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*****I**

REPORT

on the proposal for a regulation of the European Parliament and of the Council
on online dispute resolution for consumer disputes (Regulation on consumer
ODR)
(COM(2011)0794 – C7-0453/2011– 2011/0374(COD))

Committee on the Internal Market and Consumer Protection

Rapporteur: Róza Gräfin von Thun und Hohenstein

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION.....	5
EXPLANATORY STATEMENT.....	56
OPINION OF THE COMMITTEE ON LEGAL AFFAIRS	59
PROCEDURE.....	93

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a regulation of the European Parliament and of the Council on online dispute resolution for consumer disputes (Regulation on consumer ODR) (COM(2011)0794 – C7-0453/2011– 2011/0374(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2011)0794),
 - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0453/2011),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 28 March 2012¹,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on the Internal Market and Consumer Protection and the opinion of the Committee on Legal Affairs (A7-0236/2012),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a regulation

Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) The fragmentation of the Single Market impedes efforts to boost

¹ Not yet published in the Official Journal.

*competitiveness and growth.
Furthermore, the uneven availability,
quality and awareness of simple, efficient
and low-cost means of resolving disputes
arising from the sale of goods or provision
of services across the Union constitutes a
barrier within the Single Market which
undermines consumers' and traders'
confidence in shopping and selling across
borders.*

Amendment 2

Proposal for a regulation Recital 3 b (new)

Text proposed by the Commission

Amendment

*(3b) Realising the potential of online
trade would make a substantial
contribution to returning the Union to
economic growth, but doing so requires
the proper integration of the ODR
platform and the ADR entities as outlined
in Directive/EU¹.*

¹ *OJ please insert title and OJ reference
of Directive of the European Parliament
and of the Council on alternative dispute
resolution for consumer disputes and
amending Regulation (EC) No 2006/2004
and Directive 2009/22/EC (Directive on
consumer ADR).*

Amendment 3

Proposal for a regulation Recital 5

Text proposed by the Commission

Amendment

(5) The Internal Market is a reality for consumers in their daily lives, when they travel, buy and make payments. Consumers are key players in the Internal Market and

(5) The Internal Market is a reality for consumers in their daily lives, when they travel, buy and make payments. Consumers are key players in the Internal Market and

should therefore be at its heart. The digital dimension of the Internal Market is becoming vital for both consumers and traders. Consumers increasingly make purchases over the internet and an increasing number of traders sell online. Consumers and traders should feel confident in carrying out transactions in a digital environment.

should therefore be at its heart. The digital dimension of the Internal Market is becoming vital for both consumers and traders. Consumers increasingly make purchases over the internet and an increasing number of traders sell online. Consumers and traders should feel confident in carrying out transactions in a digital environment. ***In the current crisis, measures to boost economic growth, job creation and consumer recovery are essential. While the digital market provides a valuable opportunity to achieve these objectives, the Union must be capable of establishing a full digital internal market if it is to take advantage of that opportunity. It is essential, on the one hand, to dismantle existing barriers and, on the other hand, to boost consumer confidence. The existence of a reliable and efficient online dispute settlement system could also greatly help achieve this increase in consumer confidence in the Union.***

Amendment 4

Proposal for a regulation

Recital 7

Text proposed by the Commission

(7) Online dispute resolution offers a simple and low-cost out-of-court solution to disputes arising from cross-border online transactions. However, there is currently a lack of mechanisms that allow consumers and traders to resolve such disputes via electronic means. This leads to consumer detriment, acts as a barrier to cross-border online transactions, creates an uneven playing field for traders and thus hampers the development of electronic commerce.

Amendment

(7) Online dispute resolution offers a simple, ***effective*** and low-cost out-of-court solution to disputes arising from ***both*** cross-border ***and domestic*** online transactions. However, there is currently a lack of mechanisms that allow consumers and traders to resolve such disputes via electronic means. This leads to consumer detriment, acts as a barrier ***in particular*** to cross-border online transactions, creates an uneven playing field for traders and thus hampers the ***overall*** development of electronic commerce.

Amendment 5

Proposal for a regulation
Recital 8

Text proposed by the Commission

(8) This Regulation should apply to the out-of-court resolution of ***contractual*** disputes between consumers and traders ***that arise*** from the online sale of goods or provision of services by traders ***across borders***. It should not apply to disputes between consumers and traders that arise from the online sale of goods or provision of services if at least one of them is not established or resident in a Member State of the Union at the time when the consumer orders such goods or services ***or the trader and the consumer are established or resident in the same Member State***.

Amendment

(8) This Regulation should apply to the out-of-court resolution of disputes ***concerning contractual obligations*** between consumers ***resident in the Union*** and traders ***established in the Union*** ***stemming*** from the online sale of goods or provision of services, ***which are covered by Directive..../.... EU [Directive on consumer ADR]. This should include disputes arising from the sale or provision of digital content for remuneration. Although in particular consumers and traders carrying out cross-border online transactions will benefit from such an online dispute resolution mechanism, this Regulation should also apply to domestic online transactions in order to allow for a true level playing field in the area of electronic commerce. This should include disputes arising from the sale or provision of digital content for remuneration.*** It should not apply to disputes between consumers and traders that arise from the online sale of goods or provision of services if at least one of them is not established or resident in a Member State of the Union at the time when the consumer orders such goods or services.

Amendment 6
Proposal for a regulation
Recital 11

Text proposed by the Commission

(11) The definition of 'online sale of goods or provision of services' should cover a transaction for the online sale of goods or provision of services where the trader, or the trader's intermediary, has offered goods or services through a website or by other electronic means and the consumer has

Amendment

(11) The definition of 'online sale of goods or provision of services' should cover a transaction for the online sale of goods or provision of services where the trader, or the trader's intermediary, has offered goods or services through a website or by other electronic means and the consumer has

ordered those goods or services on that website or by other electronic means. This should also cover cases where the consumer has accessed the website or other information society service through a mobile electronic device such as a mobile telephone.

ordered those goods or services on that website or by other electronic means. This should also cover cases where the consumer has accessed the website or other information society service through a mobile electronic device such as a mobile telephone. ***Services which are not provided by electronic processing/inventory systems, such as services provided via voice telephony or telefax, such as telephone or telefax consultation of a doctor, telephone or telefax consultation of a lawyer, or telephone or telefax direct marketing, should not be regarded as services provided by electronic means.***

Amendment 7

Proposal for a regulation Recital 12

Text proposed by the Commission

(12) This Regulation should not apply to disputes between consumers and traders that arise from the cross-border sale of goods or provision of services offline. This Regulation should not apply to disputes between traders.

Amendment

(12) This Regulation should not apply to disputes between traders.

Amendment 8

Proposal for a regulation Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) Before submitting their dispute to an ADR entity via the ODR platform, consumers should be encouraged by Member States to make every effort to contact the trader via their website, email, or other electronic means as appropriate, with the aim of resolving the dispute

amicably.

Amendment 9

Proposal for a regulation

Recital 14

Text proposed by the Commission

(14) This Regulation aims at creating an online dispute resolution ('ODR') platform at European level. **The ODR** platform should take the form of an interactive website offering a single point of entry to consumers and traders seeking to resolve disputes out-of-court which have arisen from a cross-border e-commerce **transaction**. It should allow consumers and traders to submit complaints by filling in an electronic complaint form available in all official languages of the Union and transmit complaints to an alternative dispute resolution ('ADR') entity competent to deal with the dispute concerned. The platform should offer to ADR entities and the parties the possibility of conducting the dispute resolution procedure via the platform.

Amendment

(14) This Regulation aims at creating an online dispute resolution ('ODR') platform at European level. The **Commission should be responsible for the establishment and maintenance of that** platform, which should take the form of an interactive website offering a single point of entry to consumers and traders seeking to resolve disputes out-of-court which have arisen from a cross-border e-commerce **transactions. The ODR platform should provide general information regarding the out-of-court settlement of contractual disputes between traders and consumers arising from the online sale of goods or provision of services.** It should allow consumers and traders to submit complaints by filling in an electronic complaint form available in all official languages of the Union and **inform them of the possibility of seeking assistance from contact points if necessary in completing the form correctly. It should** transmit complaints to an alternative dispute resolution ('ADR') entity competent to deal with the dispute concerned. The **ODR** platform should **be interoperable with existing** ADR entities **operating online. The complaint form should contain only that information which is necessary to identify the ADR entity or entities competent to deal with a** dispute.

Amendment 10

Proposal for a regulation

Recital 14 a (new)

Text proposed by the Commission

Amendment

(14a) The ODR platform should allow consumers and traders to submit complaints by filling in an electronic complaint form available in all official languages of the Union and transmit complaints electronically to an alternative dispute resolution ('ADR') entity competent to deal with the dispute concerned.

The platform should offer, free of charge, an electronic case management tool which enables the parties and the ADR entity to conduct the dispute resolution procedure online via the platform. ADR entities should be able to use this and customise it for their procedures. That tool should allow parties and ADR entities to upload relevant statements and evidence. In accordance with the ADR procedure applied by the relevant ADR entity, it should automatically set deadlines to parties, inter alia for making submissions. It should also provide for a restricted access website on the ODR platform, capable of being accessed by the parties, the ADR entity and if necessary by the contact points.

Amendment 11

Proposal for a regulation Recital 14 b (new)

Text proposed by the Commission

Amendment

(14b) The Commission should provide the technical facilities necessary for the functioning of the platform, including translation functions. The tool should offer an electronic translation function to the parties and the ADR entity. This function should be capable of dealing with all necessary translations and should

be supported by translators. The Commission should also provide, on the ODR platform, information for consumers about the possibility of requesting assistance from the contact points. However, consumers should be encouraged to contact the trader first and thereby directly seek an amicable solution to the dispute before they submit a complaint to the ODR platform.

Amendment 12

Proposal for a regulation Recital 14 c (new)

Text proposed by the Commission

Amendment

(14c) The ODR platform should be accessed only through the 'Your Europe'-portal thematic website, as this portal is an existing single point of entry for both consumers and traders looking for help or information about their rights under Union legislation. The ODR platform should be given prominence on the 'Your Europe'-portal.

Amendment 13

Proposal for a regulation Recital 15

Text proposed by the Commission

Amendment

(15) An ODR system at European level should build on existing ADR entities in the Member States and respect Member States' legal traditions. ADR entities to which a complaint has been transmitted via the ODR platform should therefore apply their own rules of procedure, including rules on cost. However, this Regulation intends to establish some common rules applicable to those procedures that will safeguard their effectiveness. ***This should***

(15) An ODR system at European level should build on existing ADR entities in the Member States and respect Member States' legal traditions. ADR entities to which a complaint has been transmitted via the ODR platform should therefore apply their own rules of procedure, including rules on cost. However, this Regulation intends to establish some common rules applicable to those procedures that will safeguard their effectiveness. ***The parties***

include rules ensuring that such dispute resolution is accomplished expeditiously.

should be able to access the ODR Platform established by this Regulation, without being required to be physically present for the procedure. However, it should be possible for both parties to decide that their physical presence is necessary.

Amendment 14
Proposal for a regulation
Recital 16

Text proposed by the Commission

(16) Ensuring that all ADR entities notified to the Commission in accordance with Article 17(2) of Directive/.../EU [= Directive on consumer ADR] Office of Publications insert reference number] are linked electronically to the *European* ODR platform should allow the full coverage in out-of-court redress online for ***cross-border*** disputes arising from the online sale of goods or provision of services.

Amendment

(16) Ensuring that all ADR entities notified to the Commission in accordance with Article 17(2) of Directive/.../EU [= Directive on consumer ADR] Office of Publications insert reference number] are linked electronically to the ODR platform should allow the full coverage in out-of-court redress online for disputes arising from the online sale of goods or provision of services.

Amendment 15
Proposal for a regulation
Recital 17

Text proposed by the Commission

(17) This Regulation does not prevent the functioning of any existing online dispute resolution entity operating within the Union. It should not prevent ADR entities from dealing with ***cross-border*** online disputes which have been submitted to them by a means other than the ODR platform.

Amendment

(17) This Regulation does not prevent the functioning of any existing online dispute resolution entity operating within the Union. It should not prevent ADR entities from dealing with online disputes which have been submitted to them by a means other than the ODR platform.

Amendment 16
Proposal for a regulation
Recital 18

Text proposed by the Commission

(18) **A network of online dispute resolution facilitators** should provide support to **the resolution of disputes relating to complaints submitted via** the ODR platform. **That network** should **be composed of contact points for ODR in the Member States which host online dispute resolution facilitators.**

Amendment

(18) **Contact points** should **be established to provide support to consumers seeking to resolve their dispute with a trader through** the ODR platform. **Contact points** should **assist with the submission of the complaint and provide general information in relation to online dispute resolution procedures. contact points should not be obliged to translate any documents or obliged to resolve disputes directly.**

Justification

It adds unnecessary duplication to specify ODR contact points and ODR facilitators. It would be better to set out the functions of the ODR contact points and let Member States decide how best to fulfil these functions. It would also be helpful to clarify what kind of assistance should be provided.

Amendment 17
Proposal for a regulation
Recital 19

Text proposed by the Commission

(19) The right to an effective remedy and the right to a fair trial are fundamental rights guaranteed in Article 47 of the Charter of Fundamental Rights of the European Union. Online dispute resolution procedures cannot be designed to replace court procedures **and** should **not** deprive consumers or traders of their rights to seek redress before the courts. Nothing in this Regulation should, therefore, prevent parties from exercising their right of access to the judicial system.

Amendment

(19) The right to an effective remedy and the right to a fair trial are fundamental rights guaranteed in Article 47 of the Charter of Fundamental Rights of the European Union. Online dispute resolution procedures **are not intended to and** cannot be designed to replace court procedures, **nor** should **they** deprive consumers or traders of their rights to seek redress before the courts. Nothing in this Regulation should, therefore, prevent parties from exercising their right of access to the judicial system.

Amendment 18
Proposal for a regulation
Recital 21

Text proposed by the Commission

(21) Data subjects should be informed about the processing of their personal data in the ODR platform, and their rights with regard to that processing, by means of a comprehensive privacy notice to be made publicly available by the Commission and explaining, in a clear and simple language, the processing operations performed under the responsibility of the various actors of the platform, in accordance with Articles 11 and 12 of Regulation (EC) No 45/2001 and with national legislation adopted pursuant to Articles 10 and 11 of Directive 95/46/EC.

Amendment

(21) Data subjects should be informed about, ***and give their consent to***, the processing of their personal data in the ODR platform, and their rights with regard to that processing, by means of a comprehensive privacy notice to be made publicly available by the Commission and explaining, in a clear and simple language, the processing operations performed under the responsibility of the various actors of the platform, in accordance with Articles 11 and 12 of Regulation (EC) No 45/2001 and with national legislation adopted pursuant to Articles 10 and 11 of Directive 95/46/EC.

Amendment 19

**Proposal for a regulation
Recital 23**

Text proposed by the Commission

(23) In order to supplement or amend certain non-essential elements of this Regulation, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the type of information which a complainant is to provide in the electronic complaint form made available on the ODR platform. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.

Amendment

(23) In order to supplement or amend certain non-essential elements of this Regulation, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the ***functions of the ODR platform, the modalities of cooperation between the contact points and the*** type of information which a complainant is to provide in the electronic complaint form made available on the ODR platform, ***as well as the modalities of that electronic complaint form***. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and

Council.

Amendment 20
Proposal for a regulation
Recital 25

Text proposed by the Commission

(25) Since the objectives of this Regulation, namely to set up a European online dispute resolution platform for cross-border online disputes governed by common rules, *because of the scale and effects of the action, cannot be sufficiently achieved by the Member States and therefore* be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

Amendment

(25) Since the objectives of this Regulation, namely to set up a European online dispute resolution platform for cross-border **and domestic** online disputes governed by common rules, *cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects,* be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

Amendment 21
Proposal for a regulation
Article 1

Text proposed by the Commission

The purpose of this Regulation is to contribute to the functioning of the internal market, and in particular its digital dimension, and to the achievement of a high level of consumer protection by providing a platform facilitating the impartial, transparent, effective and fair out-of-court resolution of disputes between consumers and traders online.

Amendment

The purpose of this Regulation is to contribute to the **effective** functioning of the internal market, and in particular its digital dimension, and to the achievement of a high level of consumer protection by providing **an online** platform facilitating the **independent**, impartial, transparent, effective and fair out-of-court resolution of disputes between consumers and traders online.

Amendment 22

Proposal for a regulation
Article 2 – paragraph 1

Text proposed by the Commission

This Regulation shall apply to the out-of-court resolution of contractual disputes arising from the **cross-border** online sale of goods or provision of services between consumers and traders through the intervention of an alternative dispute resolution entity **complying with** Directive [Office of Publications please insert number of Directive of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR)] and **involving** the use of a European online dispute resolution platform.

Amendment

This Regulation shall apply to the out-of-court resolution of contractual disputes arising from the online sale of goods or provision of services between consumers and traders through the intervention of an alternative dispute resolution entity **which is established on a durable basis, complies with the quality criteria set out in Chapter II of Directive/EU** [Directive on consumer ADR], **has been notified to the Commission in accordance with Article 17(2) of that Directive** and **which involves** the use of a European online dispute resolution platform.

Amendment 23
Proposal for a regulation
Article 4 – point b

Text proposed by the Commission

(b) ‘trader’ means any natural **persons** or any legal person, irrespective of whether privately or publicly owned, who is acting, including through any person acting in his name or on his behalf, for purposes relating to his trade, business, craft or profession;

Amendment

(b) ‘trader’ means any natural **person** or any legal person, irrespective of whether privately or publicly owned, who is acting, including through any person acting in his name or on his behalf, for purposes relating to his trade, business, craft or profession;

Amendment 24

Proposal for a regulation
Article 4 – paragraph 1 – point c

Text proposed by the Commission

(c) ‘online sale of goods or provision of services’ means a transaction for the sale of goods or provision of services where the

Amendment

(c) "online sale of goods or provision of services" means a transaction for the sale of goods or provision of services **which are**

trader, or the trader's intermediary, has offered goods or services on a website or by other electronic means and the consumer has ordered such goods or services on that website or by other electronic means;

covered by Directive .../.../ EU [Directive on Consumer ADR] where the trader, or the trader's intermediary, has offered goods or services on a website or by other electronic means and the consumer has ordered such goods or services on that website or by other electronic means"

Justification

It is important to clarify that this Regulation only covers cross-border contracts that are also covered by the ADR Directive.

Amendment 25

Proposal for a regulation

Article 4 – point d – paragraph 2 – indent 2

Text proposed by the Commission

– services ***having material content even though*** provided via electronic devices such as automatic cash or ticket dispensing machines (banknotes, rail tickets), access to road networks, car parks, charging for use, even if there are electronic devices at the entrance or exit controlling access and/or ensuring correct payment is made;

Amendment

– services provided via electronic devices such as automatic cash or ticket dispensing machines (banknotes, rail tickets), access to road networks, car parks, charging for use, even if there are electronic devices at the entrance or exit controlling access and/or ensuring correct payment is made;

Amendment 26

Proposal for a regulation

Article 4 – point d – paragraph 2 – indent 3

Text proposed by the Commission

– services which are not provided via electronic processing/inventory systems such as voice telephony services, telefax or telex services, services provided via voice telephony or ***fax; telephone or telefax consultation of a doctor; telephone or telefax consultation of a lawyer; telephone or telefax direct marketing.***

Amendment

– services which are not provided via electronic processing/inventory systems such as voice telephony services, telefax or telex services, services provided via voice telephony or telefax;

Amendment 27
Proposal for a regulation
Article 4 – point e a (new)

Text proposed by the Commission

Amendment

(ea) "domestic online sale of goods or provision of services" means the online sale of goods or provision of services where, at the time the consumer orders such goods or services, the consumer is resident in the Member State where the trader is established;

Amendment 28
Proposal for a regulation
Article 4 – point g – paragraph 1

Text proposed by the Commission

Amendment

(g) ‘alternative dispute resolution procedure’ (hereinafter ‘ADR procedure’) means a procedure for the out-of-court resolution of a dispute through the intervention of a dispute resolution entity which proposes or imposes a solution or brings the parties together with the aim of facilitating an amicable solution;

(g) ‘alternative dispute resolution procedure’ (hereinafter ‘ADR procedure’) means a procedure for the out-of-court resolution of a dispute through the intervention of a dispute resolution entity which proposes or imposes a solution or brings the parties together with the aim of facilitating an amicable solution ***as set out in Article 2 of Directive/EU [Directive on consumer ADR] which has been communicated to the Commission in accordance with Article 17(2) of that Directive;***

Amendment 29
Proposal for a regulation
Article 4 – paragraph 1 – point g – paragraph 2

Text proposed by the Commission

Amendment

Procedures before dispute resolution entities where the natural persons in charge of dispute resolution are employed exclusively by the trader, ***procedures before consumer complaint handling***

Procedures before dispute resolution entities where the natural persons in charge of dispute resolution are employed exclusively by the trader ***are not to be regarded as ADR procedures unless these***

systems operated by the trader, direct negotiation between the consumer and the trader, whether represented or not, and attempts made by a judge to settle a dispute in the course of a judicial proceeding concerning that dispute shall not be regarded as ADR procedures;

entities comply with the general requirements of Chapter II of Directive/EU [Directive on consumer ADR], and in particular with Article 17 thereof, and if the following additional conditions are met:

- the natural persons in charge of dispute resolution are hierarchically independent from the trader and cannot be subject to instructions given by the trader;

- the remuneration of the natural persons in charge of dispute resolution is not subject to the outcome of the dispute resolution procedure;

- the natural persons in charge of dispute resolution must not have worked for the trader concerned during the three years prior to assuming the post.

- the dispute resolution entity is subjected to an annual evaluation by the competent authority of the Member State where it is established regarding compliance with the principles laid down in this Directive;

Justification

Mediation provided by the traders or 'in-house' mediation should not be excluded, as it constitutes an important part of alternative dispute resolution mechanisms. Recommendation 98/257/EC did not exclude such type of mediation if certain conditions were met. 'In-house' mediation can bring a true added value to out-of-court dispute resolution, as it ensures technical/'on the field' knowledge, and allows for the development of proximity mediation which is valuable for the parties.

Amendment 30

Proposal for a regulation

Article 4 – paragraph 1 – point h

Text proposed by the Commission

(h) 'alternative dispute resolution entity', (hereinafter 'ADR entity') means an entity *covered by* Article 4(e) of Directive [Office of Publications insert number of Directive

Amendment

(h) "alternative dispute resolution entity" (hereinafter "ADR entity") means an entity *that has been listed in accordance with* Article 17(2) of Directive/EU

of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR)] which has been communicated to the Commission in accordance with Article 17(2) of that Directive;

[(Directive on consumer ADR].

Justification

It is more appropriate to define an ADR entity in accordance with those listed in accordance with Article 17(2) of the ADR Directive, as opposed to Article 4(e) of the ADR Directive because ADR providers should only be regarded as ADR entities if a Competent Authority accepts that they meet the required quality standards.

Amendment 31

Proposal for a regulation Article 5 – paragraph 1

Text proposed by the Commission

1. The Commission shall establish a European online dispute resolution platform, (hereinafter ‘ODR platform’).

Amendment

1. The Commission shall establish a European online dispute resolution platform, (hereinafter ‘ODR platform’), ***and make it accessible also via the Your Europe Portal thematic ODR website and shall provide prominent links to the platform also on other Commission websites offering consumer information, such as the ECC Net website.***

Amendment 32

Proposal for a regulation Article 5 – paragraph 2

Text proposed by the Commission

2. The ODR platform shall be an interactive website which can be accessed electronically and free of charge in all official languages of the Union. The ODR platform shall be a single point of entry to

Amendment

2. The ODR platform shall be an interactive website which can be accessed electronically and free of charge in all official languages of the Union. The ODR platform shall be a single point of entry to

consumers and traders seeking the *out-of-court resolution* of disputes *covered by this* Regulation.

consumers and traders seeking *to submit disputes to* the *ADR entities notified to the European Commission as provided for in Directive ..././EU [Directive on consumer ADR]*.

Amendment 33

Proposal for a regulation

Article 5 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a The ODR platform shall provide information regarding the out-of-court settlement of contractual disputes between consumers and with traders arising from the online sale of goods or provision of services.

Amendment 34

Proposal for a regulation

Article 5 – paragraph 3 – point a a (new)

Text proposed by the Commission

Amendment

(aa) informing the trader about the complaint submitted against him;

Amendment 35

Proposal for a regulation

Article 5 – paragraph 3 – point b

Text proposed by the Commission

Amendment

(b) *proposing*, based on the information contained in the electronic complaint form, one or more *competent* ADR entities to the *parties* and providing information on their *fees*, if applicable, the language or languages in which the procedure will be conducted, the *approximate* length of the *procedures* or *informing the complainant*

(b) *identifying*, based on the information contained in the electronic complaint form, one or more ADR entities *which are competent* to *deal with* the *dispute*, and providing information *to the parties* on *the costs of* their *procedure*, if applicable, *on the procedural rules, if any, concerning thresholds and time limits, on the* the

party that based on the information submitted, no competent ADR entity could be identified;

language or languages in which the procedure will be conducted *and on the average* length of the *procedure and the binding or non-binding nature of its outcome*;

Amendment 36

Proposal for a regulation

Article 5 – paragraph 3 – point b a (new)

Text proposed by the Commission

Amendment

(ba) if no competent ADR entity can be identified, informing the complainant party that, based on the information submitted, it was not possible to identify a competent ADR entity;

Amendment 37

Proposal for a regulation

Article 5 – paragraph 3 – point b b (new)

Text proposed by the Commission

Amendment

(bb) inviting the respondent party, if a trader, to state whether he/she is obliged to or has undertaken to use a certain ADR entity for resolving disputes covered by this Regulation;

Amendment 38

Proposal for a regulation

Article 5 – paragraph 3 – point b c (new)

Text proposed by the Commission

Amendment

(bc) inviting the parties to agree on the competent ADR entity to use to settle their dispute or, if more than one ADR entity has been identified, inviting them to agree on one of the competent ADR entities

identified;

Amendment 39

Proposal for a regulation

Article 5 – paragraph 3 – point c

Text proposed by the Commission

(c) **referring** complaints to the ADR entity which the parties have agreed to use;

Amendment

(c) **transmitting** complaints to the ADR entity which the parties have agreed to use;

Amendment 40

Proposal for a regulation

Article 5 – paragraph 3 – point d

Text proposed by the Commission

(d) **enabling** the parties and the ADR entity to conduct the dispute resolution procedure online;

Amendment

(d) **offering, free of charge, an electronic case management tool which enables** the parties and the ADR entity to conduct the dispute resolution procedure online **via the platform;**

Amendment 41

Proposal for a regulation

Article 5 – paragraph 3 – point e a (new)

Text proposed by the Commission

Amendment

(ea) providing the parties and the ADR entity with an electronic translation function;

Amendment 42

Proposal for a regulation

Article 5 – paragraph 3 – point e

Text proposed by the Commission

(e) providing an electronic form by means of which ADR entities shall transmit the

Amendment

(e) providing an electronic form by means of which ADR entities shall transmit the

information referred to in Article 9(c);

information referred to in Article 9;

Amendment 43

Proposal for a regulation

Article 5 – paragraph 3 – point g

Text proposed by the Commission

(g) publishing information on ADR entities notified to the Commission in accordance with Article 17(2) of Directive/.../EU [Office of Publications please insert number of Directive of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR)] which deal with disputes covered by this Regulation;

Amendment

(g) publishing information on ADR entities notified to the Commission in accordance with Article 17(2) of Directive/.../EU [Directive on consumer ADR] which deal with disputes covered by this Regulation. *The information shall be provided in a clear and unambiguous manner, be easily accessible by electronic means and be kept up to date;*

Amendment 44

Proposal for a regulation

Article 5 – paragraph 3 – subparagraph 1 – point g a (new)

Text proposed by the Commission

Amendment

(ga) publishing information on contact points in the Member States and the respective dispute resolution contact points as referred to in Article 6, including contact details;

Amendment 45

Proposal for a regulation

Article 5 – paragraph 3 – subparagraph 1 – point h

Text proposed by the Commission

Amendment

(h) providing general information on alternative dispute resolution as a means of

(h) providing general information on alternative dispute resolution *and promoting it* as a means of out-of-court

out-of-court dispute settlement;

dispute settlement;

Amendment 46

Proposal for a regulation

Article 5 – paragraph 3 – subparagraph 1 – point h b (new)

Text proposed by the Commission

Amendment

(hb) providing information about consumer rights in general in a clear, comprehensive and understandable form, including "Frequently Asked Questions" concerning the most frequent issues consumers may address, if appropriate by using interactive tools;

Amendment 47

Proposal for a regulation

Article 5 – paragraph 3 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

The information provided under the first subparagraph shall be accessible for consumers and traders interested in the functions of the platform, regardless of whether their interest relates to the submission of a complaint or not.

Amendment 48

Proposal for a regulation

Article 5 – paragraph 4

Text proposed by the Commission

Amendment

4. Alternative dispute resolution entities which have been notified to the Commission in accordance with Article 17(2) of Directive .../.../EU **[Office of Publications please insert number of Directive of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and**

4. Alternative dispute resolution entities which have been notified to the Commission in accordance with Article 17(2) of Directive .../.../EU *[Directive on consumer ADR]* and which, according to the elements necessary to establish their competence, as notified pursuant to Article

amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR)] and which, according to the elements necessary to establish their competence, as notified pursuant to Article 16(1)(g) of Directive//.../EU [*Office of Publications please insert number of Directive of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR)]*], which, based on the information contained in the electronic complaint form referred to in point (a) of paragraph 3, are competent to deal with disputes covered by this Regulation, shall **register** electronically with the ODR platform.

16(1)(g) of *that* Directive//.../EU , which, based on the information contained in the electronic complaint form referred to in point (a) of paragraph 3, are competent to deal with disputes covered by this Regulation, shall **be registered** electronically with the ODR platform.

Amendment 49

Proposal for a regulation Article 5 – paragraph 5

Text proposed by the Commission

5. The Commission shall be responsible for the ODR platform as regards its development, *its* operation, *its* maintenance and *as regards* data security.

Amendment

5. The Commission shall be responsible for the ODR platform as regards its development *and* operation, ***including all translation functions necessary for the purpose of this Regulation***, maintenance, *its funding* and data security. ***The development, operation, user-friendliness and maintenance of the platform shall respect the principles of ‘privacy by design’ (respect for privacy from the design stage) and, as far as possible of ‘design for all’ (useable by all, including the vulnerable, without the need for any particular adjustment).***

Amendment 50

Proposal for a regulation Article 5 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. The Commission shall ensure that information contained in the ODR platform concerning the existence and characteristics of ADR procedures are accurate and up to date.

Amendment 51
Proposal for a regulation
Article 5 – paragraph 6

Text proposed by the Commission

Amendment

6. The Commission shall adopt ***measures*** concerning the modalities for the exercise of the functions provided for in paragraph 3 ***through implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 15(3).***

6. The Commission shall adopt ***delegated acts, in accordance with Article 16,*** concerning the modalities for the exercise of the functions provided for in paragraph 3.

Amendment 52

Proposal for a regulation
Article 6 – title

Text proposed by the Commission

Amendment

Network of online dispute resolution
facilitators

Network of online dispute resolution
contact points

Amendment 53

Proposal for a regulation
Article 6 – paragraph 1

Text proposed by the Commission

Amendment

1. Each Member State shall designate ***one ODR*** contact point and communicate its name and contact details to the Commission. ***Member States may confer responsibility for the ODR contact points***

1. Each Member State shall designate ***their own centre of the European Consumer Centre Network as a*** contact point and communicate its name and contact details to the Commission. Each ODR contact

on their centres of the European Consumer Centre Network, on consumer associations or on any other body. Each ODR contact point shall host at least two *online dispute resolution facilitators (hereinafter ‘ODR facilitators’)*.

point shall host at least two *contact points*.

Amendment 54

Proposal for a regulation

Article 6 – paragraph 2 – introductory part

Text proposed by the Commission

2. The *ODR facilitators* shall provide support to the resolution of disputes relating to complaints submitted via the platform by fulfilling the following functions:

Amendment

2. The *contact points* shall provide support to the resolution of disputes relating to complaints submitted via the platform by fulfilling the following functions:

Amendment 55

Proposal for a regulation

Article 6 – paragraph 2 – point a

Text proposed by the Commission

(a) if *necessary*, facilitating communication between *the parties* and the competent ADR entity;

Amendment

(a) if *requested, assisting the parties and* facilitating communication between *them* and the competent ADR entity. *This may include, in particular:*

Amendment 56

Proposal for a regulation

Article 6 – paragraph 2 – point a – point i (new)

Text proposed by the Commission

Amendment

(i) assisting with the submission of the complaint and, where appropriate, relevant documentation,

Amendment 57

Proposal for a regulation

Article 6 – paragraph 2 – point a – point ii (new)

Text proposed by the Commission

Amendment

(ii) providing the parties and ADR entities with general information on consumer rights in relation to the sale of goods or the provision of services which apply in the Member State of the contact point which hosts the contact points concerned;

Amendment 58

Proposal for a regulation

Article 6 – paragraph 2 – point a – point iii (new)

Text proposed by the Commission

Amendment

(iii) providing information on the functioning of the ODR platform,

Amendment 59

Proposal for a regulation

Article 6 – paragraph 2 – point a – point iv (new)

Text proposed by the Commission

Amendment

(iv) providing the parties with explanations on the rules of procedure applied by the ADR entities identified;

Amendment 60

Proposal for a regulation

Article 6 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) informing **consumers** of other means of redress when a dispute cannot be resolved via the platform, for example when the

(b) informing **the complainant party** of other means of redress when a dispute cannot be resolved via the **ODR** platform,

trader fails to agree to the use of ADR;

for example when the *parties fail* to agree to the use of ADR *where no competent ADR entity can be identified or the ADR entity is unable to deal with the complaint on the basis of its procedural rules*;

Amendment 61

Proposal for a regulation

Article 6 – paragraph 2 – point c

Text proposed by the Commission

(c) submitting, based on the practical experience gained from the performance of their functions, an annual activity report to the Commission and to the Member States;

Amendment

(c) submitting, based on the practical experience gained from the performance of their functions, an annual activity report to *the European Parliament,, to the* Commission and to the Member States;

Amendment 62

Proposal for a regulation

Article 6 – paragraph 3

Text proposed by the Commission

3. The Commission shall establish a network of *online dispute resolution facilitators* (hereinafter the '*ODR facilitators*' network') which shall enable cooperation between *ODR facilitators* and contribute to the performance of the functions set out in paragraph 2.

Amendment

3. The Commission shall establish a network of *contact points* (hereinafter the '*contact point* network') which shall enable cooperation between *contact points* and contribute to the performance of the functions set out in paragraph 2.

Amendment 63

Proposal for a regulation

Article 6 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The Commission, in cooperation with Member States, shall provide appropriate training for contact points for consumer

disputes in order for these to acquire the necessary expertise to perform their duties in accordance with paragraph 2.

Amendment 64

Proposal for a regulation Article 6 – paragraph 4

Text proposed by the Commission

4. The Commission shall at least ***once*** every year convene a meeting of members of the ***ODR facilitators'*** network in order to permit an exchange of best practice, and a discussion of any recurring problems encountered in the operation of the ODR platform.

Amendment

4. The Commission shall at least ***twice*** every year convene a meeting of members of the ***contact points*** network in order to permit an exchange of best practice, and a discussion of any recurring problems encountered in the operation of the ODR platform.

Amendment 65

Proposal for a regulation Article 6 – paragraph 5

Text proposed by the Commission

5. The Commission shall adopt the rules ***concerning*** the modalities of the cooperation between the ODR ***facilitators through implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 15(3).***

Amendment

5. The Commission shall ***be empowered to adopt delegated acts, in accordance with Article 16, concerning*** the rules ***for*** the modalities of the cooperation between the ***contact points***.

Amendment 66

Proposal for a regulation Article 7 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The ODR platform shall provide an online guide for those seeking assistance in completing electronic claim forms.

Amendment 67
Proposal for a regulation
Article 7 – paragraph 2

Text proposed by the Commission

2. The information to be submitted by the complainant party shall be sufficient to determine the competent ADR entity. ***This*** information *is* described in the Annex.

Amendment

2. The information to be submitted by the complainant party shall be sufficient to determine the competent ADR entity. *That* information ***shall be entered in the electronic complaint form, the model of which is*** described in the Annex.

Amendment 68
Proposal for a regulation
Article 7 – paragraph 4

Text proposed by the Commission

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 16 to adapt the information listed in the Annex, taking into account the criteria by which the ADR entities notified to the Commission in accordance with Article 17(2) of Directive/.../EU [***Office of Publications please insert number of Directive of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC*** (Directive on consumer ADR)] that deal with disputes covered by this Regulation define their respective scopes of application.

Amendment

4. The Commission shall be empowered to adopt delegated acts, ***after consulting the European Data Protection Supervisor,*** in accordance with Article 16 to adapt the information listed in the Annex, taking into account the criteria by which the ADR entities notified to the Commission in accordance with Article 17(2) of Directive/.../EU [Directive on consumer ADR] that deal with disputes covered by this Regulation define their respective scopes of application.

Amendment 69

Proposal for a regulation Article 7 – paragraph 5

Text proposed by the Commission

5. The Commission shall lay down the modalities of the electronic complaint form ***by means of implementing acts. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 15(2).***

Amendment

5. The Commission shall ***be empowered to adopt delegated acts, in accordance with Article 16, laying down the modalities of the electronic complaint form, taking into account technical progress. Before adopting those delegated acts, the Commission shall consult the European Data Protection Supervisor.***

Amendment 70

Proposal for a regulation Article 8 – paragraph 1

Text proposed by the Commission

1. A complaint submitted to the platform shall be processed if the complaint form is fully completed.

Amendment

1. A complaint submitted to the ***ODR*** platform shall ***only*** be processed if ***all the necessary sections of the*** complaint form ***have been*** fully completed. ***If this is not the case, the ODR platform shall inform the complainant party of the decision not to process the form and the reasons why. The platform shall also offer the complainant party the services of a contact point in completing his electronic claim form should he/she so desire. If this is the case, the facilitator shall contact the complainant party for this purpose.***

Amendment 71

Proposal for a regulation Article 8 – paragraph 2 – introductory part

Text proposed by the Commission

2. Upon receipt of a fully completed

Amendment

2. Upon receipt of a fully completed

complaint form, the ODR platform shall ***communicate to the complainant party, in the language of the complaint, and send by e-mail*** to the respondent party, in the language of the contract, the following:

complaint form, the ODR platform shall in ***an easily understandable way and without delay transmit*** to the respondent party in the language of the contract ***or website***, the following:

Amendment 72

Proposal for a regulation

Article 8 – paragraph 2 – point a

Text proposed by the Commission

(a) the information that the parties have to agree on one competent ADR entity in order for the complaint to be transmitted to it;

Amendment

(a) the information that the parties have to agree on one competent ADR entity in order for the complaint to be transmitted to it ***and that, by choosing that ADR entity, they agree to initiate a dispute resolution procedure;***

Amendment 73

Proposal for a regulation

Article 8 – paragraph 2 – point a a (new)

Text proposed by the Commission

Amendment

(aa) in the event that the respondent party is the trader, an invitation to the respondent party to state, within seven days from receiving the communication, whether he is obliged by national law or has undertaken to use a specific ADR entity and, if applicable, if he is willing to use another ADR entity stated in the list referred to in (c);

Amendment 74

Proposal for a regulation

Article 8 – paragraph 2 – point a b (new)

Text proposed by the Commission

Amendment

(ab) in the event that the respondent party is a consumer, an invitation to the respondent party to select, within seven days from receiving the communication, one or more ADR entities from the list provided, specifying that there is no obligation on the consumer to make such a selection;

Amendment 75

Proposal for a regulation

Article 8 – paragraph 2 – point a c (new)

Text proposed by the Commission

Amendment

(ac) in the event that the respondent party is a consumer and that the trader, as the complainant party has stated in the complaint form that he/she is obliged by national law or has undertaken to use a specific ADR entity, an invitation to the respondent party to agree, within seven days from receipt of the communication, to use this specific ADR entity, specifying that there is no obligation on the consumer to make this decision;

Amendment 76

Proposal for a regulation

Article 8 – paragraph 2 – point a d (new)

Text proposed by the Commission

Amendment

(ad) the information that, in the event that the consumer chooses an ADR entity, the trader is obliged to, has undertaken to or is willing to use, the platform shall automatically transmit the complaint to that ADR entity;

Amendment 77

Proposal for a regulation

Article 8 – paragraph 2 – point c

Text proposed by the Commission

(c) a list of all competent ADR entities, if any are identified;

Amendment

(c) a list of all competent ADR entities, if any are identified. ***The list shall include a description of the following characteristics of each entity:***

Amendment 78

Proposal for a regulation

Article 8 – paragraph 2 – point c – point i (new)

Text proposed by the Commission

Amendment

(i) the name and website address of the ADR entity;

Amendment 79

Proposal for a regulation

Article 8 – paragraph 2 – point c – point ii (new)

Text proposed by the Commission

Amendment

(ii) the cost of the procedure, if applicable;

Amendment 80

Proposal for a regulation

Article 8 – paragraph 2 – point c – point iii (new)

Text proposed by the Commission

Amendment

(iii) the language or languages in which the procedure will be conducted;

Amendment 81

Proposal for a regulation

Article 8 – paragraph 2 – point c – point iv (new)

Text proposed by the Commission

Amendment

(iv) the average length of the ADR procedure;

Amendment 82

Proposal for a regulation

Article 8 – paragraph 2 – point c – point v (new)

Text proposed by the Commission

Amendment

(v) the binding or non-binding nature of the outcome of the procedure

Amendment 83

Proposal for a regulation

Article 8 – paragraph 2 – point c – point vi (new)

Text proposed by the Commission

Amendment

(vi) the grounds on which the ADR entity may refuse to deal with a given dispute in accordance with Article 5(4) and (5) of Directive/.../EU[Directive on consumer ADR];

Amendment 84

Proposal for a regulation

Article 8 – paragraph 2 – point e

Text proposed by the Commission

Amendment

(e) an invitation to the consumer to select one or more ADR entities from the list provided, specifying that there is no obligation on the consumer to make such a selection;

deleted

Amendment 85

Proposal for a regulation

Article 8 – paragraph 2 – point f

Text proposed by the Commission

Amendment

(f) an invitation to the trader to select one or more ADR entities from the list provided, in the event that none of those entities correspond to an entity the trader committed to use in accordance with Article 10(1) of Directive//EU[Office of Publications please insert number of Directive of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Directive 2009/22/EC (Directive on consumer ADR)]; *deleted*

Amendment 86

Proposal for a regulation

Article 8 – paragraph 2 – point g

Text proposed by the Commission

Amendment

(g) the information that in the event that the consumer chooses an ADR entity the trader has committed to use in accordance with Article 10(1) of Directive//EU[Office of Publications please insert number of Directive of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Directive 2009/22/EC (Directive on consumer ADR)], the platform shall automatically transmit the complaint to that ADR entity. *deleted*

Amendment 87

Proposal for a regulation

Article 8 – paragraph 3

Text proposed by the Commission

Amendment

3. The communication referred to in paragraph 2 shall include a description of the following characteristics of each entity:

deleted

(a) their fees, if applicable;

(b) the language or languages in which the procedure will be conducted;

(c) the approximate length of the procedure;

(d) the need for the physical presence of the parties or of their representatives, if applicable;

(e) the binding or non-binding nature of the outcome of the procedure.

Amendment 88

Proposal for a regulation

Article 8 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Upon receipt from the respondent party of the information referred to in paragraph 2, and without delay, the platform shall, in an easily understandable way, in the language of the complaint, communicate to the complainant party the following:

(a) the information that the parties have to agree on one competent ADR entity in order for the complaint to be transmitted to it;

(b) the information that, in the event that the consumer, as respondent party, has chosen an ADR entity, which the trader is obliged to, has undertaken to or is willing to use, the platform will automatically transmit the complaint to that ADR entity;

(c) the information that in the event that

the parties fail to agree on one competent ADR entity or that no competent ADR entity is identified, the complaint shall not be processed further;

(d) the ADR entity or, if applicable, the ADR entities which the respondent party has chosen in accordance with paragraph 2, including the following information in respect of that entity and, if more than one, of each of them:

(i) the name and website address of the ADR entity;

(ii) the fees for the procedure, if applicable;

(iii) the language or languages in which the procedure will be conducted;

(iv) the average length of the ADR procedure;

(v) the binding or non-binding nature of the outcome of the procedure;

(vi) the grounds on which the ADR entity may refuse to deal with a given dispute in accordance with Article 5(4) and (5) of Directive.

(e) an invitation to the complainant party to accept, within seven days from receiving the communication, the ADR entity selected by the respondent party or, if applicable, to select one of the ADR entities chosen by the respondent party in accordance with paragraph 2, specifying that there is no obligation on the consumer to make such a selection;

(f) the information that in the event that the complainant party chooses a competent ADR entity identified in accordance with the provisions of this Article, that the platform shall automatically transmit the complaint to that ADR entity;

(g) the name and contact details of the contact point in the place of residence for the consumer and in the place of

establishment for the trader, as well as a brief description of the functions referred to in [Article 6(2)(a), (b) and (d)].

Amendment 89

Proposal for a regulation Article 8 – paragraph 3 b (new)

Text proposed by the Commission

Amendment

3b. In the event that the complainant party chooses a competent ADR entity identified in accordance with the provisions of this Article, the platform shall automatically transmit the complaint to that ADR entity;

Amendment 90

Proposal for a regulation Article 8 – paragraph 4

Text proposed by the Commission

Amendment

4. Where the parties fail to reply to the platform or to agree on one competent ADR entity, the complaint shall not be processed further. ***The consumer shall be informed of the possibility of contacting an ODR facilitator for information on other means of redress.***

4. Where the parties fail to reply to the platform or to agree on one competent ADR entity ***within 20 days***, the complaint shall not be processed further.

Amendment 91

Proposal for a regulation Article 8 – paragraph 5

Text proposed by the Commission

Amendment

5. Where the choice of the consumer corresponds to an ADR entity the trader has ***committed*** to use in accordance with Article 10(1) of Directive .../.../EU[Office of Publications please insert number of Directive of the European Parliament and

5. Where the choice of the consumer corresponds to an ADR entity the trader has ***undertaken*** to use in accordance with Article 10(1) of Directive/..EU [Directive on consumer ADR] or where the parties choose the same ADR entity in their

of the Council on alternative dispute resolution for consumer disputes and amending Directive 2009/22/EC (Directive on consumer ADR)] or where the parties choose the same ADR entity in their replies, the platform shall automatically transmit the complaint to that ADR entity.

replies, the **ODR** platform shall automatically ***and without delay*** transmit the complaint to that ADR entity.

Amendment 92
Proposal for a regulation
Article 8 – paragraph 6

Text proposed by the Commission

6. In the event that the parties agree on more than one ADR entity, the consumer shall be requested to select one of the ADR entities agreed upon. The platform shall automatically transmit the complaint to that ADR entity.

Amendment

6. In the event that the parties agree on more than one ADR entity, the consumer shall be requested to select one of the ADR entities agreed upon. The **ODR** platform shall automatically ***and without delay*** transmit the complaint to that ADR entity.

Amendment 93
Proposal for a regulation
Article 9 – paragraph 1 – point b

Text proposed by the Commission

(b) if, following the notification of the dispute to the parties, the parties agree to institute proceedings before the entity, accomplish the conclusion of the dispute resolution procedure within **30** days from when the ***proceedings have been instituted***. In the case of complex disputes, the ADR entity may extend this time limit;

Amendment

(b) if, following the notification of the dispute to the parties, the parties agree to institute proceedings before the entity, accomplish the conclusion of the dispute resolution procedure within ***a timeframe of 90 calendar days from the date when the entity has received the complete complaint file***. In the case of complex ***or technical*** disputes, the ADR entity may extend this time limit ***in order to guarantee high-quality dispute resolution***;

Amendment 94
Proposal for a regulation
Article 9 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) without delay transmit the following to the ODR platform:

(i) date of receipt of the complaint and subject-matter of the dispute;

(ii) any request for additional information or translation regarding relevant documents that are needed from the parties;

(iii) date of conclusion of the dispute resolution procedure and result of that procedure.

Amendment 95

Proposal for a regulation

Article 9 – paragraph 1 – point c – introductory part

Text proposed by the Commission

Amendment

(c) without delay transmit the following information to the ODR platform:

deleted

(i) date of receipt and subject-matter of the dispute;

(ii) date of notification of the dispute to the parties;

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

Amendment 96

Proposal for a regulation

Article 9 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The ODR platform shall transmit without delay the relevant information referred to in point (b) of paragraph 1 to

the parties of the dispute and competent ADR entity.

Amendment 97
Proposal for a regulation
Article 9 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. If the language of the dispute resolution procedure is the same as that of the complainant party, the ADR entity may choose not to conduct that procedure through the ODR platform. In such cases, Article 9(1a) shall not apply.

Amendment 98
Proposal for a regulation
Article 10

Text proposed by the Commission

Amendment

The Commission shall take the necessary measures to establish and maintain an electronic database in which it shall store the information processed in accordance with Article 5(3) and Article 9(c).

The Commission shall take the necessary measures to establish and maintain an electronic database in which it shall store the information processed in accordance with Article 5(3) and Article 9(1)(b).

Amendment 99
Proposal for a regulation
Article 11 – paragraph 1

Text proposed by the Commission

Amendment

1. Access to information, including personal data, related to a dispute and stored in the database referred to in Article 10 shall be granted, for the purposes referred to in Article 9, only to the ADR entity to which the dispute was transmitted in accordance with Article 8. Access to the same information shall be granted also to **ODR facilitators** for the purposes referred to in Article 6(3).

1. Access to information, including personal data, related to a dispute and stored in the database referred to in Article 10 shall be granted, for the purposes referred to in Article 9, only to the ADR entity to which the dispute was transmitted in accordance with Article 8. Access to the same information shall be granted also to **contact points, in so far as it is necessary**, for the purposes referred to in Article 6(2)

and (3).

Amendment 100
Proposal for a regulation
Article 11 – paragraph 2

Text proposed by the Commission

2. The Commission shall have access to information processed in accordance with Article 9 for the purposes of monitoring the use and functioning of the ODR platform and drawing up the reports referred to in Article 17. It shall process personal data of the users of the platform in so far as it is necessary for the operation and maintenance of the platform, including for the purposes of monitoring the use of the platform by ADR entities and **ODR facilitators**.

Amendment 101
Proposal for a regulation
Article 11 – paragraph 3

Text proposed by the Commission

3. Personal data related to a dispute shall be kept in the database referred to in paragraph 1 only for the time necessary to achieve the purposes for which they were collected and to ensure that data subjects are able to access their personal data in order to exercise their rights, and shall be automatically deleted, at the latest, after 6 months following the date of conclusion of the dispute which has been transmitted to the ODR platform in accordance with Article 9(c)(iii). The above-mentioned retention period shall also apply to personal data kept in national files by the ADR entity or the **ODR facilitator** which dealt with the dispute concerned, except if the rules of procedure applied by the ADR entity or any specific provisions of national

Amendment

2. The Commission shall have access to information processed in accordance with Article 9 for the purposes of monitoring the use and functioning of the ODR platform and drawing up the reports referred to in Article 17. It shall process personal data of the users of the platform in so far as it is necessary for the operation and maintenance of the platform, including for the purposes of monitoring the use of the platform by ADR entities and **contact points**.

Amendment

3. Personal data related to a dispute shall be kept in the database referred to in paragraph 1 only for the time necessary to achieve the purposes for which they were collected and to ensure that data subjects are able to access their personal data in order to exercise their rights, and shall be automatically deleted, at the latest, after 6 months following the date of conclusion of the dispute which has been transmitted to the ODR platform in accordance with Article 9(c)(iii). The above-mentioned retention period shall also apply to personal data kept in national files by the ADR entity or the **contact point** which dealt with the dispute concerned, except if the rules of procedure applied by the ADR entity or any specific provisions of national

law provide for a longer retention period.

law provide for a longer retention period.

Amendment 102

Proposal for a regulation

Article 11 – paragraph 4

Text proposed by the Commission

4. Each **ODR facilitator** and each ADR entity shall be regarded as a controller, in accordance with Article 2(d) of Directive 95/46/EC, with respect to their own data processing activities under this Regulation and shall be responsible to ensure that these activities comply with data protection rules laid down in national legislation adopted pursuant to Directive 95/46/EC. In relation to its responsibilities under this Regulation and the processing of personal data involved therein, the Commission shall be regarded as a controller in accordance with *Article 2(d)* of Regulation (EC) No 45/2001.

Amendment

4. Each **contact point** and each ADR entity shall be regarded as a controller, in accordance with Article 2(d) of Directive 95/46/EC, with respect to their own data processing activities under this Regulation and shall be responsible to ensure that these activities comply with data protection rules laid down in national legislation adopted pursuant to Directive 95/46/EC. In relation to its responsibilities under this Regulation and the processing of personal data involved therein, the Commission shall be regarded as a controller in accordance with *point (d) of Article 2* of Regulation (EC) No 45/2001.

Amendment 103

Proposal for a regulation

Article 11 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. The Commission shall provide parties to an ADR procedure with a guide containing clear and specific information regarding the treatment of their personal data by the ODR platform under Articles 11 and 12 of Regulation (EC) No 45/2001 and the relevant national legislation adopted under Articles 10 and 11 of Directive 95/46/EC, and informing them of their rights in this respect.

Amendment 104

Proposal for a regulation
Article 12 – paragraph 1

Text proposed by the Commission

(1) **ODR facilitators and ADR entities** shall be subject to rules of professional secrecy or other equivalent duties of confidentiality laid down in **national legislation**.

Amendment

(1) **Contact points** shall be subject to rules of professional secrecy or other equivalent duties of confidentiality laid down in **the legislation of the Member State of their ODR contact point**.

ADR entities shall be subject to rules of professional secrecy or other equivalent duties of confidentiality laid down in the legislation of the Member State where they are based.

Amendment 105
Proposal for a regulation
Article 12 – paragraph 2

Text proposed by the Commission

2. The Commission shall take the appropriate technical and organisational measures to ensure the security of information processed under this Regulation, including appropriate data access control, a security plan and a security incident management, in accordance with Article 22 of Regulation (EC) No 45/2001.

Amendment

2. The Commission shall take the appropriate technical and organisational measures to ensure the security of information processed under this Regulation, including appropriate data access control, a security plan, **privacy impact assessment** and a security incident management, in accordance with Article 22 of Regulation (EC) No 45/2001.

Amendment 106

Proposal for a regulation
Article 13 – paragraph 1

Text proposed by the Commission

1. Traders established within the Union **engaging** in the cross-border online sale of goods or provision of services shall inform consumers about the ODR platform and **about their e-mail address**. This information shall be **made easily, directly,**

Amendment

1. Traders established within the Union **that engage** in the cross-border online sale of goods or provision of services shall inform consumers about **their e-mail address and about the existence of the** ODR platform and **provide an electronic**

prominently and ***permanently*** accessible on the traders' websites and, if the offer is made by e-mail or another textual message transmitted by electronic means, in that message. It shall include an electronic link to the ODR platform's homepage. Traders shall also inform consumers about the ODR platform when the consumer submits a complaint to the trader, a consumer complaint handling system operated by the trader or to a company ombudsman.

link to its website. This information shall be ***mentioned in a clear and comprehensible manner***. It shall include an electronic link to the ODR platform's homepage. Traders shall also inform consumers about the ODR platform when the consumer submits a complaint to the trader, a consumer complaint handling system operated by the trader or to a company ombudsman.

Amendment 107

Proposal for a regulation

Article 13 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The consumer information provided for in this Article shall be grouped together in the same place on the traders' websites in order to allow consumers to have an overview of all their respective rights in this regard.

Amendment 108

Proposal for a regulation

Article 15

Text proposed by the Commission

Amendment

Implementing acts

deleted

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply. Where the opinion of the committee is to be obtained by written procedure, that procedure shall

be terminated without result when, within the time-limit for delivery of the opinion, the chair of the committee so decides or a simple majority of committee members so request.

Amendment 109
Proposal for a regulation
Article 16 – paragraph 2

Text proposed by the Commission

2. *The delegation of power* referred to in *Article 7(4)* shall be conferred for an indeterminate period of time from the *[Office of Publications insert same date as in Art. 18(1) = date of entry into force of this Regulation]*.

Amendment

2. *The power to adopt delegated acts* referred to in *Articles 5 (6), 6 (5) and 7(4)* shall be conferred *on the Commission* for an indeterminate period of time from ... *.

* *OJ: please insert the date of entry into force of this Regulation.*

Amendment 110
Proposal for a regulation
Article 16 – paragraph 3

Text proposed by the Commission

3. The delegation of *powers* referred to in *Article 7(4)* may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

Amendment

3. The delegation of *power* referred to in *Articles 5 (6), 6 (5) and 7(4)* may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

Amendment 111

Proposal for a regulation
Article 16 a (new)

Text proposed by the Commission

Amendment

Article 16a

Penalties

Member States shall lay down rules on penalties applicable to infringement of this Regulation and shall take all the measures necessary to ensure that those rules are implemented. The penalties should be effective, proportionate and dissuasive.

Amendment 112

Proposal for a regulation
Article 17

Text proposed by the Commission

Amendment

Every ***three years*** and for the first time no later than ***five years*** after the entry into force of this Regulation the Commission shall submit to the European Parliament and the Council a report on the application of this Regulation. The report shall be accompanied, if necessary, by proposals for adaptations to this Regulation.

Every ***two years*** and for the first time no later than ...* the Commission shall submit to the European Parliament and the Council a report on the application of this Regulation, ***in particular on the level of acceptance of the online signposting platform and the practicability of the complaint form and the possible needs to adapt the information listed in the Annex, taking into account the criteria by which the ADR entities notified to the Commission in accordance with Article 17(2) of Directive/.../EU Directive on consumer ADR] that deal with disputes covered by this Regulation define their respective scopes of application, as well as the possibilities of further development of interactive means of communication.*** The report shall be accompanied, if necessary, by proposals for adaptations to this Regulation.

**** OJ please insert the date three years***

*after the entry into force of this
Regulation*

Amendment 113
Proposal for a regulation
Annex – heading 1

Text proposed by the Commission

Amendment

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

Model of the electronic complaint form

Amendment 114
Proposal for a regulation
Annex – point 1

Text proposed by the Commission

Amendment

***(1) Name, address and, if applicable, e-
mail and website address of the
complainant party;***

***(1) Whether the complainant party is a
consumer or a trader*;***

Amendment 115
Proposal for a regulation
Annex – point 2

Text proposed by the Commission

Amendment

***(2) Whether the complainant party is a
consumer or a trader;***

***(2) Name, e-mail, and, geographical
address of the consumer;***

Amendment 116
Proposal for a regulation
Annex – point 3

Text proposed by the Commission

Amendment

***(3) Name, address and, if applicable, e-
mail and website address of the
respondent party;***

***(3) Name, address, e-mail, geographical
address and website of the trader;***

Amendment 117
Proposal for a regulation
Annex – point 4

Text proposed by the Commission

(4) *Whether the respondent party is a consumer or a trader;*

Amendment

(4) *Type of goods or services to the sale or provision of which the complaint relates*;*
(*) *to be chosen from a drop-down list*

Amendment 118
Proposal for a regulation
Annex – point 5

Text proposed by the Commission

(5) *Type of goods or services to the sale or provision of which the complaint relates;*

Amendment

(5) *Consumer's language***

(**) *to be chosen from a drop-down list with the possibility to choose more than one language from that list*

Amendment 119
Proposal for a regulation
Annex – point 6

Text proposed by the Commission

(6) *Grounds on which the complaint is based;*

Amendment

(6) *Communication method by which the goods or services were offered and the communication method by which the order was made*;*

Amendment 120
Proposal for a regulation
Annex – point 7

Text proposed by the Commission

(7) *Consumer's place of residence at the time the goods or services were ordered;*

Amendment

(7) *If applicable, where the trader's offer was made or the goods or services were delivered or were supposed to be delivered out of the operations of a branch, agency or other establishment, the place where*

that branch, agency or other establishment is situated;

Amendment 121
Proposal for a regulation
Annex – point 8

Text proposed by the Commission

(8) Communication method by which the goods or services were offered and communication method by which the order was made;

Amendment

(8) Language of the contract or, if not known, language used on the website;

Amendment 122
Proposal for a regulation
Annex – point 9

Text proposed by the Commission

(9) If applicable, where the trader's offer was made or the goods or services delivered or supposed to be delivered out of the operations of a branch, agency or other establishment, the place where that branch, agency or other establishment is situated;

Amendment

(9) ADR entities that the trader has undertaken to use [if known].

Amendment 123
Proposal for a regulation
Annex – point 10

Text proposed by the Commission

(10) Language of the contract;

Amendment

(10) Grounds on which the complaint is based [Description of the complaint, up to 1000 words]

Amendment 124
Proposal for a regulation
Annex – point 11

Text proposed by the Commission

Amendment

(11) ADR entities the trader committed to use in accordance with Article 10(1) of Directive/.../EU[Office of Publications please insert number of Directive of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Directive 2009/22/EC (Directive on consumer ADR)], if known.

(11) Attachments

EXPLANATORY STATEMENT

The Commission's draft proposal aims at establishing a European Online Dispute Resolution platform "*ODR platform*". It will be an interactive website offering consumers and traders a single point of entry for out of court resolution of certain disputes – contractual disputes arising from the cross-border online sale of goods or the provision of services by a trader established in a Member State to a consumer resident in another Member State. The platform will be free of charge and available in all official languages of the EU.

The proposal has to be looked at in conjunction with the draft proposal for a directive on alternative dispute resolution for consumer disputes ("*ADR Directive*"). This draft Directive aims at enhancing redress for consumers by ensuring that all consumer complaints can be submitted to an ADR entity (e.g. arbitrator, conciliator, ombudsman or complaints board) for out of court resolution.

The ODR platform will be able to identify a competent ADR entity falling under the ADR Directive and communicate core information about that entity (fees, language(s) of the procedure, binding/non-binding nature of the outcome of the procedure etc) to the parties. Upon agreement between the parties on which ADR shall treat the complaint, the platform will automatically transmit the complaint to that ADR entity, which will seek to resolve the dispute within 30 days applying its own rules of procedure. The trader's agreement to use ADR will be presumed if, according to the provisions on customer information in the ADR Directive, it has committed to use the ADR entity concerned on its website.

The platform will enable the parties and the ADR entity to conduct the dispute resolution procedure online. A "network of ODR facilitators" will be established to support the resolution of disputes which will be transmitted via the ODR platform.

Scope of the Regulation

Your Rapporteur supports the basic principle of making available voluntary ADR systems in every economic sector to facilitate consumer redress.

Your Rapporteur welcomes the fact that the draft Regulation applies to complaints filed not only by customers but also by traders. While your Rapporteur agrees that, in purely statistical terms, most complaints will be lodged by consumers, it is important that the tool is also available to complaints by traders in cases of, for example, non-payment or refusal to accept delivery of goods. This is all the more important in light of the fact that the ADR system laid out by the draft Directive is voluntary and therefore it is essential that the legislation provides incentives for traders to commit to ADR.

However, your Rapporteur deplores the fact that the draft Regulation applies only to disputes arising from the cross-border online sale of goods or provision of services by a trader established in a Member State to a consumer resident in another Member State.

Your Rapporteur encourages Members to seek a more ambitious solution to that contained in the draft Regulation and proposes that its scope be extended to include domestic online disputes as it is often difficult for consumers to ascertain if they are buying products and services on a cross-border basis when carrying out online transactions.

Moreover, as the Internet economy is driven by the so-called network effect (i.e., the more a tool such as Google or Facebook is used, the more advantageous it is for users); the greater the number of disputes submitted by users to the ODR platform, the greater the incentive for ADR entities and for traders to cooperate with it, generating a "virtuous circle" that will benefit consumers, promote e-commerce and improve the functioning of the retail Internal Market. As the fixed costs of creating the platform will remain the same regardless of its scope, this "network benefit" will be achieved without causing a large increase in the total cost of running the enlarged platform.

Role of Facilitators

Your Rapporteur notes that the role of the network of ODR facilitators (which the Rapporteur intends to rename "consumer advisors") is quite limited in the draft Regulation. It is envisaged that these ODR consumer advisors will intervene only as a "last resort" to inform consumers of other means of redress when a dispute cannot be solved via the platform. They will also, only upon request, facilitate communication between the parties and the competent ADR entity. Additionally, they will draw up an annual activity report on the operation of the platform.

This is a direct consequence of an inherent contradiction in the draft Regulation – that the platform will be an IT tool operated by the European Commission from Brussels but facilitators will be based in the Members States.

Your Rapporteur calls for an increased role for the consumer advisors, so that they can be contacted by complainants at any point during the process of resolution of their complaint. They should be closely associated with the operation of the platform and available to "hold the hand" of consumers from the moment that the complaint form is filled in. Consumer advisors will help parties in choosing an ADR entity if more than one is identified by the ODR platform. They can also help to resolve language and translation problems if the dispute is cross-border in nature. Apart from helping complainants to use the ODR platform, consumer advisors should provide general information to consumers about their rights and suggest other courses of action, such as contacting the trader, starting judicial proceedings etc. If no ADR entity competent to resolve the dispute can be identified, the consumer advisors will also be a "last resort" for the parties by helping them to find an amicable solution.

Role of European Consumer Centres

The draft Regulation provides that Member States may confer the responsibility for carrying out the tasks assigned to facilitators to the European Consumer Centre network, consumer associations or any other body. Your Rapporteur would like to draw attention to the fact that ECCs are mentioned in EP and Council Decision 1926/2006 establishing the 2007-2013 consumer policy programme and that they already provide information and assistance to consumers to help them exercise their rights and obtain access to appropriate dispute resolution.

On this basis, it seems appropriate to amend the draft Regulation to set out that consumer advisors will be based in ECCs. This reinforcement of the role of ECCs will go a long way towards establishing a "one stop shop" for all queries from EU citizens. In order to achieve

this, your Rapporteur proposes that the ODR be housed in the European Commission operated portal "Your Europe" which offers practical help and advice about the rights of EU citizens.

Time Periods

Your Rapporteur would like to remind you of the old principle “delayed justice is justice denied” and notes that the provisions on processing and transmitting complaints do not set any deadlines for the time period between filling in the complaint form on the ODR platform and either the submission of the complaint by the platform to the relevant ADR entity or, in the absence of agreement between consumer and trader to refer the matter, the moment in which the complaint shall not be processed further. Therefore, a time limit of seven working days is proposed for the processing of the complaint by the platform. This proposed change is accompanied by other modifications to clarify and streamline the workflow of the ODR platform.

On this basis, Your Rapporteur believes that the maximum time period of 30 days for the resolution of disputes by ADR entity should be amended. Instead, it is proposed that the time period for dispute resolution is extended to 90 days, in line with the provisions of the ADR directive. This time period will begin once the dispute is received by the ADR entity.

Data Protection

Your Rapporteur would like to recall the opinion of the European Data Protection Supervisor welcoming the fact that data protection principles have been included in the text, in particular in relation to the purpose and access limitation, the limitation of the retention period and the security measures provided in Article 11. Additionally, your Rapporteur proposes that data are shared with consumer advisors only on a "need to know" basis and that the Commission conducts privacy impact assessments.

Implementing and Delegated Acts

Your Rapporteur understands that the Commission needs some room to manoeuvre for the creation of this new instrument and its practical implementation.

However, in order to ensure that the European Parliament fulfils its role of oversight for the benefit of consumers, it is proposed that the implementing powers requested by the Commission in relation to (i) the functions of the platform, (ii) the modalities of cooperation between ODR facilitators, and (iii) the modalities of the electronic complaint form are replaced by delegated acts.

In particular, Your Rapporteur is concerned about the translation capabilities of the ODR platform and wants to ensure that it works correctly in every language combination. She also wants to ensure that the interface between consumers and the platform (i.e. the electronic complaint form) is customer friendly and easy to use. The best way to achieve these objectives is to make sure that the Parliament maintains a veto right over the Commission's proposals in this regard.

21.6.2012

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS

for the Committee on the Internal Market and Consumer Protection

on the proposal for a regulation of the European Parliament and of the Council on online dispute resolution for consumer disputes (Regulation on consumer ODR)
(COM(2011)0794 – C7-0453/2011 – 2011/0374(COD))

Rapporteur: Luigi Berlinguer

SHORT JUSTIFICATION

Your rapporteur for opinion welcomes the Commission proposal for a regulation on online dispute resolution for consumer disputes, since it will contribute to the functioning of the internal market and improve ADR coverage given that access to ADR can be burdensome due to language barriers, unfamiliar procedures etc.

However, he strongly believes that the system proposed can only reach these goals if it is comprehensive (including domestic and cross-border as well as online and offline transactions), complies with high standards (high consumer protection, impartiality, efficiency, transparency), is easy to use, provides efficient results and preserves access to justice, i.e. in particular does not deprive consumers of their right to seek redress before the courts.

The proposed amendments seek to achieve this, in particular by:

- extending the scope to both cross-border and domestic transactions, given that there is no reason (and also often no practical possibility) to distinguish between those two types of transactions; for the same reason the scope should also include disputes arising from offline transactions;
- renaming the platform to "online signposting platform", in order to more explicitly describe its function ("signposting") and its scope (covering as an online tool both online and offline transactions);
- assuring that the online signposting platform does indeed assist consumers to a maximum in benefiting from ADR: by including access to traders' complaint services in the platform, by providing comprehensive information publicly available to all interested parties on ADR procedures and ADR entities; by making contact information of facilitators available on the platform; by providing for assistance to consumers, together with the contact points and facilitators, in filling out the

complaint form and selecting the best-suited ADR entity, and by assisting, through an ad-hoc mechanism composed by competent facilitators, in case no common competent ADR entity could be identified by consumer and trader in a first step;

- stating the responsibility of the Commission for the online platform as clearly as possible;
- promoting low-cost ADR and use of online tools, by informing consumers as fully and as early as possible on aspects such as fees and the need for physical presence, and by including the online communication aspect specifically in the review clause;
- clearly defining the deadlines in which the competent ADR entity has to be found and the dispute has to be resolved;
- reorganising the attribution of implementing and delegated acts compared to the Commission proposal, with a view to better reflecting the objectives of Articles 290 and 291 TFEU.

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a regulation

Title

Text proposed by the Commission

Regulation of the European Parliament and of the Council on online dispute resolution for consumer disputes (***Regulation on consumer ODR***)

Amendment

Regulation of the European Parliament and of the Council on ***an online platform for alternative*** dispute resolution for consumer disputes

Amendment 2

Proposal for a regulation

Recital 2

Text proposed by the Commission

(2) In accordance with Article 26(2) TFEU, the Internal Market is to comprise an area without internal frontiers in which the free movement of goods and services is ensured. In order for consumers to have confidence in and benefit from ***the digital***

Amendment

(2) In accordance with Article 26(2) TFEU, the Internal Market is to comprise an area without internal frontiers in which the free movement of goods and services is ensured. In order for consumers to have confidence in and benefit from the Internal

dimension of the Internal Market, it is necessary that they have access to easy and low-cost ways of resolving disputes which arise from the sale of goods or the supply of services *online*. This is *particularly* important when consumers shop cross-border.

Market, it is necessary that they have access to easy and low-cost ways of resolving disputes which arise from the sale of goods or the supply of services. This is *obviously* important when consumers shop cross-border, *but also for domestic transactions. It might also be difficult to make a distinction between cross-border and domestic transactions on the one hand and between online and offline transactions on the other. Accordingly, this Regulation should apply to cross-border and domestic as well as to online and offline transactions.*

Amendment 3

Proposal for a regulation

Recital 5

Text proposed by the Commission

(5) The Internal Market is a reality for consumers in their daily lives, when they travel, buy and make payments. Consumers are key players in the Internal Market and should therefore be at its heart. *The digital dimension of the Internal Market is becoming vital for both consumers and traders. Consumers increasingly make purchases over the internet and an increasing number of traders sell online.* Consumers and traders should feel confident in carrying out transactions in *a digital environment*.

Amendment

(5) The Internal Market is a reality for consumers in their daily lives, when they travel, buy and make payments. Consumers are key players in the Internal Market and should therefore be at its heart. Consumers and traders should feel confident in carrying out transactions in *the internal market*.

Amendment 4

Proposal for a regulation

Recital 6

Text proposed by the Commission

(6) Being able to seek easy and low-cost

Amendment

(6) Being able to seek easy and low-cost

dispute resolution can boost consumers' and traders' confidence in the **digital** market. Consumers and traders, however, still face barriers to finding out-of-court solutions **in particular** to their disputes **arising from a cross-border online transaction**. Thus, **such** disputes currently are often left unresolved.

dispute resolution can boost consumers' and traders' confidence in the **internal** market. Consumers and traders, however, still face barriers to finding out-of-court solutions to their disputes. Thus, disputes currently are often left unresolved.

(This amendment (deletion of "cross-border" and deletion of "online transaction") applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

Amendment 5

Proposal for a regulation Recital 7

Text proposed by the Commission

(7) **Online** dispute resolution offers a simple and low-cost out-of-court solution to disputes **arising from cross-border online transactions**. However, there is currently a lack of mechanisms that allow consumers and traders to resolve **such** disputes via electronic means. This leads to consumer detriment, acts as a barrier to **cross-border online** transactions, creates an uneven playing field for traders and thus hampers the development of **electronic commerce**.

Amendment

(7) **Alternative** dispute resolution offers a simple and low-cost out-of-court solution to disputes. However, there is currently a lack of mechanisms that allow consumers and traders to resolve disputes via electronic means. This leads to consumer detriment, acts as a barrier to transactions, creates an uneven playing field for traders and thus hampers the development of **the internal market**.

Amendment 6

Proposal for a regulation Recital 8

Text proposed by the Commission

(8) This Regulation should apply to the out-of-court resolution of contractual disputes between consumers and traders that arise from the **online** sale of goods or provision of services by traders **across**

Amendment

(8) This Regulation should apply to the out-of-court resolution of contractual disputes between consumers and traders that arise from the sale of goods or provision of services by traders. It should

borders. It should not apply to disputes between consumers and traders that arise from the ***online*** sale of goods or provision of services if at least one of them is not established or resident in a Member State of the Union at the time when the consumer orders such goods or services ***or the trader and the consumer are established or resident in the same Member State***.

not apply to disputes between consumers and traders that arise from the sale of goods or provision of services if at least one of them is not established or resident in a Member State of the Union at the time when the consumer orders such goods or services. ***This Regulation should be limited to complaints submitted by consumers against traders.***

Justification

The amendment aims at ensuring consistency with the amendments to the proposed Directive on Consumer ADR.

Amendment 7

Proposal for a regulation Recital 11

Text proposed by the Commission

Amendment

(11) The definition of 'online sale of goods or provision of services' should cover a transaction for the online sale of goods or provision of services where the trader, or the trader's intermediary, has offered goods or services through a website or by other electronic means and the consumer has ordered those goods or services on that website or by other electronic means. This should also cover cases where the consumer has accessed the website or other information society service through a mobile electronic device such as a mobile telephone.

deleted

Amendment 8

Proposal for a regulation Recital 12

Text proposed by the Commission

(12) ***This Regulation should not apply to disputes between consumers and traders that arise from the cross-border sale of goods or provision of services offline.*** This Regulation should not apply to disputes between traders.

Amendment

(12) This Regulation should not apply to disputes between traders.

Amendment 9

Proposal for a regulation Recital 14

Text proposed by the Commission

(14) This Regulation aims at creating an online ***dispute resolution ('ODR')*** platform at European level. The ***ODR*** platform should take the form of an interactive website offering a single point of entry to consumers and traders seeking to resolve disputes out-of-court ***which have arisen from a cross-border e-commerce transaction.*** It should allow consumers and traders to submit complaints by filling in an electronic complaint form available in all official languages of the Union and transmit complaints to an alternative dispute resolution ('ADR') entity competent to deal with the dispute concerned. The platform should offer to ADR entities and the parties the possibility of conducting the dispute resolution procedure via the platform.

Amendment

(14) This Regulation aims at creating an online ***signposting*** platform at European level. The platform should take the form of an interactive website offering a single point of entry to consumers and traders seeking to resolve disputes out-of-court. It should allow consumers and traders to submit complaints by filling in an electronic complaint form available in all official languages of the Union and transmit complaints to an alternative dispute resolution ('ADR') entity competent to deal with the dispute concerned. The platform should offer to ADR entities and the parties the possibility of conducting the dispute resolution procedure via the platform.

(This amendment ("online signposting platform") applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

Amendment 10

Proposal for a regulation Recital 14 a (new)

Text proposed by the Commission

Amendment

(14a) The Commission should establish, develop, maintain, and secure the operation of the platform, in particular by providing the necessary funding and expertise.

Amendment 11

Proposal for a regulation Recital 14 b (new)

Text proposed by the Commission

Amendment

(14b) It should also be taken into account that, despite the controversy, Member States whose national legislation goes beyond the core requirements of the Mediation Directive seem to have achieved important results in promoting the non-judicial treatment of disputes in civil and commercial matters; and that the results achieved, in particular in Italy, Bulgaria and Romania, show that mediation can help bring swift and effective extrajudicial resolution of disputes through processes that are tailored to the needs of the parties and safeguard consumers, which is of particular relevance in cases of electronic purchasing.

Amendment 12

Proposal for a regulation Recital 15

Text proposed by the Commission

(15) **An ODR** system at European level should build on existing ADR entities in the Member States and respect Member States' legal traditions. ADR entities to which a complaint has been transmitted via the **ODR** platform should therefore apply their own rules of procedure, including rules on cost. However, this Regulation intends to establish some common rules applicable to those procedures that will safeguard their effectiveness. This should include rules ensuring that such dispute resolution is accomplished expeditiously.

Amendment

(15) **A** system at European level should build on existing ADR entities in the Member States and respect Member States' legal traditions. ADR entities to which a complaint has been transmitted via the **online signposting** platform should therefore apply their own rules of procedure, including rules on cost. ***It should be recalled in this context that, in accordance with Article 8(c) of Directive/.../EU [= Directive on consumer ADR] Office of Publications insert reference number], costs for consumers should be moderate.*** However, this Regulation intends to establish some common rules applicable to those procedures that will safeguard their effectiveness. This should include rules ensuring that such dispute resolution is accomplished expeditiously.

Amendment 13

Proposal for a regulation Recital 15 a (new)

Text proposed by the Commission

Amendment

(15a) In order to promote the processing of a complaint via the platform, where the parties do not agree on one competent ADR entity, the consumer should have the possibility to call upon one facilitator from his place of residence, who shall attempt to identify an ADR entity agreeable to both parties.

Amendment 14

Proposal for a regulation

Recital 18

Text proposed by the Commission

(18) A network of **online** dispute resolution **facilitators** should provide support to the resolution of disputes **relating to complaints submitted** via the **ODR** platform. That network should be composed of contact points **for ODR** in the Member States which host **online dispute resolution** facilitators.

Amendment

(18) A network of dispute resolution facilitators should provide support to the resolution of disputes via the **online signposting** platform. That network should be composed of contact points in the Member States which host facilitators.

(This amendment ("deletion of "online"/"ODR" as regards the facilitators and the contact points) applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

Amendment 15

Proposal for a regulation

Recital 18 a (new)

Text proposed by the Commission

Amendment

(18a) In order not to multiply access points for consumers, Member States should, in the first place, confer responsibility for the contact points on their centres of the European Consumer Centres Network. The facilitators should provide support for the resolution of disputes via the platform, in particular by assisting and informing consumers. As the success of the platform will therefore also depend on the facilitators' abilities and expertise, they should be adequately trained by the Commission and the Member States.

Amendment 16

Proposal for a regulation Recital 22

Text proposed by the Commission

(22) Traders should inform consumers on their websites about the **ODR** platform and provide an electronic link to its homepage. They should also provide such information when a consumer submits a complaint to the trader, a consumer complaint handling system operated by the trader or a company ombudsman. This obligation should be without prejudice to Article 10(1)-(3) of Directive/.../EU [Office of Publications insert reference number] ***concerning the information of consumers by traders about the ADR procedures by which those traders are covered and about whether or not they commit to use alternative dispute resolution procedures to resolve disputes with consumers.*** Furthermore, this obligation should be without prejudice to Articles 6(1)(t) and 8 of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights . Article 6(1)(t) of Directive 2011/83/EU stipulates for consumer contracts concluded at a distance or off premises that the trader has to inform the consumer about the possibility of having recourse to an out-of-court complaint and redress mechanism to which the trader is subject, and the methods for having access to it, before the consumer is bound by the contract.

Amendment

(22) Traders should inform consumers on their websites ***in a clear and easily accessible way*** about the ***online signposting*** platform and provide an electronic link to its homepage. They should also provide such information when a consumer submits a complaint to the trader, a consumer complaint handling system operated by the trader or a company ombudsman. This obligation should be without prejudice to Article 10(1)-(3) of Directive/.../EU [Office of Publications insert reference number]. Furthermore, this obligation should be without prejudice to Articles 6(1)(t) and 8 of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights. Article 6(1)(t) of Directive 2011/83/EU stipulates for consumer contracts concluded at a distance or off premises that the trader has to inform the consumer about the possibility of having recourse to an out-of-court complaint and redress mechanism to which the trader is subject, and the methods for having access to it, before the consumer is bound by the contract. ***The obligation to inform consumers of the existence of the online signposting platform should not create excessive administrative burdens for small and micro enterprises within the meaning of Commission Recommendation 2003/361 of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises¹. Small and micro enterprises should transmit to consumers all relevant information when they are confronted to a particular problem.***

Amendment 17

Proposal for a regulation Recital 23

Text proposed by the Commission

(23) In order to supplement or amend certain non-essential elements of this Regulation, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the type of information which a complainant is to provide in the electronic complaint form made available on the **ODR** platform. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.

Amendment

(23) In order to supplement or amend certain non-essential elements of this Regulation, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the type of information which a complainant is to provide in the electronic complaint form made available on the **online signposting** platform, **as well as the technical modalities concerning the submission of a complaint**. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level, **and in particular, the European Data Protection Supervisor**. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.

Amendment 18

Proposal for a regulation Recital 24

Text proposed by the Commission

(24) In order to ensure uniform conditions for the implementation of this Regulation implementing powers should be conferred on the Commission in respect of the functioning of the **ODR** platform, **the modalities for the submission of a complaint** and co-operation within the **ODR facilitators'** network. Those powers

Amendment

(24) In order to ensure uniform conditions for the implementation of this Regulation implementing powers should be conferred on the Commission in respect of the functioning of the **online signposting** platform and co-operation within the **contact points'** network. Those powers should be exercised in accordance with

should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers. ***The advisory procedure should be used for the adoption of implementing acts relating to the electronic complaint form given its purely technical nature.*** The examination procedure should be used for the adoption of the rules concerning the modalities ***of cooperation between the ODR facilitators of the network of online dispute resolution facilitators.***

Amendment 19

Proposal for a regulation Article 1

Text proposed by the Commission

The purpose of this Regulation is to contribute to the functioning of the internal market, ***and in particular its digital dimension***, and to the achievement of a high level of consumer protection by providing a platform facilitating the impartial, transparent, effective and fair out-of-court resolution of disputes between consumers and traders ***online***.

Amendment 20

Proposal for a regulation Article 2

Text proposed by the Commission

This Regulation shall apply to the out-of-court resolution of contractual disputes arising from the ***cross-border online*** sale of goods or provision of services between consumers and traders ***through the***

Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers. The examination procedure should be used for the adoption of the rules concerning the modalities ***for the exercise of the functions of the online signposting platform.***

Amendment

The purpose of this Regulation is to contribute to the functioning of the internal market and to the achievement of a high level of consumer protection by providing ***an online*** platform facilitating the impartial, transparent, effective and fair out-of-court resolution of disputes between consumers and traders.

Amendment

This Regulation shall apply to the out-of-court resolution of contractual disputes arising from the sale of goods or provision of services between consumers and traders ***and referred by consumers to an***

intervention of an alternative dispute resolution entity complying with Directive [Office of Publications please insert number of Directive of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR)] and involving the use of a European online dispute resolution *platform*.

alternative dispute resolution entity complying with Directive [Office of Publications please insert number of Directive of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR)] and involving the use of a European online *platform for alternative* dispute resolution.

Amendment 21

Proposal for a regulation Article 4 – point c

Text proposed by the Commission

Amendment

(c) "online sale of goods or provision of services" means a transaction for the sale of goods or provision of services where the trader, or the trader's intermediary, has offered goods or services on a website or by other electronic means and the consumer has ordered such goods or services on that website or by other electronic means;

deleted

Amendment 22

Proposal for a regulation Article 4 – point e

Text proposed by the Commission

Amendment

(e) "cross-border online sale of goods or provision of services" means an online sale of goods or provision of services where, at the time the consumer orders such goods or services, the consumer is resident in a Member State other than the Member State where the trader is established;

deleted

Amendment 23

Proposal for a regulation

Article 4 – point g – subparagraph 1

Text proposed by the Commission

(g) ‘alternative dispute resolution procedure’ (hereinafter ‘ADR procedure’) means a procedure for the out-of-court resolution of a dispute through the intervention of a dispute resolution entity which ***proposes or imposes a solution*** or brings the parties together with the aim of ***facilitating an amicable solution***;

Amendment

(g) ‘alternative dispute resolution procedure’ (hereinafter ‘ADR procedure’) means a procedure for the out-of-court resolution of a dispute ***whereby the parties involved attempt to solve their conflict*** through the intervention of a dispute resolution entity which ***adopts a decision binding or non-binding on the parties*** or brings the parties together with the aim of ***reaching a mutually acceptable agreement***;

Amendment 24

Proposal for a regulation

Article 4 – point g – subparagraph 2

Text proposed by the Commission

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

Amendment

deleted

Justification

The definition and scope of ADR are provided in Articles 2 and 4 of the Directive on

consumer ADR. There is no need for its inclusion in this Regulation.

Amendment 25

Proposal for a regulation

Article 4 – point i

Text proposed by the Commission

Amendment

(i) ‘complainant party’ means the consumer or the trader that has submitted a complaint via the European online dispute resolution platform; **deleted**

Justification

Alignment with amendments on the scope of the Regulation and Directive on consumer ADR. The complainant can only be the consumer.

Amendment 26

Proposal for a regulation

Article 4 – point j

Text proposed by the Commission

Amendment

(j) ‘respondent party’ means the consumer or the trader against whom a complaint has been submitted via the European online dispute resolution platform; **deleted**

Justification

Alignment with amendments on the scope of the Regulation and Directive on consumer ADR. The respondent party can only be the trader.

Amendment 27

Proposal for a regulation

Article 5 – paragraph 2

Text proposed by the Commission

Amendment

2. The **ODR** platform shall be an interactive website which can be accessed

2. The **online signposting** platform shall be an interactive website which can be

electronically and free of charge in all official languages of the Union. The **ODR** platform shall be a single point of entry to consumers and traders seeking the out-of-court resolution of disputes covered by this Regulation.

accessed electronically and free of charge in all official languages of the Union. The **online signposting** platform shall be a single point of entry to consumers and traders **seeking information on out-of-court resolution of contractual disputes arising from the sale of goods or provision of services between consumers and traders and/or** seeking the out-of-court resolution of disputes covered by this Regulation.

Amendment 28

Proposal for a regulation

Article 5 – paragraph 3 – subparagraph 1 – point a

Text proposed by the Commission

(a) providing an electronic complaint form which can be filled in by the **complainant party**;

Amendment

(a) providing an electronic complaint form which can be filled in by the **consumer**;

(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

Justification

Alignment with amendments on the scope of the regulation and directive on consumer ADR. The complainant can only be the consumer. To be applied throughout the text.

Amendment 29

Proposal for a regulation

Article 5 – paragraph 3 – subparagraph 1 – point b

Text proposed by the Commission

(b) **proposing**, based on the information contained in the electronic complaint form, one or more competent ADR entities to the parties and providing information on their fees, if applicable, the language or languages in which the procedure will be conducted, the approximate length of the procedures or informing the **complainant**

Amendment

(b) based on the information contained in the electronic complaint form,

party that based on the information submitted, no competent ADR entity could be identified;

(i) **identifying** one or more competent ADR entities to the parties and providing information on their fees, if applicable, the language or languages in which the procedure will be conducted, the approximate length of the procedures, **if applicable, the need for the physical presence of the parties or of their representatives, the voluntary or mandatory participation in ADR procedures and the binding or non-binding nature of the outcome of the procedure, in accordance with applicable national law, respectively;** or

(ii) informing the **consumer** that based on the information submitted, no competent ADR entity could be identified;

Amendment 30

Proposal for a regulation

Article 5 – paragraph 3 – subparagraph 1 – point g a (new)

Text proposed by the Commission

Amendment

(ga) publishing information on contact points in the Member States and the respective dispute resolution contact points as referred to in Article 6, including contact details;

Amendment 31

Proposal for a regulation

Article 5 – paragraph 3 – subparagraph 1 – point h

Text proposed by the Commission

Amendment

(h) providing general information on alternative dispute resolution as a means of out-of-court dispute settlement;

(h) providing general information on alternative dispute resolution **and promoting it** as a means of out-of-court dispute settlement;

Amendment 32

Proposal for a regulation

Article 5 – paragraph 3 – subparagraph 1 – point h a (new)

Text proposed by the Commission

Amendment

(ha) providing information about the most commonly used methodologies and statistical data broken down into the different subjects covered;

Amendment 33

Proposal for a regulation

Article 5 – paragraph 3 – subparagraph 1 – point h b (new)

Text proposed by the Commission

Amendment

(hb) providing information about consumer rights in general in a clear, comprehensive and understandable form, including "Frequently Asked Questions" concerning the most frequent issues consumers may address, if appropriate by using interactive tools;

Amendment 34

Proposal for a regulation

Article 5 – paragraph 3 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

The information provided under the first subparagraph shall be accessible for consumers and traders interested in the functions of the platform, regardless of whether their interest relates to the submission of a complaint or not.

Amendment 35

Proposal for a regulation Article 5 – paragraph 5

Text proposed by the Commission

5. The Commission shall be responsible for the **ODR** platform as regards its development, its operation, its maintenance and as regards data security.

Amendment

5. The Commission shall be responsible for the **online signposting** platform as regards its development, its operation, its maintenance, **in particular by providing sufficient funding and expertise**, and as regards data security.

Amendment 36

Proposal for a regulation Article 6 – paragraph 1

Text proposed by the Commission

1. Each Member State shall designate one **ODR** contact point and communicate its name and contact details to the Commission. Member States *may* confer responsibility for the **ODR** contact points on their centres of the European Consumer Centre Network, on consumer associations or on any other body. Each **ODR** contact point shall host at least two **online** dispute resolution facilitators (hereinafter '**ODR** facilitators').

Amendment

1. Each Member State shall designate one **dispute resolution** contact point (*hereinafter 'contact point'*) and communicate its name and contact details to the Commission.

1a. Member States ***shall, in the first place,*** confer responsibility for the contact points on their centres of the European Consumer Centre Network. ***Should the respective centre of the European Consumer Centres Network not be available for this task, Member States may also confer responsibility*** on consumer associations or on any other body. ***Member States shall in any event give preference to existing structures when allocating this responsibility.***

1b. Each contact point shall host at least

two dispute resolution *contact points* (hereinafter '*contact points*'). *The contact points shall ensure that consumers are able to contact facilitators through the online signposting platform.*

Amendment 37

Proposal for a regulation

Article 6 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The Commission and the Member States shall provide adequate training for facilitators in order to ensure that they possess the necessary expertise in order to fulfil their functions in accordance with paragraph 2.

Amendment 38

Proposal for a regulation

Article 7 – paragraph 4

Text proposed by the Commission

Amendment

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 16 to adapt the information listed in the Annex, taking into account the criteria by which the ADR entities notified to the Commission in accordance with Article 17(2) of Directive/.../EU [Office of Publications please insert number of Directive of the European Parliament and of the Council on alternative dispute

4. The Commission shall be empowered to adopt delegated acts, ***after consulting the European Data Protection Supervisor***, in accordance with Article 16 to adapt the information listed in the Annex, taking into account the criteria by which the ADR entities notified to the Commission in accordance with Article 17(2) of Directive/.../EU [Office of Publications please insert number of Directive of the European

resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR)] that deal with disputes covered by this Regulation define their respective scopes of application.

Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR)] that deal with disputes covered by this Regulation define their respective scopes of application.

Amendment 39

Proposal for a regulation Article 7 – paragraph 5

Text proposed by the Commission

5. The Commission shall lay down the modalities of the electronic complaint form ***by means of implementing acts. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 15(2).***

Amendment

5. The Commission shall ***be empowered to adopt delegated acts in accordance with Article 16 to*** lay down the modalities of the electronic complaint form, ***taking into account technical progress. Before adopting such delegated acts, the Commission shall consult the European Data Protection Supervisor.***

Amendment 40

Proposal for a regulation Article 8 – paragraph 1a (new)

Text proposed by the Commission

Amendment

1a. Upon receipt of a fully completed complaint form, the online signposting platform shall process the complaint as follows:

(a) the platform shall provide the information referred to in paragraphs 2 and 3, in particular a list of all competent ADR entities, if any are identified;

(b) the consumer may select one of more entities from the list provided;

(c) the trader may select one or more entities from the list provided if he has not already undertaken to use one of them in accordance with Article 10(1) of Directive/.../EU[Office of Publications please insert number of Directive of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Directive 2009/22/EC (Directive on consumer ADR)];

(d) the platform shall choose automatically whether to transmit the complaint

(i) to an ADR entity identified in accordance with paragraphs 1b or 1c; or

(ii) to a facilitator for the purposes of paragraph 1d;

or whether not to process the complaint further pursuant to paragraph 1e.

Amendment 41

Proposal for a regulation

Article 8 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. Where the choice of the consumer corresponds to an ADR entity the trader has undertaken to use in accordance with Article 10(1) of Directive/.../EU[Office of Publications please insert number of Directive of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Directive 2009/22/EC (Directive on consumer ADR)] or where the parties choose the same ADR entity in their replies, the platform shall automatically transmit the complaint to that ADR entity.

(See amendment for Article 8(5))

Amendment 42

Proposal for a regulation

Article 8 – paragraph 1 c (new)

Text proposed by the Commission

Amendment

1c. In the event that the parties agree on more than one ADR entity, the consumer shall be requested to select one of the ADR entities agreed upon. The platform shall automatically transmit the complaint to that ADR entity.

(See Amendment for Article 8(6)).

Amendment 43

Proposal for a regulation

Article 8 – paragraph 1 d (new)

Text proposed by the Commission

Amendment

1d. Where the parties fail to agree on one competent ADR entity the platform shall inform the consumer that he may call upon one facilitator from his place of residence, who shall attempt to identify an ADR entity upon which the parties can agree. If this attempt fails, the complaint shall be further dealt with in accordance with paragraph 1e.

Amendment 44

Proposal for a regulation

Article 8 – paragraph 1 e (new)

Text proposed by the Commission

Amendment

1e. Where no competent ADR entity is identified or where the parties fail to reply to the platform, the complaint shall not be processed further. The consumer shall be informed of the possibility of contacting a facilitator for information on other means of redress.

(See amendment for Article 8(4); the text has been adapted.).

Amendment 45

Proposal for a regulation

Article 8 – paragraph 2 – introductory part

Text proposed by the Commission

2. Upon receipt of a fully completed complaint form, the **ODR** platform shall communicate to the **complainant party**, in the language of the complaint, and send by e-mail to the **respondent party**, in the language of the contract, the following:

Amendment

2. Upon receipt of a fully completed complaint form, the **online signposting** platform shall communicate to the **consumer**, in the language of the complaint, and send by e-mail to the **trader**, in the language of the contract, the following:

(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

Justification

Alignment with amendments on the scope. The respondent can only be the trader.

Amendment 46

Proposal for a regulation

Article 8 – paragraph 2 – point b

Text proposed by the Commission

(b) the information that in the event that the parties fail to **agree on one competent ADR entity** or that no competent ADR entity is identified, the complaint shall not be processed further;

Amendment

(b) the information that in the event that the parties fail to **reply to the platform** or that no competent ADR entity is identified, the complaint shall not be processed further;

Amendment 47

Proposal for a regulation

Article 8 – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(ba) the information that in the event that

the parties fail to agree on one competent ADR entity, the complaint shall be transmitted upon the request of the consumer to one facilitator from the place of residence of the party which has submitted the complaint, who shall attempt to identify an ADR entity upon which the parties can agree;

Amendment 48

Proposal for a regulation

Article 8 – paragraph 2– point d

Text proposed by the Commission

(d) the name and contact details of the **ODR** contact point in the place of residence for the consumer and in the place of establishment for the trader, as well as a brief description of the functions referred to in Article 6(2)(a), (b) and (d).

Amendment

(d) the name and contact details of the contact point, **including the facilitators**, in the place of residence for the consumer and in the place of establishment for the trader, as well as a brief description of the functions referred to in Article 6(2) (a), (b) and (d).

Amendment 49

Proposal for a regulation

Article 8 – paragraph 3 – point a

Text proposed by the Commission

(a) their fees, **if applicable**;

Amendment

(a) their fees;

Justification

The costs and expenses relating to a procedure must be clear to any consumer wishing to initiate this.

Amendment 50

Proposal for a regulation

Article 8 – paragraph 3 – point d

Text proposed by the Commission

(d) the need for the physical presence of the parties or of their representatives, if

Amendment

(d) the need for the physical presence of the parties or of their representatives, if

applicable;

applicable, and an indication of whether the dispute can be settled without the parties or their representatives being physically present in cases where the places of residence or of habitual residence of the parties are in different Member States;

Amendment 51

Proposal for a regulation

Article 8 – paragraph 3a (new)

Text proposed by the Commission

Amendment

3a. A complaint to a competent ADR entity shall transmitted by the platform within a period of 30 days.

Amendment 52

Proposal for a regulation

Article 8 – paragraph 4

Text proposed by the Commission

Amendment

4. Where the parties fail to reply to the platform or to agree on one competent ADR entity, the complaint shall not be processed further. The consumer shall be informed of the possibility of contacting an ODR facilitator for information on other means of redress.

deleted

(See amendment for Article 8(1e)(new)).

Amendment 53

Proposal for a regulation

Article 8 – paragraph 5

Text proposed by the Commission

Amendment

5. Where the choice of the consumer corresponds to an ADR entity the trader has committed to use in accordance with Article 10(1) of Directive

deleted

....../EU[Office of Publications please insert number of Directive of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Directive 2009/22/EC (Directive on consumer ADR)] or where the parties choose the same ADR entity in their replies, the platform shall automatically transmit the complaint to that ADR entity.

(See amendment for Article 8(1b)(new)).

Amendment 54

Proposal for a regulation Article 8 – paragraph 6

Text proposed by the Commission

Amendment

6. In the event that the parties agree on more than one ADR entity, the consumer shall be requested to select one of the ADR entities agreed upon. The platform shall automatically transmit the complaint to that ADR entity.

deleted

(See amendment for Article 8(1c)(new)).

Amendment 55

Proposal for a regulation Article 9 – point b

Text proposed by the Commission

Amendment

(b) if, following the notification of the dispute to the parties, the parties agree to institute proceedings before the entity, accomplish the conclusion of the dispute resolution procedure within **30 days** from **when the proceedings have been instituted. In the case of complex disputes,** the ADR entity may extend this time **limit;**

(b) if, following the notification of the dispute to the parties, the parties agree to institute proceedings before the entity, accomplish the conclusion of the dispute resolution procedure within **90 days** from **the date on which the complaint has been notified to the parties in accordance with Article 8 (ca) of Directive .../.../EU [Office of Publications please insert number of Directive of the European Parliament and of the Council on alternative dispute**

resolution for consumer disputes and amending Directive 2009/22/EC (Directive on consumer ADR)]. Where disputes are of a complex or highly technical nature the ADR entity may extend this time period. Any extension shall be notified to the parties, together with an expected approximate length for the conclusion of the dispute.

Amendment 56

Proposal for a regulation Article 11 – paragraph 1

Text proposed by the Commission

1. Access to information, including personal data, related to a dispute and stored in the database referred to in Article 10 shall be granted, for the purposes referred to in Article 9, only to the ADR entity to which the dispute was transmitted in accordance with Article 8. Access to the same information shall be granted also to **ODR** facilitators for the purposes referred to in Article 6(3).

Amendment

1. Access to information, including personal data, related to a dispute and stored in the database referred to in Article 10 shall be granted, for the purposes referred to in Article 9, only to the ADR entity to which the dispute was transmitted in accordance with Article 8. Access to the same information shall be granted also to facilitators *to which the dispute was referred* for the purposes referred to in Article **6(2) and** 6(3).

Amendment 57

Proposal for a regulation Article 11 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. A comprehensive privacy notice shall be made available on the online signposting platform whereby data subjects are informed about the processing of their personal data, as well as about their rights with regard to that processing. The privacy notice shall state clearly the processing operations

performed under the responsibility of the various actors of the platform.

Justification

Alignment with the proposed recital 21.

Amendment 58

Proposal for a regulation

Article 13

Text proposed by the Commission

1. Traders established within the Union engaging in the cross-border online sale of goods or provision of services shall inform consumers about the **ODR** platform and about their e-mail address. This information shall be made easily, **directly, prominently and permanently** accessible on the traders' websites and, if the offer is made by e-mail or another textual message transmitted by electronic means, in that message. It shall include an electronic link to the **ODR** platform's homepage. Traders shall also inform consumers about the **ODR** platform when the consumer submits a complaint to the trader, a consumer complaint handling system operated by the trader or to a company ombudsman.

2. The provisions in paragraph 1 are without prejudice to the provisions in Article 10 of Directive/.../EU [Office of Publications please insert number of Directive of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR)] **concerning the information of consumers by traders about the ADR procedures by which those traders are covered and about whether or not those traders commit to use**

Amendment

1. Traders established within the Union engaging in the cross-border online sale of goods or provision of services shall inform consumers about the **online signposting** platform and about their e-mail address. This information shall be made **clearly and** easily accessible on the traders' websites and, if the offer is made by e-mail or another textual message transmitted by electronic means, in that message. It shall include an electronic link to the **online signposting** platform's homepage. Traders shall also inform consumers about the **online signposting** platform when the consumer submits a complaint to the trader, a consumer complaint handling system operated by the trader or to a company ombudsman.

2. The provisions in paragraph 1 are without prejudice to the provisions in Article 10 of Directive/.../EU [Office of Publications please insert number of Directive of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR)]

***alternative dispute resolution procedures
to resolve disputes with consumers.***

3. The provisions in paragraph 1 are without prejudice to the provisions in Articles 6 and 8 of Directive 2011/83/EU concerning consumer information for distance and off-premises contracts.

3. The provisions in paragraph 1 are without prejudice to the provisions in Articles 6 and 8 of Directive 2011/83/EU concerning consumer information for distance and off-premises contracts, ***in Article 3 of Directive 2002/65/EU of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services¹ and Article 185 of Directive 2009/138/EU of the European Parliament and of the Council of 25 November 2008 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)².***

3a. The obligation to inform consumers of the existence of the online signposting platform in all textual messages in accordance with paragraph 1 shall not apply if the trader is a small or micro enterprise within the meaning of the Commission Recommendation 2003/361 of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises³. In that case, the trader shall provide the information about the online signposting platform only once the consumer has complained to him.

¹ OJ L 271, 9.10.2002, p. 16.

² OJ L 335, 17.12.2008, p. 1.

³ OJ L 124, 20.5.2003, p. 36.

Amendment 59

**Proposal for a regulation
Article 15 – paragraph 2**

Text proposed by the Commission

2. Where reference is made to this paragraph, Article 4 of Regulation (EU)

Amendment

deleted

No 182/2011 shall apply.

Amendment 60

Proposal for a regulation Article 16 – paragraph 2

Text proposed by the Commission

2. The delegation of power referred to in Article 7(4) shall be conferred for an indeterminate period of time from the [Office of Publications insert same date as in Art. 18(1) = date of entry into force of this Regulation].

Amendment

2. The delegation of power referred to in Article 7(4) **and (5)** shall be conferred for an indeterminate period of time from the [Office of Publications insert same date as in Art. 18(1) = date of entry into force of this Regulation].

Amendment 61

Proposal for a regulation Article 16 – paragraph 3

Text proposed by the Commission

3. The delegation of powers referred to in Article 7(4) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

Amendment

3. The delegation of powers referred to in Article 7(4) **and (5)** may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

Amendment 62

Proposal for a regulation Article 16 – paragraph 5

Text proposed by the Commission

5. A delegated act adopted pursuant to Article 7(4) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of **2 months** of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by **2 months** at the initiative of the European Parliament or the Council.

Amendment

5. A delegated act adopted pursuant to Article 7(4) **and (5)** shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of **3 months** of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by **3 months** at the initiative of the European Parliament or the Council.

Amendment 63

Proposal for a regulation Article 17

Text proposed by the Commission

Every **three years** and for the first time no later than **five years** after the entry into force of this Regulation the Commission shall submit to the European Parliament and the Council a report on the application of this Regulation. The report shall be accompanied, if necessary, by proposals for adaptations to this Regulation.

Amendment

Every **two years** and for the first time no later than **three years** after the entry into force of this Regulation the Commission shall submit to the European Parliament and the Council a report on the application of this Regulation, ***in particular the level of acceptance of the online signposting platform and the practicability of the complaint form, the possible needs to adapt the information listed in the Annex, taking into account the criteria by which the ADR entities notified to the Commission in accordance with Article 17(2) of Directive/EU [Office of Publications please insert number of Directive of the European Parliament and***

of the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR)] that deal with disputes covered by this Regulation define their respective scopes of application, as well as the possibilities of further development of interactive means of communication. The report shall be accompanied, if necessary, by proposals for adaptations to this Regulation.

Amendment 64

Proposal for a regulation Article 18 – paragraph 2

Text proposed by the Commission

2. This Regulation shall apply from [Office of Publications insert date = 6 months after implementation deadline for Directive of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR as to be inserted in that Directive in accordance with Art 22(1) of that Directive], except for Article 5(1), (4), (5) and (6), Article 6(1), (2) and **(6)**, Article 7(4) and (5), Article 10, Article 15 and Article 16 which shall apply from the date on which this Regulation enters into force.

Amendment

2. This Regulation shall apply from [Office of Publications insert date = 6 months after implementation deadline for Directive of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR as to be inserted in that Directive in accordance with Art 22(1) of that Directive], except for Article 5(1), (4), (5) and (6), Article 6(1), **(1a), (1b)**, (2) and **(5)**, Article 7(4) and (5), Article 10, Article 15 and Article 16 which shall apply from the date on which this Regulation enters into force.

PROCEDURE

Title	Online dispute resolution for consumer disputes (Regulation on consumer ODR)		
References	COM(2011)0794 – C7-0453/2011 – 2011/0374(COD)		
Committee responsible Date announced in plenary	IMCO 13.12.2011		
Opinion by Date announced in plenary	JURI 13.12.2011		
Rapporteur Date appointed	Luigi Berlinguer 19.12.2011		
Discussed in committee	1.3.2012	25.4.2012	30.5.2012
Date adopted	19.6.2012		
Result of final vote	+: 21 -: 0 0: 0		
Members present for the final vote	Raffaele Baldassarre, Luigi Berlinguer, Sebastian Valentin Bodu, Christian Engström, Marielle Gallo, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Klaus-Heiner Lehne, Antonio Masip Hidalgo, Alajos Mészáros, Evelyn Regner, Francesco Enrico Speroni, Rebecca Taylor, Alexandra Thein, Cecilia Wikström, Tadeusz Zwiefka		
Substitute(s) present for the final vote	Piotr Borys, Cristian Silviu Buşoi, Eva Lichtenberger, Dagmar Roth-Behrendt, Axel Voss		
Substitute(s) under Rule 187(2) present for the final vote	Patrice Tirolien		

PROCEDURE

Title	Online dispute resolution for consumer disputes (Regulation on consumer ODR)			
References	COM(2011)0794 – C7-0453/2011 – 2011/0374(COD)			
Date submitted to Parliament	29.11.2011			
Committee responsible Date announced in plenary	IMCO 13.12.2011			
Committee(s) asked for opinion(s) Date announced in plenary	JURI 13.12.2011			
Rapporteur(s) Date appointed	Róza Gräfin von Thun und Hohenstein 30.11.2011			
Discussed in committee	20.12.2011	28.2.2012	29.2.2012	8.5.2012
	20.6.2012	9.7.2012		
Date adopted	10.7.2012			
Result of final vote	+: 34	–: 1	0: 0	
Members present for the final vote	Pablo Arias Echeverría, Adam Bielan, Cristian Silviu Buşoi, Sergio Gaetano Cofferati, Birgit Collin-Langen, Lara Comi, Anna Maria Corazza Bildt, António Fernando Correia de Campos, Cornelis de Jong, Vicente Miguel Garcés Ramón, Evelyne Gebhardt, Louis Grech, Małgorzata Handzlik, Philippe Juvin, Sandra Kalniete, Edvard Kožušník, Toine Manders, Hans-Peter Mayer, Sirpa Pietikäinen, Phil Prendergast, Mitro Repo, Robert Rochefort, Heide Rühle, Christel Schaldemose, Andreas Schwab, Catherine Stihler, Róza Gräfin von Thun und Hohenstein, Emilie Turunen, Barbara Weiler			
Substitute(s) present for the final vote	Raffaele Baldassarre, Jürgen Creutzmann, María Irigoyen Pérez, Emma McClarkin, Sabine Verheyen, Anja Weisgerber			
Date tabled	17.7.2012			