



2023/0376(COD)

16.1.2024

DRAFT OPINION

of the Committee on Transport and Tourism

for the Committee on the Internal Market and Consumer Protection

on the proposal for a directive of the European Parliament and of the Council amending Directive 2013/11/EU on alternative dispute resolution for consumer disputes, as well as Directives (EU) 2015/2302, (EU) 2019/2161 and (EU) 2020/1828
(COM(2023)0649 – C9-0384/2023 – 2023/0376(COD))

Rapporteur for opinion: Cláudia Monteiro de Aguiar

PA_Legam

SHORT JUSTIFICATION

Adopted in 2013, the Alternative Dispute Resolution (ADR) Directive¹ aimed at fair, fast and affordable out-of-court resolution of domestic and cross-border disputes between EU consumers and traders. Based on a minimum harmonisation approach, it caters for the varying ADR cultures and national frameworks across the different Member States. While ADR is not meant to replace court litigation, it is considered an effective redress mechanism to resolve low-value disputes, as resorting to court is more costly and often much more time-consuming. However, so far success of ADR in the EU has only been partial, its setup and efficiency often depending on the national context of each Member State. As a consequence, today there is a significant share of EU consumers who are not aware of or do not trust ADR schemes and, subsequently, abstain from complaining. Moreover, 43% of retailers in the EU are unaware of the existence of ADR as a means to resolve their disputes with consumers.

In view of the above, your Rapporteur welcomes the Commission proposal to amend ADR Directive in order to make the framework fit for digital markets, to enhance the use of ADR in cross-border disputes and to simplify ADR procedures. While generally endorsing the proposal, your Rapporteur would like to accentuate several aspects below.

Your Rapporteur supports retaining the **minimum harmonisation approach** in the proposal, not least in view of a still fragmented ADR landscape in the EU Member States as well as time and effort necessary to ensure seamless ADR across the EU. While recognising that certain sectors are significantly more dispute-intensive than others – indeed, transport and tourism being one of them – your Rapporteur would like to remind that the 2013 Directive already provided for a degree of flexibility for the Member States to decide whether trader participation in ADR should be mandatory or voluntary in sectors they deem fit. Having said that, whenever traders refuse to participate in an ADR procedure, they shall be required to provide written explanations.

One of the main objectives of the Commission proposal is to enhance the use of ADR in cross-border disputes through more customised assistance to consumers and traders. However, real-life examples show that **ADR accessibility** in cross-border disputes remains problematic, including in terms of language and applicable law. Achieving this objective will require focusing on providing ADR entities with sufficient knowledge, expertise and resources. Furthermore, currently many ADR entities operate on the basis of a general competence, with only a few Member States having ADR entities specialising in disputes related to travel and passenger rights². Therefore, your Rapporteur would like to encourage **specialisation** of ADR entities, especially in the fields of transport and tourism, traditionally yielding high numbers of consumer complaints, including training of those in charge of ADR in relevant sectorial legislation to anticipate the best solutions of cross-border consumer complaints.

One of the basic principles of ADR is the good will of the parties – consumers and traders – to cooperate in finding an amicable solution to a dispute, its premise being awareness of the

¹ Directive 2013/11/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), OJ L 165, 18.6.2013, p. 63.

² [Alternative Dispute Resolution in the Air Passenger Rights Sector](#), European Consumer Centres Network, September 2019, p. 1.

advantages of the ADR mechanism. Therefore, it is important to build **incentives for traders** to join the ADR schemes, informing them about benefits thereof: confidentiality, avoiding the risk of adverse publicity and reputational damage that could arise from a court case; deciding the outcome themselves rather than having it imposed on them; and flexibility in terms of the outcome, including achieving outcomes that a court could not order, or a result that the parties think is fairer than that dictated by law³. At the same time, it is crucial to enhance **consumer awareness of and strengthen their trust** in ADR, especially when resolving cross-border disputes. In this connection, your Rapporteur takes notice of numerous unregulated claims management companies, offering mediation in solving passenger air claims online for private profit⁴, and stresses that, unaware of existence of the ADR entities or not trusting them to be independent and/or impartial, consumers tend to resort to the former. Indeed, as only a number of Member States have smoothly functioning ADR schemes, focusing on the quality (independence, impartiality, expertise, resources) of ADR entities, on information and assistance to consumers as well as on enhancing take-up rates of dispute resolution is crucial.

While welcoming the Commission proposal to establish **ADR contact points with clearly defined tasks**, your Rapporteur points out that European Consumer Centres that are well placed to perform such tasks, should work in cooperation with national ADR competent entities. Moreover, considering the cross-border nature of passenger and traveller rights, the Commission should work closely with European Consumer Centres, travel and tourism businesses, consumer organisations and other entities dealing with consumer rights, to promote best practices and knowledge needed to remove the obstacles faced by consumers and traders when using ADR procedures in the field of transport and tourism.

Finally, your Rapporteur broadly supports the Commission proposal to **enable ADR entities to bundle** similar cases against specific trader in cooperation with the national ADR competent authorities or the European Consumer Centres Network, as such a possibility would allow for representative action and ensure consistent ADR outcomes subjected to the same unfair commercial practices.

³ Most ADR entities in the Nordic and Baltic countries can make decisions regardless of whether the trader participates in the scheme or not, which also gives traders a strong incitement to participate in ADR. See “ADR in the Nordic and Baltic countries”, a comparative study prepared by the European Consumer Centres in Denmark, Estonia, Finland, Iceland, Latvia, Lithuania, Norway & Sweden, 11 May 2023.

⁴ [Airclaim](#), [Airhelp](#), [Fairplane](#), [Flightright](#), [Myflyright](#), [Oroskundas](#), [Ritardoareo](#), [Skycop](#), [Skyrefund](#), etc.

AMENDMENTS

The Committee on Transport and Tourism calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to take the following into account:

Amendment 1

Proposal for a directive

Recital 2

Text proposed by the Commission

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

Amendment

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

applicable law, as well as specific access difficulties for vulnerable consumers.

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

knowledge of the applicable law, as well as specific access difficulties for vulnerable consumers.

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

Or. en

Amendment 2

Proposal for a directive Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) The ADR landscape has evolved into a variety of different systems in the EU, meaning that due to the different procedural rules and criteria across the Member States, transport and tourism traders face challenges related to the use of dispute mechanisms in a cross-border context. Access barriers, such as language and translation, complexity of the procedures, cost of the procedures, knowledge of the consumer law applied in another Member State, among other things, are obstacles that need to be addressed in order to increase the engagement of consumers and traders in ADR.

Or. en

Amendment 3

Proposal for a directive Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) Member States shall encourage ADR entities to provide training for natural persons in charge of ADR in relevant sectorial legislation, such as passenger and traveller rights, in order to support ADR entities in providing the best solutions to cross-border consumer complaints.

Or. en

Amendment 4

Proposal for a directive Recital 8 a (new)

Text proposed by the Commission

Amendment

(8a) The high number of consumer complaints and inquiries related to the transport and tourism sectors shows, on one hand, the existent awareness of the consumer rights framework in this field. On the other hand, it means that the use of ADR procedures should remain the last resort for well-founded consumer complaints before resorting to court proceedings in order consumer rights are met to the fullest extent. Furthermore, there should be strong incentives for traders and consumers to use ADR procedures. Therefore, Member States should have a possibility to introduce national legislation to establish ADR systems in the sector of transport and tourism, when deemed fit, ensuring equal representation of traders and consumers within the boards of ADR entities and a strong supervisory role of the competent authorities in relation to ADR entities.

Amendment 5

Proposal for a directive

Recital 11

Text proposed by the Commission

(11) Member States should also enable ADR entities to bundle similar cases against a specific trader, to make ADR outcomes consistent for consumers subjected to the same illegal practice, and more cost-efficient for ADR entities and for traders. Consumers should be informed accordingly and should be given the opportunity to refuse from having their dispute bundled.

Amendment

(11) Member States should also enable ADR entities to bundle similar cases, **in close cooperation with the national ADR competent authorities and/or the European Consumer Centres Network**, against a specific trader, to make ADR outcomes consistent for consumers subjected to the same illegal practice, and more cost-efficient for ADR entities and for traders. Consumers should be informed accordingly and should be given the opportunity to refuse from having their dispute bundled.

Or. en

Amendment 6

Proposal for a directive

Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) Only a number of Member States have a smoothly functioning ADR system, meaning that focusing on the quality (independence, impartiality, expertise, resources) of ADR entities, on information and assistance to consumers as well as on enhancing take-up rates of dispute resolution is crucial.

Or. en

Amendment 7

Proposal for a directive Recital 15

Text proposed by the Commission

(15) To provide effective assistance to consumers and traders in cross-border disputes, it is necessary to ensure that Member States establish ADR contact points with clearly defined tasks. European Consumer Centres (“ECCs”) are well placed to perform such tasks, as they are specialised in assisting consumers with issues with their cross-border purchases, but Member States should also be able to choose other bodies with relevant expertise. Those designated ADR contact points should be communicated to the Commission.

Amendment

(15) To provide effective assistance to consumers and traders in cross-border disputes, it is necessary to ensure that Member States establish ADR contact points with clearly defined tasks. European Consumer Centres (“ECCs”) are well placed to perform such tasks, ***in close cooperation with national ADR competent entities***, as they are specialised in assisting consumers with issues with their cross-border purchases, but Member States should also be able to choose other bodies with relevant expertise. Those designated ADR contact points should be communicated to the Commission.

Or. en

Amendment 8

Proposal for a directive

Article 1 – paragraph 1 – point 3 – point d
Directive 2013/11/EU
Article 5 – paragraph 8 (new)

Text proposed by the Commission

8. Member States shall ensure that traders established in their territories that are contacted by an ADR entity from their country or from another Member State, inform that ADR entity whether, or not, they accept to participate in the proposed procedure and reply within a reasonable period of time that shall not exceed 20 working days.

Amendment

8. Member States shall ensure that traders established in their territories that are contacted by an ADR entity from their country or from another Member State, inform that ADR entity whether, or not, they accept to participate in the proposed procedure and reply within a reasonable period of time that shall not exceed 20 working days. ***Traders shall provide written explanations whenever they refuse to participate in an ADR procedure.***

Or. en(Directive 2013/11/EU)

Amendment 9

Proposal for a directive

Article 1 – paragraph 1 – point 3 a (new)

Directive 2013/11/EU

Article 6 – paragraph 6

Text proposed by the Commission

6. For the purposes of point (a) of paragraph 1, Member States shall encourage ADR entities to provide training for natural persons in charge of ADR. If such training is provided, competent authorities shall monitor the training schemes established by ADR entities, on the basis of information communicated to them in accordance with point (g) of Article 19(3).

Amendment

3a. Article 6, paragraph 6 is replaced by the following:

“6. For the purposes of point (a) of paragraph 1, Member States shall encourage ADR entities to provide training for natural persons in charge of ADR **in relevant sectorial legislation such as passenger and traveller rights**. If such training is provided, competent authorities shall monitor the training schemes established by ADR entities, on the basis of information communicated to them in accordance with point (g) of Article 19(3).”

Or. en

(Directive 2013/11/EU)

Amendment 10

Proposal for a directive

Article 1 – paragraph 1 – point 3 – point d

2013/11/EU

Article 14 paragraph 2

Text proposed by the Commission

2. Each Member State shall designate an ADR contact point in charge of the task referred to in paragraph 1. Each Member State shall communicate the name and contact details of its ADR contact point to the Commission. Member States shall confer responsibility for the operation of the ADR contact points on their centre

Amendment

2. Each Member State shall designate an ADR contact point in charge of the task referred to in paragraph 1. Each Member State shall communicate the name and contact details of its ADR contact point to the Commission. Member States shall confer responsibility for the operation of the ADR contact points on their centre

belonging to the European Consumer Centres Network, or, if not possible, on consumer organisations or on any other body dealing with consumer protection.

belonging to the European Consumer Centres Network, or, if not possible, on consumer organisations or on any other body dealing with consumer protection, ***including national ADR competent authorities.***

Or. en

Amendment 11

Proposal for a directive

Article 1 – paragraph 1 – point 8

2013/11/EU

Article 20 paragraph 8 (new)

Text proposed by the Commission

8. The Commission shall develop and maintain a digital interactive tool that provides general information on consumer redress and links to the webpages of the ADR entities notified to it in accordance with paragraph 2 of this Article.

Amendment

8. The Commission shall develop and maintain a digital interactive tool that provides general information on consumer redress and links to the webpages of the ADR entities notified to it in accordance with paragraph 2 of this Article.

Due to the cross-border nature of passenger and traveller rights, the Commission should work closely with European Consumer Centres, business from the sector of transport and tourism, consumer organisations and other entities dealing with consumer rights, to promote best practices and knowledge necessary to remove obstacles faced by consumers and traders when resorting to ADR procedure in this specific field.

Or. en

Amendment 12

Proposal for a directive

Article 1 – paragraph 1 – point 8 a (new)

Directive 2013/11/EU

Article 20 – paragraph 5

Text proposed by the Commission

5. Each competent authority shall make publicly available the consolidated list of ADR entities referred to in paragraph 4 on its website by providing a link to the relevant Commission website. In addition, each competent authority shall make publicly available that consolidated list on a durable medium.

Amendment

8a. In Article 20, paragraph 5 is replaced by the following:

“5. Each competent authority shall make publicly available the consolidated list of ADR entities referred to in paragraph 4 on its website by providing a link to the relevant Commission website. In addition, each competent authority shall make publicly available that consolidated list on a durable medium. Each competent authority shall make publicly available the explanations whenever the traders refuse to participate in an ADR procedure.”

Or. en(Directive 2013/11/EU)