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#### NOTE

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	9244/2/24 REV 2
No. Cion doc.:	14434/23
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 - Fourth Presidency compromise proposal

In view of the Working Party on Consumer Protection and Information meeting on 12 September 2024, delegations will find in the Annex the fourth 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. 9244/2/24 REV 2 are marked in grey highlight.

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 Council<sup>1</sup> 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.

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<sup>1</sup> 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 Council<sup>2</sup> 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.

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<sup>2</sup> 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. 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.~~
- (4) The complexity of consumer disputes has evolved significantly since the adoption of Directive ~~2011/13/EU~~ **2013/11/EU**. ~~Digitisation~~ **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) Directive 2013/11/EU should apply to disputes where consumers seek redress for practices harming them 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 under Directive 2013/11/EU for practices that have harmed them, whether at the pre-contractual, contractual or post-contractual stage before or after the contract is concluded. Pre-contractual obligations and consumer rights 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 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 does not preclude the consumer to refer the matter to another body, such as consumer associations or public enforcement authorities, neither does it prevent those other bodies from taking appropriate action to address the practice in question. Public enforcement authorities and ADR entities work in a complementary manner. While public enforcement authorities may contribute significantly to consumer redress, by seeking remedial commitments for the benefit of consumers and/or facilitating follow-on damages actions, it is equally important that consumers are able to seek redress with the intervention of an ADR entity without prejudice to the competences of the competent public enforcement authorities.**

**The material scope of Directive 2013/11/EU should cover, for example, situations arising from the pre-contractual phase when a contract has been concluded between a consumer and a trader, such as where a consumer concludes a contract based on misleading advertisement in regards to a specific price promotion, which falls within the scope of Directive 2005/29/EC of the European Parliament and of the Council<sup>3</sup>. 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 Council<sup>4</sup>, 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 Council<sup>5</sup>, the right to receive pre-journey information provided for in article 9, paragraph 1, of Regulation (EU) No 2021/782 of the European**

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<sup>3</sup> **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).**

<sup>4</sup> **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).**

<sup>5</sup> **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).**

**Parliament and the Council<sup>6</sup>, 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 Council<sup>7</sup>, 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 Council<sup>8</sup>.**

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<sup>6</sup> **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).**

<sup>7</sup> **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).**

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



(4c) The material scope of Directive 2013/11/EU covers situations arising from the pre-contractual phase when a contract has been concluded between a consumer and a trader, such as where a consumer concludes a contract based on misleading advertisement in regards to a specific price promotion, which falls within the scope of Directive 2005/29/EC of the European Parliament and of the Council<sup>9</sup>. 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 Council<sup>10</sup>, 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 Council<sup>11</sup>, 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 Council<sup>12</sup>, 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 Council<sup>13</sup>, 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 Council<sup>14</sup>.

<sup>9</sup> 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).

<sup>10</sup> 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).

<sup>11</sup> 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).

<sup>12</sup> 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).

<sup>13</sup> 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).

<sup>14</sup> 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).

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

(4d) Consumer rights and obligations of traders towards consumers related to sales and service contracts also concern situations where consumers invoke their rights relating to the legal guarantee, in accordance with articles 5 up to 8, 10 and 11 of Directive (EU) 2019/771 of the European Parliament and of the Council<sup>15</sup>. 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/EEC<sup>16</sup>, the right to switch providers as provided for in article 25 of Regulation (EU) 2023/2854 of the European Parliament and of the Council<sup>17</sup>, 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.

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<sup>15</sup> 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).

<sup>16</sup> Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95, 21.4.1993, p. 29).

<sup>17</sup> Regulation (EU) 2023/2854 of the European Parliament and of the Council of 13 December 2023 on harmonised rules on fair access to and use of data and amending Regulation (EU) 2017/2394 and Directive (EU) 2020/1828 (Data Act) (OJ L, 2023/2854, 22.12.2023).

**(4e) Consumer rights and obligations of traders towards consumers related to sales and service contracts can also be related to the post-contractual stage disputes arising after the contract is terminated. This is the case, among others, with regards to obligations of traders to refrain from using content provided or created by the consumer, as provided for in article 16, paragraph 3, of Directive (EU) 2019/770 of the European Parliament and of the Council<sup>18</sup>. Another example would be the case where the legal guarantee provided by national law is longer than the commercial guarantee offered by the trader on the basis of the contract.**

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<sup>18</sup> **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 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 Council<sup>19</sup> 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 Council<sup>20</sup> and to not be discriminated as provided for in Article 15 of that Directive ; the right to receive transparent information on retail conditions for roaming calls and SMS messages as provided for in Articles 13, 14 and 15 of Regulation (EU) 2022/612 of the European Parliament and of the Council<sup>21</sup>, 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 Council<sup>22</sup>. Therefore, it should be provided that disputes arising in relation to such categories of consumer rights can be dealt with in ADR procedures.

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<sup>19</sup> — 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).

<sup>20</sup> — 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).

<sup>21</sup> — 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).

<sup>22</sup> — 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 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 Council<sup>23</sup>, 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 Council<sup>24</sup>, 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 of the European Parliament and of the Council<sup>25</sup>. Directive 2013/11/EU should also apply to disputes over access to such services, which are clearly defined in Union legislation and relate to consumers' basic needs, 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. Nevertheless, in order to ensure that the effective operation of the ADR entities shall not be impaired by the respective increase in their workload, the inclusion of this type of disputes shall solely apply to ADR entities that have adequate resources and funding. Moreover, ADR procedures shall cover such disputes only when there is no other redress mechanism offered by a public body for consumers to revert to where some of their basic needs are not satisfactorily met by the market. Finally, this expansion of the scope should be interpreted strictly as covering only specific types of disputes and not all types of disputes over access to services due to discrimination on the basis of nationality or place of residence.

<sup>23</sup> — 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).

<sup>24</sup> — 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).

<sup>25</sup> — Directive (EU) 2014/92 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 features (OJ L 257, 28.8.2014, p. 214).

- (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.<sup>26</sup> 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 Council<sup>27</sup> on out-of-court dispute settlement applies to that dispute, in accordance with Article 2(4) of that Regulation, given that it lays down more detailed rules in relation to such disputes.
- (8) The definitions of 'domestic dispute' and 'cross-border dispute' ~~should be adapted accordingly to reflect the extension of the scope of Directive 2013/11/EU.~~ **should reflect the extended material scope of Directive 2013/11/EU.**

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<sup>26</sup> ~~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).~~

<sup>27</sup> 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 under contracts under in 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. Given the interchangeability of paid goods and services and goods and services provided in exchange for personal data that there are contracts where the consumer provides or undertakes to provide personal data instead of the payment of a price, the definitions of 'sales contract' and 'service contract' should be adapted and the definitions of 'goods', 'digital content' and 'digital service' should be added. 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, including in the context of digital content and digital services.**
- (9) To ensure that ADR procedures are well suited for the digital age where communication takes place online, including in a cross border context, it is necessary to ensure swift and fair processes for all consumers. Member States should ensure that ADR entities established in their territories have the competence to provide dispute resolution procedures in disputes between traders established outside of the Union and consumers residing in their territory.

- (10) **Under Directive 2013/11/EU Member States are obliged to ensure that the ADR procedure is available and easily accessible online and offline.** Member States should ensure that, **when ADR entities should enable consumers to initiate and follow ADR procedures through digital tools also offline if requested.** It should also be ensured that **when digital tools, such as online interfaces and online complaint forms, are provided, those tools can be used by all consumers, including vulnerable consumers or those with varying levels of digital literacy.** **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 ADR entities which are public bodies are already covered by Directive (EU) 2016/2102 of the European Parliament and of the Council<sup>28</sup>.** **ADR entities which are private bodies should strive to follow the same accessibility standards as much as possible and feasible.** Member States should ensure that, upon request, parties to the disputes always have access to a review of automated procedures by a natural person. **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.**

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<sup>28</sup> **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)<sup>29</sup>. 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.**

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<sup>29</sup> **PE-CONS 24/24.**

- (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, for example where they deem this opportune bundling leads to faster or more coherent dispute resolution, under conditions defined by Member States, against a specific trader, to make ADR outcomes consistent for consumers subjected to the same illegal practice, and more cost-efficient for ADR entities and for traders. Consumers should be informed accordingly and should be given the opportunity to refuse from having their dispute bundled. On the other hand, the bundling of cases should not prejudice the right of the consumer to object.
- (12) Member States should also not allow the introduction of disproportionate rules as regards the reasons that an ADR entity may invoke to refuse the handling of a dispute, such as the obligation to use the company escalation system after a first negative contact with the complaints handling service ensure that ADR entities do not refuse to deal with a dispute where a trader introduces disproportionate rules on internal complaint-handling systems before the case can be referred to an ADR entity. For instance, in certain market sectors, some consumers face undue burden such as multiple mandatory steps in complaint-handling, or the obligation to prove that a specific part of a company's after sales service was contacted.

- (13) Under Directive 2013/11/EU, Member States may introduce national legislation to make trader participation in ADR compulsory in sectors they deem fit, in addition to sector-specific Union legislation which provides for mandatory participation of traders in ADR. To encourage traders' participation in the ADR procedures and to ensure due and swift ADR procedures, traders should be required, ~~especially in cases where their participation is not compulsory, to respond~~ **reply** within a specific period to enquiries made by ADR entities on whether they intend to participate to the proposed procedure. **The duty to reply should not hinder ADR entities from making recommendations or taking non-binding decisions, even when the trader has indicated that they do not intend to participate in the ADR procedure. Member States that apply stricter national rules, for example where traders' participation is mandatory, or ADR outcomes can be reached without the trader's consent to participate, are not required to apply the duty to reply. 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 they intend to participate in the ADR procedure should be, in principle, no more than 20 working days. However, in certain exceptional cases of a complex nature or in exceptional circumstances, the ADR entity should be entitled to extend that time period in order to give the trader the opportunity to analyse the dispute thoroughly and to choose whether or not they want to participate in an ADR procedure. In any case, that time period should not exceed 40 working days. The consumer should be informed of the time period given to the trader to reply and of any extension of it.**

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

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

- (17) To ensure that consumers are able to easily find a suitable ADR entity, especially in a cross-border context, the Commission should develop, promote and maintain a digital interactive tool that provides information about ADR entities' main characteristics and links to the webpages of the ADR entities, as notified to it. **The digital interactive tool should aim to assist consumers to understand appropriate redress solutions for their specific case and to take the appropriate action. It should contain direct links to the complaint form, where available, of ADR entities and a machine translation tool for ADR entities and ADR contact points. Furthermore, the tool should host the list of the ADR contact points notified to the Commission. While the Commission is already obliged to publish the list of the ADR entities on its website continuously, the additional functions of the tool, such as direct links to the complaint forms and the machine translation, should be available as soon as possible and no later than three months after the ADR Directive enters into force.**
- (18) Therefore, Directive 2013/11/EU should be amended accordingly.
- (19) As Regulation (EU) No 524/2013 is to be repealed by a separate act, it is also necessary to amend Directives (EU) 2015/2302<sup>30</sup>, (EU) 2019/2161<sup>31</sup> and (EU) 2020/1828<sup>32</sup> of the European Parliament and of the Council, as a consequence of that repeal,

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<sup>30</sup> 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).

<sup>31</sup> 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).

<sup>32</sup> Regulation (EU) 2023/988 of the European Parliament and of the Council of 10 May 2023 on general product safety, amending Regulation (EU) No 1025/2012 of the European Parliament and of the Council and Directive (EU) 2020/1828 of the European Parliament and the Council **of 25 November 2020 on representative actions for the protection of the collective interests of consumers (OJ L 409, 4.12.2020, p.1)**, and repealing Directive 2001/95/EC of the European Parliament and of the Council and Council Directive 87/357/EEC (OJ L 135, 23.5.2023, p. 1).

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

*Amendments to Directive 2013/11/EU*

Directive 2013/11/EU is amended as follows:

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

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

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

~~(b) a trader refuses to conclude a sales or service contract with a consumer in violation of the right of consumers to access services to which this trader cannot refuse access under Union law, provided that:~~

~~(1) the refusal of the conclusion of the contract resulted in a detriment for the consumer;~~

~~(2) the competent ADR entity has the adequate resources and funding;~~

~~(3) there is no existing public body that offers redress to consumers in this type of individual disputes.~~

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

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

~~(ii) — compulsory precontractual information,~~

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

**‘2. Member States shall ensure that ADR entities:**

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

(b) ~~which when they~~ offer digital ADR procedures, **they do so** 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 the parties to the dispute in advance in a clear, comprehensible and easily accessible way when automated means are used in the procedure;**

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

**(ca) when the procedure is partly or entirely carried out by automated means, inform the consumers parties to the dispute 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 under point (c);**

(d) may bundle similar cases against one specific trader into one procedure, under ~~condition that the consumer concerned is informed and does not object to that.~~ **The the conditions under which this bundling can take place are defined by the Member States;**

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

**(f) when dealing with disputes covered by this Directive, take the necessary measures to ensure that the processing of personal data complies with the rules on the protection of personal data laid down in Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>33</sup>;**

(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’;

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<sup>33</sup> **Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).**

(d) the following paragraph 8 is added:

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

**The 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 where the trader’s participation is mandatory, or ADR outcomes can be reached without the trader’s consent to participate. In any event, if trader participation is not mandatory, the ADR entity shall at least contact and invite the trader to participate.**’

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

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

‘Member States shall ensure that ADR entities make publicly available on their websites, on a durable medium upon request, and by any other means they consider appropriate, ~~biennial~~ activity reports **at least every 2 years.**’

(b) point (h) is deleted.

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

**(a) paragraph 3 is replaced by the following:**

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

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

*Article 14*

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

1. Member States shall ensure that, with regard to cross-border disputes, consumers and traders are able to obtain assistance to access the ADR entity or entities competent to deal with their cross-border dispute.
2. Each Member State shall designate an ADR contact point in charge of the task referred to in paragraph 1 **and** ~~Each Member State shall~~ communicate the name and contact details of its ADR contact point to the Commission. Member States shall confer responsibility for the operation of the ADR contact points on their centre belonging to the European Consumer Centres Network, or, if not possible, on consumer organisations or on any other body dealing with consumer protection.
3. **Member States shall ensure that** ~~The~~ **the** ADR contact points ~~shall facilitate,~~ **upon request,** communication between the parties and the competent ADR entity, which ~~may~~ includes **at least the following tasks,** in particular:
  - (a) ~~assisting with the submission of the complaint and, where appropriate, providing relevant documentation~~ **information concerning the submission of the complaint and the competent ADR entity;**
  - (b) providing the parties ~~and ADR entities~~ with general information on EU consumer rights;
  - (c) providing the parties with explanations on the procedural rules applied by the specific ADR entities;
  - (d) informing the complainant party of other means of redress when a dispute cannot be resolved through an ADR procedure.

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

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

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

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

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

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

**(b) the following paragraphs are added:**

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

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

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

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

#### *Article 2*

#### ***Amendment to Directive (EU) 2015/2302***

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

‘(g) information on available in-house complaint handling procedures and on alternative dispute resolution (‘ADR’) mechanisms pursuant to Directive 2013/11/EU of the European Parliament and of the Council<sup>34</sup> and, where applicable, on the ADR entity by which the trader is covered;’.

#### *Article 3*

#### ***Amendment to Directive (EU) 2019/2161***

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

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

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<sup>34</sup> 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 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*