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Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL repealing Regulation (EU) No 524/2013 and amending Regulations (EU) 2017/2394 and (EU) 2018/1724 with regards to the discontinuation of the European ODR Platform 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 - Opinion of the European Economic and Social Committee (EESC)

Delegations will find attached a copy of the above-mentioned opinion.

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OPINION

European Economic and Social Committee

Alternative Dispute Resolution

Alternative Dispute Resolution

a) Proposal for a Regulation of the European Parliament and of the Council repealing Regulation (EU) No 524/2013 and amending Regulations (EU) 2017/2394 and (EU) 2018/1724 with regards to the discontinuation of the European ODR Platform
[COM(2023) 647 final – 2023/375 (COD)]

and

b) 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
[COM(2023) 649 final – 2023/376 (COD)]

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Referrals	a) Council of the European Union, 13/11/2023 European Parliament, 20/11/2023 b) Council of the European Union, 15/11/2023 European Parliament, 20/11/2023
Legal basis	a) and b) Articles 114(1) and 169(3) of the Treaty on the Functioning of the European Union
Section responsible	Single Market, Production and Consumption
Adopted in section	29/1/2024
Adopted at plenary	14/2/2024
Plenary session No	585
Outcome of vote (for/against/abstentions)	161/0/0

1. Conclusions and recommendations

1.1 The European Economic and Social Committee (EESC) supports the development of Alternative Dispute Resolution (ADR) as an alternative to court proceedings when consumers seek redress for the damage traders may cause them, alongside accessible judicial proceedings and enforcement of consumer rights by national authorities. It considers enforcement by national authorities to be essential as a foundation of trust in consumer protection, while redress, whether through court or an ADR procedure, offers a way to restore trust when an incident occurs between consumer and trader.

1.2 The EESC approves the choice of minimal harmonisation, which leaves opportunities for Member States to set further standards for such schemes, in particular in markets where the availability of such schemes contributes to the confidence of consumers with regard to products and services they buy in their Member State, across EU borders or from outside merchants who may join established EU ADR schemes. The EESC encourages Member States to implement and follow very closely the current requirements in order to improve access, fairness, quality, expertise, impartiality, legality, independence and confidence of consumers and traders in the effectiveness of ADR processes.

1.3 The EESC underlines the importance of encouraging Member States and industries to set up such schemes and of encouraging traders, including SMEs, to join them voluntarily. Therefore, the EESC calls for the adoption of measures that would increase the participation of traders in the ADR schemes and procedures, initiated by consumers, especially in certain sectors with large number of claims (e.g. travel and tourism, aviation and package tours, along with critical sectors such as energy, financial services and telecommunications) and other sectors with long-term commitments and significant expenses and transactions. The EESC calls on the Commission to review the progress of ADR schemes three years after the implementation of the proposed Directive.

1.4 The EESC considers feedback from ADR instances to be extremely valuable both to professionals and legislators or regulators. Therefore, it calls for fast-track reporting of crisis situations on top of the requirement of biennial publication of activity reports by ADR schemes. It calls on the Commission to incorporate feedback from ADR platforms in its evaluations of sectoral regulations.

1.5 One of the reasons why ADR has not taken off to the same extent across Europe is the lack of information available to businesses and customers. Communication about ADR will be important to get traders to take part in such schemes and convince consumers that they are accessible and useful. The EESC therefore expects the Commission and Member States to actively reach out to the relevant constituencies, and continue to implement simple and effective information and assistance measures, such as sharing the contact details of ADR entities when the trader initially rejects the consumer's claim.

1.6 The EESC calls on the legislators to be more precise about the requirement for consumers to first seek contact with the trader before resorting to an ADR scheme and about sanctions

applicable to traders who do not comply with the requirement to report on their acceptance of the ADR procedure within the 20 working days mentioned in the proposals.

2. Main features of the legislative proposal

2.1 On 17 October 2023, the Commission published its proposals to modernise and simplify the regulatory framework for consumer-oriented alternative dispute resolution (ADR), consisting of modifications to the ADR Directive of 2013 (2013/11/EU), a repeal of the Online Dispute Resolution Regulation (524/2013), and a recommendation aimed at online marketplaces and EU trade associations.

2.2 The aim of the review and of the new measures is to update the rules regarding the out-of-court settlement of conflicts between providers of products and services on the one hand and consumers on the other hand. The ADR procedures the proposals referred to should be fair, neutral and efficient, to serve the interests of both consumers and traders, including SMEs.

2.3 The new framework would:

2.3.1 include non-EU traders and encompass unfair practices such as manipulative interfaces and advertising or geo-blocking practices as well as issues with switching providers or roaming costs;

2.3.2 entrust designated and well-publicised bodies like the European Consumer Centres Network (ECC) with providing assistance to consumers in understanding and accessing ADR procedures as part of a customised approach to facilitate communication between the parties involved;

2.3.3 give traders a 20-day deadline to accept or decline to participate in dealing with a complaint under an ADR procedure;

2.3.4 leave it to the Member States to extend the obligation for traders to join ADR schemes, while aiming to nudge traders to join such schemes where this is not obligatory under EU or national rules;

2.3.5 repeal the infrequently-used ODR procedure, to be replaced by digital interactive tools directing consumers to available redress solutions;

2.3.6 through a recommendation, aim to include ADR schemes offered by online marketplaces and EU trade associations with, inter alia, attention paid to the independence, impartiality and expertise needed to guarantee the fairness and effectiveness of those schemes, thus mirroring the standards that apply generally to ADR schemes;

2.3.7 allow for collective ADR claims (for instance when a number of travellers have suffered similar inconvenience and/or damage), with a possibility for individual plaintiffs to opt out of such claims.

3. General comments

3.1 Trust in retailers and service providers increases with their ability to deal with complaints effectively, as the 2023 Consumer Scoreboard shows[1]. The EESC believes ADR can apply to many disputes, of which consumer rights are just one segment, as ADR for instance also helps settle issues citizens may have with public administrations and social services and disputes between professionals. It believes that settling disputes out of court should be promoted alongside measures to facilitate access to courts in different fields, while the current proposal specifically addresses issues regarding consumers' rights. The EESC supports exchanges of best practices across the different fields.

3.2 The Consumer Bill of Rights presented in 1962 by US president John F. Kennedy already identified the right to be heard as one of the foundations of modern consumer policy. The right to redress has since been a policy objective at both national and international level, with initiatives to prevent disputes, facilitate access to courts and develop alternative dispute resolution procedures through the efforts of private operators and legislation, setting ever higher standards.

3.3 In the specific case of consumer rights, ADR procedures should, as a matter of principle, be based on existing consumer protection rules in order to achieve a practical, fair and equitable outcome. The EESC considers the willingness of the consumer to file a complaint to be an expression of trust in this method of achieving redress, and more generally in the possibility to restore the trust in the trader.

3.4 The EESC considers redress to be part of consumer policy, alongside the quality of products and services, including consumer advice. In this respect, litigation, whether on an individual or collective basis, can be perceived, both by consumers and businesses, as a lengthy and costly process. Nevertheless, litigation still has a role to play, especially where access to small claims procedures is affordable, as is the case in some Member States. Moreover, it leads to court decisions which can be quoted in future cases, which is not as frequently the case with the outcome of ADR procedures.

3.5 Article 47 of the EU Charter of Fundamental Rights guarantees everyone the right to an effective remedy as a principle of the rule of law. In addition to legal proceedings and lodging complaints with dedicated public authorities, ADR offers consumers a means to uphold their rights. This approach is especially pertinent for minor claims, where the motivation to seek court resolution may be lacking.

3.6 The EESC welcomes the overall aim of the Commission to review and renew the legal framework regarding the schemes available to consumers to search and find redress through structured out-of-court schemes which should be easily accessible, affordable for all stakeholders and faster than judicial procedures. Research has demonstrated that certain categories of people, usually those who have lower incomes, are less socially integrated, and less technology-savvy, have more difficulty making complaints. Therefore, streamlining

[1] https://ec.europa.eu/commission/presscorner/detail/en/ip_23_1891.

complaint processes to make them more accessible is not just a procedural necessity, but a social imperative[2].

3.7 The EESC salutes the possibility for traders outside the European market to make use of ADR entities to settle their disputes to the benefit of EU consumers, but considers that these traders should be subject to a fair financial contribution to those entities, and not operate as "free riders" in this regard.

4. Contribution to a well-tempered regulatory framework

4.1 The EESC approves the Commission's commitment to act in the spirit of care for the long-term competitiveness of the EU economy and the REFIT programme.

4.2 The EESC welcomes the contribution the proposals make to improving the competitiveness of traders when accepting a conciliatory approach rather than court procedures, often perceived as lengthy and costly, giving traders accepting ADR procedures an edge in competition terms and the opportunity to claim a "trusted trader" reputation, at least in this regard.

4.3 The EESC points to the need to improve the enforcement of consumer rights in the case of cross-border trade through a revisited Consumer Protection Cooperation Regulation, in order to improve cooperation between competent national authorities.

4.4 The EESC recognises that the increase of online transactions during the COVID-19 pandemic, the simultaneous expansion of the online marketplace model, and the priority given to the digital transition justify taking into account those important new features of trading with consumers. At the same time, the EESC salutes the efforts and the proposals made to include offline access to ADR schemes for consumers who prefer such procedures, to ensure human supervision of decisions, and to pay due attention to the needs of all vulnerable groups, including both elderly and younger people including students (who appear to frequently encounter problems with telecommunications and internet providers). Their protection should be emphasised explicitly in the Directive itself, rather than in the recitals, to avoid missing potential complaints from those groups.

4.5 For this reason, fair, neutral and efficient ADR schemes should be promoted, both in a general way and more specifically with an eye on those products and services, including consumer advice, that are known to cause a significant number of consumer complaints, where trust is essential with regard to the importance of adaptation to the digital environment, or with regard to the amounts of expenditure and/or the duration of the contractual commitments.

4.6 Consumer protection also calls for proper enforcement and for regulatory response to issues where grievances justify such action, in particular with regard to effective enforcement of consumer protection. The EESC supports a proportionate use of fines collected by public

[2] Naomi Creutzfeldt, Chris Gill, Marine Cornelis and Rachel McPherson, *Access to justice for vulnerable and energy-poor consumers. Just energy?* (Oxford: Hart 2021).

authorities in the event of infringements to finance ADR schemes that meet the standards of fairness and effectiveness.

4.7 The EESC understands that striving to include all relationships between consumers and traders anywhere may be overreaching the competences of EU law. The EESC still strongly recommends progress in this direction in overall consumer policy and in relevant sectoral legislation, both at EU and Member State level, in order to strengthen trust in ADR schemes. The EESC calls for the adoption of measures that would increase the participation of traders in the ADR schemes and procedures, initiated by consumers, especially in certain sectors with large number of claims (e.g. travel and tourism, aviation and package tours, along with critical sectors such as energy, financial services and telecommunications) and other sectors with long-term commitments and significant expenses and transactions. The Commission should commit itself to evaluating progress three years after implementation of the proposed Directive.

4.8 The EESC acknowledges the lack of effectiveness of the current ODR scheme, where the success rate of lodging complaints appears to be way too low, despite the funding that had been devoted to this scheme. It endorses simplification objectives and expresses its hope that the services referred to in Article 20(8) will not replace a formal scheme by another administrative layer, and will avoid inducing extra costs. The EESC recommends that the European Commission elaborate on the purpose, design and functionalities of the proposed digital tool replacing the ODR platform, ensuring coordination with existing Member State tools and involving stakeholders in the development.

4.9 While the proposals would extend the current scope of the ADR Directive by including the precontractual relations between consumers and traders, it is not clear to what extent this proposed extension will increase the workload and the cost of ADR entities. The EESC regrets that this aspect is not sufficiently considered in the impact assessment and might have a negative effect on private and public financing of these entities. Mitigation measures are needed to address this issue.

4.10 The EESC points to the opportunity to include, beyond the extensions of the scope of the Directive already included in the proposal, the possible infringements of the rights of citizens who are not the contractual counterpart of the trader, such as citizens entitled to compensation under civil liability principles (for instance under product liability or third party automobile liability) or who are entitled to benefits under contracts where they are beneficiaries of rather than a party to the contract.

5. Relevance of feedback from ADR entities

5.1 The EESC underlines the importance of the contribution the proposals make to an increased awareness of the need for improvements to the quality of products and services through publicly available reports which are useful to national authorities, legislators at Member State and EU level, and also executive and board-level management of traders.

5.2 The EESC urges the Commission to systematically and expressly refer to feedback from ADR entities and networks in its assessment of consumer policy issues, both at a general level and in specific sectoral legislative proposals.

5.3 For these reasons, the EESC expresses its doubts about the design of reporting requirements, as prompt and streamlined feedback from ADR entities is key to trigger adaptations in the behaviour of traders and, where justified, policy measures from supervisory and legislative authorities at Member State and EU level. Such feedback should be available annually in sectors where the complaint level and the importance of the interests at stake justify it. While reporting can be simplified if experience over one year does not have much added value, ADR entities should apply fast-track procedures when faced with crisis situations that cannot be reported on a biennial basis as proposed.

5.4 The EESC recognises the contribution made to increase consumer trust, including through cross-border and single market aspects and the need to address cooperation across borders within the EU in handling low-value claims through low-cost procedures.

5.5 The EESC is aware of complicated cases where language, applicable law, administrative and/or financial thresholds make it difficult for average consumers to lodge their claim with the competent ADR entities, especially when the supply chain involves traders established in several countries each having responsibility for a part of the delivery and outcome for the consumer, and approves the commitment the proposals make to signposting the way(s) consumers should follow with the help of appropriate bodies like the ECC Network.

5.6 As ADR schemes established in a Member State may not be familiar with the consumer rights applicable in the State where products or services are delivered, the EESC invites the Commission to set up, monitor and develop networks of cross-border cooperation between ADR schemes in specific sectors as is already the case in some sectors like FIN-NET for financial services and TRAVEL-NET for travel and public transport.

6. Conditions of access to ADR procedures

6.1 The proposal to bundle complaints in ADR processes, aimed at cost-effectiveness and consistency, should be applied selectively and under specific conditions such as adequate ADR expertise, informed consumer consent and coordination with consumer rights authorities and potential representative actions under the Representative Actions Directive 2020/1828. The EESC understands that Article 5(2)(d) offers the possibility for consumers to opt out of a collective procedure and seek compensation individually with regard to the characteristics of their own case.

6.2 The EESC calls for clarity about the threshold for gaining access to ADR procedures. It considers that the possibility for the ADR entity to reject a case because the consumer did not establish contact with the trader before appealing to the ADR entity should be subject to precise conditions instead of a reference to possibly disproportionate rules about the format of such contact. Contacts between consumers and traders are usually made through chatbots, calls to

call centres, electronic messages and written, possibly registered, letters, records of which are not always available for future reference.

6.3 The EESC is aware of the fact that imposing a financial contribution on consumers may discourage vulnerable consumers or those with a low-value dispute to make use of ADR schemes, while in several Member States and sectors access to ADR is free of charge, without leading to improper claims.

6.4 The EESC considers that the proposals do not sufficiently address the issue of the time it takes for ADR entities to consider a complaint to be complete, which might lead to inconsistencies in the resolution time, to the detriment of consumer trust. These issues justify monitoring by national competent authorities of the work done by certified ADR entities.

6.5 The EESC would likewise appreciate if the proposals could concretely regulate the consequences of the absence of a response from the trader within the set timetable. It should not become an excessive burden on ADR entities to monitor compliance with this obligation, which is key to maintaining trust in the prompt handling of consumer complaints. It remains uncertain whether the intention was to leave this to possibly divergent measures at Member State level, whether such failure to respond would be grounds for any liability or whether the failure to respond is to be considered as acceptance to participate in the proposed procedure.

6.6 Finally, the EESC insists on the need to monitor to what extent decisions made by ADR entities are effectively applied by traders, as aiming to develop the use of ADR schemes makes no sense if the value of such redress possibilities were doubtful.

6.7 Hence, in order to enhance the relevance of such a way to resolve conflicts, the revision should focus on ways to make parties adhere voluntarily to the decisions of ADR bodies. This entails providing parties with the option, at the outset of the ADR process, to determine whether the resolution will take the form of a non-binding recommendation or a legally binding decision. Consequently, the EESC encourages the Commission to explore and identify effective strategies to bolster participation in ADR schemes. Furthermore, the co-legislators should consider the feasibility of introducing additional legislative measures to reinforce the commitment of parties to participate in and adhere to the ADR process.

Brussels, 14 February 2024.

Oliver RÖPKE
The president of the European Economic and Social Committee