that the ADR entities offer such procedures.

(8c) 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.

(9) 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 matters¹.

(10) 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.

(11) 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.

(12) 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.

(13) This Regulation should be seen in conjunction with Directive .../.../EU [Office of Publications insert reference number] of the European Parliament and of the Council of [Office of Publications insert date of adoption] on alternative dispute resolution for consumer disputes (Directive on consumer ADR) which requires Member States to ensure that all disputes between consumers and traders resident or established in the Union which arise from the sale of goods or provisions of services can be submitted to an alternative dispute resolution entity.

(13a) Before submitting their dispute to an ADR entity via 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.

(14) This Regulation aims at creating an online dispute resolution ('ODR') platform at European 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 the online sales and service contracts.** It should allow consumers and traders to submit complaints by filling in an electronic complaint form available in all official languages of the Union and **to attach relevant documents. It should** transmit complaints to an alternative dispute resolution ('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** via the **ODR** platform. **ADR entities should not be obliged to use the case management tool.**

(14b) The Commission should be responsible for 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 information, which is exchanged through the ODR platform and is necessary for the resolution of the dispute, translated, where appropriate. This 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.

(14c) 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 (DDABC).*

*[*ADD FOOTNOTE: OJ L 144, 30.4.2004, p. 62 (Decision located in OJ L 181, 18.5.2004, p. 25).]*

(14d) 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 EU. The ODR platform should be given prominence on the 'Your Europe Portal'.*

*[*ADD FOOTNOTE: OJ L 144, 30.4.2004, p. 62 (Decision located in OJ L 181, 18.5.2004, p. 25).]*

(15) An ODR *platform* at European level should build on existing ADR entities in the Member States and respect Member States' legal traditions. ADR entities to which a complaint has been transmitted via the ODR platform should therefore apply their own rules of procedure, 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. However, the parties may agree that physical presence is necessary.*

(16) Ensuring that all ADR entities *listed* in accordance with Article 17(2) of Directive .../.../EU [= Directive on consumer ADR] Office of Publications insert reference number] are *registered with the ODR platform* should allow *for full coverage in online out-of-court resolution for* [] disputes arising from the *online sales or service contracts*.

(17) This Regulation does not prevent the functioning of any existing [] dispute resolution entity operating *online or 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 [] .

[]

(18a) 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 via the ODR platform without being obliged to translate documents related 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 Centre Network. Member States should make use of this possibility in order to allow ODR contact points to fully benefit from the experience of the centres of the European Consumer Centre 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.*

(19) The right to an effective remedy and the right to a fair trial are fundamental rights guaranteed in Article 47 of the Charter of Fundamental Rights of the European Union. Online dispute resolution procedures *are not intended to and* cannot be designed to replace court procedures, *nor* should *they* deprive consumers or traders of their rights to seek redress before the courts. Nothing in this Regulation should, therefore, prevent parties from exercising their right of access to the judicial system.

(20) The processing of information under this Regulation should be subject to strict guarantees of confidentiality and should comply with the rules on the protection of personal data laid down in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data¹ and in Regulation (EC) 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 data². These rules should apply to the processing of personal data carried out under this Regulation by the various actors of the platform, whether they act alone or jointly with other actors of the platform.

(21) Data subjects should be informed about, **and give their consent to**, the processing of their personal data in the ODR platform, and 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 a 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.

(21a) This Regulation is without prejudice to provisions on confidentiality in national legislation relating to alternative dispute resolution.

(22) In order to ensure broad consumer awareness of its existence, 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 inform of their email address so that consumers have a first point of contact. A significant proportion of online sales and service contracts are concluded using the online intermediaries, which bring together or facilitate online transactions between consumers and traders. These are online platforms which allow traders to make their products and services available to consumers. Such online intermediaries should therefore have the same obligation to provide an electronic link to the ODR platform. This obligation should be without prejudice to Article 10(1)-(3) of Directive .../.../EU [Office of Publications insert reference number] concerning the information of consumers by traders about the ADR procedures by which those traders are covered and about whether or not they commit to use alternative dispute resolution procedures to resolve disputes with consumers. Furthermore, this obligation should be without prejudice to Articles 6(1)(t) and 8 of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights. 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. **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.**

(23) In order to supplement or amend certain non-essential elements of this Regulation, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the type of 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 carries 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 Council.

(24) 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 co-operation within the ODR *advisors'* network. 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 online dispute resolution *advisors*.

(24a) In the application of this Regulation, the Commission should consult, where appropriate, the European Data Protection Supervisor.

(25) Since the objectives of this Regulation, namely to set up a European online dispute resolution 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.

(26) 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,

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 its digital dimension, **■** by providing ***an online*** platform facilitating the ***independent***, impartial, transparent, effective 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 the online sales or service contracts between a consumer resident in the Union and a trader established in the Union*** through the intervention of an alternative dispute resolution entity ***listed in accordance with Article 17(2) of Directive .../..EU*** Directive on consumer ADR] and which involves the use of a European online dispute resolution platform.

2. ***This Regulation shall apply to the out-of-court resolution of disputes as 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 as 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 send the list referred to in Article 17(2) of Directive .../EU [Directive on consumer ADR], inform the Commission about which ADR entities deal with such disputes.

4. The application of this Regulation to disputes as referred to in paragraph 1, which are initiated by a trader against a consumer, does not establish 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 legislation

This Regulation is without prejudice to Directive 2008/52/EC. ■

Article 4

Definitions

For the purposes of this Regulation:

■

(a) "consumer" means a consumer as defined in Article 4 (a) of [directive on ADR];

(b) "trader means a trader as defined in Article 4 (b) of [directive on ADR];

(ba) the place of establishment of the trader shall be determined in accordance with Article 4(c) of [directive on ADR];

(b) "sales contract" means a sales contract as defined in Article 4(da) of [directive on ADR];

(bc) "service contract" means a service contract as defined Article 4(db) of [directive on ADR];

(c) "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;

(ca) "online intermediary" means an information society service provider, as defined in Article

2(b) of Directive 2000/31/EC [Directive on electronic commerce], which facilitates relations between consumers and traders engaging in online sales and service contracts by means of an online market place;

(d) "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

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

■

(h) "alternative dispute resolution entity", (hereinafter "ADR entity") means an ADR entity as defined in Article 4(e) of [directive on ADR];

(ha) the place of establishment of the ADR entity shall be determined in accordance with Article 4(f) of Directive .../..EU [Directive on consumer ADR];

(i) "complainant party" means the consumer or the trader that has submitted a complaint via the European online dispute resolution platform;

(j) "respondent party" means the consumer or the trader against whom a complaint has been submitted via the European online dispute resolution platform;

(ja) "competent authority" means a public authority as defined in Article 4 (fa) of [directive on ADR];

(k) "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 his or her physical, physiological, mental, economic, cultural or social identity.

CHAPTER II - EUROPEAN ONLINE DISPUTE RESOLUTION PLATFORM

Article 5

Establishment of the European online dispute resolution platform

1. The Commission shall *develop* a European online dispute resolution platform, (hereinafter "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 the 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 official languages of the Union.*

2a. The Commission shall make the ODR platform accessible, as appropriate, through its websites providing information to citizens and businesses in the Union and, in particular, through the Your Europe portal established in accordance with Decision 2004/387/EC.

3. The ODR platform shall have the following functions:

(a) providing an electronic complaint form which can be filled in by the complainant party *in accordance with Article 7;*

■

(ba) informing the respondent party about the complaint.

- (bb) identifying the competent ADR entity or entities and transmitting the complaint to the ADR entity, which the parties have agreed to use, in accordance with Article 8;*
- (bc) offering an electronic case management tool free of charge, which enables the parties and the ADR entity to conduct the dispute resolution procedure online via the ODR platform;*
- (bd) providing 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;*
- (e) providing an electronic form by means of which ADR entities shall transmit the information referred to in [Article 9] I;*

(f) providing 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 dispute¹ ;

■

(g) making publicly available the following:

- (i) *general information on alternative dispute resolution as a means of out-of-court dispute settlement;*
- (ii) *information on ADR entities listed in accordance with Article 17(2) of Directive .../.../EU Directive on consumer ADR] which are competent to deal with disputes covered by this Regulation;*
- (iii) *an online guide about how to submit complaints via the ODR platform*
- (iv) *information, including contact details, on ODR contact points designated by the Member States in accordance with Article 6(1);*
- (v) *statistical data on the outcome of the disputes which were transmitted to ADR entities via the ODR platform.*

3a. The Commission shall ensure that the information referred to in paragraph 4(h) is accurate, up to date and provided in a clear, comprehensible and easily accessible way.

3b. ADR entities listed in accordance with Article 17(2) of Directive .../.../EU [Directive on consumer ADR] which are competent to deal with disputes covered by this Regulation █ shall be registered electronically with the ODR platform.

█

6. The Commission shall adopt measures concerning the modalities for the exercise of the functions provided for in paragraph 4 through implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 15(3).

Article 5a

Testing of the ODR platform

1. The Commission shall, no later than 18 months after the entry into force of this Regulation, 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 online dispute resolution 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, 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 6

Network of online dispute resolution contact points

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

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

(a) if *requested*, facilitating communication between the parties and the competent ADR entity.
This 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 the 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 rules of procedure applied by the ADR entities identified,

*(v) informing the complainant party of other means of redress when a dispute cannot be resolved via 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;

■

2a. 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.

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

3. The Commission shall establish a network of *contact points* (hereinafter the 'ODR *contact point* network') which shall enable cooperation between *contact points* and contribute to the performance of the functions set out in paragraph 2.
4. The Commission shall at least *twice* every 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.
5. The Commission shall adopt the rules concerning the modalities of the cooperation between the ODR *advisors* through implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 15(3).

Article 7

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. This information is described in the Annex. *The complainant party may attach documents in support of the complaint.*

■

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 16 to adapt the information listed in the Annex, taking into account the criteria by which the ADR entities notified to the Commission in accordance with Article 17(2) of Directive .../.../EU [Office of Publications please insert number of 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)] that deal with disputes covered by this Regulation define their respective scopes of application.

5. The Commission shall lay down the modalities of 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 15(2).

6. 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 8

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.**

1a. 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.

2. 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 EU languages chosen by that party, the complaint together with the following information:*

(a) the 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 shall not be processed further;

■

(ca) information about the ADR entity or entities which are competent to deal with the complaint, if any are mentioned in the electronic complaint form or are identified by the ODR platform on the basis of the information provided in that form;

(cb) 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 the list referred to in (b);

(cc) 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 the list referred to in (b);

*(d) 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 Article 6(2)(a) **■**;*

■

3a. Upon receipt from the respondent party of the information referred to in paragraph 2(c) or (d), the ODR platform shall in an easily understandable way and without delay communicate to the complainant party, in one of the official EU languages chosen by that party, the following information:

(a) the information referred to in paragraph (2)(a);

(b) in the event that the complainant party is a consumer, information about the ADR entity or entities stated by the trader in accordance with paragraph (2)(c) 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, information about the ADR entity or entities stated by the consumer in accordance with paragraph 2(d) 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 Article 6(2)(a);

3. The information referred to in paragraph (2)(b) and paragraph (3)(b) and (c) shall include a description of the following characteristics of each ADR entity:

(-a) the name, contact details and website address of the ADR entity;

(a) the fees for the ADR procedure, if applicable;

(b) the language or languages in which the procedure can be conducted;

(c) the average length of the procedure;

I

(e) the binding or non-binding nature of the outcome of the procedure;

(f) the grounds on which the ADR entity may refuse to deal with a given dispute in accordance with Article 5(3a) of Directive .../.../EU Directive on consumer ADR].

3a. 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 (2) and (3).

3b. The ADR entity to which the complaint has been transmitted shall without delay inform the parties about whether it accepts or refuses to deal with the dispute in accordance with its procedural rules as referred to in Article 5(3a) of Directive/.../EU [Directive on consumer ADR]. The ADR entity which has accepted to deal with the dispute shall also inform the parties of its rules of procedure and, if applicable, of the costs of the concerned dispute resolution procedure.

4. Where within 30 calendar days after submission of the complaint form the parties fail to ■ *agree 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 9

Resolution of the dispute

The ADR entity to which a complaint has been transmitted in accordance with Article 8 shall:

(a) in the event that the ADR entity has accepted to deal with the dispute, accomplish the conclusion of the dispute resolution procedure within the deadline referred to in article 8(d) of

Directive/.../EU [Directive on consumer ADR];

(ba) only require the physical presence of the parties or their representatives, if the parties deem it necessary

(c) without delay transmit the following information to the ODR platform:

- (i) date of receipt *of the complaint file*;
 - (ii) subject-matter of the dispute;
 - (iii) date of conclusion *of the dispute resolution* procedure;
 - (iv) *the result of that procedure*.
- (d) *not be required to conduct ADR procedure through the ODR platform.*

Article 10

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 Article 9(c) *taking due account of Article 12(2) of this Regulation.*

Article 11

Processing of personal data

1. Access to information, including personal data, related to a dispute and stored in the database referred to in Article 10 shall be granted, for the purposes referred to in Article 9, only to the ADR entity to which the dispute was transmitted in accordance with Article 8. 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 6(2) *and* (3).
2. The Commission shall have access to information processed in accordance with Article 9 for the purposes of monitoring the use and functioning of the ODR platform and drawing up the reports referred to in Article 17. 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 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, after 6 months following the date of conclusion of the dispute which has been transmitted to the ODR platform in accordance with Article 9(c)(iii). The above-mentioned 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 rules of procedure 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 their own data processing activities under this Regulation, *in accordance with Article 2(d) of Directive 95/46/EC*, and shall ■ ensure that these 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 Article 2(d) of Directive 95/46/EC, and shall ensure that these 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 Article 2(d) of Regulation (EC) No 45/2001.

Article 12

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 13

Consumer information

1. Traders established within the Union engaging in *online sales or service contracts and online intermediaries established within the Union, which provide traders with a possibility to offer goods or services on their websites, shall provide on their websites an electronic link to the ODR platform. This link should be easily accessible for consumers. Traders established within the Union engaging in online sales or service contracts shall also state their e-mail address.*

1a. Traders established within the Union, engaging in the online sales or service contracts who are committed or obliged to use ADR entity or 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 and provide an electronic link to its website 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 applying to online sales and service contract.

2. The provisions in paragraph 1 are without prejudice to **Article 10** of Directive .../.../EU [Directive on consumer ADR] and the provisions on consumer information on out-of-court redress procedures contained in other Union legislation, which shall apply in addition to the provisions of this Article.
3. The list of ADR entities referred to in Article 17(4) of Directive .../.../EU [Office of Publications insert reference number] and its updates shall be published in the ODR platform.
4. Member States shall ensure that ADR entities, the centres of the European Consumer Centre Network, the competent authorities defined in Article 15(1) of Directive .../.../EU [Office of Publications insert reference number and, where appropriate, the bodies designated in accordance with Article 11(2) of Directive .../.../EU [Office of Publications insert reference number] provide an electronic link to the website of the ODR platform.
5. Member States shall encourage consumer associations and business associations to provide an electronic link to the website of the ODR platform.
6. When traders are obliged to provide information in accordance with paragraphs 1 and 1(a) and with the provisions referred to in paragraph 2, they shall, where possible, provide this information together.

Article 14

Role of the competent authorities

The competent authority of each Member State shall assess whether the ADR entities established in their territory comply with the obligations set out in this Regulation **1**.

CHAPTER III

FINAL PROVISIONS

Article 15

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 16

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 delegation of power referred to in Article 7(4) shall be conferred for an indeterminate period of time from the [Office of Publications insert same date as in Art. 18(1) = date of entry into force of this Regulation].
3. The delegation of powers referred to in Article 7(4) may be revoked at any time by the European Parliament or by the Council. A decision of revocation 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 7(4) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 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 2 months at the initiative of the European Parliament or the Council.

Article 16a

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 16b

Amendment to Regulation (EC) No 2006/2004

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

"21. Regulation of the European Parliament and of the Council of ... on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR) (OJ L..., ..., p. ...): Article 13."

Article 16c
Amendment to Directive 2009/22/EC

Directive 2009/22/EC is amended as follows:

1. *In Articles 1(1), 1(2) and 6(2)(b) 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 with the words "LIST OF UNION ACTS".*
3. *In Annex I the following point is added:*

"15. Regulation ... of the European Parliament and of the Council of ... on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR) (OJ L...; ...; p. ...): Article 13. "

Article 17

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. Every three years and for the first time no later than five years after the entry into force of this Regulation 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 of this Regulation**. The 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 18

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 [Office of Publications insert date = 6 months after implementation deadline for 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 as to be inserted in that Directive in accordance with Art 22(1) of that Directive], except for Article 5(1), (7) and (8), **Article 5a**, Article 6, Article 7(4) and (5), Article 10, Article 15 and Article 16 **and** which shall apply from the date on which this Regulation enters into force.

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

Done at Brussels,

For the European Parliament

For the Council

The President

The President

ANNEX

Information to be provided when *submitting a complaint* ■

- (1) *Whether the complainant party is a consumer or a trader*;
- (2) *Name, e-mail and geographical address of the* ■ *consumer* ■ ;
- (3) *Name, ■ e-mail, website and geographical address of the trader*;
- (4) *Name, email and geographical address of the complainant party's representative, if applicable*;
■

(5a) The language(s) of the complainant party or representative, if applicable;

(5b) Language of the respondent party, if known

(6) Type of good or service to which the complaint relates

I

(10a) Whether the contract was offered by the trader and ordered by the consumer on a website or by other electronic means;

(10b) The price of the good or service purchased;

(10c) The date when the consumer purchased the good or service;

(10d) Whether the consumer has made a direct contact with the trader;

(10e) *Whether the dispute has previously been considered by an ADR entity or by a court;*

(10f) Type of complaint;

(10g) Description of the complaint;

(11) If the complainant party is a consumer, the ADR entities the trader is obliged to or has committed to use in accordance with Article 10(1) of Directive .../.../EU[Office of Publications please insert number of Directive of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Directive 2009/22/EC (Directive on consumer ADR)], if known;

■

(15) If the complainant party is a trader, which ADR entity or entities the trader commits to or is obliged to use.
