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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

**on the functioning of the European Online Dispute Resolution platform established
under Regulation (EU) No 524/2013 on online dispute resolution for consumer disputes**

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Introduction

Facilitating cross-border e-commerce, in particular for SMEs, and strengthening consumers' trust when shopping online is an important part of the Commission's Digital Single Market (DSM) strategy, one of the European Commission's top ten political priorities. Promoting access to efficient and effective redress mechanisms through alternative dispute resolution procedures has been identified as a way to achieve this goal. The 2017 edition of the Consumer Conditions Scoreboard¹ shows that more and more EU consumers are shopping online and that their trust in e-commerce has increased. It is the first time consumers have expressed a strong increase in trust in buying goods and services from other EU countries. This is a significant development since a lack of trust in cross-border e-commerce has, for a number of years, been the main barrier to tapping the full potential of the DSM.

To enable easily accessible and efficient out-of-court redress for consumer disputes, including in disputes arising from cross-border e-commerce, a comprehensive legal framework on *Alternative Dispute Resolution (ADR)*² and *Online Dispute Resolution (ODR)*³ was adopted at EU level in 2013 and has been in place since 2016. The two legislative instruments establishing that framework are interlinked and complementary. Based on consumers' access to a comprehensive landscape of quality ADR bodies, the ODR platform contributes to strengthening consumers' and traders' confidence in shopping and trading online both in their country and abroad: consumers can solve disputes with traders that arise from online transactions in a simple, fast and inexpensive way, while traders avoid costly litigation procedures and maintain good customer relations. The Online Dispute Resolution platform (hereinafter the "ODR platform") is an online platform that channels complaints to ADR bodies. Those ADR bodies have been notified to the Commission by national authorities following a positive assessment of their compliance with the quality requirements mandated in the ADR/ODR legal framework. They can therefore be trusted by both consumers and traders.

The present Communication complies with the obligation laid down in Article 21 of the ODR Regulation to report on the functioning of the ODR platform. It details the steps taken for the establishment of the ODR platform and provides the European Parliament and the Council with an overview of its first year of operation. It also describes the actions planned by the Commission to ensure the platform's continued proper functioning and to further enhance its contribution to the development of the Digital Single Market.

¹ Consumers conditions scoreboard – Edition 2017.

² Directive 2013/11/EU of the European parliament and of the Council on Alternative Dispute Resolution for consumers, OJ L 165, 18.6.2013, p. 63–79.

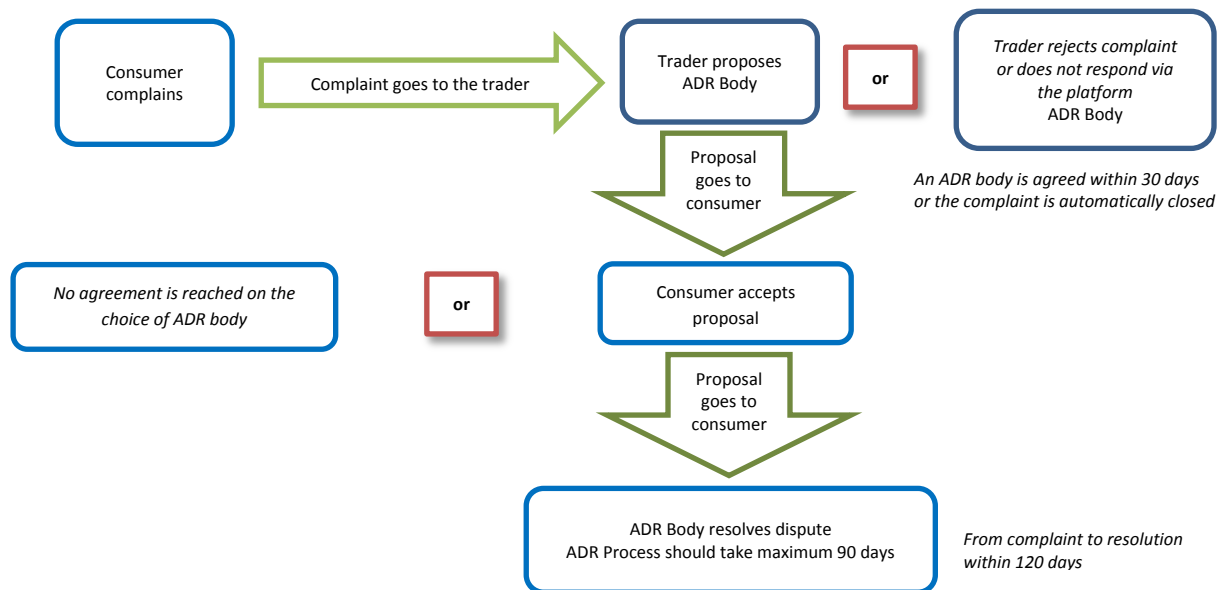
³ Regulation (EU) No 524/2013 of the European parliament and of the Council on online dispute resolution for consumers, OJ L 165, 18.6.2013, p. 1–12.

The ODR platform

The ODR platform was launched in January 2016 and opened to the public on 15 February 2016. The platform's aim is to facilitate the online resolution of disputes between consumers and traders over online transactions. The platform has the following key characteristics:

- Consumers and traders can choose any of the EU official languages for their interaction with the platform (e.g. submitting their complaints, receiving notifications). An automatic translation tool is available for free text communication.
- The platform identifies which notified ADR bodies are competent to handle the case and refers the dispute to the ADR body on which the parties agree.
- ADR bodies can use the platform's case management system to conduct the ADR procedure entirely online.
- The parties can request that the outcome of the ADR procedure is translated by a professional translator.
- Clear deadlines are built into the platform to ensure a fast process.

The process on the ODR platform



The ODR platform is fully functional and has been developed as an interactive web-interface offering a single point of entry to consumers and traders seeking to resolve disputes arising from online transactions without going to court. More specifically, the platform's functions have been designed and developed in compliance with Article 5 paragraph 4 of the ODR Regulation, to allow the parties to conduct the dispute resolution procedure online through electronic case management. The ODR platform allows consumers to initiate a procedure by submitting a complaint electronically to a trader, allows the trader to identify the competent ADR entity and, in case of agreement of both parties on the ADR body, transmits the complaint to that body. In addition, it provides all relevant actors with the free translation of information necessary for the resolution of the dispute.

In building the ODR platform, the Commission was supported by an expert group composed of ODR experts designated by the Member States. Furthermore, the Commission conducted three comprehensive testing exercises where 120 ODR experts designated by the Member States, consumer organisations, trader associations and the European Disability Forum tested the platform's various interfaces on the basis of real-life scenarios. The feedback received from those exercises directly fed into the platform's development and was important in ensuring its user-friendliness and accessibility. The platform's workflow is prescribed in the ODR Regulation; the Commission therefore designed the platform's various interfaces in full respect of those legal requirements.

The legal framework for consumer ADR and ODR

The ODR Regulation builds on the Directive on consumer ADR and thus the legal framework for the operation of the platform includes both pieces of legislation. The ADR Directive ensures that EU consumers can turn to certified ADR bodies when they have a problem with a trader over the purchase of a product or a service in virtually all retail sectors both domestically and across borders irrespective of whether the purchase was made online or offline. The certified ADR bodies are required to respect binding quality requirements such as impartiality, fairness, transparency and effectiveness. Member States need to establish national lists of certified ADR bodies and communicate those lists to the Commission. The details of the ADR bodies (name, sectoral coverage and information on fees) are translated in all the official languages of the Union and are subsequently electronically registered and made publically available on the ODR platform.

The ADR/ODR legal framework applies to consumer disputes involving traders established in the EU and in EEA countries. The ODR platform processes disputes that stem from online sales or online service contracts between consumers and traders resident/established in the Union and EEA countries.⁴ The platform does not address disputes between consumers (C2C) or between traders (B2B), nor does it provide a technical framework for direct negotiation between the parties, settlement attempts made by a judge in the course of judicial proceedings, or disputes concerning health services or public providers of further or higher education.

The ODR Regulation provides that Member States should designate ODR contact points to provide one-to-one support to users of the ODR platform when necessary. Online traders are required to provide a link to the ODR platform and state their e-mail address, on which they can be reached via the platform, on their website.

Implementation of the ADR Directive

It is important to stress that Member States' compliance with the legal framework governing ADR/ODR is an essential condition for the functioning and effective operation of the ODR platform. To date, all Member States with the exception of Spain⁵ have communicated to the

⁴ The platform deals with complaints by consumers against traders in all Member States and also with disputes submitted by traders against consumers in such contracts if the legislation of the Member State of the consumer allows for such disputes to be solved. Belgium, Poland, Luxembourg and Germany allow for business to consumer complaints.

⁵ At the moment this report was finalised the relevant Spanish national transposition legislation was in its last stages of the legislative procedure.

Commission that they have fully implemented the Directive on consumer ADR. To date a significant number of ADR bodies have been registered on the platform showing that the system is fully operational: currently more than 300 ADR bodies from 26 Member States⁶ can be accessed through the platform. Moreover, all 28 Member States have designated their national ODR contact points to assist the users of the platform and inform consumers about their options to obtain redress. On 1 July 2017 the ADR/ODR legislation became applicable to the EEA/EFTA States (Norway, Iceland and Lichtenstein). In order to facilitate the submission of complaints from these States the interfaces of the platform are also available in the Norwegian and Icelandic languages. ADR bodies from those states can also be electronically registered with the ODR platform. The ADR bodies registered on the ODR platform have been assessed (and are being monitored) by the national competent authorities for their compliance with the quality requirements established by the ADR Directive. It is important to stress that while there is no obligation for traders to use ADR in respect of individual consumer complaints, online traders are under an obligation to include a link to the ODR platform on their website. In order to check traders' compliance with this obligation the Commission has conducted a scraping of more than 20,000 web shops across the EU. The analysis of traders' compliance with the obligation to provide an easily accessible link to the platform and their email address on their website shows encouraging results that can however be significantly improved. The results showed a compliance rate of 30% where the ODR link has been found on the web shops of e-commerce traders' established in the EU. The presence of the ODR link differs across countries, sectors and differently-sized web shops. The Commission will liaise with Member States to support them in the coming months to enhance traders' compliance in this regard.

Complaints lodged on the ODR platform in its first year of implementation

The Commission conducted an analysis of a complete data set related to all complaints lodged on the platform between 15 February 2016 and 15 February 2017. The analysis focuses solely on complaints that are generated within the platform's workflow and does not take into consideration complaints received by ADR entities directly, i.e. outside the platform. The ODR platform is part of a wider framework aiming to help the parties access qualified bodies for alternative dispute resolution.

During the 12 months covered by this report some 1.9 million people visited the platform. On average the website received over 160,000 unique visitors per month, and more than 2,000 complaints were submitted per month on average.⁷ These data show that the platform has reached a considerable level of coverage and uptake; it also illustrates the significant awareness and interest the platform enjoys with EU consumers and business. More than 24,000 complaints were submitted on the platform in its first year of operation. Table 1 below shows the trend of complaints submitted per month which indicates a regular increase with a peak in December 2016 and January 2017 which corresponds to a seasonal peak in online shopping.

⁶ Dispute resolution bodies are currently not available in Romania and Spain.

⁷ Current statistics show a steady increase in unique visitors from February 2017 – August 2017 to over 180,000 per month, with over 2,300 complaints being filled per month.

Complaints submitted per month

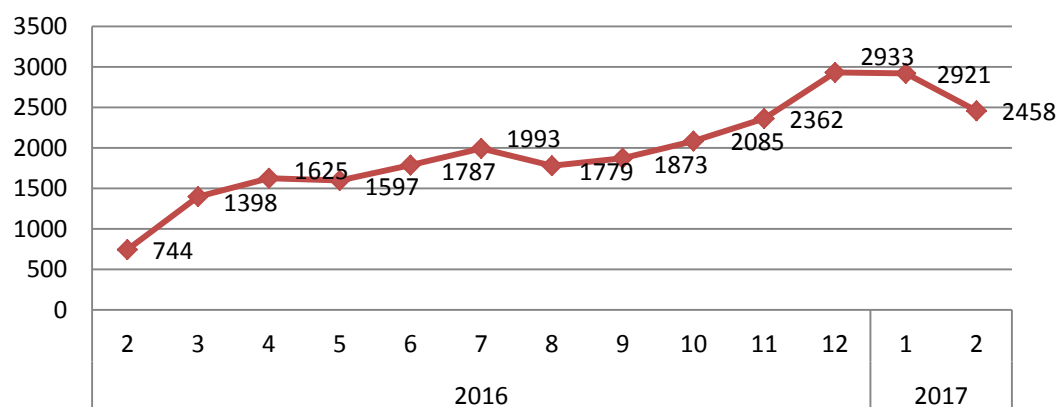


Table 1

The geographical distribution of complaints in the top 10 Member States is presented in table 2 below.

Number of complaints made in top 10 countries

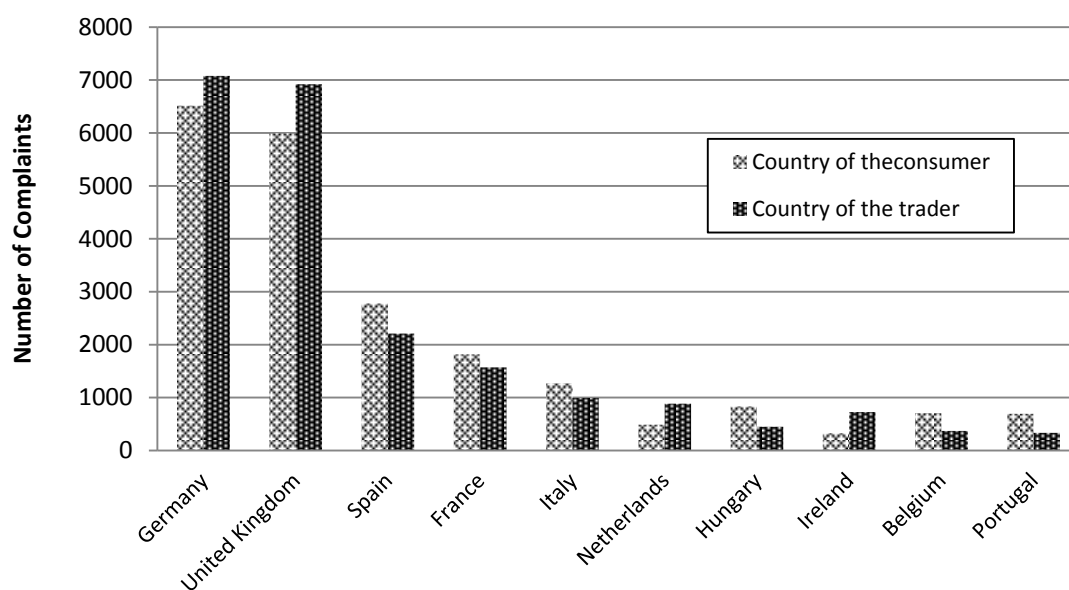


Table 2

Overview of disputes in the ODR platform during the first year of operation:

- The most complained about sectors were consumer clothing and footwear (11.5%), airline tickets (8.5%), and information and communication technology goods (8%) which also represent the main e-commerce sectors in EU⁸.
- The main reasons why consumers complained were linked to problems with the delivery of the goods (21%), followed by non-conformity with the order (15%) and problems with defective goods (12%).
- 1/3 of complaints related to a cross-border issue.
- Germany and UK, where the proportion of e-shoppers is the highest in EU⁹, are the two countries where most complaints have been lodged and also where most traders concerned are located.

Table 3

A detailed analysis of the complaint life-cycle on the platform, as shown in table 4 below, reveals that in a considerable number of cases (85%) complaints were automatically closed within 30 calendar days after submission (i.e. deadline for the consumer and trader to agree on a competent ADR body). In order to understand the significance of these data and evaluate traders' interest in ADR procedures, the Commission carried out a specific survey to get feedback from consumers whose case was automatically closed. The survey revealed that, although a large number of traders did not follow through using the ODR platform, 40% of consumers who submitted a complaint on the ODR platform that was automatically closed after 30 days had been contacted directly by the trader to solve the problem without any further progression of the complaint on the platform. Hence, even in such cases it has to be recognised that the ODR platform helps consumers and traders to solve their disputes, as consumers' mere recourse to the ODR platform has a preventive effect on traders that are more inclined to settle the dispute rapidly without taking the complaint to a dispute resolution body through the ODR platform workflow.

There are also technical reasons for the traders' lack of responsiveness on the platform. For example, when a complaint is submitted against a trader for the first time and the trader is not yet registered on the platform, the automatic notification may reach an incorrect email address. Other reasons could be that the origin of the notification message is unclear to traders or that the notification ends in the spam folder of the trader's mailbox and remains unread. The Commission developed technical measures to mitigate these technical shortcomings and subsequent negative effects after the completion of the statistical analysis in July 2017.

9% of complaints were not automatically closed by the system but were refused by the trader. In 2/3 of these cases, however, traders indicated that they made direct contact with the consumer and solved the issue or were planning to do so (around 6% of the overall submitted complaints).

For 4% of the submitted complaints the data show that both parties have used the possibility to withdraw from the procedure before their agreement to use a specific ADR body.

⁸ Source: Eurostat statistics - Online purchases, EU28, 2016.

⁹ Source: Eurostat statistics - Internet use and online purchases, 2016.

Finally only 2% of complaints were submitted to a specific ADR body. However in around half of these cases the ADR bodies refused to deal with the case on procedural grounds such as lack of competence or the consumer's failure to attempt to contact the trader first. Furthermore, either consumers or traders in some instances withdrew from the procedure before it was completed. This explains why the ADR procedure reached a final outcome in less than 1% of cases. Nevertheless, in 2/3 of those cases the final outcome was reached within the 90-day deadline.

The complaints life-cycle

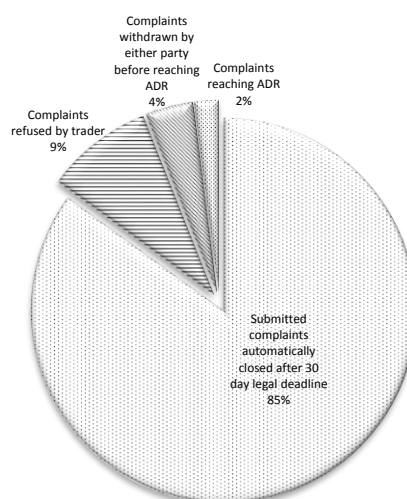


Table 4

Performance of the ODR platform

The significant number of complaints and the uptake of the ODR platform in all Member States are very positive elements which show that the ODR platform was well received and is considered as a useful tool by consumers. A user feedback survey conducted in July and August 2017 indicated that 71% of visitors to the ODR platform found it useful.

Furthermore, available information reveals that 44% of submitted cases were settled bilaterally outside the platform¹⁰.

ODR platform achievements:

- Very high level of consumer visits: the platform received an average of over 160,000 unique visitors per month.
- Large number of complaints submitted: over 2000 complaints per month on average.
- About 44% of the overall number of complaints was solved in successful bilateral negotiation between traders and consumers.

¹⁰ 40% of the complaints automatically closed after 30 days (85% of the total number of complaints) resulted in bilateral settlement. This is 34% of the overall complaints. This 34% figure may be added to the 6% of traders that refused ADR and settled directly with the consumer and the 4% of complaints where the parties withdrew from ADR presumably because they had reached a settlement.

Conclusions

Overall, the platform's structural functionality and its impressive reach among consumers in its first year of operation is very positive. The platform's main functions work properly, it operates as an interactive multilingual web-based IT tool, it provides a user-friendly means to submit complaints online, it contains a multilingual register of ADR entities, and it offers information on consumer redress. However, it is mainly due to its incentive effects that it contributes to solving cases outside of the platform.

In the coming months, it will be important to improve traders' engagement so as to ensure that the complaints that cannot be settled bilaterally (i.e. outside of the platform or through traders' internal complaint systems) are effectively channelled through the ODR platform and dealt with by a competent ADR body. To this end the Commission will work with national authorities to improve compliance by traders with their obligation to link to the ODR platform on their website. The Commission has also started to take action to encourage traders to cooperate more on the platform including by giving feedback when they solve the issues outside the platform, and technical measures are being rolled out with the objective to improve the platform's interface and messaging and to better communicate the various ways of handling complaints that are available to consumers.

Communication activities to further promote the ODR platform amongst consumers and traders will be launched in 2017. In addition, the Commission organised two high-level events with traders active in the top online retail sectors, the clothing and footwear¹¹ and the airlines sector¹², to discuss the potential that ADR and ODR hold for increasing consumer confidence in online trading.

Finally, it is worth mentioning that the ODR platform is also supported by the Connecting Europe Facility financial instrument (CEF Telecoms) established by Regulation 1316/2013/EU¹³. The projects supported aim at maintaining the ODR platform and improving its interoperability with other systems with a view to facilitate communication between traders' complaints systems and the ODR platform.

¹¹ A round-table discussion with representatives of e-retailers in the clothing and footwear sector is scheduled to take place in Brussels in December 2017. The event will discuss important policy developments in online trading and support traders' effort and commitment to responsible trading and the respect of consumer rights in the digital marketplace.

¹² In cooperation with the German Conciliation Body for Public Transport - SÖP (Schlichtungsstelle für den öffentlichen Personenverkehr e.V) the Commission hosted a special event in Berlin on 10 November 2017. The event marked the launch of "TRAVEL-NET", a network of ADR entities from various Member States that handle disputes in the public transport and travel sector.

¹³ OJ L 348, 20.12.2013, p. 129–171.