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COMPROMISE AMENDMENTS

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Draft report
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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

Proposal for a directive
(COM(2023)0649 – C9-0384/2023 – 2023/0376(COD))

CA 1

Covers: AMs 14, 66, 67

Article 1 Amendments to Directive 2013/11/EU

Directive 2013/11/EU is amended as follows:

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

‘1. The purpose of this Directive is, through the achievement of a high level of consumer protection, to contribute to the proper functioning of the internal market by ensuring that consumers can, on a voluntary basis, submit complaints against traders to entities offering independent, impartial, transparent, effective, fast and fair alternative dispute resolution procedures.

This Directive shall require the participation of traders into ADR procedures to be mandatory ~~in the transport and tourism sector~~ for air carriers falling under the scope of Regulation (EC) No 261/2004 without preventing the parties from exercising their right of access to the ~~to the~~ judicial system.

This Directive is without prejudice to national legislation making participation in such procedures mandatory ***in economic sectors other than those referred to in the second subparagraph***, provided that such legislation does not prevent the parties from exercising their right of access to the judicial system.’

~~Where national legislation makes the participation in such procedures voluntary, Member States shall ensure that traders that choose not to participate are required to make the explanation for such choice publicly available.~~

CA 2

Covers: AMs 15-18, 68-84 and 119

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

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

- (a) contractual obligations stemming from sales contracts, including for the supply of digital content, or service contracts, ***including pre-contractual and post-contractual obligations and in particular in relation to:***
 - (i) unfair commercial practices and terms
 - (i) compulsory precontractual information,***
 - (ii) passenger and travellers’ rights,***
 - (iii) remedies in case of non-conformity of products and digital content, and***
 - (iv) access to deliveries***
- (b) consumer rights applicable to non-contractual ~~and pre-contractual~~ situations and provided in Union law concerning:
 - (i) non-discrimination on the basis of nationality or place of residence,
 - (ii) access to services ~~and deliveries~~, and
 - (iii) right to switch providers,
 - ~~(iv) remedies in case of non-conformity of products and digital content.~~
 - (iv) Unfair commercial practices not falling under point (a)(i), provided that:***
 - (a) the ADR entity is a sectorial coverage entity with necessary knowledge on unfair commercial practices;***
 - (b) the ADR entity has adequate resources, funding and capacity;***
 - (c) the unfair practice resulted in a material or immaterial loss to the consumer; and***
 - (d) the entity applies applicable law when dealing with unfair commercial practices.***

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

2. In Article 4(1), points (e) and (f) are replaced by the following:

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

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

(fa) ‘Unfair commercial practice’ means any misleading commercial practice as defined in Annex I of Directive 2005/29/EC.’

6a. In Article 17, the following paragraph 5 is added:

‘5. In case of an unfair commercial practice is brought to the attention of the ADR entity by a consumer, the principle of confidentiality shall not apply and the consumer ADR entity shall inform the competent national authority if there are serious suspicions that such a practice has occurred and, if appropriate, shall keep it informed about the outcome of the dispute.’

CA 3

Covers: AMs 19-22 and 85-99

3. Article 5 is amended as follows:

(a) paragraph 1 is replaced by the following:

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

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

‘(a) maintain a up-to-date website which provides the parties with easy access to information concerning the ADR procedure;

(aa) ensure that consumers can submit complaints and the requisite supporting documents online in a traceable manner and ensure that consumers may also submit and access these documents in a non-digital format upon request;

(ab) ensure that consumers can submit complaints in the country where they reside

(b) offer digital ADR procedures through easily accessible and inclusive tools;

(c) when the procedure was carried out by automated means, **ensure that** parties to the dispute **have access to** review by a natural person, **who shall be independent and impartial;**

(d) may bundle similar cases against one specific trader into one procedure, under condition

that the consumer concerned is informed and ~~does not object~~ *expressly agrees* to that *and that, in accordance with Article 6, the natural persons in charge of ADR procedures have sufficient knowledge and expertise to deal with the case;*'

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

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

(d) the following paragraph 8 is added:

'8. Member States shall ensure that traders established in their territories that are contacted by an ADR entity from their country or from another Member State, inform that ADR entity whether, or not, they accept to participate in the proposed procedure and reply within a reasonable period of time that shall not exceed ~~20~~ *15* working days. *However, an extension of this deadline, not exceeding 20 working days, may be granted for complex disputes or as a result of exceptional circumstances, such as a period of high activity or of external crisis.*'

CA 4

Covers: AMs 23 and 100-103

3a Article 6 is amended as follows:

(a) paragraph 1, point (a) is amended as follows:

‘(a) possess the necessary knowledge and skills in the field of alternative or judicial resolution of consumer disputes, as well as a general understanding of law ~~and possess expertise,~~ including private international law, when dealing with cross-border cases’

(aa) in paragraph 3, the point (aa) is added:

~~‘(aa) the dispute resolution entity embedded “in-house” shall have no access to the software, database and other tools or information in the possession of the trader where a dispute is handled by an ADR entity where the natural persons in charge of dispute resolution are employed or remunerated exclusively by the individual trader, the entity shall only have access to data strictly related to the case and explicitly provided by the trader or the consumer’~~

(b) paragraph 6 is replaced by the following:

‘6. For the purposes of point (a) of paragraph 1, Member States shall ~~encourage~~ ensure that ADR entities ~~to~~ provide ~~annual~~ regular training for natural persons in charge of ADR, in particular in the area of consumer law and other relevant sectorial legislation. ~~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).’

CA 5

Covers: AMs 24-26 and 104-107

4. Article 7, paragraph 2 is amended as follows:

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

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

~~(b) — point (h) is deleted.~~

4a. Article 8 is amended as follows:

(a) point (c) is amended as follows:

‘(c) the ADR procedure is free of charge or available at a nominal fee for consumers. *In the case of a nominal fee for consumers, this fee is reimbursable by national authorities when the dispute is resolved.*’

(b) point (da) is added as follows:

‘(da) at the consumer’s request, the parties have access to the procedure with the possibility to hold a physical meeting;’

4b. The following article is inserted:

‘Article 11a

Member States shall ensure that, where they do not comply with the outcome of an ADR procedure, irrespective of whether the outcome of that procedure is binding, traders are required to provide the other parties to the ADR procedure with a written explanation.’

CA 6

Covers: AMs 27, 28, 108 and 109

4c. Article 13, paragraph 2 is replaced by the following:

"2. The information referred to in paragraph 1 shall be provided:

*(a) on the traders' website, ~~and social media channels~~, where *it exists, in a clear, prominent, comprehensible and easily accessible way, and clearly separated from other information available on traders' website;**

(b) in the general terms and conditions of sales or service contracts between the trader and a consumer; and

(c) on the invoices issued by the trader.

2a. Traders shall make available an dedicated email address allowing consumers to contact them, including for the sole purpose of ADR procedures."

~~5. In article 13, paragraph 3 is deleted.~~

Covers: AMs 29, 30 and 110-118

6. Article 14 is replaced by the following:

Article 14

Assistance for consumers

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

1a. Member States shall ensure that consumers can carry out cross-border ADR procedures in an official language of the Member State that they are resident in.

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 ***and ensure that they have adequate budgetary and human resources.***

2 a. Consumers and traders engaged in cross-border disputes shall use the ADR contact point assigned based on the consumer's location and the ADR entity of the Member State they are resident in.

3. The ADR contact points shall facilitate communication between the parties and the competent ADR entity, which may include, in particular:

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

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

domestic disputes.

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

6a. In Article 15, paragraph 2 is amended as follows:

‘2. Member States shall **ensure that** relevant consumer organisations and business associations make publicly available on their websites **and brochures** and by any other means they consider appropriate, the list of ADR entities referred to in Article 20(4).’

6b. In Article 17, paragraph 2 is replaced by the following:

‘2. This cooperation shall in particular include mutual exchange of information on practices in specific business sectors about which consumers have repeatedly lodged complaints. **It shall also, where appropriate, include an obligation for ADR entities to direct consumers to ~~consumer protection authorities and/or consumer organisations~~ the national authorities referred to in paragraph 1 whenever they report ~~misleading market practices~~ unfair commercial practices, as well as to report to ~~competent~~ those national authorities whenever they become aware of unfair commercial practices and terms and conditions.** It shall also include the provision of technical assessment and information by such national authorities to ADR entities where such assessment or information is necessary for the handling of individual disputes and is already available.’

Covers: AMs 31-35 and 120-124

6c. In Article 18, paragraph 1 is replaced by the following:

‘1. Each Member State shall designate a competent authority which shall carry out the functions set out in Articles 19 and 20. **Member States shall ensure that their competent authorities have the necessary resources, including sufficient budgetary and other resources, such as a sufficient number of competent personnel, expertise, procedures and other arrangements for the proper performance of their duties. The natural persons working for competent authorities should be impartial and independent from the ADR entities that they supervise.** Each Member State may designate more than one competent authority. If a Member State does so, it shall determine which of the competent authorities designated is the single point of contact for the Commission. Each Member State shall communicate the competent authority or, where appropriate, the competent authorities, including the single point of contact it has designated, to the Commission.’

6d. In Article 19, paragraph 3 is amended as follows:

(a) the introductory part is replaced by the following:

‘Member States shall ensure that ADR entities communicate to the competent authorities every two years ~~annually~~ information on:

(b) point (d) is replaced by the following:

‘(d) the rate of compliance, if known, with the outcomes of the ADR procedures **and the traders who systematically and unduly refuse to comply with the outcomes of ADR procedures.**’

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

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

(a) in paragraph 2, the following new subparagraph 3a is inserted:

‘**Competent authorities shall conduct regular checks into the functioning and activities of the certified ADR entities to monitor compliance with the requirements of this ~~regulation~~ Directive.**’

(c) paragraph 8 is replaced by the following:

‘8. The Commission shall develop and maintain a **user-friendly** digital interactive tool that provides general information on consumer redress, **practical information about how to avail of ADR procedures in a cross-border context** and links to the webpages of the ADR entities notified to it in accordance with paragraph 2 of this Article, **directing consumers to a competent body to resolve their disputes.**’

~~The Commission shall be responsible for coordinating this digital interactive tool and national digital tools, where appropriate. Where similar digital tools exist at the national level, they should provide a link to the Commission digital tool, to inform consumers with a cross border issue.~~

Covers: AMs 36 and 125

8a. *Article 21 is replaced by the following:*

‘Article 21
Penalties

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

~~2. Member States shall ensure that the following non-exhaustive and indicative criteria are taken into account for the imposition of penalties, where appropriate:~~

~~(a) the nature, gravity, scale and duration of the infringement;~~

~~(b) any action taken by the trader to mitigate or remedy the damage suffered by consumers;~~

~~(c) any previous infringements by the trader;~~

~~(d) the financial benefits gained or the losses avoided by the trader as a result of the infringement, if the relevant data are available;~~

~~(e) penalties imposed on the trader for the same infringement in other Member States in cross-border cases where information about such penalties is available through the mechanism established by Regulation (EU) 2017/2394 of the European Parliament and of the Council;~~

~~(f) any other aggravating or mitigating factors applicable to the circumstances of the case.~~

~~3. Member States shall, by ... [24 months from the entry into force of this amending Directive] notify the Commission of the rules and of the measures referred to in paragraph 1 and shall notify it without delay of any subsequent amendment affecting them.’~~

CA 10

Covers: AMs 1-13 and 37-65

- (1) Directive 2013/11/EU of the European Parliament and of the Council¹ was adopted in order to ensure that consumers within the Union have access to high quality alternative dispute resolution (“ADR”) procedures to resolve the contractual disputes arising from the sale of goods or provision of services by traders established in the Union to consumers resident in the Union. It provides for the availability of ADR procedures for all types of domestic and cross-border consumer disputes within the Union, ensuring that ADR procedures meet minimum quality standards. It requires Member States to monitor the performance of ADR entities. To increase consumer awareness and promote the use of ADR, it also provides that traders should be required to inform their consumers of the possibility to settle their dispute out-of-court through ADR procedures.
 - (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 applicable law, as well as specific access difficulties for vulnerable consumers.
- (2a) In order to reach its full potential and deliver for consumers, this Directive should require the participation of traders to be mandatory for air carriers falling under the scope of Regulation (EC) No 261/2004, provided that it does not prevent the parties from exercising their right of access to the judicial system. This is the case, given that several studies have highlighted that transport and tourism sector are dealing with a high number of consumer complaints, especially in the field of air passengers rights.***

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

² 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).

- (2b) ***ADR bodies should communicate to the competent authorities a list of traders who systematically and unduly refuse to comply with the outcomes of ADR procedures. Furthermore, Member States should ensure that, where they do not comply with the outcome of an ADR procedure, ~~irrespective of whether the outcome of that procedure is binding~~, traders are required to provide the other parties to the ADR procedure with a written explanation.***
- (3) Since at least two out of five online transactions made by consumers residing in the Union are with traders based in third countries, the scope of Directive 2013/11/EU should be extended to allow those third country traders willing to participate in an ADR procedure to do so. No procedural impediments should hinder consumers residing in the Union from resolving disputes against traders, irrespective of their establishment, if the traders accept to follow an ADR procedure through an ADR entity established in a Member State. ***In accordance with applicable Union law, the consumer should be able to commence a procedure in the Member State where he or she resides. It should not be possible to access ADR procedures in a Member State in which neither the consumer resides nor the trader is established.***
- (4) The complexity of consumer disputes has evolved significantly since the adoption of Directive 2011/13/EU. Digitalisation of goods and services, the growing importance of e-commerce and digital advertising in the formation of consumer contracts has resulted in a rise in the number of consumers being exposed to misleading online information and manipulative interfaces preventing them from making informed purchasing decisions. It is, therefore, necessary to clarify that contractual disputes arising from the sale of goods or services include digital content and digital services, and to extend the scope of Directive 2011/13/EU, beyond such disputes so that consumers are also able to seek redress for practices harming them at a pre-contractual stage, ~~irrespective of whether~~ ***provided*** they later become bound by a contract, ***or at a post-contractual stage.***
- (5) Moreover, Directive 2011/13/EU should also cover consumer rights arising from Union legislation which governs relationships between consumers and traders when there is no relationship of a contractual nature, with respect to the right to access and to pay for goods and services without undergoing discrimination based on nationality, place of residence or of establishment, as provided for in Articles 4 and 5 of Regulation (EU) 2018/302 of the European Parliament and of the Council³; ***or on any ground as referred to in Article 21 of the Charter of Fundamental Rights of the European Union***; the right to open and switch bank accounts as provided for in Articles 9, 10, 11, and 16 of Directive 2014/92/EU of the European Parliament and of the Council⁴ and to not be discriminated against as provided for in Article 15 of that Directive; the right to receive transparent information on retail conditions for roaming calls and SMS messages as provided for in Articles 13, 14 and 15 of Regulation (EU) 2022/612 of the European Parliament and of the Council⁵, the right to price transparency in air fares and rates as provided for in Article 23 of Regulation (EC) No 1008/2008 of the European Parliament

³ Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC (OJ L 60I, 2.3.2018, p. 1).

⁴ Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic feature (OJ L257, 28.8.2014, p. 214).

⁵ Regulation (EU) 2022/612 of the European Parliament and of the Council of 6 April 2022 on roaming on public mobile communications networks within the Union (OJ L 115, 13.4.2022, p. 1).

and of the Council⁶. Therefore, it should be provided that disputes arising in relation to such categories of consumer rights can be dealt with in ADR procedures.

- (5a) ***Member States should take note of the Commission Recommendation of 17 October 2023 on quality requirements for dispute resolution procedures offered by online marketplaces and Union trade associations. The Commission should be encouraged to complement this Directive with a Regulation on quality requirements for dispute resolution procedures offered by online marketplaces and Union trade associations.***
- (6) Member States should have the right to apply ADR procedures also to disputes that relate to other non-contractual rights stemming from Union law, including rights stemming from Articles 101 and 102 TFEU or rights of users provided in Regulation (EU) 2022/1925 of the European Parliament and of the Council⁷. This is without prejudice of public enforcement of those rules.
- (7) Where a dispute arises between a provider of an online platform and a recipient of that service in relation to that provider's activities in moderating illegal or harmful content on its platform, Article 21 of Regulation (EU) 2022/2065 of the European Parliament and of the Council⁸ on out-of-court dispute settlement applies to that dispute, in accordance with Article 2(4) of that Regulation, given that it lays down more detailed rules in relation to such disputes.
- (8) The definitions of ‘domestic dispute’ and ‘cross-border dispute’ should be adapted accordingly to reflect the extension of the scope of Directive 2013/11/EU.
- (9) To ensure that ADR procedures are well-suited for the digital age where communication takes place online, including in a cross-border context, it is necessary to ensure swift and fair processes for all consumers. Member States should ensure that ADR entities established in their territories have the competence to provide dispute resolution procedures in disputes between traders established outside of the Union and consumers residing in their territory.
- (10) Member States should ensure that ADR should enable consumer to initiate and follow ADR procedures also offline if requested. It should also be ensured that when digital tools are provided, those can be used by all consumers, including vulnerable consumers or those with varying levels of digital literacy. Member States should ensure that, ~~upon request,~~ parties to the disputes, ***in particular consumers,*** always have access to a review of automated procedures by a natural person, ***who should be independent and impartial.***
- (10a) ***In order to enhance consumer and traders’ trust and increase their participation in ADR procedures, it is fundamental to ensure that the functioning and work of consumer ADR entities is of good quality. In this sense, the expertise and knowledge of the ADR entity staff should be strengthened updated on a regular basis. Therefore, ~~staff participating in~~ ADR entities should provide natural persons in charge of ADR***

⁶ Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ L 293, 31.10.2008, p. 3).

⁷ Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) (OJ L 265, 12.10.2022, p. 1).

⁸ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (OJ L 277, 27.10.2022, p. 1)

procedures should be require to undergo mandatory with regular training to ensure their knowledge is continuously updated.

- (11) Member States should also enable ADR entities *with sufficient knowledge* to bundle similar cases against a specific trader, *where the natural persons in charge of ADR procedures have sufficient knowledge and expertise to deal with the case. This would help* 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.
- (12) Member States should also not allow the introduction of disproportionate rules as regards the reasons that an ADR entity may invoke to refuse the handling of a dispute, such as the obligation to use the company escalation system after a first negative contact with the complaints handling service, or the obligation to prove that a specific part of a company's after sales service was contacted.
- (13) Under Directive 2013/11/EU, Member States may introduce national legislation to make trader participation in ADR compulsory in sectors they deem fit, in addition to sector-specific Union legislation which provides for mandatory participation of traders in ADR. To encourage traders' participation in the ADR procedures and to ensure due and swift ADR procedures, traders should be required, especially in cases where their participation is not compulsory, to respond within a specific period *that should not exceed 15 working days* to enquiries made by ADR entities on whether they intend to participate to the proposed procedure. *An extension of this deadline could be granted for complex disputes or as a result of exceptional circumstances, such as a period of high activity or of external crisis. In case they fail to do so, they should be subject to sanctions under this Directive.*
- (13a) *In order to ensure that consumers can expect full independence and impartiality, as provided for in this Directive, when dealing with all kind of ADR entities, including ADR entities where the natural persons in charge of dispute resolution are employed or remunerated exclusively by the individual trader, also commonly referred to as "in-house" ADR entity, such entities should only have access to data strictly related to the case and explicitly provided by the trader or the consumer.*
- ~~(14) To reduce information and reporting requirements and to save costs for ADR entities, national competent authorities and traders, reporting and information requirements should be simplified and the amount of information provided by ADR entities to the competent authorities should be reduced.~~
- (14a) *ADR procedures should preferably be free of charge for the consumer. In the event that costs are applied, those costs should not exceed a nominal fee. Furthermore, in order to increase the accessibility and attractiveness of ADR procedures to consumers, those fees should be reimbursable. It is important to clarify that such reimbursement is to be made by Member States, in full compliance with the principles of subsidiarity and proportionality, and not by other entities, such as the other party to the ADR procedure.*
- (14b) *In many Member States, consumers are still insufficiently informed about the existence and services proposed by consumer ADR entities. In order to increase consumer awareness about ADR entities and traders participating in ADR procedures, traders should provide ADR information in a clear, prominent, comprehensible and easily accessible way. Where the trader has a website, it should present the information on it. Traders should also provide such information in their*

general terms and conditions and on invoices issues by them. In order to facilitate communication, traders should make available an email address allowing consumers to contact them, including for the purposes of ADR procedures.

- (14c) *A swift cooperation between the different actors involved in the enforcement of consumer rights is crucial to ensure the overall consistency and coherence of the consumer enforcement system. In cases where an unfair commercial practice has been brought to the attention of ADR entities, they should report to their national competent authorities or consumer organisation ~~whenever~~ if they ~~are aware~~ have serious suspicion ~~about~~ that an unfair commercial practice and terms has occurred.*
- (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. *Member States should communicate those* ~~These~~ *designated ADR contact points should be communicated to the Commission and ensure that they have adequate budgetary and human resources. Consumers should be entitled to carry out a cross-border ADR procedure in an official language of the Member State that they are resident in.*
- (15a) *To ensure procedural fairness, consumers engaging in cross-border disputes should engage with the ADR contact point determined by the consumer’s location, thereby discouraging selective choice of ADR contact points for convenience or advantageous outcomes.*
- (15b) *In cross-border disputes, ADR entities should use Union law as a point of reference for the resolution of the disputes. Nevertheless, in both domestic and cross-border disputes, ADR entities should always take into account the remedies available in Union and applicable national law.*
- (16) Despite the fact that ADR procedures are meant to be simple, consumers may be assisted by a third party of their choice during ADR procedures. Member States should ensure that such assistance is provided in good faith to allow a fair procedure and in full transparency, in particular regarding the possible fees required in exchange for the assistance. *In addition, Member States are encouraged to extend the benefit of consumer ADR systems to micro enterprises and self employed to ensure that such businesses have access to cheap and quality alternative dispute resolution systems to solve contractual disputes.*
- (16a) *It should be noted that not all ADR entities have the expertise to deal with non-contractual matters, in particular unfair commercial practices and terms. Therefore, procedures of ADR entities in this area should be limited to unfair commercial practices and terms with a personal scope, and hence only cover matters where a damage or loss, material or immaterial, has occurred to the consumer directly. In addition, only ADR entities that can demonstrate necessary expertise in the relevant area, covering the relevant economic sector in its entirety, such as a sectorial ombudsman, should be empowered to take on such procedures. ADR entities sometimes choose to deviate from strict legal provisions in order to base their decisions on ~~fairness~~-equity principles. This implies that ADR entities could opt for solutions that, in their judgment, align with a sense of what is morally or ethically right in a particular situation, diverging from a strict adherence to legal statutes.*

However, the use of fairness principles should not be acceptable when it comes to unfair commercial practices, which are not subject to compromises or mediated outcomes as they touch upon public order and the fundamentals of consumer protection.

- (16b) *The means used by consumer organisations and business associations to make publicly available the list of ADR entities established by the Commission can include relevant broadcasts concerning consumer protection and consumer rights.*
- (17) To ensure that consumers are able to easily find a suitable ADR entity, especially in a cross-border context, the Commission should develop and maintain a digital interactive tool that provides information about ADR entities' main characteristics, *practical information about how to avail of ADR procedures in a cross-border context* and links to the webpages of the ADR entities, as notified to it, *allowing consumers to be signposted directed to a competent body to resolve their disputes. The Commission should ensure coordination between this digital interactive tool and other EU and national digital tools, where appropriate.*
- (18) Therefore, Directive 2013/11/EU should be amended accordingly.
- (19) As Regulation (EU) No 524/2013 is to be repealed by a separate act, it is also necessary to amend Directives (EU) 2015/2302⁹, (EU) 2019/2161¹⁰ and (EU) 2020/1828¹¹ of the European Parliament and of the Council, as a consequence of that repeal,

⁹ Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC (OJ L 326, 11.12.2015, p. 1).

¹⁰ Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules (OJ L 328, 18.12.2019, p. 7).

¹¹ Regulation (EU) 2023/988 of the European Parliament and of the Council of 10 May 2023 on general product safety, amending Regulation (EU) No 1025/2012 of the European Parliament and of the Council and Directive (EU) 2020/1828 of the European Parliament and the Council, and repealing Directive 2001/95/EC of the European Parliament and of the Council and Council Directive 87/357/EEC (OJ L 135, 23.5.2023, p. 1).