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CONTRIBUTION

From:	General Secretariat of the Council
To:	Working Party on Consumer Protection and Information (Attachés) Working Party on Consumer Protection and Information
N° Cion doc.:	ST 14434/23
Subject:	DIRECTIVE on Consumer ADR - Member States' comments following the Working Party meeting on 11 March 2025

Delegations will find attached the Member States' comments following the Working Party meeting on 11 March 2025.

CY

Cyprus' positions on document WK 3155/2025 following the Consumers WP dated 11/03 - ADR

Obligatory participation of air carriers (line 31d)

With regard to the **obligatory participation of air carriers** in the ADR process, we are flexible.

Geographical and material scope (lines 33-43a)

We continue to have a strong reservation on the extension of **geographical scope** outside the Union. However, we can show flexibility if DSA model is applied.

We are not in favor of extending the scope to **pre-contractual rights**.

Definitions (lines 44-46b)

We are not in favor to include a **definition of unfair commercial practices**.

Additional obligations for ADR entities (lines 47-57, 58a-62, 62d-62e)

We are flexible for **microenterprises and self- employed** to have access in ADR procedures provided that it is left to the discretion of the MS.

In relation to the **bundling** of cases we can accept EP's position to inform the consumers accordingly. However, we still oppose to the position that the consumers should give their consent to this.

In relation to the EP’s amendment for access to the procedure with **physical presence**, we consider that this is not practicable and therefore cannot be accepted.

As regards the possibility for the consumer to **submit a complaint in their MS of residence** in the case of a cross-border dispute within the Union, we are flexible if it is made clear in the text that in such cases the responsibility of the ADR entity receiving the complaint is limited to transfer it to an ADR entity in the trader's MS of establishment.

Additional obligations for Member States (lines 62a-62c)

Regarding the possibility of **reimbursement of the nominal fee** paid by the consumer, we declare flexibility if the reimbursement made only in case the decision from the complaint examination vindicates the consumers.

Duty to reply (line 58)

Regarding the **duty to reply**, we continue to support the Council's mandate text. With regard to the EP's proposal for a 15-day deadline for response, we are flexible.

CZ

ADR (Follow-up to the Working Party on 11 March) - CZ COMMENTS

Geographical scope

In the context of the extension of the territorial scope, we have already expressed on several occasions that we do not agree with the extension of ADR to traders from third countries (red line). We agree that this should be decided by individual MS.

We are unable to comment on the proposed possible solution - DSA and the obligation on platforms to appoint a counsel in the EU as a possible basis for limiting it to only those traders who can be subject to effective enforcement - we do not have sufficient information on this. Moreover, while it may address platforms, it does not address third country traders in general. We take a rather negative view.

Bundling

We would prefer that individual MS decide whether cases can be bundled in the MS. However, if the process for bundling remains similar to the agreed mandate, with the MS shaping the terms of bundling themselves, we could be flexible on the requirement to inform consumers.

The right to submit a complaint with the MS where consumer resides

We do not agree that in the case of a cross-border dispute, the consumer should be able to make a complaint in the MS where he is resident. As we have already stated on several occasions, this would be a huge administrative burden on the ADR entity if it had to deal with this complaint (language, legislation, delivery, etc.). Moreover, it is not clear to us how the text could be reworded so that this change would not interfere with the rules of the ADR entity. At the WG it was mentioned that the consumer should contact the contact point, which will forward the complaint to the correct ADR entity in the relevant MS. This should already be the normal practice from the ECC side, so we are not clear on the intent of this "change" and do not agree with it.

Information about ADR

We understand the argument regarding consumers who do not have access to the internet, but these consumers are likely to make their purchases in physical stores where they have terms and conditions in which ADR information is mandatory. We believe that the information provided by the trader as it stands is sufficient both in relation to the administrative burden on traders and consumer protection. Further information obligations would impose an unnecessary administrative burden on traders without a clear added value for consumers.

Refund of nominal fee

In our view, it should be left to the MS to decide whether or not to charge for ADR. Only in the case of a non-statutory text (e.g. in a recital), regarding the possible refund of the fee in case of a positive outcome for the consumer, we could be flexible. But only if the EP makes concessions on other key issues (notably the above).

Summary

The Czech Republic recommends PRES to stick to the agreed mandate negotiated with the Member States as much as possible. The European Parliament's proposals fundamentally change some areas and we cannot

agree with them. We have shared our views on each area with the PRES at previous meetings and in writing, and our red lines still stand.

A few points on the ITM results presented by the PRES in the flash:

Air carriers - we do not agree with the mandatory inclusion of this sector in the ADR Directive. The majority of MS are against this step. Moreover, if it should result in a legally binding decision, some MS have based the whole ADR system on a voluntary and non-binding outcome. Most MS would have to set up a new state body for this area, which would be able to issue binding decisions, which would mean a large state budget cost.

Resolution of unfair commercial practices by the ADR entity – we disagree, red line.

Written explanation by the trader - only applies when the result is non-binding. It is not possible to imagine how the ADR entity will check whether the trader has complied with the agreement and then ask for a written explanation. We do not agree.

DEU Stellungnahme zu den Kompromissvorschlägen der POL PRÄS – schriftliche Kommentierung im Nachgang zur RAG am 11.03.2025

DEU beglückwünscht die POL PRÄS zur Eröffnung der Trilogverhandlungen und wünscht viel Erfolg bei den weiteren anstehenden Verhandlungen. Bei der Bewertung der Kompromissvorschläge der POL PRÄS ist für uns maßgeblich, ob damit die Verbraucherschlichtung sinnvoll gestärkt wird. Bei den Reformüberlegungen sollte unbedingt darauf geachtet werden, dass die Neutralität und Leistungsfähigkeit der AS-Stellen erhalten wird, damit weiterhin Verbraucherinnen und Verbraucher von funktionierender alternativer Streitbeilegung profitieren können. Den Aufbau unnötiger Bürokratie sollten wir vermeiden.

Im Einzelnen zu den Kompromissvorschlägen:

1. Geografischer Anwendungsbereich

Die POL PRÄS erläuterte in der RAG am 11.03.2025, dass man überlege, nur diejenigen Unternehmen, die dem Anwendungsbereich des DSA unterfallen, vom geografischen AWB der ADR-RL zu erfassen. Der DSA ist auf alle Anbieter von Vermittlungsdiensten, die ihre Dienste im EU-Binnenmarkt anbieten, anwendbar. Dies gilt unabhängig davon, ob diese in der EU oder außerhalb niedergelassen sind. Anbieter ohne Niederlassung in der EU sind jedoch nach dem DSA dazu verpflichtet, einen gesetzlichen Vertreter in einem MS der EU zu benennen. Anbieter von Vermittlungsdiensten i.S.d. DSA bieten Dienste der Informationsgesellschaft in Form von Diensten der „reinen Durchleitung“, „Caching“-Leistungen oder Hosting“-Diensten an. Darunter fallen zum Beispiel Internetzugangsdienste, Domänennamen-Registrierstellen, Hosting-Dienste wie Cloud- und Webhosting-Dienste, Online Plattformen wie Online-Marktplätze, App-Stores, Plattformen der kollaborativen Wirtschaft und Social-Media-Plattformen.

DEU sieht eine Ausweitung des geografischen AWB kritisch. Mit Blick auf die damit verbundenen zusätzlichen Kosten für die Schlichtungsstellen sowie den Haushalt der MS ist dies ein wichtiger Punkt in den Verhandlungen. Sollte die POL PRÄS in diese Richtung denken, sind in den Verhandlungen folgende Punkte zu berücksichtigen:

a) Anwendung nur auf very large online platforms

Es sollten nur die außerhalb der EU niedergelassenen very large online platforms (VLOPs) in den geografischen AWB aufgenommen werden. Die VLOPs haben von den Nicht-EU-Online-Diensten den höchsten Anteil von Nutzerinnen und Nutzern in der EU und sind daher besonders relevant.

b) anwendbares materielles Recht

Bei vertraglichen Ansprüchen eines Verbrauchers gegen ein Unternehmen, welches dem DSA unterfällt, ist im Einzelfall zu prüfen, welches materielles Recht anwendbar ist. Die Benennung eines gesetzlichen Vertreters i.S.d. DSA gilt nicht als Niederlassung in der EU (Art. 13 Abs. 5 DSA) und ist daher kein Anknüpfungskriterium nach Artikel 4 Absatz 1 Buchstabe a Rom I-VO für die Anwendung des Rechts des Mitgliedstaates, in dem der gesetzliche Vertreter seinen Sitz hat. Für die Schlichtungsstelle bedeutet dies, dass sie ggf. ausländisches Recht anwenden muss. Zur Erleichterung der Arbeit der Schlichtungsstellen wäre eine Formulierung bzgl. der Ausweitung des geografischen AWB erforderlich, die hinsichtlich der Unternehmen, die dem DSA unterfallen, einschränkend hinzufügt, dass sie ihre berufliche oder gewerbliche Tätigkeit im jeweiligen Staat ausüben, in dem der Verbraucher seinen gewöhnlichen Aufenthalt hat oder ihre Tätigkeit in irgendeiner Weise auf diesen Mitgliedstaat ausrichten (siehe Artikel 6 Absatz 1 Rom-I-Verordnung und Artikel 17 Absatz 1 lit. c) Brüssel-Ia-Verordnung). Nach der Grundanknüpfung des Artikels 6 Absatz 1 Rom I-VO wäre dann grundsätzlich (unbeschadet der Ausnahmen des Artikels 6 Absatz 4 Rom I-VO und einer nach Artikel 6 Absatz 2 Rom I-VO eingeschränkt möglichen Rechtswahl) das Recht des Staates anwendbar, in dem der Verbraucher seinen gewöhnlichen Aufenthalt hat. Es sollte bei der konkreten Formulierung der Ausweitung des geografischen AWB unbedingt darauf geachtet werden, dass die Schlichtungsstellen kein ausländisches Recht anwenden müssen.

c) Abgrenzung zur Schlichtungsstelle nach dem DSA

Streitigkeiten in Zusammenhang mit Entscheidungen von Online-Plattformen, die vermeintlich rechtswidrige Inhalte oder Inhalte, die mit den AGBs der Plattform unvereinbar sind, zum Gegenstand haben, können bereits nach geltendem Recht vor den entsprechenden nach den Vorgaben des DSA eingerichteten Schlichtungsstellen verhandelt werden. Mit Blick auf die bereits vorhandene Struktur von Schlichtungsstellen nach dem DSA bedarf es einer klaren Abgrenzung der Zuständigkeiten.

d) Vollstreckbarkeitserleichterung

Die Intention der POL PRÄS ist es ausweislich des Flashs, eine effektive Vollstreckbarkeit zu gewährleisten. Hierzu ist aus DEU Sicht zu beachten, dass die Pflicht aus dem DAS, einen gesetzlichen Vertreter zu benennen, lediglich die behördliche Rechtsdurchsetzung erleichtern soll. Die Benennung eines gesetzlichen Vertreters nach dem DSA ermöglicht es, die behördlichen Zuständigkeiten für die Pflichten aus dem DSA zwischen den MS zu bestimmen. Darüber hinaus erleichtert es die behördliche Zusammenarbeit mit den Anbietern, z.B. durch einfachere Zustellung von administrativen Bescheiden. Unmittelbare Auswirkungen auf die

ADR-Schlichtungsstelle hat die Benennung eines gesetzlichen Vertreters nicht, da diese keinen Zusammenhang mit der Einhaltung und Durchsetzung des DSA aufweist. Gleichwohl könnten die ADR-Schlichtungsstelle wie auch andere Stellen von der öffentlichen Bekanntgabe eines gesetzlichen Vertreters in der EU profitieren, insbesondere durch eine einfachere Kommunikation mit dem Unternehmen. Zu beachten ist aber, dass zwischen dem Verbraucher und dem ausländischen Unternehmen ein zivilrechtliches Verhältnis besteht. Für dieses privatrechtliche Verhältnis des Verbrauchers und des ausländischen Unternehmers ändert sich durch die Einrichtung eines gesetzlichen Vertreters hingegen nichts. Der gesetzliche Vertreter gemäß den Vorgaben des DSA haftet jedenfalls nicht für alle Ansprüche gegen den Unternehmer. Sofern sowohl der Verbraucher als auch der Unternehmer das Schlichtungsergebnis annehmen, bleibt für den Verbraucher weiterhin problematisch, wie er dieses gegenüber einem Unternehmen mit Sitz im Nicht-EU-Ausland durchsetzen kann.

2. Bündelung

DEU ist mit dem Kompromissvorschlag der POL PRÄS, wonach den Mitgliedstaaten die Möglichkeit eingeräumt wird, die Voraussetzungen für eine Bündelung festzulegen, solange der Verbraucher über die Bündelung zumindest informiert wird, einverstanden.

3. „Wohnsitzprinzip“ Zeile 51a und Zeile 67a

DEU begrüßt die Klarstellung des EP, dass an den Zuständigkeitsregelungen der AS-Stellen durch die Amendments des EP nichts geändert werden soll. Bei der neuen Formulierung sollte klargestellt werden, dass die AS-Kontaktstelle im Wohnsitz-Mitgliedstaat des Verbrauchers die Aufgabe übernehmen sollte, Beschwerden auch bei grenzüberschreitenden Fällen anzunehmen und an die zuständige Schlichtungsstelle in einem anderen Mitgliedstaat weiterzuleiten. Die AS-Kontaktstelle dürfte dafür deutlich besser geeignet, als die einzelnen AS-Stellen in einem Mitgliedstaat. Das Fachwissen über die zuständigen Schlichtungsstellen im EU-Ausland sollte gebündelt bei den AS-Kontaktstellen liegen. In diesem Zusammenhang sollte auch die Forderung des EP in Zeile 67a überdacht werden. Die Umsetzung der Vorschläge des EP würde wegen der erforderlichen Sprachkompetenz enorme Ressourcen von den AS-Stellen verlangen, die die Schlichtungsstellen nicht aufbringen können.

Im Zusammenhang mit den Aufgaben der AS-Kontaktstellen möchte DEU ergänzen, dass wir den Vorschlag von NDL unterstützen, in Zeile 69 „may include“ einzufügen. Dies entspricht dem bisherigen Wortlaut für die OS-Kontaktstellen in Art. 7 Abs. 2 lit. a ODR-VO. In Zeile 71a sollte „relevant“ durch „general“ ersetzt werden. In einem schlüssigen Gesamtpaket einer Einigung mit dem EP könnte bzgl. der AS-Kontaktstellen der Vorschlag des EP zu

Zeile 74 akzeptiert werden, dass diese auch dann für Verbraucher und Unternehmer Hilfestellungen anbieten, wenn es sich um rein innerstaatliche Streitigkeiten handelt.

4. Information auf Rechnungen

DEU begrüßt die Offenheit des EP, seinen Vorschlag zu den neuen Informationspflichten zu überdenken. Mit Blick auf das Ziel des EP, den „digitally excluded consumer“ zu erreichen, ist zu betonen, dass der Begriff der Rechnung eben nicht nur die Papierrechnung erfasst, sondern sehr weitreichend ist. Aus DEU Sicht ist der „digitally excluded consumer“ am ehesten durch Informationskampagnen der Mitgliedstaaten bzw. der Schlichtungsstellen zu erreichen. Dabei könnte eine Formulierung gefunden werden, die die Mitgliedstaaten ermutigt, über die Schlichtungsstellenlandschaft zu informieren und dabei auch Verbraucher miteinzubeziehen, die sich bisher nicht auf digitalem Weg informieren.

5. Gebühren

DEU begrüßt die Flexibilität des EP, die Vorschläge zu Zeile 62c zur Diskussion zu stellen. DEU unterstützt den Vorschlag von HUN für einen neuen EWG 14a sowie die Streichung von Zeilen 62b und 62c im Regelungsteil. Aus DEU Sicht müsste es im EWG 14a statt “the reimbursement mechanism” „a reimbursement mechanism“ heißen. Im vorletzten Satz des HUN Vorschlags zu EWG 14a müsste auch von „fees“ gesprochen werden, da andernfalls auch andere außergerichtliche Kosten davon erfasst sein könnten. Mit diesen Änderungen würde der EWG 14a lauten:

> "ADR procedures should preferably be free of charge for the consumer. In the event that costs are applied, those costs should not exceed a nominal fee. In order to enhance consumer access to ADR procedures while ensuring a balanced approach for all parties involved, Member States should have the flexibility to determine ~~the~~ **a** reimbursement mechanisms for any nominal fees applied in ADR procedures. In this regard, a fair solution could be to link the reimbursement of such fees to the outcome of the dispute. Where the consumer's complaint is upheld by a binding ADR decision, the trader could be required to bear the **fees** ~~costs~~ associated with the procedure. Conversely, where the consumer's claim is rejected, each party should bear its own costs."

6. Formulierungsvorschläge

Wie von der POL PRÄS gewünscht, übermittelt DEU die bereits in der RAG am 11.03.2025 mündlich vorgetragenen Formulierungsvorschläge.

a) Zeile 58g (Training für AS-Stellen):
Aus DEU Sicht ist der EP Vorschlag akzeptabel, wenn es bei „encourage“ statt „ensure“ bleibt. Der zweite Satz müsste dann entsprechend angepasst werden „if such training is provided“.

b) Zeile 77b (behördliche Kontrolle der AS-Stellen):
Der Vorschlag des EP ist akzeptabel, wenn „regular” gestrichen und ersetzt wird durch:
“Competent Authorities shall conduct ~~regular~~ checks into the functioning and activities of the ADR entities to monitor compliance with the requirements of this Directive **as and when appropriate**.”

c) Zeile 78 (Vorgaben für das neue KOM-Tool):
DEU unterstützt den Vorschlag Lettlands zum neuen KOM Tool. Dieser lautete:

> Recital 17 (compared to the Council's general approach):
>
> 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**, practical information about how to avail of ADR procedures in a cross-border context** and links to the webpages of the ADR entities, as notified to it**, allowing consumers to be directed to a competent body to resolve their disputes**. 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. **The Commission should ensure coordination between this digital interactive tool and other EU and national digital tools, where appropriate.**

- Amendments in Article 20, paragraph 8 (compared to the Council's general approach): By 3 months after the entry into force of this Directive], the Commission shall develop a **user-friendly** digital interactive tool that provides general information on consumer redress**, practical information about how consumers can avail themselves of ADR procedures in a cross-border context** 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 relevant websites**, directing consumers to a competent body to resolve their disputes**. 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.

Position statement by the German delegation on the Polish Presidency's compromise proposals – written comments following the Working Party Meeting on 11 March 2025

- Courtesy translation -

Germany congratulates the Polish Presidency for opening the trilogue negotiations and wishes Poland every success for the upcoming negotiations. In evaluating the compromise proposals presented by the Polish Presidency, the key question for Germany is whether the proposals strengthen consumer dispute resolution in a meaningful way. With regard to the reform considerations, it is essential to ensure that the neutrality and effectiveness of ADR entities are maintained so that consumers can continue to benefit from well-functioning alternative dispute resolution. We should avoid creating unnecessary bureaucracy.

On the individual compromise proposals:

1. b) Geographic scope of application

In the Working Party Meeting on 11 March 2025, the Polish Presidency explained that there were considerations to include only those businesses in the ADR Directive's geographic scope of application that fall within the DSA's scope of application. The DSA applies to all providers of intermediary services that offer their services in the EU internal market. This applies irrespective of whether their place of establishment is inside or outside the EU. However, under the DSA, providers who are not established in the EU are obliged to designate a legal representative in an EU Member State. Providers of intermediary services within the meaning of the DSA provide information society services in the form of "mere conduit", "caching" and "hosting" services. This includes internet access services, domain registries, hosting services such as cloud and web-hosting services, online platforms such as online market places, app stores, collaborative economy platforms and social media platforms.

Germany takes a critical view of extending the geographic scope of application. Given the resulting additional costs for ADR entities and the Member State budgets, this is an important point in the negotiations. Should the Polish Presidency think along these lines, the following points must be taken into account during negotiations:

a) Application to very large online platforms only

Only the very large online platforms (VLOPs) established outside the EU should be included in the geographic scope of application. Among the group of non-EU online services, VLOPS have the largest share of users inside the EU and are therefore particularly relevant.

b) Applicable substantive law

When a consumer has contractual claims against a business which falls within the scope of the DSA, the question of which substantive law is applicable must be examined on a case-by-case basis. The designation of a legal representative within the meaning of the DSA does not constitute an establishment in the EU (Article 13(5) DSA) and does therefore not constitute a connecting factor under Article 4(1)(a) of the Rome I Regulation for the application of the law of the Member State in which the legal representative is based. For the ADR entity, this means that it might potentially have to apply foreign law. To facilitate the work of ADR entities, it would be necessary to include a formulation regarding the expansion of the geographic scope of application, which adds the restriction that businesses falling within the scope of the DSA must be pursuing their professional or commercial activities in the respective country where the consumer has their habitual residence or must, by any means, be directing such activities to that country (see Article 6(1) Rome I Regulation and Article 17(1)(c) Brussels Ia Regulation). Under the basic connecting mechanism of Article 6(1) Rome I Regulation, the law of the country where the consumer has their habitual residence would then, in principle, be applicable (without prejudice to the exceptions set out in Article 6(4) Rome I Regulation and the limited choice of law under Article 6(2) Rome I Regulation). When deciding on the exact wording regarding the expansion of the geographic scope of application, it is essential to ensure that ADR bodies do not have to apply foreign law.

c) Distinction from “dispute settlement bodies” under the DSA

Under existing law, it is already possible to set up dispute settlement bodies in accordance with DSA provisions to hear disputes about decisions taken by online platforms concerning presumed illegal content or content that does not comply with the terms and conditions of the platform. Given the already existing structure of dispute settlements bodies under the DSA, it is necessary for competences to be clearly delineated.

d) Facilitating enforcement

According to the Flash, the Polish Presidency intends to ensure effective enforcement. To this end, Germany believes that the duty under the DSA to designate a legal representative merely aims to facilitate enforcement by the authorities. The designation of a legal representative under the DSA allows Member States to determine among themselves the

competent authorities responsible for obligations arising under the DSA. The designation also facilitates cooperation between authorities and providers, e.g. by making it easier to serve notices. The designation of a legal representative has no direct impact on the ADR entity as it does not have any impact on ensuring compliance with and enforcement of the DSA. The ADR entity, like other bodies, could nevertheless benefit from the public announcement of a legal representative in the EU, in particular thanks to smoother communication with the business. It should be noted that the relationship between the consumer and the foreign business is governed by civil law. However, the designation of a legal representative does not entail any changes to this private-law relationship between consumer and foreign business. Pursuant to DSA provisions, the legal representative is not at any rate liable for all claims against the business. Even if both the consumer and the business accept the outcome of the dispute resolution, it remains challenging for the consumer to find a way to enforce the result vis-à-vis a business established outside the EU.

2. Bundling

Germany accepts the Polish Presidency's compromise proposal that allows Member States to define the conditions for bundling provided that the consumer concerned is at least informed thereof.

3. "Residence principle", line 51a and line 67a

Germany welcomes the EP's clarification that its amendments do not impact the rules on which ADR entity is competent. The new wording should make it clear that the ADR contact point in the Member State where the consumer concerned resides is to take on the task of receiving complaints in cross-border cases and transfer them to the competent ADR entity in another Member State. The ADR contact points are likely much better suited for this task than the Member States' individual ADR entities. Expertise on the competent ADR entities in other EU countries should be pooled at the ADR contact points. In this context, the EP's additional proposal in line 67a should be reconsidered. Due to the required language skills, implementation of the EP's proposals would require the ADR entities to invest massive amounts of resources which they simply cannot afford.

In connection with the tasks of the ADR contact points, Germany would like to add that we support the Netherlands' proposal of adding "may include" in line 69. This reflects the current wording used in Article 7 (2)(a) of the Regulation on consumer ODR. In line 71a, "relevant" should be replaced by "general". As part of a coherent overall agreement with the EP, the EP's proposal in line 74 could be accepted in terms of ADR contact points being allowed to provide assistance to consumers and traders also in purely domestic disputes.

4. Information on invoices

Germany welcomes the EP's openness to reconsidering its proposal regarding the new information requirements. As regards the EP's intention of reaching "digitally excluded consumers", it should be stressed that the term "invoice" does not only refer to paper invoices, but is in fact very broad. In Germany's view, "digitally excluded consumers" can best be reached by the Members States or ADR entities carrying out information campaigns. A formulation could be found to encourage Member States to provide information on the ADR landscape, with a special focus on consumers who do not yet obtain information digitally.

5. Fees

Germany welcomes the EP's flexibility in putting its proposals in line 62c up for discussion. Germany supports Hungary's proposal to add a new Recital 14a and delete lines 62b and 62c in the operative part. In Germany's view, the text in Recital 14a should read "a reimbursement mechanism" instead of "the reimbursement mechanisms". The second to last sentence of the Hungarian proposal regarding Recital 14a should say "fees", because it could otherwise also cover other extrajudicial costs. With these changes, Recital 14a would then read as follows:

> "ADR procedures should preferably be free of charge for the consumer. In the event that costs are applied, those costs should not exceed a nominal fee. In order to enhance consumer access to ADR procedures while ensuring a balanced approach for all parties involved, Member States should have the flexibility to determine ~~the~~ **a** reimbursement mechanism for any nominal fees applied in ADR procedures. In this regard, a fair solution could be to link the reimbursement of such fees to the outcome of the dispute. Where the consumer's complaint is upheld by a binding ADR decision, the trader could be required to bear the **fees** ~~costs~~ associated with the procedure. Conversely, where the consumer's claim is rejected, each party should bear its own costs."

6. Drafting suggestions

As requested by the Polish Presidency, Germany is submitting the drafting suggestions previously put forward verbally at the Working Party Meeting on 11 March 2025.

a) Line 58g (training of ADR entities):

In Germany's view, the EP's proposal is acceptable provided that "ensure" is replaced by "encourage". The second sentence should then be amended accordingly by re-including "if such training is provided".

b) Line 77b (checks of ADR entities by competent authorities):
The EP's proposal is acceptable provided that "regular" is deleted and replaced by "as and when appropriate": "Competent Authorities shall conduct ~~regular~~ checks into the functioning and activities of the ADR entities to monitor compliance with the requirements of this Directive **as and when appropriate**."

c) Line 78 (provisions regarding the new Commission tool):
Germany supports Latvia's proposal regarding the new Commission tool. The proposal read as follows:

Recital 17 (compared to the Council's general approach):

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**, practical information about how to avail of ADR procedures in a cross-border context** and links to the webpages of the ADR entities, as notified to it**, allowing consumers to be directed to a competent body to resolve their disputes**. 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. **The Commission should ensure coordination between this digital interactive tool and other EU and national digital tools, where appropriate.**

- Amendments in Article 20, paragraph 8 (compared to the Council's general approach): By 3 months after the entry into force of this Directive], the Commission shall develop a **user-friendly** digital interactive tool that provides general information on consumer redress**, practical information about how consumers can avail themselves of ADR procedures in a cross-border context** 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 relevant websites**, directing consumers to a competent body to resolve their disputes**. 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.

DK

MINISTRY OF INDUSTRY, BUSINESS AND FINANCIAL AFFAIRS

18 March 2025

Danish written comments related to possible areas for flexibility as set out in the Presidency flash of the 7th of March 2025 concerning the Proposal for a directive amending Directive 2013/11/EU on alternative dispute resolution for consumer disputes

In addition to our written comments as well as our comments provided at the different working parties – both of which are still valid – Denmark would like to provide further comments regarding our position concerning the areas which the Presidency has identified for possible discussion in terms of flexibility:

(1) the geographical scope,
(2) bundling,
(3) the right to submit the complaint in Member State where the consumer resides,
(4) information on invoices, and
(5) reimbursement of nominal fee.

Furthermore, we have also included our remarks concerning the German proposal regarding line 52a and 53.

Comments regarding the geographical scope
It is difficult to demonstrate any further flexibility than already set out in the Council mandate, thereby leaving the choice of extending the scope to the Member States.

As previously stated, Denmark finds it important to limit the scope to cover EU-traders, as it will not be possible to enforce the outcome of the AD-procedure towards non-EU-traders. Therefore, the proposal made by the EP will not increase legal certainty, but will merely give the consumers false hope of an effective resolution.

However, in terms of the proposal set out in the flash, we will have to analyse the proposal further before we are able to demonstrate flexibility.

Comments regarding bundling
We can show certain flexibility in regards to informing the consumer about bundling as set out in the flash. As long as the bundling is not dependent on the consumer's consent, we can support informing the consumer of the important steps made throughout the procedure - for example bundling.

In Denmark, it is good administrative practice to provide information about such steps to the parties. Informing the consumer about the bundling will also provide the consumer with the possibility to object to the bundling, if the consumer finds their case to be significantly different.

Comments regarding the right to submit the complaint in Member State where the consumer resides
Denmark can demonstrate flexibility regarding the right to submit the complaint in the Member State where the consumer resides, if this is carried out by having the ADR Contact Point receive and forward the complaint to the competent ADR entity.

Denmark finds it important to state that the competent ADR entity should be in the Member State where the trader is established. This is the wording of article 5, paragraph a, in the current ADR-directive.

Comments regarding information on invoices
As set out in the flash, it would be a better solution to replace the duty to provide the consumer with information on ADR with different means than invoices, as an invoice serves a different purpose. If this is of utmost importance for the EP, we are able to show flexibility as set out in the flash in order to be able to retain other core parts of the Council mandate – such as geographical scope for example.

However, we do find that the current balance between informing the consumer and burdening the traders to be appropriate. The trader is already obligated to inform the consumer, but has a certain degree of flexibility when choosing the way of information. When finding a potential landing zone, it is important that we do not impose too many burdens on the trader, as the system is based on a willingness to participate.

Comments regarding reimbursement of nominal fee
Denmark can show certain flexibility in regards to the reimbursement of a nominal fee. In Denmark, most ADR entities will reimburse a fee payed by the consumer, if the outcome is positive for the consumer. Therefore, we are able to support the proposal set out in the flash in terms of having a soft provision encouraging reimbursement of a fee for consumers if the outcome is positive for the consumer.

Comments regarding DE's proposal

In terms of the German proposal regarding line 52a and 53 in the mandate of the Council, we are aware that there must be a careful balance in the trilogue with many core points from the Council's side, but we agree that the scope of the AI Act and the GDPR have already been deliberately defined in those negotiations. If we are to establish more far-reaching requirements in the ADR directive than already provided for in these acts, this must be based on a thorough analysis setting out the necessity to do so. An analysis, which we have not seen at this stage.

Therefore, if the majority of the Member States supports the German proposal and it does not create unnecessary hurdles in the dialogue with the EP, then we can also support the proposal.

EE

Estonia's written comments regarding the ADR directive.

Obligatory participation of air carriers (line 31d)

We understand that this is an important topic to the European Parliament, but we are still convinced that the ADR directive is not the right place to regulate this obligation. As many member states have already mentioned, the right place would be regulation 261/2004. However, the ADR directive is minimally harmonizing, which means that member states should have the opportunity to decide by themselves whether the procedure is mandatory for some sector(s) or not.

Geographical and material scope (lines 33-43a)

Geographical scope: we support the idea that this it could be up to the Member States to decide whether to solve disputes with third country traders or not.

Material scope: post-contractual obligations are a red line for us. However, our colleagues from another ministry drew our attention to the fact that recital 88 of the Consumer Credit Directive already says that ADR should solve pre-contractual disputes regarding the Consumer Credit Directive. Is there a conflict with the current wording agreed with the European Council?

Definitions (lines 44-46b)

We can be flexible with the directive's definitions.

Additional obligations for ADR entities (lines 47-57, 58a-62, 62d-62e)

We support the idea that regular trainings are important, but we should not regulate in the directive how often these trainings should take place. We have some flexibility here.
Other points in the Flash are suitable for us.

Additional obligations for Member States (lines 62a-62c)

We do not support the idea that the fee paid by the consumer should be reimbursable by national authority.
Currently, the procedure in Estonia is free, but we considered introducing a fee (15 EUR) to prevent consumers from filing unfounded claims. We do not support this because the consumer also receives a legal solution made by lawyers for this fee (which can not exceed a nominal fee). Because of that, this fee should not be reimbursable.

Additionally, holding a physical meeting is even more expensive for the ADR entities and because of that we also do not support the idea that the fee paid by the consumer should be reimbursable when the dispute was resolved in the physical meeting.

Duty to reply (line 58)

That's a red line for us. We need this exception in which me made an agreement with the European Council. In other words we strongly support the European Council's wording "*the first subparagraph shall not apply where the trader's participation is mandatory, or ADR outcomes can be reached without the trader's consent to participate, or where the trader has already committed contractually to use ADR entities.*"

We are pleased that the European Parliament has shown openness to this exception.

Additional obligations for traders (62f-63e)

We do not support this obligation, because in practice traders may not give a written explanation. This obligation may cause many problems in practice - in Estonia, the decision is made based on the evidence provided by the consumer if the trader does not respond. A written explanation does not help the consumer in any way, what is important to him/her is the decision made by the ADR entity.

FI

FI comments on the proposal for next steps (14.3.2025)

1) Geographical scope: DSA and the obligation on platforms to appoint legal representative in the EU as a possible basis to limit the extension of the scope only to those traders that can be subject to effective enforcement (as suggested during our working party on 31st January).

FI: We do not support the extension of geographical scope to third country traders. Therefore, we do not support this amendment by EP. We do not see any compromise solution on this matter.

2) Bundling: flexibility for MS to shape the conditions with a requirement to at least inform consumer.

FI: We strongly support the Council mandate. The possibility to bundle cases makes the operations of ADR-entity more efficient and it is therefore also in the interests of the consumers. However, we could support EP's proposal on informing consumers about bundling if the Article otherwise is like the Council mandate. We do not support the amendment that the consumer must expressly agree on bundling.

3) Right to submit the complaint in Member State where consumer resides: Rewording EP text in a way that it is clear that it does not interfere with the rules on which ADR entity is competent.

FI: We need more information about this. What would this mean? Would the consumer be able to submit the complaint via an ADR contact point?

As a starting point, consumer must be able to choose the ADR entity that best knows the law applicable to dispute resolution in cross-border cases inside the EU. The applicable law is determined in accordance with N:o 593/2008 of Rome 1. The law applicable to cross-border disputes may be the law of a Member State other than the one in which the ADR entity is situated.

If the consumer choses an ADR-entity in another MS than in which the consumer is resident, the consumer should not have the right to use the language which EP proposes.

The ADR contact point should not be responsible for translating consumer's complaint.

4) Information on invoices: replacing information on **invoices** with a different means to provide information on ADR system to digitally excluded consumers.

FI: We need more information about this. What is the means the presidency team is considering?

We are strongly against the invoice amendment because this information is not needed on invoices and the proposal would cause costs.

5) Reimbursement of nominal fee: soft provision encouraging reimbursement of fee for consumers if the outcome is positive for the consumer.

FI: As a starting point, we think the current regulation of the ADR Directive is sufficient. We do not support the EP amendment. Some ADR-entities are funded by sector-specific traders. The EP mandate would in practice means the transfer of state funds to traders. However, we are open to the solution that it is mentioned in the recitals that this kind of cost transfer is possible.

6) Duty to reply (row 58)

FI: We can support EP's proposal on shortening the reply time to 15 days if the second subparagraph in the Council Mandate is maintained. (According to the second subparagraph "The first subparagraph shall not apply where the trader's participation is mandatory, or ADR outcomes can be reached without the trader's consent to participate, or where the trader has already committed contractually to use ADR entities to resolve disputes with consumers. In any event, if trader participation is not mandatory, the ADR entity shall at least contact and invite the trader to participate".) It would be a red line for us if this exemption in the second subparagraph is deleted.

Moreover, FI wants to emphasize the following:

- ➔ **We do not support mandatory participation of any traders. ADR-procedure should be kept voluntary. It is not clear what is meant by mandatory participation. Even participation in court process in the judicial system is voluntary, even though the outcomes are binding.**
- ➔ **We strongly support the Council mandate on material and geographical scope. Including non-contractual disputes in the scope would be a red line for us.**
- ➔ **We are strongly against the proposal on physical meetings by EP. ADR procedure is written. The possibility to hold a physical meeting should be left for the MS to decide. Organising a physical meeting demands resources and is not needed as the dispute can be properly resolved based on written documents.**

RÉPUBLIQUE FRANÇAISE
Liberté
Égalité
Fraternité

Paris, le 17 mars 2025

NOTE DES AUTORITÉS FRANÇAISES

Objet : Commentaires écrits concernant les amendements soutenus par le Parlement européen sur le projet de révision de la directive 2013/11/UE relative au règlement extrajudiciaire des litiges de consommation (RELC)

PJ. : Traduction anglaise de courtoisie

À l'invitation de la présidence polonaise à l'issue du groupe de travail « Protection et information du consommateur » du 11 mars 2025, les autorités françaises souhaitent faire part des commentaires écrits suivants, relatifs à la proposition de directive révisant la directive 2013/11/UE telle qu'amendée par le Parlement européen, à la suite de la première réunion interinstitutionnelle qui s'est tenue le 20 février 2025.

Les autorités françaises tiennent en préambule à remercier de nouveau la présidence polonaise pour la défense des équilibres du mandat de négociation en réunion interinstitutionnelle.

Elles constatent que la position du Parlement européen diverge sensiblement des équilibres du mandat et prennent acte des positions exprimées. **Elles soulignent être particulièrement attachées à la préservation des positions qu'elles ont défendues lors des discussions au sein du groupe de travail** et au maintien des équilibres issus du 5ème compromis.

I. Rappel des acquis du mandat de négociation tel qu'approuvé par le COREPER et des positions défendues par les autorités françaises

À la suite du groupe de travail du 11 mars 2025, les autorités françaises réaffirment les positions les plus importantes qu'elles ont défendues et qu'elles maintiennent dans la perspective des échanges avec le Parlement :

- **La limitation du champ matériel du RELC aux seuls litiges liés à un contrat** (lignes 14,15,33 à 43 et 46b du tableau) : opposition à l'extension de ce champ aux litiges non contractuels ou relatifs à des pratiques précontractuelles indépendantes de la conclusion d'un contrat (pratiques commerciales déloyales notamment) ;
- **La limitation du champ géographique du RELC aux opérateurs établis au sein de l'UE** (ligne 12 du tableau) : attachement aux équilibres du mandat sur le sujet et au libre choix laissé aux Etats-membres de décider d'instaurer d'une telle procédure ;
- **Le refus d'une obligation de participation aux procédures de RELC pour les transporteurs aériens** (tableau lignes 11a et 31d) : bien que le Parlement européen ait insisté sur l'importance de cette disposition, les autorités françaises insistent sur l'idée que le caractère volontaire du RELC est de nature à faciliter l'adhésion au dispositif par les professionnels, leur entrée en médiation et la résolution durable des litiges.

- **L'opposition au signalement aux autorités compétentes des professionnels qui refusent systématiquement de se conformer aux propositions du médiateur** (lignes 11b et 75j du tableau). Cela serait contraire au caractère volontaire du RELC et de nature à décourager son utilisation par les professionnels.
- **L'opposition à l'obligation de motivation des refus des propositions de solution par les professionnels** (lignes 11b et 62h du tableau), du fait du caractère volontaire de la procédure, et de la difficile contrôlabilité de la disposition en cause.
- **Le refus d'une sanction de l'absence de réponse d'un professionnel à l'entité de RELC** (ligne 78d du tableau), qui créerait des difficultés en termes d'application, et des charges administratives importantes.

  Elles restent par ailleurs opposées aux nouvelles contraintes imposées par le Parlement en termes de formation des personnes physiques chargées du RELC, même si les autorités françaises sont attachées à la qualité de la formation (lignes 19a, 58b et 58c et 58 g du tableau).

II. Positions des autorités françaises sur les pistes exploratoires proposées par la Présidence en vue des prochaines réunions interinstitutionnelles techniques

La présidence polonaise a invité les autorités des Etats membres à se prononcer sur les flexibilités potentielles qu'elle a identifiées à la suite du premier trilogue du 20 février et des deux réunions techniques des 4 et 7 mars. Elle a demandé aux autorités de chaque Etat membre à se prononcer sur les sujets suivants :

- Le champ géographique ;
- Le regroupement des cas similaires ;
- Le droit pour le consommateur de déposer une plainte dans son état membre ;
- L'obligation d'information sur les factures ;
- Le remboursement des coûts de la procédure.

1. Le champ géographique

La présidence polonaise propose comme base de discussion avec le Parlement européen de s'inspirer des dispositions du règlement DSA imposant aux plateformes visées par ce règlement de désigner un représentant légal au sein de l'UE.

Les autorités françaises rappellent leur attachement aux équilibres du mandat sur le sujet de l'extension du champ géographique et au libre choix laissé aux Etats-membres de décider de permettre une telle extension. A ce titre, elles sont **défavorables à la proposition de la présidence.**

2. Le regroupement des cas similaires

Lignes 20 et 54 du tableau

La proposition initiale de la Commission visant à modifier l'article 5.2 de la directive permet aux entités de RELC de regrouper des cas similaires à condition que le consommateur concerné soit informé et ne s'y oppose pas (« *under condition that the consumer concerned is informed and does not object to that* »). Le Parlement européen a amendé cet article en ajoutant un accord exprès du consommateur (« *expressly agrees to that bundling* ») et une formation spécifique des personnes en charge de la procédure.

Les autorités françaises rappellent leur attachement à ce que la possibilité de regrouper des cas similaires soit mise en œuvre dans les conditions définies par les Etats membres (« *may bundle cases under the conditions defined by the Member States* »). Cette position du mandat est soutenue par les autorités françaises.

Dès lors que les principales conditions de regroupement des cas resteraient définies par les Etats membres et que l'information du consommateur n'entrainerait pas de contraintes excessives pour les entités de RELC dans le traitement des dossiers, **elles sont néanmoins ouvertes à examiner une rédaction sur le sujet.**

3. Le droit de déposer une plainte dans l'Etat membre où réside le consommateur
   Lignes 12 et 51a du tableau

Le Parlement a introduit une nouvelle obligation pour les entités de RELC à l'article 5.2.a bis qui doivent veiller à ce que les consommateurs puissent introduire une plainte dans l'Etat membre dans lequel ils résident. La présidence fait part de sa volonté de clarifier le texte proposé par le Parlement afin qu'il ne crée pas d'interférence avec les règles de compétence de chaque entité de REL (« *Rewording EP text in a way that it is clear that it does not interfere with the rules on wich ADR entity is competent* »).

Le groupe de travail du 11 mars 2025 n'a pas permis de lever les questionnements sur ce sujet. **Les autorités françaises maintiennent leur très forte réserve sur cette proposition** et rappellent leurs positions :

- Il est permis que les professionnels déterminent l'entité de médiation dont ils relèvent. La proposition du Parlement poserait donc difficulté dans le cas des litiges transfrontaliers où le professionnel adhérerait à un processus de médiation mis en place dans l'Etat dans lequel il exerce uniquement, comme cela est permis par les textes ;
- La proposition est de nature à remettre en cause l'architecture globale des dispositifs de RELC telle que définie dans le cadre de l'harmonisation minimale, et en tous les cas le système décidé en France, fondé sur le choix d'une entité RELC par le professionnel.

4. L'information sur les factures
   Lignes 23b et 63d du tableau

Le Parlement européen souhaite renforcer l'information du consommateur sur l'existence des entités de RELC et les services que celles-ci proposent, en faisant en sorte de rendre plus claires, visibles et accessibles ces informations. À ce titre, il prévoit une modification de l'article 13 pour que ces informations apparaissent sur le site web des professionnels lorsqu'il existe, dans les conditions générales des contrats de vente ou de service et sur les factures émises par le professionnel.

Lors des derniers groupes de travail au Conseil, certains Etats ont montré une vive opposition à ce que les informations concernant le RELC apparaissent sur les factures du professionnel, craignant des charges excessives pour ces derniers ou estimant que les factures n'ont pas pour but de fournir des informations au consommateur autres que celles relatives à l'objet même du contrat.

- **Les autorités françaises partagent la préoccupation de ne pas créer de charges excessives pour les professionnels et considèrent que l'état du droit en la matière ne pose pas de difficulté.**
- A cet égard, elles ont aussi fait part de leur forte réserve sur **l'ajout d'un paragraphe 2 bis imposant aux professionnels de mettre à disposition une adresse électronique pour les consommateurs,** estimant que cela créerait de nouvelles charges pour les professionnels sans pour autant palier un besoin et avoir démontré son utilité.

Elles émettent une réserve d'examen général sur ce sujet.

5. Le remboursement du coût de la procédure
   Ligne 23a du tableau

En réponse à l'amendement du Parlement européen imposant le remboursement des frais de la médiation imputés au consommateur par les Etats membres (considérant 14.a), la présidence polonaise envisage une disposition non contraignante de remboursement de ces frais dans le cas où l'issue de la procédure est favorable au consommateur (« *if the outcome is positive for the consumer* »).

Les autorités françaises restent défavorables à la proposition du Parlement européen en ce qu'elle est de nature à remettre en cause l'architecture globale des dispositifs de RELC définis dans le cadre de l'harmonisation minimale et créerait une nouvelle charge pour les autorités nationales là où la médiation peut avoir un coût modique pour le consommateur.

III. **Autre point de flexibilité soulevé par les autorités françaises :** l'obligation pour le professionnel de répondre dans un délai de 15 jours ouvrables.
Lignes 22 et 58 du tableau

Les autorités françaises rappellent avoir une flexibilité sur une proposition du Parlement européen : l'obligation des professionnels de répondre à une demande de médiation dans un délai de 15 jours, au lieu de 20 jours prévu dans le texte de compromis (*amendements 10 et 39 du PE – lignes 22 et 58 du tableau*), de nature à favoriser la résolution rapide des litiges de consommation. Néanmoins ce soutien ne serait possible que sous réserve que cette obligation ne soit pas assortie de sanction

Le Parlement européen prévoit une obligation pour les professionnels d'informer l'entité de RELC de leur volonté de participer ou de ne pas participer à la procédure initiée par le consommateur. Cette information doit être transmise dans un délai fixé par le Parlement à 15 jours ouvrables, pouvant être étendus à 20 jours en cas de litige complexe ou de circonstances exceptionnelles telles qu'une période de forte activité ou une crise extérieure.

Si les autorités françaises ont soutenu les équilibres du mandat sur la durée laissée au professionnel, tout en rappelant qu'elles n'étaient pas favorables à l'extension du délai en cas de circonstances exceptionnelles, elles confirment qu'elles **sont ouvertes sur la demande du Parlement de fixer l'obligation des professionnels de répondre à une demande de médiation dans un délai contraint de 15 jours**, au lieu de 20 jours prévu par le mandat, de nature à favoriser la résolution rapide des litiges de consommation.

Elles rappellent également que, bien qu'ayant soutenu le texte du 5e compromis, elles n'étaient pas favorables à l'introduction d'exceptions à cette obligation de répondre sous condition de délai, en particulier à celle qui exonérerait les professionnels s'étant engagé à entrer en médiation par voie contractuelle. **Elles maintiennent leur position sur ce point et sont défavorables à l'introduction de toute nouvelle exception.**

En revanche, elles rappellent que la mention expresse d'une sanction à l'absence de réponse dans les 20 jours a été supprimée et que cela va dans le sens qu'elles ont souhaité, même si elles avaient sollicité une clarification rédactionnelle sur le sujet.

A cet égard, elles demeurent opposées à la modification proposée de l'article 21 de la directive, au travers de l'amendement 57 (ligne 78d), introduisant l'obligation pour les Etats membres de définir un régime de sanction en cas de non-respect l'obligation de réponse dans les délais précités.

Une telle modification entrerait en effet en contradiction avec la nature amiable et volontaire du processus de RELC et pourrait décourager l'adhésion des professionnels, essentielle à l'efficacité de la procédure. En outre, elle impliquerait une charge supplémentaire pour les entités de RELC qui pourraient être responsables d'informer les autorités compétentes, ou de prononcer elles-mêmes des sanctions.

IV. **Recours à des moyens automatisés**

1. Information ex ante des consommateurs

L'article 5(2) (ba) définit une information ex-ante des consommateurs sur la **nature**, le **rôle** et les **risques potentiels** liés à l'utilisation de procédures automatisées. Cette disposition protectrice, spécifique à la procédure de RELC, est favorable aux consommateurs, et ne semble pas créer de charge excessive pour les entités de RELC (ie : envoi de messages types automatiques).

Des dispositions du RGPD (articles 13 et 15) protègent les consommateurs, en prévoyant leur information concernant l'utilisation de leurs données à caractère personnel. L'existence de ces dispositions peut interroger sur la nécessité d'introduire un texte spécifique relatif à l'information des consommateurs sur l'utilisation de procédures automatisées dans le cadre de procédures de RELC (article 5 (2) (ba)).

Cependant :

- le RGPD et la directive RELC n'ont pas le même objet, le premier portant sur l'information en cas de traitement de données à caractère personnel et le second portant sur les garanties offertes aux consommateurs en cas de recours à des moyens automatisés dans le cadre du processus décisionnel du RELC ;
- les dispositions de l'article 5(2) (ba) s'ajoutent à ces dispositions du RGPD, pour prévoir une information supplémentaire spécifique et plus précise des consommateurs sur le recours à des procédures automatisées ; ainsi, l'information des consommateurs sur la « nature » et le « rôle » des procédures automatisées est « spécifique », et va au-delà des dispositions du RGPD quant à l'utilisation de leurs données à caractère personnel ;
- les autorités françaises restent attachées à ce qu'une telle information spécifique des consommateurs soit prévue dans le texte régissant les procédures de RELC et leurs droits en la matière.

Il serait toutefois utile de préciser les « risques potentiels » liés à l'utilisation de procédures automatisées dans le cadre d'une procédure de RELC, avec un processus décisionnel particulier, en droit, et en équité (précision dans le texte ou dans un considérant). Cela permettrait ainsi aux entités de RELC d'identifier exhaustivement ces risques potentiels spécifiques, dont ils devront informer les consommateurs.

2. Droit de réexamen des solutions de RELC proposées aux parties

Les autorités françaises ont soutenu le texte du mandat prévoyant le droit au réexamen par une personne physique de l'issue d'une procédure de médiation, y compris lorsque la procédure n'a pas été menée de manière « entièrement » automatisée.

Le mandat de négociation prévoit la possibilité de revoir l'issue d'une procédure de RELC par une personne physique, quand des moyens automatisés ont été utilisés dans le « processus décisionnel ».

Les autorités françaises considèrent que le « processus décisionnel du RELC » (« *decision-making process* ») couvre toutes les phases de la procédure de règlement du litige, c'est-à-dire de la recevabilité du dossier à la proposition de solution. Ce processus couvre donc tous les actes déterminant ou pouvant influencer la décision de recevabilité oui la proposition de solution. Les autorités françaises comprennent donc que les garanties prévues par l'article 5.2.b bis et 5.2.c s'appliqueront à l'ensemble de ces étapes, y compris si la décision a été validée au final par une personne physique.

L'ajout dans cet article d'une référence explicite à l'article 22 du RGPD réserverait la possibilité d'un réexamen aux procédures entièrement automatisées, lesquelles ne sont pas souhaitables pour les autorités françaises.

Les autorités françaises continuent de soutenir l'ouverture d'un droit au réexamen des solutions de RELC même lorsque ces dernières ne sont pas entièrement automatisées (c'est-à-dire lorsqu'une personne humaine est intervenue dans le processus décisionnel). Elles sont toutefois ouvertes à examiner une amélioration de la rédaction qui permettrait de limiter la charge administrative induite par ce droit.

NOTE FROM THE FRENCH AUTHORITIES – ENGLISH COURTESY TRANSLATION

At the invitation of the Polish Presidency following the "Consumer Protection and Information" working group of March 11, 2025, the French authorities would like to submit the following written comments on the proposal for a directive revising Directive 2013/11/EU as amended by the European Parliament, following the first inter-institutional meeting held on February 20, 2025.

The French authorities would first like to thank the Polish Presidency once again for defending the balance of the mandate during the inter-institutional meetings. They note that the European Parliament's position diverges significantly from the balance of the mandate and take note of the positions expressed.

They stress that they are particularly keen to preserve the positions they defended during discussions within the working party, and to maintain the balance that was reached in the 5th compromise.

I. Main lines of the mandate as approved by COREPER and the positions supported by the French authorities

Following the March 11th working party, the French authorities are reaffirming the most important positions that they still support in view of the exchanges with the European Parliament:

- **Limitation of the material scope of the ADR to contractual disputes** (lines 14, 15, 33 to 43 and 46b of the table): opposition to the extension of this scope to non-contractual disputes or disputes relating to pre-contractual practices independent of the conclusion of a contract (unfair commercial practices in particular);

- Limiting the geographical scope of the ADR to traders established within the EU (line 12 of the table): attachment to the balance of the mandate on the subject and to the free choice left to Member States to decide on the introduction of such a procedure;

- **The refusal of an obligatory participation of air carriers** (table lines 11a and 31d): although the European Parliament has insisted on the importance of this provision, the French authorities insist on the idea that the voluntary nature of ADR procedures is likely to facilitate adherence to the system by professionals, their entry into ADR procedure and the lasting resolution of disputes.

- **Opposition to the reporting to the competent authorities of professionals who systematically refuse to comply with the entities's proposals** (lines 11b and 75j of the table). This would be contrary to the voluntary nature of the RELC and would discourage its use by professionals.

- **Opposition to the obligation for traders to provide written explanations on lack of compliance with the outcome** (lines 11b and 62h of the table), given the voluntary nature of the procedure and the difficulty of verifying the provision in question.

- The refusal of a sanction for the duty to reply (line 78d of the table), which would create difficulties in terms of enforcement, and significant administrative burden.

- They also remain opposed to the new constraints imposed by Parliament in terms of training for individuals in charge of ADR procedures, even though the French authorities are in general committed to the quality of training (lines 19a, 58b and 58c and 58g of the table).

II. Positions of the French authorities on the exploratory avenues proposed by the Presidency with a view to the forthcoming inter-institutional technical meetings

The Polish Presidency has invited Member State authorities to comment on the potential flexibilities it has identified following the first trialogue on February 20th and the two technical meetings on March 4th and 7th. The Presidency asked the authorities of each Member State to give their opinion on the following subjects:

- Geographical scope;
- The bundling of similar cases;
- The consumer's right to submit a complaint in his own member state;
- The obligation to provide information on invoices;
- Reimbursement of nominal fee.

1. Geographical scope

As a basis for discussion with the European Parliament, the Polish Presidency proposes to draw inspiration from the provisions of the DSA, which require platforms covered by this regulation to appoint a legal representative within the EU.

The French authorities reiterate their attachment to the balance of the mandate on the subject of extending the geographical scope and to the free choice left to member states to decide whether to allow such an extension. **They are therefore opposed to the Presidency's proposal**.

2. Grouping similar cases

Lines 20 and 54 of the table

The Commission's initial proposal to amend article 5.2 of the Directive allows ADR entities to bundle similar cases “under condition that the consumer concerned is informed and does not object to that”. The European Parliament amended this article by adding an express agreement by the consumer (“expressly agrees to that bundling”) and specific training for the people in charge of the procedure.

The French authorities reiterate their commitment to ensuring that the possibility of bundling similar cases is implemented under the conditions defined by the Member States. As long as the main conditions for bundling cases remain defined by the Member States, and that consumer information does not entail excessive restrictions for ADR entities in processing cases, **the French authorities are nonetheless open to examining a draft wording on the subject**.

3. The right to lodge a complaint in the Member State where the consumer resides

Lines 12 and 51a of the table

The Parliament introduced a new obligation for ADR entities in article 5.2.aa, which must ensure that consumers can submit a complaint in the Member State in which they reside. The Presidency expressed its wish to “reword EP text a way that it is clear that it does not interfere with the rules on which ADR entity is competent”. The working group of March 11th did not resolve any questions on this subject. **The French authorities maintain their very strong reservations on this proposal** and reiterate their positions:

- Traders are allowed to determine the ADR entity to which they belong. The Parliament's proposal would therefore raise difficulties in the case of cross-border disputes, where the trader would adhere to an ADR entity set up solely in the Member State in which they operate, as permitted by the current legislation;

- The proposal is likely to contradict the overall architecture of ADR systems as defined in the context of minimum harmonization, and in any case the system decided in France, based on the choice of an ADR entity by the trader.

4. Invoice information

Lines 23b and 63d of the table

The French authorities express a general reservation on this subject.

The European Parliament wishes to strengthen consumer information on the existence of ADR entities and the services they offer, by making this information clearer, more visible and more accessible. To this end, it plans to amend Article 13 so that this information appears on professionals' websites where they exist, in the general terms and conditions of sales or service contracts, and on invoices issued by the professional.

During the most recent Council working parties, some Member States expressed strong opposition to the inclusion of information concerning the ADR procedures on the trader's invoices, fearing excessive costs for the trader or considering that invoices are not intended to provide information to the consumer other than that relating to the actual subject of the contract.

The French authorities share the concern not to place excessive burdens on professionals, and consider that the state of the law in this area does not pose any difficulties.

In this respect, they also express **their strong reserves about the addition of a paragraph 2a requiring professionals to provide an e-mail address for consumers**: it would create new burden for professionals without meeting a need and having demonstrated its usefulness.

5. Reimbursement of nominal fee

Line 23a of the table

In response to the European Parliament's amendment requiring Member States to reimburse nominal fee charged to the consumer (recital 14.a), the Polish Presidency is considering a non-binding provision to reimburse these costs “if the outcome is positive for the consumer”.

The French authorities remain opposed to the European Parliament's proposal, insofar as it is likely to call into question the overall architecture of the ADR mechanisms defined as part of minimum harmonization, and would create a new burden for national authorities where ADR procedures can have a limited cost for the consumer.

III. Another point of flexibility raised by the French authorities: the professional's obligation to respond within 15 working days.

Lines 22 and 58 of the table

The French authorities point out that they can be flexible on one of the European Parliament's proposals: the obligation for traders to respond to a request for mediation within 15 days, instead of the 20 days provided for in the compromise text (EP amendments 10 and 39 - lines 22 and 58 of the table), which is likely to encourage the rapid resolution of consumer disputes. However, this support would only be possible on condition that this obligation is not met with penalties.

The European Parliament envisages an obligation for traders to inform the ADR entity of their wish to participate or not to participate in the procedure initiated by the consumer. This information must be sent within a period set by the Parliament at 15 working days, which can be extended to 20 days in the event of a complex dispute or exceptional circumstances such as a period of high activity or an external crisis.

While the French authorities have supported the balance of the mandate in terms of the length of time left to the trader, while reiterating that they were not in favor of extending the time limit in exceptional circumstances, they confirm that **they are open to Parliament's request to set an obligation for professionals to respond to a request for mediation within a restricted time limit of 15 days**, instead of the 20 days stipulated in the mandate, in order to encourage the rapid resolution of consumer disputes.

They also point out that, although they supported the text of the 5th compromise, they were not in favor of introducing exceptions to this obligation to respond within a given timeframe, in particular one that would exempt traders who had undertaken to enter into mediation by contract. They maintain their position on this point, and are opposed to the introduction of any new exceptions.

However, they point out that the express mention of a penalty for failure to respond within 20 days has been removed and that this is in line with their concerns, even though they had requested editorial clarification on the subject.

In this respect, they remain opposed to the proposed amendment to article 21 of the directive, through amendment 57 (line 78d), introducing the obligation for Member States to define a penalty system in the event of failure to comply with the obligation to reply within the aforementioned time limits.

Such a change would be contrary to the amicable and voluntary nature of the ADR process, and could discourage traders from signing up, which is essential to the effectiveness of the procedure. It would place an additional burden on ADR entities, which could be responsible for informing the competent authorities, or for imposing sanctions themselves.

IV. Use of automated means

1. Ex ante consumer information

Article 5(2)(ba) defines ex-ante consumer information on the **nature**, **role** and **potential risks** associated with the use of automated procedures. This protective provision, specific to the ADR procedure, is favorable to consumers, and does not appear to create an excessive burden for ADR entities (ie: it could be met by sending automatic standard messages).

Provisions of the GDPR (Articles 13 and 15) protect consumers, by providing for their information regarding the use of their personal data. The existence of these provisions may call into question the need to introduce a specific text relating to consumer information on the use of automated procedures in the context of ADR procedures (article 5 (2) (ba)).

However:

- the RGPD and the ADR Directive do not have the same purpose, the former relating to information in the event of personal data processing and the latter relating to the guarantees offered to consumers in the event of the use of automated means as part of the ADR decision-making process;

- the provisions of Article 5(2) (ba) are added to these provisions of the GDPR, to provide for additional specific and more precise information for consumers on the use of automated procedures; thus, consumer information on the “nature” and “role” of automated procedures is “specific”, and goes beyond the provisions of the GDPR with regard to the use of their personal data;

- the French authorities remain committed to ensuring that such specific consumer information is provided for in the text governing ADR procedures and their rights in this area.

➔ **It would be useful, however, to specify the “potential risks” associated with the use of automated procedures in the context of an ADR procedure, with a specific decision-making process, in law and in equity (clarification in the text or in a recital). This would enable ADR entities to exhaustively identify these specific potential risks, of which they would have to inform consumers.**

2. Right to reconsider ADR procedure outcomes

The French authorities supported the text of the mandate providing for the right of review by an individual of the outcome of an ADR procedure, including where the procedure was not conducted in a “fully” automated manner.

The negotiating mandate provides for the possibility of review of the outcome of an ADR procedure by a natural person, when automated means have been used in the “decision-making process”.

The French authorities consider that the “ADR decision-making process” covers all phases of the dispute resolution procedure, i.e. from the admissibility of the case to the outcome. This process therefore covers all acts that determine or may influence the decision on admissibility or the outcome. The French

authorities therefore understand that the guarantees set out in article 5.2.b bis and 5.2.c will apply to all these stages, even if the decision has been validated in the end by a natural person.

Adding an explicit reference to Article 22 of the RGPD in this article would reserve the possibility of reconsideration to **fully** automated procedures, a result which is not desirable to the French authorities.

➔ **The French authorities keep supporting the opening up of a right to reconsider ADR outcomes even when they are not fully automated (i.e. when a human has intervened in the decision-making process). They are, however, open to examining drafting improvements that would make it possible to limit the administrative burden induced by this right.**

An Roinn Fiontar,
Trádála agus Fostaíochta
Department of Enterprise,
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IE Written Comments on Presidency Flash for WP Meeting of 11th March 2025.

1. **Obligatory participation of air carriers (line 31d)**

We remain opposed to the mandatory inclusion of air-carriers as we consider that ADR should remain voluntary for air carriers.

We are concerned that any proposals to make ADR mandatory would interact negatively with the robust complaints framework that is in place and is functioning effectively and there could be resistance from the industry to any provisions that would seek to make it mandatory.

2. **Geographical and material scope (lines 33-43a)**

We continue to support the position in the Council mandate for both geographical and material scope. As regards geographical scope, we consider that Member States are best placed to determine if ADR entities have the competence to engage in disputes with traders established in third countries.

We maintain a scrutiny reservation on the suggestion regarding the DSA (as suggested at the WP meeting on 31st January) and the obligation on platforms to appoint legal representative in the EU as a possible basis to limit the extension of the scope only to those traders that can be subject to effective enforcement.

3. **Definitions (lines 44-46b)**

We understand the EP position. However, we share the concern of other Member States that by introducing unfair commercial practices here, we are burdening ADR entities with a responsibility that is not theirs to address or enforce.

4. **Additional obligations for ADR entities (lines 47-57, 58a-62, 62d-62e)**

Inclusion of micro-enterprises and self-employed

We have flexibility here and can agree to their inclusion in the Recitals rather than an Article. However, the text should be very clear that Member States can determine how and under what circumstances or conditions they may be included.

Submitting a complaint in MS in which they reside

We can support this proposal and can agree that it does not change the structure or rules of which ADR entity is competent to deal with them.

Bundling

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We can support that consumers are informed when bundling occurs but consider it important that consumers do not have to give their consent to bundling. ADR entities are aware of all necessary information and similarities that allow them bundle cases and requiring consumers consent will further delay the process.

Private international law

We do not support this proposal as it is considered too much to expect from ADR entities and represents a further burden. We agree with NL position, that knowledge and information of international law is closely linked to broadening of geographic scope so there is no need to retain it given the general opposition to the extension of the geographical scope.

Access to data strictly related to the case and specifically provided by the parties

We note the EP will reflect on this line and we await the outcome.

Regular training

We note the PRES will look into possible provisions to strengthen the requirements in a more flexible way and await the outcome. However, we can support DE proposal that “encourage” be used in place of “ensure”.

5. Additional obligations for Member States (lines 62a-62c)

We do not support the reimbursement of the nominal fee as we consider it too burdensome for ADR entities. However, we can have flexibility on this if it can be left to Member States to decide. We await PRES suggestion on this.

We have flexibility around the provision of physical meetings and await the EP reconsideration of this amendment. However, we understand that it is problematic for other Member States.

6. Duty to reply (line 58)

We have flexibility here and can support the shorter deadlines. However, we do not agree with sanctions for not replying as we consider it goes against the voluntary nature of ADR. We agreed with the presumption that lack of reply could be taken as a negative. However, we note EP openness to discuss exemptions from duty to reply and await further proposals here.

7. Additional obligations for traders (62f-63e)

IE

We do not support the provision of written explanations by traders. It is an additional burden and if traders don’t engage or comply, it is unrealistic to expect a written explanation as to why not. We consider that this proposal goes against the voluntary nature of ADR.

We do not support the provision of information on invoices as it will add costs and burden to traders. We understand the intention is to make access to information easier for consumers (in particular, digitally excluded consumers) but consider the inclusion of information on invoices may exceed any benefit to consumers. We also note that EP is reconsidering this element, and so we await the outcome.

Italian observations

on the Proposal for DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2013/11/EU on alternative dispute resolution for consumer disputes and Directives (EU) 2015/2302, (EU) 2019/2161 and (EU) 2020/1828

Italy wishes the Polish Presidency every success for the trilogue negotiations for the ADR Directive. In line with the request from the Presidency, Italy would like to supplement its previous contributions.

Red lines

- The text of the EU Parliament provides, among other things, the extension of the competence of ADR entities to disputes relating to non-contractual situations and the extension of the geographical scope of the Directive to disputes between EU consumers and professionals from third countries. In this regard, we oppose the Parliament's proposal and support the general approach of the Council on these issues, as a red line.
- Furthermore, as already reported, the Parliament's text still contains the provision introducing the obligation for ADR entities to ensure that consumers can submit and access documents in non-digital format. In this regard, we oppose the Parliament's proposal, reiterating the concern, expressed several times, for the introduction of this concept in the text of the Directive. With reference to the possibility of choosing between online and offline procedures, Italy hopes that this choice will be left to the Member States and that the provision of the current Directive that allows consumer discretion, "where applicable", will be maintained. Please, find more details in the annex, attached to the present document.
- We strongly oppose the provision on review by a natural person when the procedure "has been carried out by automated means", because it could be interpreted as requiring human control even when the automated means are used to carry out purely administrative and ancillary tasks without prejudice to the human assessment of the case. We believe that the right to obtain a human review of the ADR decision should only apply to ADR procedures that are fully automated or defined as high-risk AI systems under the AI Act. Indeed, if the automated means do not replace the human decision of the case, the right of review would constitute a generalized right of appeal and would prejudice the rapid conclusion of the proceedings even when the automated means are used only for purely ancillary tasks (e.g. simple case law research) that do not materially affect the outcome of the decision-making process.

We support Germany’s drafting proposal. We agree with what we perceive as the underlying rationale of the proposal, i.e. that the ADR Directive should not introduce additional information requirements and a broader right of review than those established by the AI Act and the GDPR. We do not think that compelling reasons to do otherwise have emerged in the discussion so far. Nonetheless, both the EP and the Council drafting proposals (line 53), as currently worded, extend the scope of the notion of “automated means” well beyond art. 22 GDPR (“decision based solely on automated processing”) even considering its interpretation in Schufa (the final decision “draws strongly” on an upstream partial decision made automatically).

In particular, in our view, the German proposal would clarify that: (i) if an AI system used in ADR procedures is classified as “high risk” under the AI Act, then (and only then) the ADR must comply with the requirements set out therein; (ii) if the ADR makes use of “automated means” (whether AI-based or not) that fall within the scope of Article 22 GDPR, then (and only then) the party would have a right of review from a natural person.

In particular, the use of automated tools that merely perform ancillary administrative or procedural preparatory tasks within the meaning of Art. 6(3) AI Act should never lead to a right to a human review of the ADR decision, as it remains entirely human from the beginning.

In light of the above, we support a request of further legal analysis on the topic.

- Finally, with regard to the proposed Art. 1, paragraph 1, point (4 a)(b), which amends the rule in the first paragraph, the provision allowing the possibility, upon request of the consumer, to access the procedure by holding a face-to-face meeting risks undermining the objective of the Directive to ensure rapid procedures, without certain benefits for the quality of the decision-making process where the relevant findings must be based on documentary evidence. Furthermore, it seems excessively costly, especially in the case of cross-border disputes. We therefore oppose this amendment and consider it a red line.

Specific observations

What follows is a series of specific observations on the text regarding issues that do not relate to the above-mentioned red lines are nevertheless considered important. However, Italy can ultimately show flexibility on the following issues in a spirit of compromise.

1. **Geographical scope and related amendments obliging Member States to ensure that consumers can submit complaints in their Member State (lines 12, 51a, 68a).**

While we support the Council mandate text on this point, the text proposed by the European Parliament in recital 3 does not appear clear or consistent with other recitals and provisions of the text (see recital in line 26 and provisions in line 78). It would be appropriate to clarify how the actual functioning mechanism is envisaged and whether the proposed addition implies that the ADR entity of the Member State in which the consumer is resident should provide assistance only for the submission of the complaint and the relevant documentation, or – a case that would raise several critical issues – the addition could be interpreted as meaning that the consumer should be allowed to carry out the entire ADR procedure in the Member State in which he is resident. If this were the case, the provision would be burdensome for ADR entities and could undermine the role of ADR contact points which – pursuant to Article 14 – should assist consumers and traders in cross-border disputes. Indeed, ADR contact points should not necessarily be an ADR entity of the Member State.

In conclusion, the European Parliament's text raises interpretative doubts and perplexities.

2. **Material scope and related amendments in the definitions where a new definition of "unfair commercial practice" is added. The new definition restricts unfair commercial practices to the "black list" of commercial practices only.**

We support the compromise text proposed by the Council on disputes arising from a contract with the deletion of the non-contractual situation from the material scope of the Directive. Indeed, this approach seems to have a more limited scope of application which, on the one hand, does not burden the operation of ADR entities and, on the other hand, provides greater certainty in the protection of consumer rights.

The definition of unfair commercial practices on the basis of a clear and exhaustive “black list” seems to be suitable to offer clarity and legal certainty to both professionals and consumers. However, this approach could reduce consumer protection in the face of conduct by professionals who, although not explicitly listed in the black list, can still be included in the category of unfair commercial practices as they are in any case harmful to consumers' rights and, with respect to which, ADR bodies would therefore not have jurisdiction.

3. Mandatory participation of air carriers. (line 11a, 31d)

The European Parliament has added an obligation for air carriers to participate in alternative dispute resolution (ADR) procedures, while ensuring that the parties have access to the ordinary judicial system.

Italy confirms the position already expressed, regarding the fact that the provision of a participation obligation for Airlines, inserted in the ADR Directive relating to all sectors, although desirable to ensure that consumers can derive the maximum benefit from ADR procedures, seems inconsistent with the rest of the regulatory corpus. Given that the difficulties in applying the rights established by Regulation 261/2004 should more correctly be resolved through its revision, the possible introduction of a participation obligation for Airlines should, in any case, be accompanied by the provision of sanctions in the event of violations.

4. Competence, independence and impartiality requirements for ADR entities

Strengthening the above requirements improves the integrity and credibility of ADR entities, ensuring fair and impartial outcomes. However, it should be avoided that improving these requirements could lead to higher fees or funding problems. The aim that could be achieved with such intervention is to increase consumer confidence in ADR processes, promoting their use as a valid alternative to litigation. ADR entities may still have difficulties in meeting the standards, reducing competition and availability.

Article 1, first paragraph, point 3a, letter c), of the European Parliament text requires Member States to ensure that ADR entities provide “regular” training to natural persons responsible for ADR, in particular in the area of consumer law and other relevant sectoral legislation. We are flexible on this provision, provided that no precise time limit is imposed on the requirement of regular training, and that it can respond to the needs and different sectors of operation.

5. New obligations imposed on traders and ADR bodies:

- traders who do not comply with the outcome of the ADR procedure are required to provide a written explanation regardless of whether the outcome is binding or not (rows 62g-62h of the 4-column table).

- obligation to provide information relating to ADR on traders' websites, on terms and conditions and on invoices issued to consumers (lines 63-63d).

- obligation imposed on ADR entities to collect and report data on traders who systematically refuse to comply with the outcome of the ADR procedure (lines 75i-75j)

We strongly support the Council's mandate, which introduces an exception to the professional's obligation to respond under Article 13 where professional participation is mandatory.

The trader's response, however, should not result in generic or insubstantial explanations, compromising the effectiveness of the requirement for the benefit of effective consumer protection. Clear guidance should be provided in this regard.

With reference to the reporting obligation of professionals who refuse to respect the outcome of the procedure, it is emphasized that this obligation risks becoming a disproportionate burden for ADR entities. To date, ADR entities may not know whether the outcome of the procedures has been respected, because there are no reporting obligations in this regard and, in part, because failure to comply with the agreement, especially for conciliatory procedures, is usually submitted to the Judge. Therefore, this provision risks not being applicable to procedures characterized by the conciliatory nature and the presence of minutes of agreement valid as an enforceable title.

We are not opposed to introducing new obligations for traders to provide ADR-related information on their websites and in their terms and conditions (lines 23b/63d). However, we have some concerns about the reference to the term “invoices” as it could be interpreted too broadly (particularly in relation to the banking, payments and financial sector).

6. Other

- We strongly oppose the European Parliament's proposal that consumers should have the right to carry out a cross-border ADR procedure in an official language of the Member State in which they reside. We believe that this provision would be too burdensome because each ADR would potentially have to provide for ADR procedures in all official EU languages. In our view, the dispute should be conducted in the official language of the ADR body identified for the dispute. Perhaps ADR contact points could provide assistance to consumers for the translation of documents. Finally, we note that this provision seems in any case contradictory to what is provided for in recital 17 and related Article 1, paragraph 8, as regards the development of the interactive tool with the translation system integrated.
- With regard to the European Parliament's proposal for recital 14a, the obligation for Member States to reimburse nominal fees charged by ADR entities appears to be excessively burdensome for Member States and does not necessarily ensure effective consumer protection in out-of-court settlements. On the contrary, passing on the cost of the ADR procedure to the trader could act as a deterrent for the latter and encourage early dispute resolution. Furthermore, we believe that consumers should not bear the costs of the procedure only if the dispute is resolved entirely or partially in their favour. Otherwise, there would be an incentive to submit frivolous and merely delaying complaints, which would congest the ADR system without effective consumer protection.
- Regarding the European Parliament's proposal for recital 14c, we do not agree with the extension to unfair commercial practices. Furthermore, we note a discrepancy between recital 14c and Article 17(5), where consumer organisations are not mentioned.
- As regards the amendments to recital 16 by the European Parliament, we do not support the text of the EP Mandate regarding the possibility of extending the benefits of ADR schemes for consumers to self-employed workers and micro-enterprises.

- As regards the amendments to Article 1, first paragraph (3), point (d), which add a new paragraph (8), We support the Council's mandate providing for a maximum response time of 20 working days, extendable up to 40 working days in the case of complex disputes or exceptional circumstances, provided that the consumer is informed of such an extension. We also support the specification that if the trader does not respond within the deadline, the ADR body may consider the lack of response as a refusal to participate. In any case, doubts remain as to when the trader is exempted from this obligation, in particular when he has published information on ADR procedures on his website.

ANNEX - Comments on the proposal to allow consumers to submit complaints in a non-digital format.

1) Introduction

In October 2023, the EU Commission adopted a proposal to amend Directive 2013/11/EU on alternative dispute resolution (ADR Directive) aimed, among others, at safeguarding vulnerable consumers with limited digital skills.

To achieve this objective, the EU Commission proposed to amend the current art. 5(2), letter a), of the ADR Directive, introducing the possibility for consumers to submit, upon request, complaints and the related supporting documentation also in non-digital format.

This provision was confirmed in both the positions adopted by the European Parliament and by the EU Council, in the latter case with some modifications.

If confirmed, this provision would have a significant (negative) impact on the activity of already existent ADR entities relying only on digital procedures and, ultimately, on all consumers deciding to submit a complaint.

The protection of vulnerable consumers, which must be guaranteed, can be achieved with different provisions. We can support this by highlighting, in particular, the high numbers of complaints handled by the Italian ADR bodies. In fact, first of all, it seems useful to recall that, as revealed in the European commission's report of November 2022, Italy ranks second in Europe in terms of the number of recognized national ADR organs and in terms of the number of applications they receive. In addition, it seems also appropriate to point out that if one relates these data to the population, looking at per capita procedures, Italy would rank first in Europe. Furthermore, it should be noted that in Italy several (public) ADR bodies have been established on the basis of legislative provisions, with respect to which the current regulatory provision of the directive was taken into account when drafting the relevant regulation. Therefore, a change to access to the procedure would also result in a regulatory burden on Member states.

These pieces of evidence should give an understanding of the enormous burden on the Member State and on ADR bodies, in terms of costs and organization of procedures, should the current version of the text on how complaints should be filed be confirmed. It should also be noted that the possibility of filing the appeal offline seems to cover only one hypothesis of weakness related to digital literacy, which is only one of the vulnerabilities that can plague consumers and that must necessarily be taken into account in order to ensure the effectiveness of access, and this tool alone is insufficient for this purpose. Furthermore, it is represented that the percentage of appeals filed through a proxy/intermediary is very high in Italy, as in the case of appeals filed in the financial sector (approx. 73%, data taken from the 2023 annual reports). In these cases, the technicality and complexity of the subject matter is such that the consumer does not feel able to file the appeal independently.

We recall in fact that the current Article 5(2)(c) of the ADR Directive requires Member States to provide that, where applicable, ADR entities offer the consumer the possibility of filing a complaint offline
We add below new pieces of evidence about the impacts of the abovementioned provision and, considering the extent of such impacts, we propose amendments in order to grant consumer an easy access to ADR procedures while eliminating unnecessary costs for already operational ADR platforms and in particular an impact analysis made for one of the ADR entities in the financial sector and data coming from a recent FIN-Net survey. Furthermore, similar concerns are shared by other Italian authorities, such as the Transport Regulatory Authority. In fact, for the transport sector (since the institution of the “Conciliaweb” on April 3, 2023), are

registered 14,717 instances received in 2023, 15,030 instances received in 2024 (until September 30); in the telecommunications sector, approximately 70,000 proceedings per year were handled in 2022 and 2023 by Authority for the guarantee of the communications. Recent comparative data on European ADRs in the financial sector confirm previous concerns raised by the "financial ombudsman", particularly regarding the average number of claims handled, the share of online and offline complaints, and the impact of individual assistance tools in reducing offline workload. Similar cost-related challenges could arise for ADRs in the transport sector. In this context, as previously already noted by our delegation in previous written comments, a key strength of the current ADR mechanism is its ability to facilitate direct and informal message exchanges, even if not simultaneous.

2) ACF, the ADR entity established by Consob

The Italian Financial Disputes Arbitrator ("Arbitro per Controversie Finanziarie", hereinafter, ACF), is an out-of-court resolution entity established by Consob in 2016 to resolve disputes between retail investors and intermediaries, regarding violations of the obligations of diligence, fairness, information and transparency, when providing investment services and activities or collective investment management.

When established, ACF allowed the submission of complaints in a non-digital format for a period of two years only to investors who decided to submit the complaint directly, without any assistance from a professional attorney or a consumer association.

This temporary rule ceased to apply as of January 2019. Since that date, consumers have been required to send and access documents in a digital format only.

This regulatory choice was grounded on the fact that the use of digital tools contributes to ensure timeliness, an orderly conduct and the efficiency of procedures while facilitating a possible future application of AI tools within ADR procedures.

Based on ACF experience, digital tools have not been causing operational problems to investors, thanks also to the implementation of a simple and intuitive system and the assistance provided – when necessary – by the ACF staff.

a) Impact analysis of the proposal

The proposal is to allow in any circumstance the submission and consultation of documents also in non- making the procedure faster, more orderly and effective. In fact, one of the most significant burdens resulting from the introduction of non-digital procedures is represented by the reduction in the efficiency digital format would undermine the objectives and the benefits for investors that digital solutions aim to achieve – i.e. of ACF procedure.

Moreover, this provision would entail an increase in economic, administrative and organizational costs for ADR entities, in particular for those entities (as ACF) which already rely on fully digital procedure. Such costs would far outweigh the (marginal) benefits that the legislator intends to guarantee to consumers – i.e. allow vulnerable consumers an easy access to ADR procedure.

Lower efficiency of the ACF procedure

The introduction of non-digital procedures would cause significant delays in the conclusion of ACF proceedings which currently rely exclusively on digital tools.

Based on the ACF practical experience, we have estimated that, assuming the use of postal mail as an alternative method for submitting and consulting documentation, proceedings managed through non-digital tools could conclude with a delay ranging from 17 to 33 working days, if compared to similar proceedings managed through digital tools.

The possibility to use non-digital methods could also encourage opportunistic behavior by consumers. In fact, they might exploit the non-digital channel to bypass the document constraints (in terms of length and format) designed to expedite the conclusion of ACF digital proceedings. Therefore, ACF would need to find solutions to ensure that the constraints provided in the digital-only handling of complaints do not encourage the choice of paper-based methods.

Eventually, the increased workload for ACF staff in managing non-digital proceedings would also cause a general slowdown in the conclusion of all proceedings (digital and not).

Higher costs for ACF

The introduction of non-digital procedures would also result in a significant increase of economic costs.

As first, it will be necessary to update the IT systems currently used by ACF to handle non-digital documentation which could require *una tantum* cost estimated at around € 50,000.

The ongoing management of individual procedures through non-digital tools could also imply additional activities quantifiable, in terms of Full Time Equivalent, in a range from 6 to 10 additional man-days for each complaint. According to our estimations, these additional activities would generate higher costs quantifiable in a range from € 1,900 to € 3,200 for single proceeding.

It should be noted that the current positions of the EU Council and the EU Parliament, granting all individuals the possibility to use non-digital procedures, could not allow to introduce any type of limitation and this makes difficult to predict the exact extent that the phenomenon could assume and, as a consequence, to make an exact estimate of the overall related costs.

To provide an estimation of the comprehensive annual costs for ACF deriving from this provision, in the following table we show three different scenarios, assuming a number of complaints approximately amounting to 1,000 per year:

	Scenario (% paper based complaints on the expected total amount of complaints)		
	Optimistic (2%)	***Bad*** (no attorney - 40%)	***Worst*** (all)
N° of complaints	**20**	**400**	**1000**
Total expected costs	from **38.000€** to **64.000€**	from **760.000€** to **1.280.000€**	from **1.900.000€** to **3.200.000€**

In the optimistic scenario, we assumed that the share of complaints submitted in paper format could be around 2% of the total complaints annually submitted. This estimate replicates the share (on an annual basis) of paper complaints submitted in the period 2017-2018, when both channels (online and offline) were available.
For comparative purposes, two other less favorable scenarios have been considered, in which non- digital complaints could represent:

a) the amount of complaints received from investors not assisted by an attorney or a consumer association, approximately 40% of the number of complaints yearly received (bad scenario);
b) the total amount of complaints yearly received (worst scenario).

3) Further evidence from the banking, financial, and insurance sectors

In November 2024, IVASS, the Italian institute for insurance supervision, conducted a survey among most Alternative Dispute Resolution (ADR) entities in the banking, financial, and insurance sectors that are members of the FIN-NET network. The survey results underscore the unique positioning of Italian ADR entities within the European framework and highlight the specific challenges that these entities may encounter due to the adoption of Article 5(2) of Directive 2013/11/EU, as confirmed by the European Parliament.

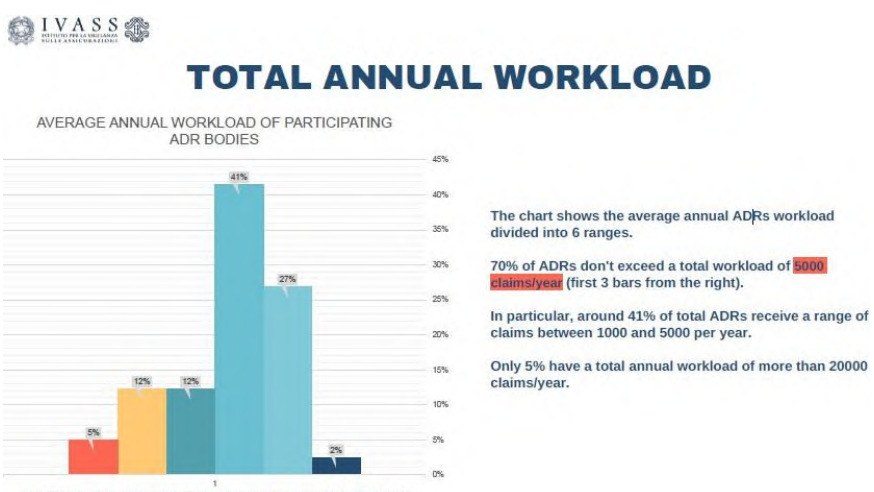
The participation rate was significant, with **41 ADR bodies across 25 countries** responding to the survey. The study sought to collect comparative data regarding:

- The availability of offline complaint submission;
- The average annual workload of ADR entities;
- The proportion of complaints filed through offline channels;
- The effectiveness of assistance tools in streamlining the complaint submission process.

4.1 Comparative Analysis of ADR Workload

The survey revealed that, on average, ADR entities in the financial, banking, and insurance sectors process approximately **5,000 complaints per year**. However, the Italian ADR landscape significantly deviates from this norm. For instance:

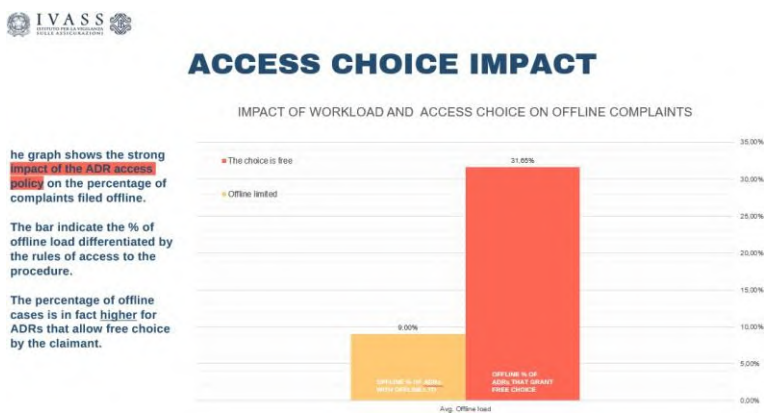
- **ABF** (the Italian financial and banking Arbiter) processed **15,800 complaints** in 2023;
- **IVASS** received **30,118 complaints** in the same year, a number that is a significant even for a rough estimate of the appeals expected at the start of the AAS, also taking into account the low cost of access to the procedure and the wide competence of the AAS.



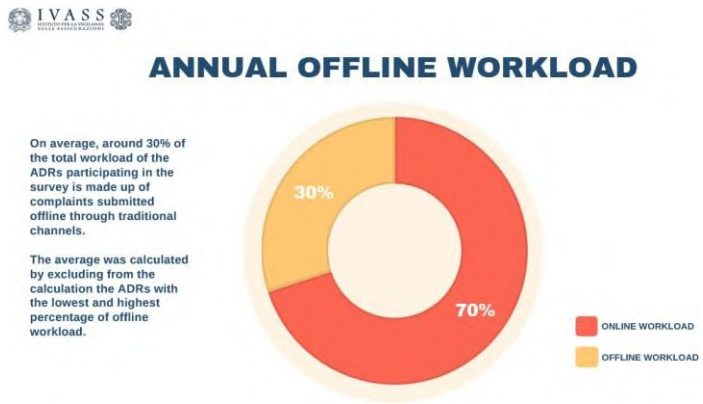
Given these figures, it is evident that Italian ADR bodies handle a **substantially higher caseload** than their European counterparts. This aspect becomes crucial when assessing the potential impact of **Article 5(2)**, particularly in relation to the cost implications and procedural adaptations necessary for compliance.

4.2 Impact of Online vs. Offline Complaint Filing on ADR Efficiency

The ADR bodies surveyed were also asked whether they allowed the appellant to file the appeal offline and, if so, whether they imposed any restrictions in this respect, e.g. by allowing it only in certain circumstances or under certain conditions.



The findings indicate that ADR entities allowing both online and offline filing without restrictions tend to receive a **higher proportion of complaints via traditional (offline) channels**—approximately **30% of total submissions**.



If Article 5(2) is implemented as currently formulated, **Italian ADR bodies would likely experience a similar offline complaint rate**, significantly increasing their operational burden.

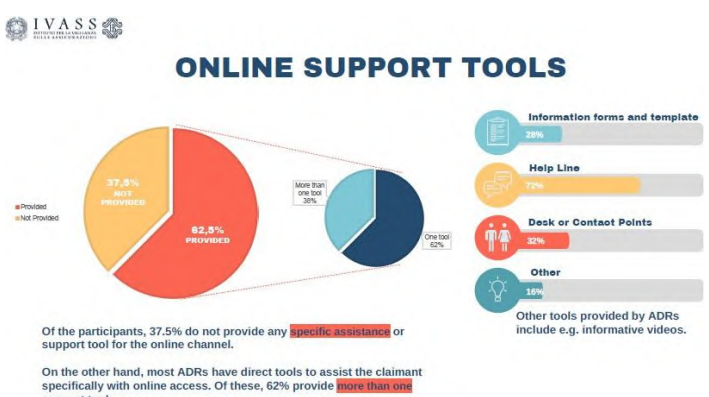
As pointed out by the study conducted by Consob, such percentage represents a **negative scenario** to which are associated risks of loss of efficiency for the bodies, excessive costs for the adaptation of the procedure, structures and personnel, lengthening of the time it takes to settle proceedings, but above all the risk that all these repercussions may ultimately compress the effective right of defence of consumers who resort to ADR bodies

that are no longer efficient.

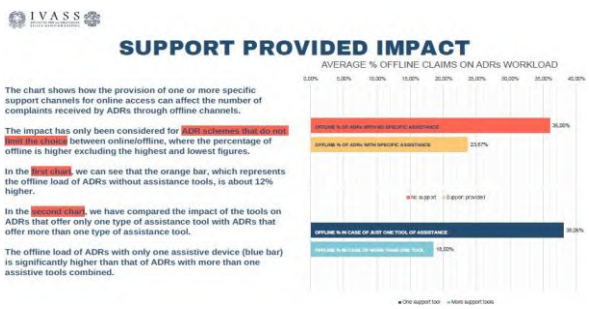
Moreover, the huge impact in terms of cost that CONSOB so clearly defines would soar for bodies that instead receive or expect to receive more than the European sector average of 5000 complaints.

4.3 Effectiveness of Online Assistance Tools

Another crucial aspect analyzed was the availability and impact of online assistance tools. The survey found that ADR bodies that do not offer dedicated online complaint-handling assistance tools receive, on average, **12% more offline complaints**.



Conversely, entities providing comprehensive support mechanisms—such as contact points, helplines, online guidance, and structured submission platforms—achieve a 20% reduction in offline complaints (see graph below).



The results obtained clearly demonstrate the **effectiveness of online complaint assistance tools**, which are a strategic response to reduce the digital divide and ensure a more effective exercise of the right of defence, especially for the most vulnerable consumers. Returning to an offline mode would not be an efficient or effective solution, given the obvious advantages of the digital approach and the risk of leaving behind those whom one would most like to protect.

Conclusively, the empirical evidence presented demonstrates that mandating offline access without flexibility for digital-first ADR entities could lead to significant inefficiencies, financial burdens, and a reduction in procedural effectiveness.

4) Conclusions and proposal

In conclusion, the survey has shown that, compared to the European sectoral panorama, the Italian ADR bodies are particularly affected by the reform of Article 5(2), in the wording confirmed so far, as they are among the few that have a fully digital procedure and an average annual workload - actual and estimated - higher than the average of their European counterparts.

Based on the above-mentioned assessment and in order to find a solution that allows to preserve the efficiency and effectiveness of procedures of ADR entities relying only on digital procedure as well as to safeguard vulnerable consumers, we propose the following amendment to art. 5(2), letter b) (line 52 of PE proposal) (in **bold** the added parts)[1]:

2. Member States shall ensure that ADR entities: *(a) 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;*

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

The amendments primarily reflect the request to maintain the current situation as provided by the existing legislation (that is to keep the word “where applicable” of art.5,2 lett. c).

Furthermore, in view of compromise, we could consider an alternative proposal based on the present analysis and related to the revision of the EP text in order to safeguard already established entities, by adding the part in bold as in the following box.

*(b) enable consumers to choose whether to submit complaints and other supporting documents and to access ADR in a digital or a non- digital format. When ADR entities offer digital ADR procedures, they shall do so through easily accessible and inclusive tools****. Already established ADR entities that offer exclusively digital procedures may continue to do so as long as they ensure that those procedures can be used by all consumers in the most efficient and effective way, including personal assistance in the successful submission and handling of their complaints.***

[1] This proposal is specifically referred to the position adopted by EU Council.

IT

The proposed compromise amendment ensures that:

1) Consumer access remains inclusive;
2) ADR entities maintain operational efficiency;
3) The quality and speed of dispute resolution are not compromised.

Maintaining a balanced approach that leverages digital efficiency while ensuring accessibility for all consumers is the optimal solution to uphold the integrity of ADR mechanisms across Europe.

17.3.25

LV

Written comments from Latvia

regarding the *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*
(proposals by European Parliament (WK 3155/2025 INIT) (13925/24))
(17.03.2025.)

In addition to the position and comments expressed by Latvia on meeting of the Working Party on 11th March, as well as the written comments submitted on 7th February, and without repeating the position stated therein, below you will find detailed current comments on certain proposals made by the European Parliament (EP):

Obligatory participation of air carriers (lines 11a, 31d, 31e)

Despite the fact that the EP proposal provides for obligatory participation of air carriers in the ADR process, but at the same time does not stipulate that the outcome of the relevant process must be binding, **Latvia could not show flexibility** because it **still believes** that the determination of such an obligation should be left to the discretion of the Member States, as has been the case so far. Similarly, **in Latvia's opinion**, obligatory participation of air carriers should be regulated in sectoral legislation, for example, Regulation (EC) No 261/2004 on air passenger rights, and not in the ADR Directive. However, it is important to mention in this regard that the PRES Flash document (WK 3155/2025 INIT) indicates that the amendment 55 of Regulation (EC) No 261/2004 provide not only for mandatory participation of air carriers in the ADR procedures, but also for a binding outcome of the relevant procedure, which **Latvia cannot agree with**, therefore this aspect would need to be appropriately clarified and aligned in both documents.

Geographical and material scope (lines 33-43a)

Regarding the geographical and material scope, **Latvia does not support** the EP proposals and **wants to stick** to the Council's general approach. **This is a red line for us**.

Bundling of cases (lines 20 and 54)

Latvia supports the Council's general approach. Regarding the EP's mention of providing information to consumers on the bundling of cases, **Latvia could consider flexibility but notes** that it does not see the added value of providing such information, as it will only create an additional unjustified administrative burden for ADR entities.

Expertise requirements for ADR entities (lines 58b and 58c) and access to data strictly related to the case (lines 22a, 58d, 58e)

Latvia can be flexible.

ADR fee (lines 23a, 62b and 62c)

Despite the explanation provided by the EP, **Latvia still believes** that these conditions should be left to the discretion of the Member States, as they are currently relatively complicated and may not be relevant to all Member States and ADR entities.

Physical meetings (lines 62d and 62e)

Latvia still believes that this issue should be left to the discretion of the Member States, as it will create an additional administrative burden for ADR entities, and it could also be difficult in the case of long distances.

Duty to reply and sanctions for failure to fulfill it (lines 22, 22a, 58, 78b-78d)

Latvia cannot support the EP proposals to reduce the deadline for the duty to reply, as it is essential to provide sufficient time for the traders to fully assess the need to engage in ADR proceedings and the consequences of this action. In this regard, **Latvia prefers** the Council's general approach.
Latvia stresses that **it agrees** with the inclusion of the duty to reply in this proposal for a Directive only if, in accordance with the Council's general approach, exceptions to the application of this obligation are also provided for. **For us, this is a red line**. It is also **important for Latvia** to maintain the action provided for in the Council's general approach in the case of a failure to reply (so-called "presumption of non-participation").
Latvia points out that it would also be necessary to maintain the provision of information to the consumer about the extension of the deadline for the duty to reply, as included in the Council's general approach.
Latvia does not support imposition of sanctions for failure to fulfill the duty to reply, as such an approach will not be effective and will not achieve the goal. **For us, this is a red line**. **Latvia would directly support** further easing of the duty to reply, taking into account the additional burden it creates.

Obligation for traders to provide a written explanation on lack of compliance with the outcome of an ADR procedure (lines 11b, 62f-62h)

Latvia could not show flexibility regarding this obligation, as it would create an additional administrative burden for traders, but at the same time it would have no added value, as those traders who do not comply with the decisions made by ADR entities are also unlikely to contact the parties involved in the ADR procedure and provide relevant explanations.

Obligation for ADR entities to collect data and report on the traders who systematically refuse to comply with the results of ADR procedures (lines 11b, 75i, 75j)

Latvia indicates that **it is skeptical** about the introduction of such an obligation, as it will create an additional administrative burden of an undetermined amount for those

ADR entities that have not collected such data so far. Overall, **Latvia supports the reduction of reporting requirements for ADR entities**, therefore **it wishes** to adhere to the Council's general approach on this issue.

Obligation to provide ADR-related information on traders' websites, general terms and conditions and on the invoices issued to consumers (lines 23b, 63-63d)

Latvia remains skeptical about the EP's proposed obligation to provide ADR-related information on the invoices issued to consumers, as it is currently unclear how much administrative burden this will create for traders. **Latvia therefore calls for** no reference to invoices in the context of this obligation. **Latvia could consider** other proposed alternatives to non-digital consumer information tools, while assessing the extent of the administrative burden they will create for traders.

NL

Comments from the Netherlands.

The Netherlands wants to uphold the exception in case the trader has already committed contractually to use ADR entities.

The first subparagraph shall not apply where the trader's participation is mandatory, or ADR outcomes can be reached without the trader's consent to participate, or where the trader has already committed contractually to use ADR entities.

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

Portuguese position (14.03.2025)

PT thanks the Polish Presidency for all its work.

According to the Presidency Flash (**WK 3155/2025 INIT)**, PT presents the following comments and indicates red lines and topics on which PT has flexibility and openness to negotiation:

Obligatory participation of air carriers (line 31d)

EP considers this amendment to be the most important change proposed and stressed the broad political support behind it.

EP also explained that the intention is to introduce obligatory participation in the procedure while the outcome of the proceedings would not have to be binding.

PT is flexible on this point and may support the EP's position regarding mandatory participation of air carriers.

PT considers the inclusion of air carriers to be positive since passenger rights are frequently infringed and the consumer/passenger is - in this sector in particular - the weakest party of the contract and should therefore be protected.

In Portugal, in all disputes that have a value of up to 5,000 Euros, consumers can force companies to use alternative means of resolving consumer disputes. The Portuguese experience shows, however, that in situations involving cross-border conflicts – a situation that frequently occurs in air transport – the proper application of this legal regime will only work if the other member states have the same legal obligation.

Given that there are other legal instruments in specific areas that already provide for the use of ADR Entities (such as the financial sector and energy), PT suggests, once again, that air carriers and transport should now be included in an annex to this Directive, which should also include other specific sectors for legal coherence.

As for the non-binding nature proposed by the EP, PT presents a drafting reservation.

Geographical and material scope (lines 33-43a)

*EP supports Commission proposal on **geographical scope** and is opposed to leaving the extension to the discretion of Member Sates, as it would cause diverging level of consumer protection.*
*Regarding **material scope**, EP explained that the intention was to clarify Commission proposal (in general EP accepts its essence). EP recognises that not all ADR entities may be able to handle all types of cases. At the same time EP seemed open to further discuss Council's arguments. EP is open to address Councils' concerns regarding **access to services** via an enumerative list of services and referring to tangible detriment.*

PT is in favour of strict adherence to the Council's mandate regarding the geographic scope of application.

PT is in favour of strict adherence to the Council's mandate regarding the material scope. Therefore, PT does not support the Parliament's proposals (a red line in this matter).

Reservation
Regarding access to services, PT will wait for further information from the European Parliament, as well as the list of services in question, before making any comments.

Definitions (lines 44-46b)

EP explained that the aim of introducing the definition of unfair commercial practices referring only to the practices listed in Annex I to Unfair Commercial Practices Directive (UCPD) was to simplify the decision making process for ADR entities

Reservation
This point is connected on whether the material scope is extended.
Concerning the proposal to include "unfair practices" in the definitions, this would only make sense if there was a broadening of the material scope. PT does not intend to extend the material scope to non-contractual issues, nor include unfair practices, for the reasons set out in previous meetings.

Additional obligations for ADR entities (lines 47-57, 58a-62, 62d-62e)
*EP seemed open to move the clarification that MS may grant access to ADR procedures to **microenterprises and self-employed** in the recitals instead of articles.*

This would imply a change in the definition of "consumer". PT considers that the alternative dispute resolution mechanisms for consumer provided for in this Directive should not be extended to micro-enterprises and self-employed professionals for the following reasons: it changes the paradigm, the human and financial structure of current ADR entities (in Portugal), which are not prepared for this major change, and also due to the legal instrument itself used and alignment with other legal instruments of the European Union.

It should be noted that, in Portugal, 96% of businesses are microenterprises, so this would entail a major overhaul of the consumer ADR structure, which we cannot support.

Even though the proposal is now to include it in the Directive recitals, **we maintain many reservations on this point.**

*EP also explained that its intention was only to clarify that consumers should be entitled to **submit a complaint in their Member State** without changing the rules on which ADR entity is competent.*

PT does not agree with the Parliament's proposals, which deviate from the basic principle set out in Article 5(1) of the Directive. According to the Parliament's proposals, the trader's place of business is no longer the only relevant factor for determining which ADR entity is competent, and consumers are to be able to call on the ADR entities in their Member State and, in the case of cross-border disputes, in the language of their own Member State.

PT does not agree with the extension to allow consumers in a cross-border dispute to lodge complaints in their own Member State, because this will bring complications with dispute resolution such as language barrier, delivery or even enforcement. Traders would also have to respond to a request from an ADR entity from another Member State which brings the same difficulties.

Regarding translations, as the European Centres do not have official translators, and this translation involves technical-legal knowledge, PT considers that it is not advisable to resort only to automatic translations.

In the case of cross-border complaints, in particular, different legal mechanisms may be at stake that may not be comparable in another Member State (resulting in problems relating to comparative law), which will make the translation and work of the European Centres very difficult.

As a compromise solution, PT is open to accept a harmonized solution for all Member States, using a specialized digital tool that carries out such legal translations, one such as eTranslation. We hope that the new platform, created by the European Commission, will include this functionality and the required legal technicality.

The implementation of the Parliament's proposals would require also large amounts of resources on the part of the ADR entities which they cannot raise.

PT also considers that the consumer's right to carry out a cross-border procedure in English could be considered as a compromise solution.

*EP seemed open to Council proposal regarding the **bundling of cases** but stressed that consumers should be at least informed.*

PT defends the Council's mandate which states that the bundling will take place in accordance with the procedural rules of each Member State.

The EP intention behind the amendment on regular trainings was to strengthen the requirements concerning knowledge and expertise. EP explained it did not to intend to specify the frequency of trainings. We will look into possible provisions that would strengthen the requirements in a more flexible way.

Regarding line no. 58g, we agree with the need for training, but we consider that it cannot be the obligation of the Member State to ensure or guarantee that Alternative Dispute Resolution Entities have such complex training.

Additional obligations for Member States (lines 62a-62c)

*Regarding the **reimbursement of the nominal fee,** we are exploring the possibility to soften the provision in a way that does not create unproportionate burdens for MS and ADR entities.*

PT considers that the possibility of reimbursement should not be included as the service is often free of charge and it would be an additional and significant administrative burden for ADR bodies and would have a major impact on the Portuguese funding model, which is based on public funding.

PT considers this to be a red line.

Duty to reply (line 58)

It is important for the EP to shorten the deadline for reply and at the same time allow for a longer deadline in complex cases.

*EP believes shorter **deadlines** will speed up the ADR procedure.*

*EP stressed the importance of effective **sanctions** for failure to fulfil the duty to reply and declared that it is a political issue.*

*EP expressed doubts regarding the amendment on the possibility to **presume that lack of reply within the deadline is a negative reply**. EP is concerned that it would water down the duty to reply.*

PT agrees with the EP mandate.

*Regarding **information requirements,** EP explained that the intention was to make access to information easier for consumers, including digitally excluded consumers. EP will reconsider the amendment regarding **invoices**.*

Flexibility

PT agrees with the EP's proposals that create the obligation to keep the website updated, as well as with the reduction of the company's response period to 15 days as the ADR process should, by nature, be fast and simple. PT also agrees with giving information in terms and conditions and invoices.

In Portugal, this information is now provided on company websites, in terms and conditions and through a poster in physical stores.

PT also agrees with the Parliament Proposal concerning article 13, paragraph 2. The information should be provided through a durable and/or written medium. PT would like to maintain the proposal already made in the past, for the following reasons:

• This provision seeks to increase traders' participation in ADR procedures and improves consumer awareness.

• If a Member State decides to create a penalty for the lack of information given by a trader about the competent ADR entity, under the general provision of article 21, which (we believe) is wide enough for this, there should be enough evidence (on a durable medium) of the information given or not given by the trader.

Regarding line 63 e) the EP proposal states that: “2a. Traders shall make an email address available allowing consumers to contact them, including for the sole purpose of ADR procedures.” The EP's proposal, which provides that traders must have an email address available only for ADR procedures, raises concerns as it is excessive and very difficult to implement with SMEs or self-employed professionals. We do not agree with the phrase “including for the sole purpose of ADR procedures.”

SI

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

Written comments, 17/3/2025

(Republic of Slovenia)

Based on the information from the first political trilogue and in view of the upcoming ITMs and the second political trilogue, Slovenia has the following comments on the key points raised at the working group meeting on 11 March 2025:

- **Geographical scope**: DSA and the obligation on platforms to appoint legal representative in the EU as a possible basis to limit the extension of the scope only to those traders that can be subject to effective enforcement (as suggested during our working party on 31st January):

  I general, SI does not agree with the extension of the geographical scope, this is still a red line for us. SI wishes to preserve the Council's mandate on key issues to the greatest extent possible and maintains the positions already expressed. We are certainly not against the intentions of positive changes, but we cannot agree with the proposed changes, which only represent an extension on paper, without being able to lead to greater efficiency of ADR procedures.

  As we have already explained, we strongly believe, these provisions will not effectively contribute to the cooperation of traders from third countries. This is the reason we remain skeptical that the proposed non-binding cooperation of those traders could lead to successful alternative dispute resolution procedures with consumers in EU. In our experience traders don’t have an interest in participating in the out-of-court dispute resolution procedures at all. We do not expect third-country traders will show more interest of participation and also that they will want to pay for such a procedure. If the trader is from a third country, the question is also whether he will be always able to communicate in the language(s) in which complaints can be submitted and in which the ADR entity can conduct the dispute resolution procedure.

  As for the proposed compromise approach under the DSA, which requires EU intermediary platforms to appoint a legal representative, we would need a concrete written proposal in order to be able to examine it and take a position on it. We would also like to ask for clarification from the European Commission on whether this proposal is aligned with the opinion of the Directorate, responsible for the DSA. We would also ask for the opinion of the CLS on this matter.

  We must be careful not to just superficially seek compromises just to be able to demonstrate that on paper we have extended the scope to third-country traders, selling in the EU via intermediary platforms, but we do not know what this would bring in practice and whether the benefits it would bring to consumers would outweigh the additional burdens and costs for MS and ADR bodies.

  We would also like to ask for information on how the provision of Article 13 of the DSA has contributed to the effective enforcement of the DSA, given that some practice already exists. We hope that DG CONNECT will also be present at the meeting where PRE plans to discuss the European Commission's communication on e-commerce. Please provide a concrete example of how the procedure would work in practice if the proposed extension were added - what would be the obligations and responsibilities of legal representatives (same as EU traders?), which law would apply, etc.

- **Bundling**: flexibility for MS to shape the conditions with a requirement to at least inform consumer:

SI does not oppose the EP proposal to bundle similar cases against one specific trader into one procedure on condition that the consumer concerned is informed. We are flexible in the wording of this provision. However, we are not in favor of additional EP's text regarding the sufficient knowledge of persons in charge of ADR, because we don't think it's necessary. Persons in charge of ADR must have sufficient knowledge and experience to carry out the procedure in accordance with the directive and national law. In addition, bundling of cases should be related to reasons of efficiency, speed of the procedure and equality in similar cases.

- **Right to submit the complaint in Member State where consumer resides:** Rewording EP text in a way that it is clear that it does not interfere with the rules on which ADR entity is competent:

SI could support the right to submit the complaint in Member State where consumer resides. However, it is necessary to ensure consistency with other provisions and to clarify and define the procedure before adopting amendments to the directive.

- **Information on invoices**: replacing information on **invoices** with a different means to provide information on ADR system to digitally excluded consumers:

In general, we believe that consumers are still insufficiently informed about ADR procedures, existence of ADR entities and traders participating in ADR procedures. We also believe that traders should provide ADR information in a clear, prominent, comprehensible and easily accessible way, both in cases of online and physical sales.

SI is flexible regarding replacing information on invoices (as proposed by the EP) with a different means to provide information on ADR system to digitally excluded consumers. However, it is crucial not to forget vulnerable consumers in this digital age.

- **Reimbursement of nominal fee**: soft provision encouraging reimbursement of fee for consumers if the outcome is positive for the consumer:

SI supports free proceedings for consumers, but we believe that fees should be reimbursed by the other party to the proceedings (eg. the supplier of goods or services), in cases where the other party lost.

- **Automated means when used in the ADR decision-making procedure (line 52a) and on the right to request that the outcome of the ADR procedure be reviewed by a natural person (line 53)**

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

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

In light of the discussion at the Working Party meeting on 11 March 2025, we would also like to take an additional position on the provisions on automated means when used in the ADR decision-making procedure (line 52a) and on the right to request that the outcome of the ADR procedure be reviewed by a natural person (line 53).

SI

Following the discussion at the meeting and further examination of certain provisions of the AI Act, we still consider it appropriate to maintain these provisions within the framework of the EU Council's mandate. We understand that recital (9) of the AI Act clarifies that this act is without prejudice to existing consumer or data protection law. We also understand that the provisions of the AI Act in relation to high-risk systems within the meaning of point 8(a) of Annex III differ from the provision in the ADR proposal (line 52a). The first one only contains systems that assist in the research and interpretation of facts and the law and in applying the law to a concrete set of facts, while the provision within the framework of ADR covers automated means when they are used in the ADR decision-making procedure.

We believe that even in cases where there are no high-risk systems under the AI Act, it is necessary to protect consumers in the ADR procedure and inform them if automated means are used in decision-making procedure.

Considering that there are prescribed requirements for persons who lead or participate in ADR procedures, in the case of the mentioned procedures with automated means, it is not specified anywhere what such procedures must ensure and who supervises such procedures. The existing conditions set out in Directive 2013/11/EU take into account the natural persons responsible for ADR, and the aim is also to reach an agreement with legally appropriate and fair solutions through the mediation of this natural person. We do not object to the use of automated means to assist the ADR body for only part of the procedure, but it is of utmost importance to ensure that ADR procedures cannot be carried out entirely by automated means alone. It is necessary to ensure that ADR procedures are carried out in a supervised manner, so that they are credible, verifiable and in accordance with the regulations.

THE SLOVAK REPUBLIC

Written comments indicating possible flexibilities in view of the upcoming negotiations with the European Parliament on

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

Obligatory participation of air carriers (line 31d)

No flexibility. We strongly disagree with making it compulsory for air carriers to participate in ADR procedures. It should be left to Member States to decide on character of ADR procedures. Such amendment would require many Member States to change significantly their national ADR systems. At the same time, it is not clear why the ADR Directive should prescribe mandatory ADR procedures specifically for this one sector.

Geographical and material scope (lines 33-43a)

No flexibility.

- **Geographical scope**: We strongly disagree with the extension of the scope of the ADR Directive to disputes with the third country traders. We insist that this would impose a disproportionate administrative and financial burden on ADR entities, while the benefits and effectiveness of resolving such disputes are questionable. It should be left to Member States to decide whether ADR procedures should also apply to consumer disputes with non-EU traders. **We do not support the extension of the geographical scope even to the extent indicated by the Presidency (using DSA and the obligation on platforms to appoint legal representative in the EU as a possible basis to limit the extension)**.
- **Material scope**: As regards the material scope of the ADR Directive, we fundamentally disagree with the European Parliament proposal. The EP proposal is based on the original Commission proposal, which was clearly rejected by Member States. We do not support the proposed list within contractual obligations in point (a); we consider such a list to be redundant and disagree with its wording. We also disagree with the expansion of the material scope to non-contractual situations as proposed by the European Parliament. The provision on the material scope should be as close as possible to the Council's mandate.

Definitions (lines 44-46b)

We disagree with the proposed definition of 'unfair commercial practice'. We do not consider it appropriate for the ADR Directive to define this term in a significantly narrower way than the UCPD. Definitions in the EU consumer protection legislation should be consistent.

Additional obligations for ADR entities (lines 47-57, 58a-62, 62d-62e, 75f-75j)

- **Microenterprises and self-employed:** We do not support the application of ADR procedures to disputes between traders and small businesses (self-employed and micro enterprises). However, we believe that Member States are allowed to facilitate access by self-employed or micro enterprises to ADR procedures even without explicit mention in the Directive. **We can support moving clarification required by the European Parliament to the recitals**.

- **Right to submit the complaint in Member State where consumer resides:** Explanation provided by the European Parliament raises a number of questions and practical issues. It must be clear from the proposal what the purpose of the provision is, what obligations are imposed and on whom those obligations are imposed. We cannot support provisions that will in any way imply a change in the ADR entity's jurisdiction and functioning of existing ADR systems.

- **Bundling of cases: Flexibility.** We can support wording containing requirement of informing consumers.

- **Private international law: No flexibility.** Since we strongly disagree with the extension of the geographical scope of the ADR Directive, we do not support the addition of a specific requirement for knowledge of private international law either. ADR procedures vary from one Member State to another and, depending on this, Member States have set out in national law requirements for the necessary knowledge and skills of the natural persons in charge of ADR procedures. Different requirements should be applied where ADR procedures are binding and different requirements should be applied where they involve the mediation of an agreement between the parties to a dispute on a voluntary basis. We consider the current general wording of provision on requirements on expertise to be sufficient.

- **Regular trainings:** We do not agree with the new wording proposed by the European Parliament. We agree that regular training of natural persons in charge of ADR procedures is important and necessary to maintain a high standard of ADR procedures. However, **we prefer wording that leaves more flexibility to Member States and does not require sanctioning of ADR entities for non-compliance**.

- **Reporting obligations of ADR entities (lines 75f and 75j): No flexibility**. We disagree with the proposed obligation for ADR entities to inform the national competent authorities when they suspect that an unfair commercial practice has taken place and about the outcome of the dispute. We find it important to follow principles of the ADR Directive including principle of confidentiality. We believe that such a regulation will discourage traders from voluntarily participating in ADR procedures. At the same time, we do not agree with the introduction of an obligation for ADR entities to report traders who refuse to comply with the outcomes of ADR procedures. This would create an additional administrative burden on ADR entities. It also should be noted that ADR entities often do not have information on the compliance with the ADR outcomes.

Additional obligations for Member States (lines 62a-62c)

- **Reimbursement of the nominal fee: No flexibility, if reimbursement is formulated as an obligation of Member States**. We fundamentally disagree with the proposed obligation of Member States to reimburse ADR fees paid by consumers. Such an obligation would have a significant impact on Member States' budgets. It is already laid down that the ADR procedure has to be free of charge or available at a nominal fee for consumers, so no disproportionate costs are imposed on consumers. If the provision is reworded, our position will depend on its specific wording. In any case, we cannot support the provision if it is formulated as an obligation of Member States.

- **Physical meetings: No flexibility**. As regards the proposed obligation to hold a physical meeting at the consumer's request, we consider it unjustified. Such an obligation would impose significant costs on all parties involved (ADR entities and parties to the dispute) and could significantly slow down the ADR process. Today, when a number of new technologies are available to facilitate contact, we consider such legislation superfluous. We consider that the provision in question will discourage traders from voluntarily participating in ADR procedures.

Duty to reply (line 58):

Flexibility. Regarding the length of the trader's response period, we can accept a shorter period than laid down in the Council's mandate. At the same time, we can support adding the duty to reply to the provision on penalties (Article 21).

Additional obligations for traders (lines 62f-63e):

- **Written explanations: No flexibility.** We disagree with the imposition of a new obligation on traders to provide a written explanation as to why they do not comply with the outcome of the ADR procedure. We do not see the added value of this obligation and we do not consider it suitable neither for binding nor for non-binding ADR procedures.

- **Information requirements: No flexibility.** SK supported the original intention to reduce the administrative burden on traders by removing the information obligation under Article 13(3) of the ADR Directive and, following the repeal of the ODR Regulation, by abolishing the obligation to maintain a dedicated email address for ODR correspondence. On the contrary, the European Parliament amendments increase the administrative burden on traders without analysing and quantifying in detail the costs associated with the new obligations. We strongly disagree with the new obligation for traders to provide information about relevant ADR entities on invoices and with the obligation to operate a separate email address for ADR purposes. Any compromise reached with the European Parliament will have to be assessed in terms of its impact on businesses.

Other amendments:

- **Obligation on relevant consumer organisations and business associations (line 75b)**: **No flexibility.** We disagree with the proposed changes in Art. 15(2) of ADR

Directive. The publication of the list of ADR entities should not be formulated as an obligation for consumer organisations and trader associations. We find the proposed wording of the provision very problematic both in terms of the range of entities to which the obligation should apply (the wording 'relevant' consumer organisations and business associations) and in terms of enforcement of the obligation against these entities.