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**PROPOSAL**

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Delegations will find attached a proposal from the Commission, submitted under a covering letter from Mr Jordi AYET PUIGARNAU, Director, to Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union.

Encl.: COM(2011) 794



EUROPEAN COMMISSION

Brussels, 29.11.2011  
COM(2011) 794 final

2011/0374 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on online dispute resolution for consumer disputes (Regulation on consumer ODR)**

{SEC(2011) 1408}

{SEC(2011) 1409}

## **EXPLANATORY MEMORANDUM**

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

The present proposal, together with the proposal for a Directive on alternative dispute resolution for consumer disputes ("Directive on consumer ADR"), is to be seen in the context of efforts to improve the functioning of the retail Internal Market, in particular by enhancing consumer redress linked to cross-border e-commerce transactions.

At present, the offer of ADR schemes to resolve consumer disputes related to e-commerce transactions is scattered and incomplete. In addition, while half the existing ADR schemes offer consumers the possibility of submitting their complaint online, very few offer consumers the possibility of conducting the entire procedure online (via online dispute resolution – ODR)<sup>1</sup>. Handling the entire process online would produce time savings and ease communication between the parties.

With the development of e-commerce, the scope and size of markets in which businesses and consumers operate have grown significantly and extend beyond national borders. Consumers as well as traders, however, perceive it as risky to engage in cross-border e-commerce transactions because they fear that relevant disputes might not easily be resolved due to the virtual character of the transaction.

The lack of effective redress for complaints resulting from cross-border online transactions has adverse consequences both for consumers and businesses. Consumers lose out by not being able to shop online across borders; they thus miss the opportunity of comparing the costs of products in the wider EU market and of buying them where they are less expensive. Businesses, in particular small and medium-sized enterprises, are deterred from acquiring the administrative capacity needed to deal with disputes with consumers residing in another Member State. This hinders the development of the digital Internal Market.

The Europe 2020 flagship initiative "Digital Agenda for Europe"<sup>2</sup> announced an EU strategy to improve ADR systems, indicating that the Commission will "*propose an EU-wide online redress tool for e-commerce*" to boost consumer and business confidence in the digital market. The 2011 Single Market Act<sup>3</sup> included amongst its key priorities the establishment of "*simple, fast and affordable out-of-court settlement procedures for consumers and protect relations between businesses and their customers. This action will also include an electronic commerce dimension*".

In view of the problems identified, the proposed Regulation aims at establishing an EU-wide ODR system that will facilitate the resolution of disputes related to the cross-border online sale of goods or provision of services between a trader and a consumer.

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<sup>1</sup> The 2010 report of the European Consumer Centre's Network indicates that more than half of complaints (56.3%) received by the ECC-Net were linked to e-commerce transactions. However, out of the 35.000 cross border complaints received by ECC network in 2010, 91% could not be referred to an ADR scheme in another Member State as no suitable ADR scheme existed ([http://ec.europa.eu/consumers/ecc/docs/2010\\_annual\\_report\\_ecc\\_en.pdf](http://ec.europa.eu/consumers/ecc/docs/2010_annual_report_ecc_en.pdf)).

<sup>2</sup> Europe 2020 flagship initiative: "A Digital Agenda for Europe", COM (2010) 245, p. 13.

<sup>3</sup> Commission Communication "Single Market Act" COM (2011) 206, p.9.

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

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

Several studies conducted by the Commission on consumer ADR addressed issues linked to online dispute resolution tools. These include the 2009 “*Study on the use of Alternative Dispute resolution in the European Union*” carrying out an in-depth analysis of existing ADR schemes and their functioning in all Member States, the study on consumer redress in the EU<sup>4</sup>, the “*Assessment of the compliance costs including administrative costs/burdens on businesses linked to the use of Alternative Dispute Resolution (ADR)*” (2011) and the study on “*Cross-border ADR in the European Union*” (2011).

The public consultation on the use of ADR launched in January 2011 also addressed issues related to ODR and how best to ensure consumer redress in cross-border e-commerce transactions<sup>5</sup>. A large measure of support emerged on the need to improve ODR tools, in particular for e-commerce transactions, where there is an increasing number of complaints especially for low-value cases. In particular, it was underlined the need to tackle the language issue and to provide adequate information to the parties on the process and its outcome. A vast majority of respondents drew attention to the need to build on positive experiences that exist in specific sectors.

The debate held at the summit on “Alternative Dispute Resolution for Internal Market and consumers” organised jointly by the Commission services and the European Parliament in March 2011, showed general support for the development of ODR tools for consumer disputes through EU action in order to provide clarity on the conditions and to ensure high quality ADR schemes for e-commerce in all sectors. The workshop on “ADR: how to make it work better?”, organised within the European Consumer Summit of April 2011<sup>6</sup>, dealt with issues linked to online dispute resolution.

Finally, the European Data Protection Supervisor (EDPS) was also consulted.

### 2.2. Impact assessment

The Commission has carried out a detailed impact assessment (IA), analysing a range of policy options for both “*ADR coverage, information and quality*” and “*ODR for cross-border e-commerce transactions*”.

The IA concluded that only a combination of two instruments on ADR and ODR can ensure access to impartial, transparent and effective means to resolve consumer disputes linked to cross-border e-commerce transactions out-of-court. In particular, a Regulation will establish an EU-wide ODR system, which can effectively deal with disputes related to cross-border e-commerce transactions on the basis of the full coverage of quality ADR schemes to be achieved in accordance with the Directive on consumer ADR.

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<sup>4</sup> “Consumer redress in the European Union: consumers' experiences, perceptions and opinions”, 2009 [http://ec.europa.eu/consumers/redress\\_cons/docs/cons\\_redress\\_EU\\_qual\\_study\\_report\\_en.pdf](http://ec.europa.eu/consumers/redress_cons/docs/cons_redress_EU_qual_study_report_en.pdf)

<sup>5</sup> Public consultation on the use of alternative dispute resolution (ADR) as a means to resolve disputes related to commercial transactions and practices in the EU. Replies and feedback statement available at: [http://ec.europa.eu/consumers/redress\\_cons/adr\\_en.htm](http://ec.europa.eu/consumers/redress_cons/adr_en.htm)

<sup>6</sup> [http://www.european-consumer-summit.eu/workshops3\\_en.asp](http://www.european-consumer-summit.eu/workshops3_en.asp)

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

#### **3.1. The functioning of the EU-wide online dispute resolution system**

##### *3.1.1. Establishment of the European online dispute resolution System*

The present proposal aims at establishing a European online dispute resolution platform ("ODR platform"). This ODR platform takes the form of an interactive website which offers a single point of entry to consumers and traders who seek to resolve out-of-court a dispute which has arisen from a cross-border e-commerce transaction. The platform can be accessed in all official languages of the EU and its use is free of charge. ADR schemes established in the Member States which have been notified to the Commission in accordance with the "Directive on consumer ADR" will be registered electronically with the ODR platform.

Consumers and traders will be able to submit their complaints through an electronic complaint form which will be available on the platform's website in all official languages of the EU. The platform will check if a complaint can be processed and seek the agreement of the parties to transmit it to the ADR scheme which is competent to deal with the dispute. The competent ADR scheme will seek the resolution of the dispute in accordance with its own rules of procedure within 30 days from the date of receipt of the complaint. The ADR scheme will have to notify to the platform some data in relation to the development of the dispute (date when the complaint was notified to the parties; date when the dispute was resolved; outcome of the dispute).

Under the proposal, a network of online dispute resolution facilitators ("ODR facilitators' network") will be established which will consist of one contact point for online dispute resolution in each Member State. The ODR facilitators' network will provide support to the resolution of disputes submitted via the ODR platform.

##### *3.1.2. Information on the EU-wide ODR system*

The present proposal requires traders established within the EU that engage in cross-border e-commerce to inform consumers about the ODR platform. This information shall be made easily, directly, prominently and permanently accessible on the traders' websites as well as when the consumer submit a complaint to the trader.

##### *3.1.3. Monitoring*

An annual activity report will be drawn up on the operation of the platform. The compliance by ADR schemes with the obligations set out in this Regulation will be monitored by the competent authorities to be established in the Member States in accordance with the Directive on consumer ADR. Every three years the Commission will report to the European Parliament and the Council on the application of the Regulation.

##### *3.1.4. Data Protection rules*

The data entered in the ODR platform by the parties and the ADR schemes will be stored in a database and will be subject to the relevant legislation on data protection.

### **3.2. Subsidiarity principle**

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

The development of an EU-wide ODR system for cross-border online disputes, built on existing ADR schemes in the Member States and respecting their respective rules of procedure, will strengthen confidence in the retail digital Internal Market and will open up new opportunities for businesses.

Despite the currently low level of cross-border e-commerce transactions, there is a rapidly expanding digital retail market within the Member States. Thus, ensuring simple, low-cost and effective means of out-of-court redress is needed to strengthen consumers' and traders' confidence in online transactions across borders.

Action at EU level is necessary to establish an EU-wide ODR platform which is an essential tool for promoting e-commerce. It is also imperative to provide European consumers with the same level of protection and promote competitive practices amongst businesses, thus increasing the exchange of products and services online and across borders.

### **3.3. Proportionality**

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

The proposal intends to put in place the most effective means of achieving the pursued objective at the lowest comparative costs. Instead of creating a completely new structure at EU level, the intended regulatory approach is based on existing national ADR schemes which comply with the requirements set out in relevant Union legislation.

The proposed Regulation will thus ensure full coverage in quality ADR services for cross-border online disputes while the implementation costs will be limited to what the proposal adds to the existing ADR structures at national level.

The proposed rules have been subject to a proportionality test and intensive consultation to ensure appropriate and proportionate regulation.

## **4. BUDGETARY IMPLICATION**

This action is part of the Consumer programme 2014-2020.<sup>7</sup> The budgetary impact will be addressed by redeployment for the years 2012 and 2013. The financial appropriations for implementing this proposal from 2012 to 2020 will amount to EUR 4,586 million in current prices. The human resources required will be met by staff from the Directorate General who are already assigned to the management of the action and have been redeployed within the Directorate General, together if necessary with any additional allocation which may be granted to the managing Directorate General under the annual allocation procedure and in the light of budgetary constraints. A financial statement is attached to the proposal.

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<sup>7</sup> Proposal for a Regulation of the European Parliament and of the Council on a consumer programme 2014-2020, SEC(2011) 1320 final and SEC(2011) 1321 final.

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on online dispute resolution for consumer disputes (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<sup>8</sup>,

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<sup>9</sup>, the Commission has identified legislation on alternative dispute resolution which includes an electronic commerce dimension as one of the twelve levers to boost growth and strengthen confidence in the Single Market.
- (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.<sup>10</sup>

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<sup>8</sup> OJ C , , p. .

<sup>9</sup> Commission Communication "Single Market Act" COM (2011) 206, p.9.

- (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 in a digital environment.
- (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 and low-cost out-of-court solution to disputes arising from cross-border 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 to cross-border online transactions, creates an uneven playing field for traders and thus hampers the development of electronic commerce.
- (8) This Regulation should apply to the out-of-court resolution of contractual disputes between consumers and traders that arise from the online sale of goods or provision of services by traders across borders. It should not apply to disputes between consumers and traders that arise from the online sale of goods or provision of services if at least one of them is not established or resident in a Member State of the Union at the time when the consumer orders such goods or services or the trader and the consumer are established or resident in the same Member State.
- (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 matters<sup>11</sup>, Regulation (EC) No 44/2001 of the Council of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters<sup>12</sup>, Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (“Rome II”)<sup>13</sup> and Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (“Rome I”)<sup>14</sup>.
- (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.

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

<sup>11</sup> OJ L 136, 24.5.2008, p. 3.

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

<sup>13</sup> OJ L 199, 31.7.2007, p. 40.

<sup>14</sup> OJ L 177, 4.7.2008, p. 6.

- (11) The definition of 'online sale of goods or provision of services' should cover a transaction for the online sale of goods or provision of services 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 the cross-border sale of goods or provision of services offline. This Regulation should not apply 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)<sup>15</sup> 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.
- (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 a cross-border e-commerce transaction. 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 transmit complaints to an alternative dispute resolution ('ADR') entity competent to deal with the dispute concerned. The platform should offer to ADR entities and the parties the possibility of conducting the dispute resolution procedure via the platform.
- (15) An ODR system 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 is accomplished expeditiously.
- (16) Ensuring that all ADR entities notified to the Commission in accordance with Article 17(2) of Directive .../.../EU [= Directive on consumer ADR] *Office of Publications insert reference number* are linked electronically to the European ODR platform should allow the full coverage in out-of-court redress online for cross-border disputes arising from the online sale of goods or provision of services.
- (17) This Regulation does not prevent the functioning of any existing online dispute resolution entity operating within the Union. It should not prevent ADR entities from dealing with cross-border online disputes which have been submitted to them by a means other than the ODR platform.

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<sup>15</sup> OJ L ..., ..., p. ....

- (18) A network of online dispute resolution facilitators should provide support to the resolution of disputes relating to complaints submitted via the ODR platform. That network should be composed of contact points for ODR in the Member States which host online dispute resolution facilitators.
- (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 cannot 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 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 data<sup>16</sup> 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 data<sup>17</sup>. 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 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.
- (22) Traders should inform consumers on their websites about the ODR platform and provide an electronic link to its homepage. They should also provide such information when a consumer submits a complaint to the trader, a consumer complaint handling system operated by the trader or a company ombudsman. 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<sup>18</sup>. Article 6(1)(t) of Directive 2011/83/EU stipulates for consumer contracts concluded at a distance or off premises that the trader has to inform the consumer about the possibility of having recourse to an out-of-court

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<sup>16</sup> OJ L 281, 23.11.1995, p. 31.

<sup>17</sup> OJ L 8, 12.1.2001, p. 1.

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

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.

- (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 facilitators' 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 facilitators of the network of online dispute resolution facilitators.
- (25) Since the objectives of this Regulation, namely to set up a European online dispute resolution platform for cross-border online disputes governed by common rules, because of the scale and effects of the action, cannot be sufficiently achieved by the Member States and 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 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 to contribute to the functioning of the internal market, and in particular its digital dimension, and to the achievement of a high level of consumer

protection by providing a platform facilitating the impartial, transparent, effective and fair out-of-court resolution of disputes between consumers and traders online.

*Article 2*  
*Scope*

This Regulation shall apply to the out-of-court resolution of contractual disputes arising from the cross-border online sale of goods or provision of services between consumers and traders through the intervention of an alternative dispute resolution entity complying with Directive [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)] and involving the use of a European online dispute resolution platform.

*Article 3*  
*Relationship with other Union legislation*

This Regulation is without prejudice to Directive 2008/52/EC, Regulation (EC) No 44/2001, Regulation (EC) No 864/2007 and Regulation (EC) No 593/2008.

*Article 4*  
*Definitions*

For the purposes of this Regulation:

- (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) "online sale of goods or provision of services" means a transaction for the sale of goods or provision of services 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;
- (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.

The following shall not be regarded as services provided by electronic means:

- off-line services;
- services having material content even though provided via electronic devices such as automatic cash or ticket dispensing machines (banknotes, rail tickets),

access to road networks, car parks, charging for use, even if there are electronic devices at the entrance or exit controlling access and/or ensuring correct payment is made;

- services which are not provided via electronic processing/inventory systems such as voice telephony services, telefax or telex services, services provided via voice telephony or fax; telephone or telefax consultation of a doctor; telephone or telefax consultation of a lawyer; telephone or telefax direct marketing.
- (e) "cross-border online sale of goods or provision of services" means an online sale of goods or provision of services where, at the time the consumer orders such goods or services, the consumer is resident in a Member State other than the Member State where the trader is established;
- (f) 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 principal place of business or, if the trader's offer is made or if the goods or services ordered are to be delivered out of the operations of a branch, agency or other establishment, where that branch, agency or other establishment is situated;
- (g) "alternative dispute resolution procedure" (hereinafter "ADR procedure") means a procedure for the out-of-court resolution of a dispute through the intervention of a dispute resolution entity which proposes or imposes a solution or brings the parties together with the aim of facilitating an amicable solution;

Procedures before dispute resolution entities where the natural persons in charge of dispute resolution are employed exclusively by the trader, procedures before consumer complaint handling systems operated by the trader, direct negotiation between the consumer and the trader, whether represented or not, and attempts made by a judge to settle a dispute in the course of a judicial proceeding concerning that dispute shall not be regarded as ADR procedures;

- (h) "alternative dispute resolution entity", (hereinafter "ADR entity") means an entity covered by Article 4(e) of Directive [Office of Publications 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)] which has been communicated to the Commission in accordance with Article 17(2) of that Directive;
- (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;
- (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 establish a European online dispute resolution platform, (hereinafter ‘ODR platform’).
2. The ODR platform shall be an interactive website which can be accessed electronically and free of charge in all official languages of the Union. The ODR platform shall be a single point of entry to consumers and traders seeking the out-of-court resolution of disputes covered by this Regulation.
3. The ODR platform shall have the following functions:
  - (a) providing an electronic complaint form which can be filled in by the complainant party;
  - (b) proposing, based on the information contained in the electronic complaint form, one or more competent ADR entities to the parties and providing information on their fees, if applicable, the language or languages in which the procedure will be conducted, the approximate length of the procedures or informing the complainant party that based on the information submitted, no competent ADR entity could be identified;
  - (c) referring complaints to the ADR entity which the parties have agreed to use;
  - (d) enabling the parties and the ADR entity to conduct the dispute resolution procedure online;
  - (e) providing an electronic form by means of which ADR entities shall transmit the information referred to in Article 9(c);
  - (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 dispute.
  - (g) publishing information on 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)*] which deal with disputes covered by this Regulation;

- (h) providing general information on alternative dispute resolution as a means of out-of-court dispute settlement;
  - (i) making accessible statistics on the outcome of the disputes handled by the ADR entities to which complaints have been transmitted via the ODR platform.
4. Alternative dispute resolution entities which have been 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)*] and which, according to the elements necessary to establish their competence, as notified pursuant to Article 16(1)(g) 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)*], which, based on the information contained in the electronic complaint form referred to in point (a) of paragraph 3, are competent to deal with disputes covered by this Regulation, shall register electronically with the ODR platform.
5. The Commission shall be responsible for the ODR platform as regards its development, its operation, its maintenance and as regards data security.
6. The Commission shall adopt measures concerning the modalities for the exercise of the functions provided for in paragraph 3 through implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 15(3).

#### *Article 6*

##### *Network of online dispute resolution facilitators*

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 facilitators (hereinafter 'ODR facilitators').
2. The ODR facilitators shall provide support to the resolution of disputes relating to complaints submitted via the platform by fulfilling the following functions:
- (a) if necessary, facilitating communication between the parties and the competent ADR entity;
  - (b) informing consumers of other means of redress when a dispute cannot be resolved via the platform, for example when the trader fails to agree to the use of ADR;

- (c) submitting, based on the practical experience gained from the performance of their functions, an annual activity report to the Commission and to the Member States;
  - (d) informing the parties of the advantages and disadvantages of the procedures applied by the proposed ADR entities.
3. The Commission shall establish a network of online dispute resolution facilitators (hereinafter the 'ODR facilitators' network') which shall enable cooperation between ODR facilitators and contribute to the performance of the functions set out in paragraph 2.
  4. The Commission shall at least once every year convene a meeting of members of the ODR facilitators' 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 facilitators 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 which shall be available on the platform's website. The complainant party may attach to the complaint form any documents in electronic form in support of his complaint.
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.
3. The ODR platform shall provide the parties with information about the ADR entity or entities identified by the ODR platform as competent; if more than one option is available, the ODR facilitators of the Member States concerned shall provide the parties with details of the various entities so identified and advise them of the advantages and disadvantages of the procedures applied by each of these entities in order to enable the parties to make an informed choice.
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 platform shall be processed if the complaint form is fully completed.
2. Upon receipt of a fully completed complaint form, the ODR platform shall communicate to the complainant party, in the language of the complaint, and send by e-mail to the respondent party, in the language of the contract, the following:
  - (a) the information that the parties have to agree on one competent ADR entity in order for the complaint to be transmitted to it;
  - (b) the information that in the event that the parties fail to agree on one competent ADR entity or that no competent ADR entity is identified, the complaint shall not be processed further;
  - (c) a list of all competent ADR entities, if any are identified;
  - (d) the name and contact details of the ODR contact point in the place of residence for the consumer and in the place of establishment for the trader, as well as a brief description of the functions referred to in Article 6(2)(a), (b) and (d).
  - (e) an invitation to the consumer to select one or more ADR entities from the list provided, specifying that there is no obligation on the consumer to make such a selection;
  - (f) an invitation to the trader to select one or more ADR entities from the list provided, in the event that none of those entities correspond to an entity the trader 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)];
  - (g) the information that in the event that the consumer chooses an ADR entity the trader 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)], the platform shall automatically transmit the complaint to that ADR entity.

3. The communication referred to in paragraph 2 shall include a description of the following characteristics of each entity:
  - (a) their fees, if applicable;
  - (b) the language or languages in which the procedure will be conducted;
  - (c) the approximate length of the procedure;
  - (d) the need for the physical presence of the parties or of their representatives, if applicable;
  - (e) the binding or non-binding nature of the outcome of the procedure.
4. Where the parties fail to reply to the platform or to agree on one competent ADR entity, the complaint shall not be processed further. The consumer shall be informed of the possibility of contacting an ODR facilitator for information on other means of redress.
5. Where the choice of the consumer corresponds to an ADR entity the trader 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)] or where the parties choose the same ADR entity in their replies, the platform shall automatically transmit the complaint to that ADR entity.
6. In the event that the parties agree on more than one ADR entity, the consumer shall be requested to select one of the ADR entities agreed upon. The platform shall automatically transmit the complaint to that ADR entity.

*Article 9*  
*Resolution of the dispute*

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

- (a) without delay notify the parties of the dispute and inform them of their rules of procedure and of the fees applicable to the resolution of the dispute concerned;
- (b) if, following the notification of the dispute to the parties, the parties agree to institute proceedings before the entity, accomplish the conclusion of the dispute resolution procedure within 30 days from when the proceedings have been instituted. In the case of complex disputes, the ADR entity may extend this time limit;
- (c) without delay transmit the following information to the ODR platform:
  - (i) date of receipt and subject-matter of the dispute;
  - (ii) date of notification of the dispute to the parties;

- (iii) date of conclusion and result of the procedure.

*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(3) and Article 9(c).

*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 facilitators for the purposes referred to in Article 6(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 platform in so far as it is necessary for the operation and maintenance of the platform, including for the purposes of monitoring the use of the platform by ADR entities and ODR facilitators.
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 facilitator 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 facilitator and each ADR entity shall be regarded as a controller, in accordance with Article 2(d) of Directive 95/46/EC, with respect to their own data processing activities under this Regulation and shall be responsible to ensure that these activities comply with data protection rules laid down in national legislation adopted pursuant to Directive 95/46/EC. 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 facilitators and ADR entities shall be subject to rules of professional secrecy or other equivalent duties of confidentiality laid down in national legislation.
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 the cross-border online sale of goods or provision of services shall inform consumers about the ODR platform and about their e-mail address. This information shall be made easily, directly, prominently and permanently accessible on the traders' websites and, if the offer is made by e-mail or another textual message transmitted by electronic means, in that message. It shall include an electronic link to the ODR platform's homepage. Traders shall also inform consumers about the ODR platform when the consumer submits a complaint to the trader, a consumer complaint handling system operated by the trader or to a company ombudsman.
2. The provisions in paragraph 1 are without prejudice to the provisions in Article 10 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)] concerning the information of consumers by traders about the ADR procedures by which those traders are covered and about whether or not those traders commit to use alternative dispute resolution procedures to resolve disputes with consumers.
3. The provisions in paragraph 1 are without prejudice to the provisions in Articles 6 and 8 of Directive 2011/83/EU concerning consumer information for distance and off-premises contracts.

*Article 14*  
*Monitoring*

The compliance by ADR entities with the obligations set in this Regulation shall be monitored by the competent authorities which have been established by Member States in accordance with Article 15(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 Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR)] .

## **CHAPTER III**

### **Final provisions**

#### *Article 15* *Implementing acts*

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. Where the opinion of the committee 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 17*  
*Reports*

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. The report shall be accompanied, if necessary, by proposals for adaptations to this Regulation.

*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), (4), (5) and (6), Article 6(1), (2) and (6), Article 7(4) and (5), Article 10, Article 15 and Article 16 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*  
*The President*

*For the Council*  
*The President*

## ANNEX

### *Information to be provided when filling in the electronic complaint form*

- (1) Name, address and, if applicable, e-mail and website address of the complainant party;
- (2) Whether the complainant party is a consumer or a trader;
- (3) Name, address and, if applicable, e-mail and website address of the respondent party;
- (4) Whether the respondent party is a consumer or a trader;
- (5) Type of goods or services to the sale or provision of which the complaint relates;
- (6) Grounds on which the complaint is based;
- (7) Consumer's place of residence at the time the goods or services were ordered;
- (8) Communication method by which the goods or services were offered and communication method by which the order was made;
- (9) If applicable, where the trader's offer was made or the goods or services delivered or supposed to be delivered out of the operations of a branch, agency or other establishment, the place where that branch, agency or other establishment is situated;
- (10) Language of the contract;
- (11) ADR entities the trader 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.

## LEGISLATIVE FINANCIAL STATEMENT FOR PROPOSALS

### 1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

#### 1.1. Title of the proposal/initiative

Regulation on online dispute resolution for consumer disputes. The budgetary impact will be addressed by redeployment for the years 2012 and 2013. The action is part of the Consumers 2020 program for the period 2014-2020.

#### 1.2. Policy area(s) concerned in the ABM/ABB structure<sup>19</sup>

Consumers

#### 1.3. Nature of the proposal/initiative

The proposal/initiative relates to **a new action**

The proposal/initiative relates to **a new action following a pilot project/preparatory action**<sup>20</sup>

The proposal/initiative relates to **the extension of an existing action**

The proposal/initiative relates to **an action redirected towards a new action**

#### 1.4. Objectives

##### 1.4.1. *The Commission's multiannual strategic objective(s) targeted by the proposal/initiative*

Within heading 1a "Competitiveness for Growth and Employment", the proposal aims at creating an EU-wide Online Dispute Resolution system for cross-border online disputes between consumers and traders.

##### 1.4.2. *Specific objective(s) and ABM/ABB activity(ies) concerned*

Specific objective No..

Creation of an EU-wide Online Dispute Resolution IT system for cross-border online disputes between consumers and traders.

ABM/ABB activity(ies) concerned

Consumers

##### 1.4.3. *Expected result(s) and impact*

*Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.*

Consumers and businesses across Europe will have a simple, quick and low cost means to solve disputes that arise after an online cross-border transaction. Consumers will be able to

<sup>19</sup> ABM: Activity-Based Management – ABB: Activity-Based Budgeting.  
<sup>20</sup> As referred to in Article 49(6)(a) or (b) of the Financial Regulation.

seek redress and get compensated, while businesses will maintain their businesses' reputation and avoid high litigation costs.

#### 1.4.4. *Indicators of results and impact*

*Specify the indicators for monitoring implementation of the proposal/initiative.*

- All ADR entities are to be linked to the ODR platform and use it when the ODR platform becomes operational at the beginning of 2015.
- Increase in the number of consumers who are willing to buy online from another Member State by 20% in 2020
- Increase in the number of businesses that are willing to sell online in other Member States by 10% in 2020.

### 1.5. **Grounds for the proposal/initiative**

#### 1.5.1. *Requirement(s) to be met in the short or long term*

Articles 114 and 169 of the Treaty on the Functioning of the European Union

Consumers and businesses will have a simple, quick and low cost way to resolve their disputes on cross-border online transactions using out-of-court online dispute resolution means.

#### 1.5.2. *Added value of EU involvement*

The lack of efficient means of resolving disputes affects consumers' confidence in shopping across borders. Both businesses and consumers clearly state that concerns about potential redress problems in another Member State discourage them from selling and buying across borders and thus from fully reaping the potential benefits of the Internal Market. This situation indicates that particular attention needs to be paid to generating the confidence of consumers in the Internal Market and to ensuring a level playing field for businesses across Member States.

Despite the low level of current cross-border e-commerce transactions, there is a rapidly increasing trend of the digital retail market within the Member States. Thus, ensuring simple, low-cost and effective means of out-of-court redress is even more important for consumers and traders in order to engage in online transactions across border. Any action at Member State level will not lead to the establishment of an EU-wide online dispute resolution which, as indicated in the Digital Agenda, is an essential tool to promote e-commerce.

The objectives pursued can be better achieved by measures at EU level by reason of its effects and scale. A clear advantage in the development of ODR at EU level is the effective and adequate treatment of consumer disputes linked to online cross-border transactions.

Consumers will have a quick, inexpensive and simple way at their disposal to settle their disputes with traders irrespective of the market sector and the amount at stake. A large part of consumers do not have a full trust in the digital Internal Market, despite the numerous benefits that it offers, such as access to a wider choice of products and services; in about half of the Member States more than half of the products searched for on the internet could

only be found online in another country. Finally, more effective ODR in the Internal Market will reduce consumer detriment (now accounting for 0.02% of EU GDP) and allow consumers to make significant savings in online transactions which can be used to purchase extra goods and services in the Internal Market. Moreover, traders will have equal possibilities in dealing with consumer disputes across the EU, thus ensuring a level playing field.

Unilateral actions at Member State level cannot sufficiently provide consumer and traders with the benefits mentioned above. On the contrary, uncoordinated efforts by Member States are likely to result in unequal treatment for consumers and traders in the Internal Market and create diverging levels of consumer redress in the EU. Action at EU level in this field is supported by the vast majority of stakeholders.

Boosting the confidence of market actors, businesses and citizens alike, is essential to improve Europe's competitiveness. A well functioning Single Market encompassing 500 million consumers, whose spending accounts for 56% of EU GDP, and more than 21 million businesses is the basis for delivering smart, sustainable and inclusive growth, in line with the objectives of the Europe 2020 Strategy.

### 1.5.3. *Lessons learned from similar experiences in the past*

There is currently no IT system at EU level that deals with the online resolution of disputes between consumers and traders regarding cross-border online transactions. However, a number of IT tools that connect various actors across the different Member States are already in place. The new IT tool will be based largely on those tools. The more relevant ones are the IMI IT-tool, the ECC IT-tool and the SOLVIT IT-tool.

### 1.5.4. *Coherence and possible synergy with other relevant instruments*

The Regulation on ODR is based on the proposal for a Directive on alternative dispute resolution for consumer disputes (Directive on consumer ADR).

## 1.6. **Duration and financial impact**

√ Proposal/initiative of **limited duration**

- √ Proposal/initiative in effect from 2012 to 2020.
- √ Financial impact from 2012 to 2020.

Proposal/initiative of **unlimited duration**

- Implementation with a start-up period from 2012 to 2014,
- followed by full-scale operation.

## 1.7. **Management mode(s) envisaged<sup>21</sup>**

√ **Centralised direct management** by the Commission

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<sup>21</sup> Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: [http://www.cc.cec/budg/man/budgmanag/budgmanag\\_en.html](http://www.cc.cec/budg/man/budgmanag/budgmanag_en.html)

- Centralised indirect management** with the delegation of implementation tasks to:
- executive agencies
  - bodies set up by the Communities<sup>22</sup>
  - national public-sector bodies/bodies with public-service mission
  - persons entrusted with the implementation of specific actions pursuant to Title V of the Treaty on European Union and identified in the relevant basic act within the meaning of Article 49 of the Financial Regulation
- Shared management** with the Member States
- Decentralised management** with third countries
- Joint management** with international organisations (*to be specified*)

*If more than one management mode is indicated, please provide details in the "Comments" section.*

Comments

No comments.

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<sup>22</sup> As referred to in Article 185 of the Financial Regulation.

## **2. MANAGEMENT MEASURES**

### **2.1. Monitoring and reporting rules**

*Specify frequency and conditions.*

Every three years and for the first time no later than five years after the entry into force of this Regulation the Commission will publish a report on the application of the Regulation. The report will be accompanied, if needed, by proposals for adaptations to the Regulation.

### **2.2. Management and control system**

#### *2.2.1. Risk(s) identified*

The budget implementation covers a feasibility study and the development of an IT platform for ODR. The main risks are the following:

The "Directive on alternative dispute resolution for consumer disputes (Directive on consumer ADR)" is the basis for the ODR Regulation, as the ODR platform will include the national Alternative Dispute Resolution systems that will be notified according to the Directive. Therefore, an incomplete or late transposition of the Directive on consumer ADR will affect the effective functioning of the EU Online Dispute Resolution system.

Even though the Commission runs a number of IT tools, the ODR platform will be one of the tools with the biggest number of actors connected and with applications that will allow a tailored approach to the needs of its actors. Technical difficulties that delay the development of the platform are a possible risk.

#### *2.2.2. Control method(s) envisaged*

The budget will be implemented by centralised direct management.

The Commission will monitor the analysis, programming and testing phase of the development of the IT tool. The Unit responsible for Information Systems in DG SANCO has wide experience in managing IT tools (e.g. ECC tool, CPCS, RAPEX), some of which present similarities to the ODR platform (the ECC tool). This past experience will allow the timely and effective reaction to possible problems. In addition, the feasibility study that will be carried out in 2012 will help identify possible risks and technical difficulties, thus enabling the smooth development of the ODR platform. DIGIT and DGT will be also consulted for certain technical aspects (e.g. automatic translation machine).

### **2.3. Measures to prevent fraud and irregularities**

*Specify existing or envisaged prevention and protection measures.*

In addition to the application of all regulatory control mechanisms, DG SANCO will devise an anti-fraud strategy in line with the Commission's new anti-fraud strategy (CAFS) adopted on 24 June 2011 in order to ensure *inter alia* that its internal anti-fraud related controls are fully aligned with the CASF and that its fraud risk management approach is geared to identify fraud risk areas and adequate responses.

The Commission respects the provisions of the financial regulation to conduct the procurement of the IT hard-, software and related services; for all contracts signed the provisions relating to audits and checks by Court of Auditors and OLAF apply.

### 3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

#### 3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing expenditure budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [Description.....]	Diff./non-diff (23)	from EFTA <sup>24</sup> countries	from candidate countries <sup>25</sup>	from third countries	within the meaning of Article 18(1)(aa) of the Financial Regulation
1A	17.020200	Diff.	YES	NO	NO	NO

- New budget lines requested: Not Applicable

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [Heading.....]	Diff./non-diff.	from EFTA countries	from candidate countries	from third countries	within the meaning of Article 18(1)(aa) of the Financial Regulation
	[XX.YY.YY.YY]		YES/ NO	YES/ NO	YES/ NO	YES/ NO

<sup>23</sup> Diff. = Differentiated appropriations / Non-Diff. = Non-differentiated appropriations.

<sup>24</sup> EFTA: European Free Trade Association.

<sup>25</sup> Candidate countries and, where applicable, potential candidate countries from the Western Balkans.

### 3.2. Estimated impact on expenditure

#### 3.2.1. Summary of estimated impact on expenditure

EUR million (to 3 decimal places)

<b>Heading of multiannual financial framework:</b>		Number 3	Competitiveness for Growth and Employment									
			Year 2012	Year 2013	Year 2014	Year 2015	Year 2016	Year 2017	Year 2018	Year 2019	Year 2020	TOTAL
• Operational appropriations												
Number of budget line: 17.020200			0,150	1,000	1,000	0,300	0,300	0,300	0,300	0,300	0,300	3,95
		Commitments	(1)									
		Payments	(2)	1,000	1,000	0,300	0,300	0,300	0,300	0,300	0,300	3,95
Number of budget line		Commitments	(1a)									
		Payments	(2a)									
Appropriations of an administrative nature financed from the envelope for specific programmes <sup>26</sup>												
Number of budget line												
			(3)									
<b>TOTAL appropriations for DG Health and Consumers</b>		Commitments	=1+1a+3	1,000	1,000	0,300	0,300	0,300	0,300	0,300	0,300	3,95
		Payments	=2+2a+3	0,150	1,000	1,000	0,300	0,300	0,300	0,300	0,300	0,300

<sup>26</sup> Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former "BA" lines), indirect research, direct research.

• TOTAL operational appropriations	Commitments	(4)												
	Payments	(5)												
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)												
	TOTAL appropriations under HEADING <...> of the multiannual financial framework													
	Commitments	=4+6	0,150	1,0	1,0	0,3	0,3	0,3	0,3	0,3	0,3	0,3	0,3	3,95
	Payments	=5+6	0,150	1,0	1,0	0,3	0,3	0,3	0,3	0,3	0,3	0,3	0,3	3,95

**If more than one heading is affected by the proposal / initiative: Not Applicable**

• TOTAL operational appropriations	Commitments	(4)												
	Payments	(5)												
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)												
	TOTAL appropriations under HEADINGS 1 to 4 of the multiannual financial framework (Reference amount)													
	Commitments	=4+6												
	Payments	=5+6												







### 3.2.3. Estimated impact on appropriations of an administrative nature

#### 3.2.3.1. Summary

- √ The proposal/initiative does not require the use of administrative appropriations
- √ The proposal/initiative requires the use of administrative appropriations, as explained below:

EUR million (to 3 decimal places)

	Year 2012	Year 2013	Year 2014	Year 2015	Year 2016	Year 2017	Year 2018	Year 2019	Year 2020	TOTAL
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<b>HEADING 5 of the multiannual financial framework</b>										
Human resources	0,318	0,318								0,636
Other administrative expenditure		0,030	0,020	0,030	0,010	0,010	0,010	0,010	0,010	0,130
<b>Subtotal HEADING 5 of the multiannual financial framework</b>		0,348	0,020	0,030	0,010	0,010	0,010	0,010	0,010	0,448

<b>Outside HEADING 5<sup>27</sup> of the multiannual financial framework</b>										
Human resources										
Other expenditure of an administrative nature										
<b>Subtotal outside HEADING 5 of the multiannual financial framework</b>										

<sup>27</sup> Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former "BA" lines), indirect research, direct research.

<b>TOTAL</b>	0,318	0,348	0,020	0,030	0,010	0,010	0,010	0,010	0,010	4,798
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### 3.2.3.2. Estimated requirements of human resources

- The proposal/initiative does not require the use of human resources
- The proposal/initiative requires the use of human resources, as explained below<sup>28</sup>:

*Estimate to be expressed in full amounts (or at most to one decimal place)*

	Year 2012	Year 2013				Year N
<b>• Establishment plan posts (officials and temporary agents)</b>						
17 01 01 01 (Headquarters and Commission's Representation Offices)	2 (0,254)	2 (0,254)				
XX 01 01 02 (Delegations)						
XX 01 05 01 (Indirect research)						
10 01 05 01 (Direct research)						
<b>• External personnel (in Full Time Equivalent unit: FTE)<sup>29</sup></b>						
17 01 02 01 (CA, INT, SNE from the "global envelope")	1 (0,064)	1 (0,064)				
XX 01 02 02 (CA, INT, JED, LA and SNE in the delegations)						
<b>XX 01 04 yy<sup>30</sup></b>	- at Headquarters <sup>31</sup>					
	- in delegations					
XX 01 05 02 (CA, INT, SNE - Indirect research)						
10 01 05 02 (CA, INT, SNE - Direct research)						
Other budget lines (specify)						
<b>TOTAL</b>	<b>3</b> <b>(0,318)</b>	<b>3</b> <b>(0,318)</b>				

**XX** is the policy area or budget title concerned.

Description of tasks to be carried out:

Officials and temporary agents	Development, maintenance and update of the Online Dispute Resolution IT system.
External personnel	N/A

<sup>28</sup> The budgetary impact will be addressed by redeployment in years 2012 and 2013. 2014 onwards, the human resources needs are covered by the Consumers 2020 program.

<sup>29</sup> CA= Contract Agent; INT= agency staff ("*Intérimaire*"); JED= "*Jeune Expert en Délégation*" (Young Experts in Delegations); LA= Local Agent; SNE= Seconded National Expert.

<sup>30</sup> Under the ceiling for external personnel from operational appropriations (former "BA" lines).

<sup>31</sup> Essentially for Structural Funds, European Agricultural Fund for Rural Development (EAFRD) and European Fisheries Fund (EFF).

The human resources required will be met by staff from the DG who are already assigned to the management of the action and have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

3.2.4. *Compatibility with the current multiannual financial framework*

- Proposal/initiative is compatible with both 2007-2013 and 2014-2020 multiannual financial frameworks.
- Proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.

Explain what reprogramming is required, specifying the budget lines concerned and the corresponding amounts.  
 .....

- Proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework<sup>32</sup>.

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.  
 .....

3.2.5. *Third-party contributions*

- The proposal/initiative does not provide for co-financing by third parties
- The proposal/initiative provides for the co-financing estimated below:

Appropriations in EUR million (to 3 decimal places)

	Year N	Year N+1	Year N+2	Year N+3	... enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Specify the co-financing body								
<b>TOTAL</b> appropriations cofinanced								

<sup>32</sup> See points 19 and 24 of the Interinstitutional Agreement.

**3.3. Estimated impact on revenue**

- Proposal/initiative has no financial impact on revenue.
- Proposal/initiative has the following financial impact:
  - on own resources
  - on miscellaneous revenue

EUR million (to 3 decimal places)

Budget revenue line:	Appropriations available for the ongoing budget year	Impact of the proposal/initiative <sup>33</sup>						
		Year N	Year N+1	Year N+2	Year N+3	... enter as many years as necessary to show the duration of the impact (see point 1.6)		
Article .....		5.						

For miscellaneous assigned revenue, specify the budget expenditure line(s) affected.

.....

Specify the method for calculating the impact on revenue.

.....

<sup>33</sup> As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25% for collection costs.