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NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee

No. Cion doc.: 14434/23 + ADD 1-5 + ADD3 REV 1

Subject: Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2013/11/EU on alternative dispute resolution for consumer disputes, as well as Directives (EU) 2015/2302, (EU) 2019/2161 and (EU) 2020/1828
- Mandate for negotiations with the European Parliament

I. INTRODUCTION

1. On 17 October 2023, the Commission submitted to the Council and the European Parliament a proposal for a Directive of the European Parliament and of the Council amending Directive 2013/11/EU on alternative dispute resolution for consumer disputes¹.
2. The proposal aims to make the alternative dispute resolution (ADR) framework fit to digital markets, enhance the use of ADR in cross-border disputes and simplify ADR procedures to the benefit of all actors. It also forms part of the Commission's commitment to rationalise and simplify reporting requirements, with the aim to reduce such burdens by 25%, without undermining the related policy objectives, as stated in its Communication on 'Long-term competitiveness of the EU: looking beyond 2030'².

¹ Doc. 14434/23 + ADD 1-5.

² Doc. 7604/23.

3. The draft Directive is based on Article 114 of the Treaty on the Functioning of the European Union (TFEU) (ordinary legislative procedure).
4. The European Economic and Social Committee delivered its opinion on 14 February 2024³.
5. In the European Parliament, the Committee on the Internal Market and Consumer Protection (IMCO) has the lead responsibility. Laura BALLARÍN CEREZA (S&D, Spain) was appointed rapporteur. The report was tabled on 26 February 2024; the European Parliament adopted its first-reading position⁴ at the plenary session on 13 March 2024 and forwarded its position to the Council. This constitutes the European Parliament's negotiating mandate.

II. WORK CONDUCTED IN THE COUNCIL PREPARATORY BODIES

6. On 28 November 2023, during the Spanish Presidency, the Commission presented the proposal and the accompanying impact assessment to the Working Party on Consumer Protection and Information, and a first exchange of views took place. The article-by-article examination of the proposal began under the Belgian Presidency, which devoted six meetings to the detailed examination and discussion of the proposal. The Working Party continued the discussion of the proposal in two meetings under the Hungarian Presidency.
7. The Presidency submitted four compromise proposals to the Working Party. These texts were drawn up on the basis of oral and written comments from delegations.
8. At its last meeting on 12 September 2024, the Working Party on Consumer Protection and Information broadly supported the main elements of the compromise text presented by the Presidency. Following this meeting and based on the discussion held therein, the Presidency prepared a fifth compromise text. On the basis of further consultations with delegations, this text underwent one minor adjustment, and its final version is set out in the Annex to this note.

³ Doc. 6964/24.

⁴ Doc. 10620/24.

9. The compromise text reflects the efforts of the Presidency to strike a balance between the different positions of delegations while maintaining the objectives of the Commission proposal. Changes compared to the Commission proposal are marked in **bold and underlined** and/or ~~striketrough~~.

III. **MAIN CHANGES TO THE COMMISSION PROPOSAL**

10. **Scope of application (Article 2)**

- a) **Material scope:** The current scope of the ADR Directive is limited to disputes which stem from contractual obligations for the sale of goods or services. Through this revision, the Commission proposed to extend the scope to disputes where consumer rights exist irrespective of whether the consumer ultimately concludes a contract or not. For reasons of legal certainty and effective implementation, the proposed extension has been reduced to disputes stemming from a contract, but the compromise text makes it clear that contractual obligations include the stages preceding the conclusion of a contract, such as advertising and information provision, and those following the termination of a contract, such as use of digital content. The extension of the scope to non-contractual situations, as proposed by the Commission, has been deleted.
- b) **Geographical scope:** The Commission proposed to extend the scope to voluntary ADR processes against traders established outside of the EU selling goods or services to consumers residing in the EU. Most Member States questioned the effectiveness and practical functioning of such an extension of the scope and considered that this would impose a disproportionate administrative and financial burden on ADR entities. Therefore, the Presidency proposes to delete this extension and leave the application of ADR procedures to disputes with third country traders explicitly to the discretion of Member States.

11. **Definitions (Article 4):** The compromise text brings the definitions in line with the modified scope. In addition, new definitions are introduced to align the text with the latest EU acquis.
12. **Access to ADR entities and ADR procedures (Article 5):** To maintain a high level of consumer protection, the compromise text clarifies that access to ADR can take place both in a digital and a non-digital format. More importantly, an obligation is added to inform consumers in advance when non-high-risk automated means are used in ADR decision-making processes, to make their use equally transparent to those of high-risk covered by the Artificial Intelligence Act. Finally, to cater for different national complaint handling systems, the compromise text gives Member States the flexibility to set the conditions for the bundling of cases at national level. The obligation to ask for the consumer's consent for the bundling has been deleted, as it would create additional burden for ADR entities and slow down the procedure.
13. **Duty to reply and information obligations (Articles 5 and 13):** The Commission proposal introduced an obligation for traders to reply to a request by an ADR entity within a period not exceeding 20 working days as to whether they plan to participate in an ADR process against them or not. The compromise text allows for an extension of the 20-day period to 40 working days in the case of complex disputes or in exceptional circumstances and requires that the consumer is informed of the extension. On the other hand, the Presidency proposes streamlining the process: following the expiry of the deadline, the ADR entity can consider the absence of a reply as a refusal of the trader to participate. In addition, the compromise text allows for an exception to the obligation to reply where the traders' participation is mandatory, where ADR outcomes can be reached without the traders' consent to participate or where the trader has already committed to ADR, as Member States considered the reply unnecessary in such cases.

14. **Reporting obligations (Articles 19 and 20):** The Commission proposed to delete the requirement for ADR entities to inform ADR competent authorities about training provided to staff. Considered essential also for the monitoring of the quality criteria provided for in the Directive, the compromise text reinstates this reporting requirement for ADR entities. In addition, the Presidency proposes to postpone the date of submission of the four-yearly report on the development and functioning of ADR entities from 9 July to 1 November, to give ADR entities more time to submit their reports to the competent authorities.
15. **Digital tools (Article 20):** As the Commission proposed to discontinue the online dispute resolution platform (ODR platform) and to replace it by a digital interactive tool to ensure its continuity, the compromise text sets a deadline of 3 months after the entry into force of the ADR Directive for the Commission to develop this tool. The Commission is also required to promote this tool and ensure its technical maintenance as well as to create a network of ADR contact points.
16. **Transposition deadline (Article 5 of the proposed amending Directive):** The compromise text provides for a one year longer transposition period to offer sufficient time for the national legislative procedures. The additional one year for the application of the new rules ensures that all actors can adapt to the new requirements.

IV. CONCLUSION

17. The Permanent Representatives Committee is therefore invited to confirm agreement on the text of the mandate for negotiations with the European Parliament, as set out in the annex to this note, to enable the Presidency to conduct those negotiations.
18. In accordance with the approach to legislative transparency endorsed by Coreper on 14 July 2020, and in full consistency with Regulation (EC) 1049/2001 and the Council's Rules of Procedure, the text of the mandate thus agreed will be made public unless the Permanent Representatives Committee objects.

2023/0376 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2013/11/EU on alternative dispute resolution for consumer disputes, as well as Directives (EU) 2015/2302, (EU) 2019/2161 and (EU) 2020/1828

(Text with EEA relevance)

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 the opinion of the European Economic and Social Committee,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Directive 2013/11/EU of the European Parliament and of the Council¹ was adopted in order to ensure that consumers within the Union have access to high quality alternative dispute resolution (“ADR”) procedures to resolve the contractual disputes arising from the sale of goods or provision of services by traders established in the Union to consumers resident in the Union. It provides for the availability of ADR procedures for all types of domestic and cross-border consumer disputes within the Union, ensuring that ADR procedures meet minimum quality standards. It requires Member States to monitor the performance of ADR entities. To increase consumer awareness and promote the use of ADR, it also provides that traders should be required to inform their consumers of the possibility to settle their dispute out-of-court through ADR procedures.

¹ Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (OJ L 165, 18.6.2013, p. 63).

- (2) In 2019 the Commission adopted a report on the implementation of the Directive 2013/11/EU and of Regulation (EU) No 524/2013 of the European Parliament and of the Council² which revealed that Directive 2013/11/EU has led to increased coverage of consumer markets by quality ADR entities throughout the Union. However, the report also identified that consumer and business uptake of ADR procedures was lagging behind in some sectors and Member States. One reason for this was the low level of awareness of traders and consumers about such procedures in Member States where they had only recently been introduced. Another reason was the lack of trust of consumers and traders in unregulated ADR entities. Data provided by national competent authorities in early 2022, as well as the evaluation of the implementation of the Directive 2013/11/EU conducted in 2023, suggest that the uptake remained relatively stable (apart from a small increase of cases related to **the** Covid-19 pandemic). Most stakeholders consulted in the context of that evaluation confirmed that the lack of awareness and understanding of ADR procedures by consumers, low engagement by traders, gaps in ADR coverage in certain Member States, high costs and complex national ADR procedures and differences in the competences of ADR entities, are frequent factors hindering the uptake of ADR procedures. There are additional barriers in cross-border ADR **procedures, such as** like language, lack of knowledge of the applicable law, as well as specific access difficulties for vulnerable consumers.
- (3) ~~Since at least two out of five online transactions made by consumers residing in the Union are with traders based in third countries, the scope of Directive 2013/11/EU should be extended to allow those third country traders willing to participate in an ADR procedure to do so. No procedural impediments should hinder consumers residing in the Union from resolving disputes against traders, irrespective of their establishment, if the traders accept to follow an ADR procedure through an ADR entity established in a Member State.~~

² Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (OJ L 165, 18.6.2013, p. 1).

(4) The complexity of consumer disputes has evolved significantly since the adoption of Directive ~~2011/13/EU~~ **2013/11/EU**. ~~Digitilisation~~ **Digitalisation** of goods and services, the growing importance of e-commerce and digital advertising in the formation of consumer contracts has resulted in a rise in the number of consumers being exposed to misleading online information and manipulative interfaces preventing them from making informed purchasing decisions. It is, therefore, necessary to clarify that contractual disputes arising from the sale of goods or services include digital content and digital services, ~~and to extend the scope of Directive 2011/13/EU, beyond such disputes so that consumers are also able to seek redress for practices harming them at a pre-contractual stage, irrespective of whether they later become bound by a contract.~~

(4a) When a contract is concluded between a consumer and a trader, consumers should be able to seek redress under Directive 2013/11/EU for practices that have harmed them, whether before or after the contract is concluded.

4b) The material scope of Directive 2013/11/EU should cover, for example, situations arising from the pre-contractual phase when a contract has been concluded between a consumer and a trader, such as where a consumer concludes a contract based on misleading advertisement in regards to a specific price promotion, which falls within the scope of Directive 2005/29/EC of the European Parliament and of the Council³. Other examples include situations related to the provision of compulsory pre-contractual information as provided for in articles 5 and 6 of Directive 2011/83/EU of the European Parliament and the Council⁴, the right to price transparency in air fares and rates as provided for in article 23 of Regulation (EC) No 1008/2008 of the European Parliament and the Council⁵, the right to receive pre-journey information provided for in article 9, paragraph 1, of Regulation (EU) No 2021/782 of the European Parliament and the Council⁶, the right to receive transparent information on retail conditions for roaming calls and SMS messages as provided for in Articles 13, 14 and 15 of Regulation (EU) 2022/612 of the European Parliament and of the Council⁷, or the provision of pre-contractual information related to package travel as provided for in article 5 of Directive (EU) 2015/2302 of the European Parliament and the Council⁸.

³ **Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (Unfair Commercial Practices Directive) (OJ L 149, 11.6.2005, p. 22).**

⁴ **Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ L 304, 22.11.2011, p. 64).**

⁵ **Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ L 293, 31.10.2008, p. 3).**

⁶ **Regulation (EU) 2021/782 of the European Parliament and of the Council of 29 April 2021 on rail passengers' rights and obligations (recast) (OJ L 172, 17.5.2021, p. 1).**

⁷ **Regulation (EU) 2022/612 of the European Parliament and of the Council of 6 April 2022 on roaming on public mobile communications networks within the Union (OJ L 115, 13.4.2022, p. 1).**

⁸ **Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC (OJ L 326, 11.12.2015, p. 1).**

(4c) Submitting a dispute to an ADR entity does not preclude the consumer to refer the matter to another body, such as consumer associations or public enforcement authorities, neither does it prevent those other bodies from taking appropriate action to address the practice in question. Where applicable, public enforcement authorities and ADR entities work in a complementary manner. While public enforcement authorities may contribute significantly to consumer redress, by seeking remedial commitments for the benefit of consumers and/or facilitating follow-on damages actions, it is equally important that consumers are able to seek redress with the intervention of an ADR entity without prejudice to the competences of the relevant public enforcement authorities.

(4d) Consumer rights and obligations of traders towards consumers related to sales and service contracts also concern situations where consumers invoke their rights relating to the legal guarantee, in accordance with articles 5 up to 8, 10 and 11 of Directive (EU) 2019/771 of the European Parliament and of the Council⁹. Disputes can also arise regarding the contractual phase, among others, with regards to unfair terms as provided for in articles 3 up to 6 of Council Directive 93/13/EEC¹⁰, the right to switch providers as provided for in article 25 of Regulation (EU) 2023/2854 of the European Parliament and of the Council¹¹, passenger and travellers' rights as provided for in article 7 of Directive (EU) 2015/2302 or general consumer rights as provided for in articles 7 up to 18 of Directive 2011/83/EU.

⁹ **Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC (OJ L 136, 22.5.2019, p. 28).**

¹⁰ **Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95, 21.4.1993, p. 29).**

¹¹ **Regulation (EU) 2023/2854 of the European Parliament and of the Council of 13 December 2023 on harmonised rules on fair access to and use of data and amending Regulation (EU) 2017/2394 and Directive (EU) 2020/1828 (Data Act) (OJ L, 2023/2854, 22.12.2023).**

(4e) Consumer rights and obligations of traders towards consumers related to sales and service contracts can also be related to disputes arising after the contract is terminated. This is the case, among others, with regards to obligations of traders to refrain from using content provided or created by the consumer, as provided for in article 16, paragraph 3, of Directive (EU) 2019/770 of the European Parliament and of the Council¹².

(5) Moreover, Directive 2011/13/EU should also cover consumer rights arising from Union legislation which governs relationships between consumers and traders when there is no relationship of a contractual nature, with respect to the right to access and to pay for goods and services without undergoing discrimination based on nationality, place of residence or of establishment, as provided for in Articles 4 and 5 of Regulation (EU) 2018/302 of the European Parliament and of the Council¹³ and the right to open and switch bank accounts as provided for in Articles 9, 10, 11, and 16 of Directive 2014/92/EU of the European Parliament and of the Council¹⁴ and to not be discriminated as provided for in Article 15 of that Directive ; the right to receive transparent information on retail conditions for roaming calls and SMS messages as provided for in Articles 13, 14 and 15 of Regulation (EU) 2022/612 of the European Parliament and of the Council¹⁵, the right to price transparency in air fares and rates as provided for in Article 23 of Regulation (EC) No 1008/2008 of the European Parliament and of the Council¹⁶. Therefore, it should be provided that disputes arising in relation to such categories of consumer rights can be dealt with in ADR procedures.

¹² **Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services (OJ L 136, 22.5.2019, p. 1).**

¹³ Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC (OJ L 60I, 2.3.2018, p. 1).

¹⁴ Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic feature (OJ L 257, 28.8.2014, p. 214).

¹⁵ Regulation (EU) 2022/612 of the European Parliament and of the Council of 6 April 2022 on roaming on public mobile communications networks within the Union (OJ L 115, 13.4.2022, p. 1).

¹⁶ Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ L 293, 31.10.2008, p. 3).

- (6) **Taking into account the minimum harmonisation nature of Directive 2013/11/EU,** Member States ~~should~~ have the right to apply ADR procedures ~~also~~ to disputes ~~that relate~~ **relating** to other non-contractual rights ~~stemming from~~ **provided for in** Union **and national** law, ~~including~~ **such as** rights ~~stemming~~ **arising** from Articles 101 and 102 TFEU **and to** **disputes with traders established outside the Union.** ~~or rights of users provided in Regulation (EU) 2022/1925 of the European Parliament and of the Council.¹⁷ This is without prejudice of public enforcement of those rules.~~ **Furthermore, it is up to the Member States to determine which ADR entity is competent for which type of dispute.**
- (7) Where a dispute arises between a provider of an online platform and a recipient of that service in relation to that provider's activities in moderating illegal or harmful content on its platform, Article 21 of Regulation (EU) 2022/2065 of the European Parliament and of the Council¹⁸ on out-of-court dispute settlement applies to that dispute, in accordance with Article 2(4) of that Regulation, given that it lays down more detailed rules in relation to such disputes.
- (8) The definitions of 'domestic dispute' and 'cross-border dispute' ~~should be adapted accordingly to reflect the extension of the scope of Directive 2013/11/EU.~~ **should reflect the extended material scope of Directive 2013/11/EU.**

¹⁷ ~~Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) (OJ L 265, 12.10.2022, p. 1).~~

¹⁸ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (OJ L 277, 27.10.2022, p. 1)

- (8a) Digital content and digital services are often supplied online under contracts in which the consumer does not pay a price but provides the trader with personal data instead of money. Directive 2013/11/EU currently only applies to contracts for which the consumer pays or undertakes to pay a price, therefore it excludes contracts for which the consumer provides personal data to the trader without paying a price. Given that there are contracts where the consumer provides or undertakes to provide personal data instead of the payment of a price, the definitions of 'sales contract' and 'service contract' should be adapted and the definitions of 'goods', 'digital content' and 'digital service' should be added.**
- (9) ~~To ensure that ADR procedures are well suited for the digital age where communication takes place online, including in a cross-border context, it is necessary to ensure swift and fair processes for all consumers. Member States should ensure that ADR entities established in their territories have the competence to provide dispute resolution procedures in disputes between traders established outside of the Union and consumers residing in their territory.~~

- (10) **Under Directive 2013/11/EU Member States are obliged to ensure that the ADR procedure is available and easily accessible online and offline.** Member States should ensure that, **when ADR entities should enable consumers to initiate and follow ADR procedures through digital tools also offline if requested. It should also be ensured that when digital tools, such as online interfaces and online complaint forms, are provided, those tools can be used by all consumers, including vulnerable consumers or those with varying levels of digital literacy. ADR entities which are public bodies are already covered by Directive (EU) 2016/2102 of the European Parliament and of the Council¹⁹. ADR entities which are private bodies should strive to follow the same accessibility standards as much as possible and feasible.** Member States should ensure that, upon request, parties to the disputes always have access to a review of automated procedures by a natural person.
- (10a) **In order to satisfy the requirement of submitting complaints and the requisite supporting documents online in a traceable manner, ADR entities should at least acknowledge the receipt on a durable medium and provide means to identify the complaint for further communications.**

¹⁹ **Directive (EU) 2016/2102 of the European Parliament and of the Council of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies (OJ L 327, 2.12.2016, p. 1).**

(10b) Technological advances, including within the fields of artificial intelligence (AI), may contribute to automation of dispute resolution allowing to reach faster and more consistent outcomes. Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence (Artificial Intelligence Act)²⁰ acknowledges the use of AI in the context of certain ADR procedures, which may be considered high risk under point 8(a), Annex III to the AI Act. However, the use of automated means not falling under this Annex to help ADR reach an outcome (for example, rule-based algorithms or decision trees), may also carry certain risks of bias and opacity. Their use in the decision-making process should, therefore, be fully transparent for the parties and assist the natural persons in charge of ADR, but not replace them. Consumers and traders should be informed in advance on the nature, the role and the potential risks of the use of such automated means in the decision-making process of the ADR procedure and may, if they so wish, request that the outcome of the procedure is reviewed by a natural person from the ADR entity. That person should meet the requirements of article 6, paragraph 1, of Directive 2013/11/EU in terms of necessary expertise, independence and impartiality. Furthermore, as the Regulation (EU) 2016/679 of the European Parliament and of the Council²¹ continues to apply, the ADR entities must respect its provisions on the automated decision-making.

²⁰ **Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act) (OJ L, 2024/1689, 12.7.2024).**

²¹ **Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).**

- (11) **In various situations, for instance mass flight cancellations during the COVID-19 pandemic, ADR procedures proved to be important mechanisms to deal with the increased number of consumer issues. Therefore, Member States should also enable allow ADR entities to bundle similar cases, for example where bundling leads to faster or more coherent dispute resolution, under conditions defined by Member States.** against a specific trader, to make ADR outcomes consistent for consumers subjected to the same illegal practice, and more cost efficient for ADR entities and for traders. Consumers should be informed accordingly and should be given the opportunity to refuse from having their dispute bundled.
- (12) Member States should also not allow the introduction of disproportionate rules as regards the reasons that an ADR entity may invoke to refuse the handling of a dispute, such as the obligation to use the company escalation system after a first negative contact with the complaints handling service **ensure that ADR entities do not refuse to deal with a dispute where a trader introduces disproportionate rules on internal complaint-handling systems before the case can be referred to an ADR entity. For instance, in certain market sectors, some consumers face undue burden such as multiple mandatory steps in complaint-handling,** or the obligation to prove that a specific part of a company's after sales service was contacted.

(13) Under Directive 2013/11/EU, Member States may introduce national legislation to make trader participation in ADR compulsory in sectors they deem fit, in addition to sector-specific Union legislation which provides for mandatory participation of traders in ADR. To encourage traders' participation in the ADR procedures and to ensure due and swift ADR procedures, traders should be required, ~~especially in cases where their participation is not compulsory~~, to respond **reply** within a specific period to enquiries made by ADR entities on whether they intend to participate to the proposed procedure. **The duty to reply should not hinder ADR entities from making recommendations or taking non-binding decisions, even when the trader has indicated that they do not intend to participate in the ADR procedure.**

(13a) The time period for the trader to inform the ADR entity whether or not they intend to participate in the ADR procedure should be, in principle, no more than 20 working days. However, in certain exceptional cases of a complex nature or in exceptional circumstances, the ADR entity should be entitled to extend that time period in order to give the trader the opportunity to analyse the dispute thoroughly and to choose whether or not they want to participate in an ADR procedure. In any case, that time period should not exceed 40 working days. The consumer should be informed of the time period given to the trader to reply and of any extension of it. Following the expiry of the deadline, if the trader has not replied, the ADR entity can consider the non-reply as a refusal of the trader to participate. The consequences for the non-compliance of the trader with his duty to reply should be set out in the national legislation of the Member States.

- (14) To reduce information and reporting requirements and to save costs for ADR entities, **and** national competent authorities ~~and traders~~, reporting and information requirements should be simplified and the amount of information provided by ADR entities to the competent authorities should be reduced. **Among others, ADR entities should make publicly available, at least every two years, their activity reports. However, Member States should be allowed to set shorter reporting periods, for example reporting periods of one year. ADR entities should also have the possibility to communicate those activity reports to the relevant competent authorities with a view to comply with other reporting obligations under Directive 2013/11/EU, as long as they include all elements of information required.**
- (14a) In order to genuinely relieve the workload of ADR entities and give them more time to submit their reports to the competent authorities, the date of submission of the four-yearly report under Article 20 should be extended by a few months.**
- (14b) The trader’s obligation to specify, where a dispute following a complaint of a consumer could not be settled further, whether or not he intends to make use of the relevant ADR entities to settle the dispute should be removed, as it is covered by the obligation for the trader to inform the ADR entity whether or not he intends to participate in the ADR procedure.**
- (15) To provide effective assistance to consumers and traders in cross-border disputes, it is necessary to ensure that Member States establish ADR contact points with clearly defined tasks. European Consumer Centres (“ECCs”) are well placed to perform such tasks, as they are specialised in assisting consumers with issues with their cross-border purchases, but Member States should also be able to choose other bodies with relevant expertise. Those designated ADR contact points should be communicated to the Commission **so that the Commission can create a network of ADR contact points.**

- (15a) For reasons of efficiency and effectiveness, the Commission has proposed to discontinue the European Online Dispute Resolution Platform established pursuant to Regulation (EU) No 524/2013 and to repeal that Regulation by a separate act. In those circumstances, the relevant tasks of the contact points set out in article 7 of Regulation (EU) No 524/2013 should be taken over by the ADR contact points. Those tasks entail, among others and upon request, providing information to parties involved in a dispute and facilitating communication between the parties and the competent ADR.**
- (15b) Taking into account the minimum harmonisation nature of Directive 2013/11/EU, Member States have the possibility of allowing ADR contact points to provide assistance to consumers and traders when accessing ADR entities also with regards to domestic disputes.**
- (16) Despite the fact that ADR procedures are meant to be simple, consumers may be assisted by a third party of their choice, **such as consumer organisations or businesses that offer management services of claims** during ADR procedures. **Assistance could include helping consumers submit a request and other documents, advising them on the possible claims and following the overall process.** Member States should ensure that **providers of** such assistance ~~is provided~~ **do so** in good faith to allow a fair procedure and in full transparency, in particular regarding the **procedural rules and costs as well as** possible fees required in exchange for the assistance.

- (17) To ensure that consumers are able to easily find a suitable ADR entity, especially in a cross-border context, the Commission should develop, **promote** and maintain a digital interactive tool that provides information about ADR entities' main characteristics and links to the webpages of the ADR entities, as notified to it. **The digital interactive tool should aim to assist consumers to understand appropriate redress solutions for their specific case and to take the appropriate action. It should contain direct links to the complaint form, where available, of ADR entities and a machine translation tool for ADR entities and ADR contact points. Furthermore, the tool should host the list of the ADR contact points notified to the Commission. While the Commission is already obliged to publish the list of the ADR entities on its website continuously, the additional functions of the tool, such as direct links to the complaint forms and the machine translation, should be available as soon as possible and no later than three months after the ADR Directive enters into force.**
- (18) Therefore, Directive 2013/11/EU should be amended accordingly.
- (19) As Regulation (EU) No 524/2013 is to be repealed by a separate act, it is also necessary to amend Directives (EU) 2015/2302²², (EU) 2019/2161²³ and (EU) 2020/1828²⁴ of the European Parliament and of the Council, as a consequence of that repeal,

²² ~~Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC (OJ L 326, 11.12.2015, p. 1).~~

²³ Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules (OJ L 328, 18.12.2019, p. 7).

²⁴ ~~Regulation (EU) 2023/988 of the European Parliament and of the Council of 10 May 2023 on general product safety, amending Regulation (EU) No 1025/2012 of the European Parliament and of the Council and Directive (EU) 2020/1828 of the European Parliament and the Council **of 25 November 2020 on representative actions for the protection of the collective interests of consumers (OJ L 409, 4.12.2020, p.1)**, and repealing Directive 2001/95/EC of the European Parliament and of the Council and Council Directive 87/357/EEC (OJ L 135, 23.5.2023, p. 1).~~

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2013/11/EU

Directive 2013/11/EU is amended as follows:

(1-) In Article 2, paragraph 1 is replaced by the following:

‘1. This Directive shall apply to procedures for the out-of-court resolution of **domestic and cross-border** disputes between **a trader established in the Union and a consumer** consumers resident in the Union ~~and a traders offering goods or services, including digital content and digital services, to those consumers,~~ 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 ~~concerning~~ **where** ~~one of the following:~~

- (a) ~~contractual obligations stemming from sales contracts, including for the supply of digital content, or service contracts;~~ **a sales or service contract, including digital content and services contracts, is concluded between a consumer and a trader where the consumer pays or undertakes to pay the price, and where a dispute arises relating to pre-contractual and contractual obligations. This Directive shall also apply where the trader supplies or undertakes to supply digital content which is not supplied on a tangible medium or a digital service to the consumer and the consumer provides or undertakes to provide personal data to the trader. It shall not apply to cases falling under the exceptions provided for in Article 4(2)(b) of Directive (EU) 2019/2161.**

~~(b) consumer rights applicable to non-contractual and pre-contractual situations and provided in Union law concerning:~~

~~(i) unfair commercial practices and terms,~~

~~(ii) compulsory precontractual information,~~

~~(iii) non-discrimination on the basis of nationality or place of residence,~~

~~(iv) access to services and deliveries,~~

~~(v) remedies in case of non-conformity of products and digital content,~~

~~(vi) right to switch providers, and~~

~~(vii) passenger and travellers' rights.~~

~~Member States may apply the ADR procedures set out in this Directive, also to categories of disputes other than those listed the first subparagraph, point (b).'~~

(1a) In Article 2 the following paragraph (5) is added:

'5. This Directive acknowledges the competence of Member States to determine whether ADR entities established on their territories are competent for disputes between a consumer residing in the Union and a trader established outside of the Union.'

(2-) In Article 4(1) points (e) and (f) are replaced replaced by the following **is amended as follows:**

(a) points (c), (d), (e) and (f) are replaced by the following:

‘(c) ‘sales contract’ means any contract under which the trader transfers or undertakes to transfer ownership of goods to the consumer, including any contract having as its object both goods and services;

(ca) ‘goods’ means any good as defined in point (5) of Article 2 of Directive (EU) 2019/771;

(cb) ‘digital content’ means digital content as defined in point (1) of Article 2 of Directive (EU) 2019/770;

(d) ‘service contract’ means any contract other than a sales contract under which the trader supplies or undertakes to supply a service, including a digital service, to the consumer;

(da) ‘digital service’ means a digital service as defined in point (2) of Article 2 of Directive (EU) 2019/770;

(e) ‘domestic dispute’ means a dispute between a consumer and a trader, related to contractual obligations and/or consumer rights provided in in Union law as referred to in article Article 2(1), where, **at the time the consumer orders the goods or services,** the consumer is resident in the same Member State as that in which the trader is established;

(f) ‘cross-border dispute’ means a dispute between a consumer and a trader, related to contractual obligations ~~and/or consumer rights provided in Union law as referred to in article Article 2(1), 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 ~~or where the consumer is resident in a Member State and the trader is established outside of the Union;~~’.

~~(3-)~~ Article 5 is amended as follows:

(a) ~~paragraph 1 is replaced by the following:~~

~~‘1. Member States shall facilitate access by consumers to ADR procedures and shall ensure that disputes covered by this Directive and which involve a trader established on their respective territories, or a trader not established in the territory of any Member State but offering goods or services, including digital content and digital services, to consumers residing in their respective territories, can be submitted to an ADR entity which complies with the requirements set out in this Directive.’;~~

(b) ~~in paragraph 2, points (a) to (d) are~~ **is** replaced by the following:

2. Member States shall ensure that ADR entities:

(a) ~~ensure that consumers can~~ **maintain an up-to-date website which provides the parties with easy access to information concerning the ADR procedure, and which enables consumers to** submit complaints and the requisite supporting documents online in a traceable manner ~~and ensure that consumers may also submit and access these documents in a non-digital format upon request;~~

(b) **enable consumers to choose whether to submit complaints and other supporting documents and to access ADR in a digital or a non-digital format. When ADR entities offer digital ADR procedures, they shall do so** through easily accessible and inclusive tools;

(ba) in cases other than high-risk systems in the meaning of point 8(a) Annex III of the AI Act, inform the parties to the dispute in advance in a clear, comprehensible and easily accessible way about the nature, the role and the potential risks of automated means when they are used in the ADR decision-making process;

(c) grant the right to the parties to the dispute to request that the outcome of the ADR procedure be reviewed by a natural person **from the ADR entity meeting the requirements of article 6(1), when automated means were used** ~~the procedure in the ADR decision-making process~~ was carried out by automated means;

(ca) inform the parties to the dispute of their right under point (c);

(d) may bundle similar cases against one specific trader into one procedure, under condition that the consumer concerned is informed and does not object to that, **the conditions defined by the Member States;**

(e) accept domestic and cross-border disputes; and

(f) when dealing with disputes covered by this Directive, take the necessary measures to ensure that the processing of personal data complies with the rules on the protection of personal data laid down in Regulation (EU) 2016/679 of the European Parliament and of the Council²⁵;

(c) in paragraph 4, point (a) is replaced by the following:

‘(a) the consumer did not attempt to contact the trader concerned in order to discuss the complaint and seek, as a first step, to resolve the matter directly with the trader, without introducing disproportionate rules about the format **and substance** of such contact’;

²⁵ **Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).**

(d) the following paragraph 8 is added:

‘8. Member States shall ensure that traders established in their territories that are contacted by an ADR entity from their country ~~or from another Member State~~, inform that ADR entity whether, or not, they accept to participate in the proposed procedure ~~and reply within a reasonable period of time that shall not exceed 20 working days~~. **If a trader does not reply to the ADR entity within a reasonable period of time that shall not exceed 20 working days, ADR entities shall have the right to presume that the trader has refused to participate in the procedure. The consequences of the failure to reply shall be set out in the national legislation. In the case of complex disputes or in exceptional circumstances, the relevant ADR entity may extend that time period, which cannot, however, exceed 40 working days. The consumer shall be informed by the ADR entity if the time period is extended.**

The first subparagraph shall not apply where the trader’s participation is mandatory, or ADR outcomes can be reached without the trader’s consent to participate, or where the trader has already committed contractually to use ADR entities to resolve disputes with consumers. In any event, if trader participation is not mandatory, the ADR entity shall at least contact and invite the trader to participate.’

~~(4-)~~ Article 7, paragraph 2 is amended as follows:

(a) in the introductory phrase, the first sentence is replaced by the following:

‘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, ~~biennial~~ activity reports **at least every 2 years.**’

(b) point (h) is deleted.

~~(5-)~~ ~~In article Article 13, paragraph 3 is deleted.~~ **is amended as follows:**

(a) paragraph 3 is replaced by the following:

‘3. Member States shall ensure that, in cases where a dispute between a consumer and a trader established in their territories could not be resolved further to a complaint submitted directly by the consumer to the trader, the trader is required to provide the consumer with the information referred to in paragraph 1.’

(6-) Article 14 is replaced by the following:

Article 14

Assistance ~~for consumers~~ in cross-border disputes

1. Member States shall ensure that, with regard to cross-border disputes, consumers and traders are able to obtain assistance to access the ADR entity or entities competent to deal with their cross-border dispute.

2. Each Member State shall designate an ADR contact point in charge of the task referred to in paragraph 1 **and** ~~Each Member State shall~~ communicate the name and contact details of its ADR contact point to the Commission. Member States shall confer responsibility for the operation of the ADR contact points on their centre belonging to the European Consumer Centres Network, or, if not possible, on consumer organisations or on any other body dealing with consumer protection.

3. **Member States shall ensure that** ~~The~~ **the** ADR contact points shall facilitate, **upon request**, communication between the parties and the competent ADR entity, which ~~may~~ includes **at least the following tasks**, in particular:

- (a) ~~assisting with the submission of the complaint and, where appropriate, providing relevant documentation~~ **information concerning the submission of the complaint and the competent ADR entity;**
- (b) providing the parties ~~and ADR entities~~ with general information on EU consumer rights;
- (c) providing the parties with explanations on the procedural rules applied by the specific ADR entities;
- (d) informing the complainant party of other means of redress when a dispute cannot be resolved through an ADR procedure.

4. ~~Member States may grant ADR contact points the right to provide assistance referred to in this Article to consumers and traders when accessing ADR entities also with regard to domestic disputes.~~

5. Member States shall ensure that any actors assisting consumers in cross-border or domestic disputes, ~~act in good faith to allow parties to the dispute to reach an amicable settlement and provide relevant~~ **clear** information to consumers in full transparency, including information regarding procedural rules and any applicable fees.?

(6a) In article 17, paragraph 3 is replaced by the following:

‘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 Regulation (EU) 2016/679.’

~~(7-)~~ In Article 19(3), points (f), ~~(g)~~ and (h) are deleted.

~~(8-)~~ In Article 20, the following paragraph is **amended as follows** added:

(a) in paragraph 6 the first sentence is amended as follows:

‘6. By 9 July 2018, and by 1 November every four years thereafter, each competent authority shall publish and send to the Commission a report on the development and functioning of ADR entities.’;

(b) the following paragraphs are added:

‘8. By [3 months after the entry into force of this Directive], The ~~the~~ Commission shall develop and maintain a digital interactive tool that provides general information on consumer redress and links to **information on consumer rights. The tool shall also host the list of the ADR entities in accordance with paragraph 4 of this Article, and of the ADR contact points notified under Article 14(2) of this Directive, including the links to the webpages of the ADR entities notified to it in accordance with paragraph 2 of this Article relevant websites. The Commission shall thereafter promote this interactive tool and ensure its technical maintenance, including the availability of the machine translation to the ADR entities and ADR contact points free of charge.**

9. The Commission shall create a network of ADR contact points.’

(9-) In article 24, the following paragraph 4 is added:

‘4. By [*insert date*] Member States shall communicate to the Commission the names and contact details of the ADR contact points designated in accordance with Article 14(2).’

Article 2

Amendment to Directive (EU) 2015/2302

In Article 7(2) of Directive (EU) 2015/2302, point (g) is replaced by the following:

‘(g) information on available in-house complaint handling procedures and on alternative dispute resolution (‘ADR’) mechanisms pursuant to Directive 2013/11/EU of the European Parliament and of the Council²⁶ and, where applicable, on the ADR entity by which the trader is covered;’.

Article 3

Amendment to Directive (EU) 2019/2161

In Article 5 of Directive (EU) 2019/2161, point (b) is replaced by the following:

‘(b) submit a complaint to the competent centre of the European Consumer Centres Network, depending on the parties involved.’.

Article 4

Amendment to Directive (EU) 2020/1828

In Annex I to Directive (EU) 2020/1828, point (44) is deleted.

²⁶ Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 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 165, 18.6.2013, p. 63).’

Article 5
Transposition

1. By [*dd/month/year - ~~1 year~~ **2 years** after entry into force*], Member States shall adopt and publish the measures necessary to comply with Article 1 of this Directive. They shall immediately inform the Commission thereof.

They shall apply those measures from [date ***- 3 years after entry into force***].

2. By [*dd/month/year... ~~1 year~~ **2 years** after entry into force of Regulation xx/.... [the proposal for a Regulation of the European Parliament and of the Council repealing Regulation (EU) No 524/2013 on online dispute resolution for consumers]*], Member States shall adopt and publish the measures necessary to comply with Articles 2, 3 and 4 of this Directive. They shall immediately inform the Commission thereof.

They shall apply those measures from [*insert date - 3 years after entry into force*].

3. When Member States adopt the measures referred to in paragraphs 1 and 2, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.
4. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive.

Article 6
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 7
Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament

For the Council

The President

The President