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Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2013/11/EU on alternative dispute resolution for consumer disputes, as well as Directives (EU) 2015/2302, (EU) 2019/2161 and (EU) 2020/1828 - Second Presidency compromise proposal

In view of the Working Party on Consumer Protection and Information meeting on 4 June 2024, delegations will find in the Annex a second Presidency compromise proposal. Changes compared to the Commission proposal (doc. 14434/23) are marked in **bold, underlined** for the new text and in ~~striketrough~~ for the deletions. In addition, changes compared to doc. 9244/24 are marked in grey highlight.

2023/0376 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard the opinion of the European Economic and Social Committee,

Acting in accordance with the ordinary legislative procedure,

Whereas:

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

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

- (2) In 2019 the Commission adopted a report on the implementation of the Directive 2013/11/EU and of Regulation (EU) No 524/2013 of the European Parliament and of the Council² which revealed that Directive 2013/11/EU has led to increased coverage of consumer markets by quality ADR entities throughout the Union. However, the report also identified that consumer and business uptake of ADR procedures was lagging behind in some sectors and Member States. One reason for this was the low level of awareness of traders and consumers about such procedures in Member States where they had only recently been introduced. Another reason was the lack of trust of consumers and traders in unregulated ADR entities. Data provided by national competent authorities in early 2022, as well as the evaluation of the implementation of the Directive 2013/11/EU conducted in 2023, suggest that the uptake remained relatively stable (apart from a small increase of cases related to **the** Covid-19 pandemic). Most stakeholders consulted in the context of that evaluation confirmed that the lack of awareness and understanding of ADR procedures by consumers, low engagement by traders, gaps in ADR coverage in certain Member States, high costs and complex national ADR procedures and differences in the competences of ADR entities, are frequent factors hindering the uptake of ADR procedures. There are additional barriers in cross-border ADR **procedures, such as like** language, lack of knowledge of the applicable law, as well as specific access difficulties for vulnerable consumers.

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

- (3) Since at least two out of five online transactions made by consumers residing in the Union are with traders based in third countries, the scope of Directive 2013/11/EU should be extended to allow those third country traders willing to participate in an ADR procedure to do so. A consumer residing in a Member State who has a dispute with a trader established outside the Union pursuing his commercial or professional activities in the Member State where the consumer resides should have access to ADR if the trader accepts to participate. The same rule should apply where a trader established outside the Union directs his activities to the Member State where the consumer resides and accepts to participate in the ADR procedure. No procedural impediments should hinder consumers residing in the Union from resolving disputes against traders, irrespective of their establishment, if the traders accept to follow an ADR procedure through an ADR entity established in a Member State. The direction of a trader's activities to a Member State can be determined on the basis of all relevant circumstances, including factors such as the use of a language or a currency generally used in that Member State, the possibility of ordering products or services, or the use of a relevant top-level domain. The direction of a trader's activities to a Member State could also be derived, for example, from the availability of an application in the relevant national application store, from the provision of local advertising or advertising in a language used in that Member State, or from the handling of customer relations such as providing customer service in a language generally used in that Member State. In contrast, mere technical accessibility of a website from the Member State cannot, on that ground alone, be considered as direction of a trader's activities to a Member State.

- (4) The complexity of consumer disputes has evolved significantly since the adoption of Directive ~~2011/13/EU~~ **2013/11/EU**. ~~Digitilisation~~ **Digitalisation** of goods and services, the growing importance of e-commerce and digital advertising in the formation of consumer contracts has resulted in a rise in the number of consumers being exposed to misleading online information and manipulative interfaces preventing them from making informed purchasing decisions. It is, therefore, necessary to clarify that contractual disputes arising from the sale of goods or services include digital content and digital services, ~~and to extend the scope of Directive 2011/13/EU, beyond such disputes so that consumers are also able to seek redress for practices harming them at a pre-contractual stage, irrespective of whether they later become bound by a contract.~~
- (4a) The material scope of Directive 2013/11/EU should apply be clarified with regard to its application to disputes where consumers seek redress for practices harming them at a pre-contractual or contractual stage only where when a contract is concluded or to disputes where a trader refuses to conclude a sales or service contract in violation of the right of consumers to access services to which this trader cannot refuse access under Union law. When a contract is concluded between a consumer and a trader, consumers should be able to seek redress for practices that have harmed them, whether at the pre-contractual, contractual or post-contractual stage. Pre-contractual obligations and consumer rights stemming arising from Union law, covering for example unfair contract terms, passenger and travellers' rights, and the right to switch providers, should apply to sales and service contracts and therefore such pre-contractual obligations and consumer rights should be considered in part of the examination of disputes under Directive 2013/11/EU when a contract has been concluded.**

(4b) Submitting a dispute to an ADR entity that involves unfair commercial practices does not preclude the consumer to signal the problem to other bodies refer the matter to another body, such as consumer associations or public enforcement authorities, neither does it prevent those other bodies from taking appropriate action to address the practice in question. Public enforcement authorities and ADR entities work in a complementary manner. The role of public enforcement authorities is primarily to take enforcement measures to prevent and sanction practices which disturb the market. While public enforcement authorities may contribute significantly to consumer redress, by seeking remedial commitments for the benefit of consumers and/or facilitating follow-on damages actions, their role is primarily to take enforcement measures to prevent and sanction practices which distort the market. However, it is equally important for that consumers to be able to obtain seek redress with the help intervention of an ADR entity without prejudice to the competences of the competent public enforcement authorities.

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

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

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

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

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

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

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

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

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

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

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

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

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

- (5) Moreover, Directive 2011/13/EU should also cover consumer rights arising from Union legislation which governs relationships between consumers and traders when there is no relationship of a contractual nature, with respect to **Directive 2013/11/EU should apply to non-contractual situations of discrimination on the basis of nationality or place of residence. This Directive should apply, among others, to disputes related to the right to access and to pay for goods and services without undergoing discrimination based on nationality, place of residence or of establishment, as provided for in Articles 4 and 5 of Regulation (EU) 2018/302 of the European Parliament and of the Council¹³ and the right to open and switch bank accounts as provided for in Articles 9, 10, 11, and 16 of Directive 2014/92/EU of the European Parliament and of the Council¹⁴ and ~~not~~ to not be discriminated as provided for in Article 15 of that Directive **2014/92/EU of the European Parliament and of the Council¹⁵**; the right to receive transparent information on retail conditions for roaming calls and SMS messages as provided for in Articles 13, 14 and 15 of Regulation (EU) 2022/612 of the European Parliament and of the Council¹⁶; the right to price transparency in air fares and rates as provided for in Article 23 of Regulation (EC) No 1008/2008 of the European Parliament and of the Council¹⁷. Therefore, it should be provided that disputes arising in relation to such categories of consumer rights can be dealt with in ADR procedures.**

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

¹⁴ — Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic feature (OJ L257, 28.8.2014, p. 214).

¹⁵ — **Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic feature (OJ L257, 28.8.2014, p. 214).**

¹⁶ — Regulation (EU) 2022/612 of the European Parliament and of the Council of 6 April 2022 on roaming on public mobile communications networks within the Union (OJ L 115, 13.4.2022, p. 1).

¹⁷ — Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ L 293, 31.10.2008, p. 3).

(5a) The Union law provides for a number of universal services to which a trader cannot refuse access to the consumer, such as the right to be supplied with electricity of a specified quality within their territory at competitive, easily and clearly comparable, transparent and non-discriminatory prices as provided for in Article 27 of Directive (EU) 2019/944 of the European Parliament and of the Council¹⁸, the right to an affordable adequate broadband internet access service and voice communications services at the quality specified in their territories, including the underlying connection, at a fixed location as provided for in Article 85 of Directive (EU) 2018/1972 of the European Parliament and of the Council¹⁹, the right of all consumers, including non-vulnerable ones, to access payment accounts with basic features at least at a reasonable fee as provided for in Article 16 of Directive 2014/92/EU. Directive 2013/11/EU should also apply to disputes over access to such universal services even in the absence of a contractual relationship, if the access to such services has been denied by a trader in violation of Union law in cases where there is a detriment for the consumer. This detriment could be, for instance, financial damage for the consumer or harm caused because of the lack of access to the service during the period of denial. By including this type of dispute in the ADR procedures, the consumer is granted an effective and affordable redress mechanism which can deal with the consumer's individual case and provide a timely solution. Covering such disputes would ensure a redress mechanism for consumers to revert to where some of their basic needs are not satisfactorily met by the market.

¹⁸ **Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity (OJ L 158, 14.6.2019, p. 125).**

¹⁹ **Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (OJ L 321, 17.12.2018, p. 36).**

- (6) **Taking into account the minimum harmonisation nature of Directive 2013/11/EU,**
Member States ~~should~~ have the right to apply ADR procedures ~~also~~ to disputes that ~~relate~~
relating to other rights ~~stemming from~~ **provided for in** Union **and national** law, including
such as rights ~~stemming~~ **arising** from Articles 101 and 102 TFEU **and to disputes with**
traders established outside the Union. ~~or rights of users provided in Regulation (EU)~~
~~2022/1925 of the European Parliament and of the Council.²⁰ This is without prejudice of~~
~~public enforcement of those rules.~~ **Furthermore, it is up to the Member States to**
determine which ADR entity is competent for which type of dispute. For example,
Member States can decide that ADR entities are competent for both contractual and
non-contractual disputes or that some ADR entities are only competent for contractual
disputes and others for non-contractual disputes.
- (7) Where a dispute arises between a provider of an online platform and a recipient of that
service in relation to that provider's activities in moderating illegal or harmful content on its
platform, Article 21 of Regulation (EU) 2022/2065 of the European Parliament and of the
Council²¹ on out-of-court dispute settlement applies to that dispute, in accordance with
Article 2(4) of that Regulation, given that it lays down more detailed rules in relation to such
disputes.
- (8) The definitions of 'domestic dispute' and 'cross-border dispute' ~~should be adapted~~
~~accordingly to reflect the extension of the scope of Directive 2013/11/EU.~~ **, as well as the**
definition of "international dispute", added by this Directive, should reflect the
extended material scope of Directive 2013/11/EU.

²⁰ — Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) (OJ L 265, 12.10.2022, p. 1).

²¹ — Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (OJ L 277, 27.10.2022, p. 1)

(8a) Digital content and digital services are often supplied through online contracts under which the consumer does not pay a price but provides the trader with personal data or other data instead of money to gain access. Directive 2013/11/EU currently only applies to contracts for which the consumer pays or undertakes to pay a price, therefore it excludes contracts for which the consumer provides personal data to the trader without paying a price. Considering the explicit inclusion of contracts related to digital content and digital services in the scope of Directive 2013/11/EU and given the interchangeability of paid goods and digital services and goods and digital services provided in exchange for personal data, both types of contracts should be subject to the same rules under this Directive. Therefore, the definitions of 'sales contract' and 'service contract' should be adapted and the definitions of 'goods', 'digital content' and 'digital service' should be added be aligned with the corresponding definitions of Directive 2011/83/EU, as modified by Directive (EU) 2019/2161 of the European Parliament and of the Council²², where no reference to the payment of a price by the consumer is made. With these definitions, the scope of Directive 2013/11/EU will cover both contracts where the consumer pays or undertakes to pay the price and contracts where the consumer provides or undertakes to provide personal data to the trader, even in the context of digital content and digital services. Thus, Directive 2013/11/EU will also apply to contracts where the personal data provided by the consumer are exclusively processed by the trader for the purpose of supplying digital content which is not supplied on a tangible medium or digital service in accordance with Directive 2011/83/EU, or for allowing the trader to comply with legal requirements to which the trader is subject, and the trader does not process those data for any other purpose.

²² Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules (OJ L 328, 18.12.2019, p. 7).

- (9) To ensure that ADR procedures are well suited for the digital age where communication takes place online, including in a cross-border **and international** context, it is necessary to ensure swift and fair processes for all consumers. Member States should ensure that ADR entities established in their territories have the competence to provide dispute resolution procedures in disputes between traders established outside of the Union and consumers residing in their territory.
- (10) Member States should ensure that ADR **entities** should enable consumers to initiate and follow ADR procedures **online or also** offline ~~if requested~~. It should also be ensured that when digital tools, **such as online interfaces and online complaint forms, or non-digital tools** are provided, those can be used by all consumers, including vulnerable consumers or those with varying levels of digital literacy. **To achieve that goal, the digital tool of public and private ADR entities should at least be in line with articles 4, 5 and 6 of Directive (EU) 2016/2102 of the European Parliament and of the Council²³.** Members States should **also** ensure that, upon request, parties to the disputes always have access to a review of automated procedures by a natural person **from the ADR entity. That person should meet the requirements of article 6, paragraph 1, of Directive 2013/11/EU in terms of necessary expertise, independence and impartiality. Moreover, Member States should ensure that ADR entities inform consumers in advance when the procedure is to be partly or entirely carried out by automated means. Inclusive non-digital tools could include, for example, easy-to-read documents, phone assistance and documents in Braille.**
- (10a) In order to satisfy the requirement of submitting complaints and the requisite supporting documents online in a traceable manner, ADR entities should at least acknowledge the receipt on a durable medium and provide means to identify the complaint for further communications.**

²³ **Directive (EU) 2016/2102 of the European Parliament and of the Council of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies (OJ L 327, 2.12.2016, p. 1).**

(10b) Technological advances, including within the fields of artificial intelligence (AI), may contribute to automation of dispute resolution allowing to reach faster and more consistent outcomes. However, the use of these technologies in dispute resolution carries certain risks of bias and opacity, as evidenced in the inclusion of such systems in the list of high risk AI systems under Regulation (EU) 2024... (Artificial Intelligence Act)²⁴. It is therefore important to ensure that when the ADR entities use automated means, such as AI systems in the meaning of Regulation (EU) 2024... or algorithms, the parties are informed in advance and may, if they so wish, request that the outcome of the procedure is reviewed by a natural person from the ADR entity. That person should meet the requirements of article 6, paragraph 1, of Directive 2013/11/EU in terms of necessary expertise, independence and impartiality.

(11) In various situations, for instance mass flight cancellations during the COVID-19 pandemic, ADR procedures proved to be important mechanisms to deal with the increased number of consumer issues. Therefore, Member States should also enable ~~be able to allow~~ ADR entities to bundle similar cases ~~where they deem this opportune. regarding the same or similar facts~~ against a specific ~~the same~~ trader ~~where the nature of the procedure allows it~~, to make ADR outcomes consistent for consumers subjected to the same ~~or a similar~~ illegal practice, and ~~This would be~~ more cost-efficient for ADR entities and for traders. Consumers should be informed accordingly and should be given the opportunity to refuse from having their dispute bundled. On the other hand, the bundling of cases should not prejudice the right of the consumer to object.

²⁴ **PE-CONS 24/24.**

- (12) Member States should ~~also not allow the introduction of disproportionate rules as regards the reasons that an ADR entity may invoke to refuse the handling of a dispute, such as the obligation to use the company escalation system after a first negative contact with the complaints handling service~~ **ensure that ADR entities do not refuse to deal with a dispute where a trader introduces disproportionate rules on internal complaint-handling systems before the case can be referred to an ADR entity. For instance, in certain market sectors, some consumers face undue burden such as multiple mandatory steps in complaint-handling,** or the obligation to prove that a specific part of a company's after sales service was contacted.
- (13) Under Directive 2013/11/EU, Member States may introduce national legislation to make trader participation in ADR compulsory in sectors they deem fit, in addition to sector-specific Union legislation which provides for mandatory participation of traders in ADR. To encourage traders' participation in the ADR procedures and to ensure due and swift ADR procedures, traders should be required, ~~especially in cases where their participation is not compulsory, to respond~~ **reply** within a specific period to enquiries made by ADR entities on whether they intend to participate to the proposed procedure. **The duty to reply should not hinder ADR entities to make from making recommendations or take taking non-binding decisions, even when the trader has indicated that he does they do not intend to participate in the ADR procedure. However, Member States that apply stricter national rules, such as mandatory traders' participation, or binding or non-binding ADR outcomes that can be reached without the trader having to consent to participate in ADR, are not required to apply the duty to reply as long as the trader has been contacted by the ADR entity. In any case, if trader participation is not mandatory, the ADR entity should at least contact and invite the trader to participate.**

(13a) The time period for the trader to inform the ADR entity whether or not he intends they intend to participate in the ADR procedure should, in principle, be no more than 20 working days. However, in certain exceptional cases of a highly complex nature or in exceptional circumstances, the ADR entity should be entitled to extend that time period in order to give the trader the opportunity to analyse the dispute thoroughly and to choose whether or not he wants they want to participate in an ADR procedure. In any case, that time period should not exceed 60 40 working days. The consumer should be informed of the time period given to the trader to react reply and of any extension of it.

(13b) Traders established outside of the Union can commit to participate in an ADR procedure in various forms, by providing information, for example, on their website, in the contractual conditions, in the invoice, by email, etc.

(13c) As a best practice, traders established outside of the Union that voluntarily commit to participate in an ADR procedure, could designate a single point of contact or a legal representative for the Union, could indicate the competent ADR entity for the dispute in question and should be able to communicate in the official language(s) of the Member State where the consumer resides. That information should be clear, comprehensible and easily accessible and should enable the consumer, when a dispute arises between the consumer and a trader established outside the Union, to directly contact the relevant ADR entity and transfer the information communicated by the trader. That ADR entity should then deal with the dispute in accordance with its procedural rules.

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

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

- (17) To ensure that consumers are able to easily find a suitable ADR entity, especially in a cross-border **and international** context, the Commission should develop, **promote** and maintain a digital interactive tool that provides information about ADR entities' main characteristics and links to the webpages of the ADR entities, as notified to it. **The digital interactive tool should aim to assist consumers to understand appropriate redress solutions in their specific case and to take the appropriate action. It should further contain direct links to the complaint form, where available, of ADR entities and a machine translation tool for ADR entities and ADR contact points.**
- (17a) Member States should lay down rules on penalties for infringements by traders established in the Union of their duty to reply to an ADR entity's enquiry on whether or not they intend to participate in the proposed ADR procedure.**
- (18) Therefore, Directive 2013/11/EU should be amended accordingly.
- (19) As Regulation (EU) No 524/2013 is to be repealed by a separate act, it is also necessary to amend Directives (EU) 2015/2302²⁵, (EU) 2019/2161²⁶ and (EU) 2020/1828²⁷ of the European Parliament and of the Council, as a consequence of that repeal,

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

²⁶ Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules (OJ L 328, 18.12.2019, p. 7).

²⁷ Regulation (EU) 2023/988 of the European Parliament and of the Council of 10 May 2023 on general product safety, amending Regulation (EU) No 1025/2012 of the European Parliament and of the Council and Directive (EU) 2020/1828 of the European Parliament and the Council **of 25 November 2020 on representative actions for the protection of the collective interests of consumers (OJ L 409, 4.12.2020, p.1)**, and repealing Directive 2001/95/EC of the European Parliament and of the Council and Council Directive 87/357/EEC (OJ L 135, 23.5.2023, p. 1).

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2013/11/EU

Directive 2013/11/EU is amended as follows:

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

‘1. This Directive shall apply to procedures for the out-of-court resolution of **domestic, and cross-border and international** disputes between **a trader established in the Union and a consumer** ~~consumers~~ resident in the Union ~~and a traders offering goods or services, including digital content and digital services, to those consumers,~~ through the intervention of an ADR entity which proposes or imposes a solution or brings the parties together with the aim of facilitating an amicable solution concerning **where** one **or more** of the following **situations arise**:

(a) **a sales or service contract is concluded between the a consumer and the a trader, and a dispute arises relating to:**

(i) contractual obligations ~~stemming from sales contracts, including for the supply of digital content, or service contracts~~ **or**

(ii) **consumer rights or obligations of traders towards consumers provided in Union law applicable to pre-contractual, ~~or~~ contractual or post-contractual situations stages;**

- (b) ~~the a trader refuses to conclude a sales or service contract with the a consumer in violation of the prohibition to discriminate on the basis of nationality or place of residence or the right of consumers to access universal services to which this trader cannot refuse access provided in under Union law, in cases where there is a detriment for the consumer.~~ consumer rights applicable to non-contractual and pre-contractual situations and provided in Union law concerning:
- (i) ~~unfair commercial practices and terms,~~
 - (ii) ~~compulsory precontractual information,~~
 - (iii) ~~non-discrimination on the basis of nationality or place of residence,~~
 - (iv) ~~access to services and deliveries,~~
 - (v) ~~remedies in case of non-conformity of products and digital content,~~
 - (vi) ~~right to switch providers, and~~
 - (vii) ~~passenger and travellers' rights.~~

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

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

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

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

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

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

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

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

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

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

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

(f) ‘cross-border dispute’ means a dispute between a consumer and a trader, related to contractual obligations and/or consumer rights provided in Union law as referred to **situations provided** in article Article 2(1) **points (a) and (b)**, where, **at the time the consumer orders the goods or services**, the consumer is resident in a Member State other than the Member State in which the trader is established ~~or where the consumer is resident in a Member State and the trader is established outside of the Union;~~’

(b) the following point is inserted:

~~‘(fa) ‘international dispute’ means a dispute between a consumer and a trader willing to participate in an ADR procedure, related to contractual obligations and/or consumer rights provided in Union law as referred to in Article 2(1), where the consumer is residing in a Member State and the trader is established outside of the Union but pursues his commercial or professional activities in the Member State where the consumer resides, or the trader, by any means, directs such activities to that Member State or to several countries including that Member State, and, in both cases, the dispute is related to such activities.’~~

(3-) Article 5 is amended as follows:

(a) paragraph 1 is replaced by the following:

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

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

2. Member States shall ensure that ADR entities:

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

(b) offer digital ~~and or non-digital~~ ADR procedures through easily accessible and inclusive tools **and ensure that consumers may submit complaints and the requisite supporting documents and, upon request, access documents in a non-digital format;**

~~(ba) inform consumers in advance when the procedure is partly or entirely carried out by automated means;~~

(c) grant the right to the parties to the dispute to request that the outcome of the ADR procedure be reviewed by a natural person **from the ADR entity** when the procedure was carried out by automated means;

(ca) when the procedure is partly or entirely carried out by automated means, inform the consumers in advance and in a clear, comprehensible and easily accessible way of this automated procedure, of the basis on which the automated system makes decisions and of their right to request a review of the outcome of that ADR procedure by a natural person from the ADR entity;

(d) may bundle similar cases **based on the same or similar facts** against one specific trader into one procedure, **when the nature of the procedure allows it**, under condition that the consumer concerned is informed and does not object **unless the consumer objects** to that;

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

(f) when dealing with disputes covered by this Directive, take the necessary measures to ensure that the processing of personal data complies with the rules on the protection of personal data laid down in Regulation (EU) 2016/679 of the European Parliament and of the Council²⁸.

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

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

~~(ca) in paragraph 4, the last sentence is replaced by the following:~~

~~‘Such procedural rules shall not significantly impair consumers’ access to ADR procedures, including in the case of cross-border and international disputes.’~~

²⁸ **Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).**

(d) the following paragraphs 8 is ~~and 9 are~~ added:

‘8. Member States shall ensure that traders established in their territories that are contacted by an ADR entity from their country or from another Member State, inform that ADR entity whether, or not, they accept to participate in the proposed procedure and reply within a reasonable period of time that shall not exceed 20 working days. In the case of highly complex disputes or in exceptional circumstances, the relevant ADR entity may extend that time period, which cannot, however, exceed 60 40 working days.

The obligation referred to in the first subparagraph shall not apply in cases where stricter rules regarding traders’ participation in the ADR procedure apply at national level.

9. Member States shall ensure that, where there is an international dispute, traders that have not communicated the information in accordance with article 13, paragraph 4, and that are contacted by a consumer, inform that consumer whether or not they accept to participate in the ADR procedure and reply within a reasonable period of time that shall not exceed 20 working days.

The obligation referred to in the first subparagraph shall not apply in cases where stricter rules regarding traders’ participation in the ADR procedure apply at national level.’.

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

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

‘(e) their membership in networks of ADR entities facilitating cross border and international dispute resolution, if applicable;’

(a) in paragraph 2 the introductory phrase, the first sentence is replaced by the following:

‘Member States shall ensure that ADR entities make publicly available on their websites, on a durable medium upon request, and by any other means they consider appropriate, ~~biennial~~ activity reports covering periods of no more than 2 years. Those reports shall include the following information relating to domestic, cross border and international disputes:’.

(b) in paragraph 2 point (h) is deleted.

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

(a) paragraph 3 is replaced by the following:

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

(b) the following paragraph is added:

‘4. Member States shall ensure that, in cases where a dispute between a consumer residing in their territory and a trader established outside of the Union who committed to participate in an ADR procedure could not be settled further to a complaint submitted directly by the consumer to the trader, the trader informs the consumer about the contact details of their national ADR contact point on a durable medium.’.

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

‘Article 14

Assistance for consumers

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

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

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

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

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

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

(6a) Article 16 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Member States shall ensure that ADR entities cooperate in the resolution of cross-border and international disputes and conduct regular exchanges of best practices regarding the settlement of domestic, cross-border and international disputes.’

(b) paragraph 3 is replaced by the following:

‘3. Where a network of ADR entities facilitating the resolution of cross-border and international disputes exists in a sector-specific area within the Union, Member States shall encourage ADR entities that deal with disputes in that area to become a member of that network.’

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

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

(a) in paragraph 6 point (b) is replaced by the following:

‘(b) point out the shortcomings, supported by statistics, that hinder the functioning of ADR entities for domestic, cross-border and international disputes, where appropriate;’

(b) the following paragraphs are added:

‘8. The Commission shall develop, promote and maintain a digital interactive tool that provides general information on consumer redress, and links to webpages with information on consumer rights, links to the webpages of the ADR entities notified to it in accordance with paragraph 2 of this Article and a machine translation tool for ADR entities and ADR contact points.

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

(8a) Article 21 is replaced by the following:

‘Article 21

Penalties

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted in particular pursuant to Article 5(8) and Article 13(1), (2) and (3) and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.’.

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

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

Article 2

Amendment to Directive (EU) 2015/2302

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

‘(g) information on available in-house complaint handling procedures and on alternative dispute resolution (‘ADR’) mechanisms pursuant to Directive 2013/11/EU of the European Parliament and of the Council²⁹ and, where applicable, on the ADR entity by which the trader is covered;’.

²⁹ Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR) (OJ L 165, 18.6.2013, p. 63).’

Article 3
Amendment to Directive (EU) 2019/2161

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

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

Article 4
Amendment to Directive (EU) 2020/1828

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

Article 5
Transposition

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

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

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

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

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

Article 6

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 7

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament

For the Council

The President

The President