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EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

**Proposal for a Directive of the European Parliament and of the Council on Alternative
Dispute Resolution for consumer disputes (Directive on consumer ADR)**

and

**Proposal for a Regulation of the European Parliament and of the Council on Online
Dispute Resolution for consumer disputes (Regulation on consumer ODR)**

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Disclaimer

This Impact Assessment report commits only the Commission's services involved in its preparation and the text is prepared as a basis for comment and does not prejudge the final form of any decision to be taken by the Commission.

1. INTRODUCTION

Consumer protection legislation at EU and Member States' level has been significantly strengthened in the past decades. However, when their rights are violated European consumers do not always obtain effective redress.

This is because consumers believe court proceedings to be expensive, time-consuming and burdensome. Cumbersome and ineffective proceedings and their uncertain outcome discourage consumers from even trying to seek redress. In addition, consumers are not always aware of what their rights entail in concrete terms and therefore do not seek compensation when they are entitled to it.

The lack of effective redress poses particular challenges in cross-border transactions. Naturally wary of venturing into an unfamiliar commercial environment, consumers are especially worried about something going wrong with a purchase made in another Member State. They are concerned about differences in legislation between Member States, language barriers, potentially higher costs and unfamiliar procedural rules in dispute resolution in another Member State. Consumers often give up their cases simply because they do not know where to address their dispute in another Member State. Uncertainty about securing redress affects consumers' confidence in shopping across borders and dissuades them from taking advantage of the Single Market.

In addition to traditional dispute resolution through judicial means, consumers and businesses in some Member States can refer their claims to the so-called **Alternative Dispute Resolution** ("ADR") schemes. The term alternative dispute resolution covers non-judicial procedures, such as conciliation, mediation, arbitration, complaints board. For the purposes of this Impact Assessment (IA), ADR refers to the resolution of disputes between consumers and traders (B2C) linked to the sale of goods and provision of services by traders. ADR schemes aim to settle disputes arising between parties through the intervention of an entity (e.g. conciliator, mediator, ombudsman, complaints board etc). ADR does not cover the resolution of disputes by internal complaint handling systems run by businesses. ADR schemes aimed at resolving disputes between consumers and traders via an online procedure are called **Online Dispute Resolution** schemes ("ODR") and could be an effective tool, particularly for solving disputes linked to online transactions. However, ODR is currently not sufficiently developed¹.

The need to improve access to redress for consumers through alternative dispute resolution schemes calls for a reflection at EU level. The present analysis takes full account of the different level of development of ADR in the Member States and the various types of existing ADR schemes. The divergence in national policies on ADR schemes (or lack thereof) shows that unilateral action by Member States does not lead to a satisfactory solution to consumers and businesses. The lack of coherent and efficient ADR systems in the Member States has also an impact on the possibility for consumers to rely on these ADR systems in cross-border and online disputes, for which access to ADR/ODR procedures remains very limited. The

¹ ODR can also exist for disputes between traders (B2B) which, as ADR, are not covered by this Impact Assessment. An example of B2B ODR is a service of the Czech Arbitration Court (www.adr.eu) which helps brand and trade mark owners, domain name registrants and registration companies all over the world to resolve conflicts through an online procedure.

cross-border aspects of the identified problems in ADR and ODR are directly linked with the national situation. Improving cross-border ADR relies on improving national ADR.

The Impact Assessment focuses exclusively on the area of out-of-court dispute resolution. It aims to analyse a range of policy options to improve consumer redress through ADR and ODR. Other existing instruments enhancing the application of consumer rights in the internal market through judicial means and enforcement action do not fall within the scope of this IA.

2. PROBLEM DEFINITION

A substantial proportion of European consumers encounter problems when buying goods and services in the internal market. In 2010, this was the case for approximately one in five European consumers². Despite a generally high level of consumer protection guaranteed by legislation, problems encountered by consumers are often left unresolved. The losses incurred by European consumers because of problems with purchased goods or services are estimated at 0.4% of EU GDP. This includes the detriment suffered by European consumers in relation to cross-border shopping, which is estimated between €500 million and €1 billion³.

Four main shortcomings which hinder the effectiveness of ADR have been identified. Gaps in ADR coverage, low awareness and quality of ADR schemes

European consumers do not enjoy the same level of access to quality ADR schemes in the EU. Despite roughly 750 existing national ADR schemes gaps still remain both geographically and sectorally. In addition, the lack of detailed information constitutes for consumers a significant barrier for the use of ADR. Businesses rarely provide consumers with information on the competent ADR scheme to deal with their dispute either at the point of sale or post-sale. Finally, ADR schemes do not always respect core principles such as transparency, impartiality and effectiveness, as laid down in the two Commission recommendations of 1998 and 2001.

ODR for cross-border e-commerce transactions

Lack of ADR coverage in Member States across the EU results in non-effective resolution of disputes related to e-commerce transactions. In 2010, more than half of complaints (56.3%) received by the ECC-Net were linked to e-commerce transactions, out of which less than 9% could be referred to an ADR scheme in another Member State. Very few existing ADR schemes offer the possibility to have the entire process online. Handling the entire process online would allow savings in terms of time and ease communication between the parties.

² EB 342, p. 169.

³ Assuming that the individual losses are similar for both domestic and cross-border purchases, it is estimated that the detriment suffered by EU consumers, related to cross-border shopping, is between €500million and €1 billion. This assumption is for example also supported by the fact that when comparing the shopping experience of domestic and cross-border distance shoppers, there does not seem to be significant differences in encountered problems. 16% of shoppers experienced a delay with a product purchased cross-border in the EU while 18% of shoppers experienced a delay with a product purchased domestically.

3. SUBSIDIARITY AND NEED FOR EU ACTION

Consumer protection belongs to shared competences between the EU and the Member States. As stipulated in the Article 169 of the Treaty on the Functioning of the European Union (TFEU), the EU shall contribute, *inter alia*, to protecting the economic interests of consumers as well as promoting their right to information and education in order to safeguard their interests. An ADR/ODR initiative based on Article 114 of the TFEU will help to achieve these objectives in the context of the proper functioning of the internal market. At the same time it will respect the principles of subsidiarity and proportionality.

Developing consumer ADR/ODR is crucial to benefit consumers and businesses and to improve the functioning of the internal market, as was confirmed by all sections of stakeholder opinion in the public consultation and debates.

Twelve years after the Commission Recommendations on consumer ADR schemes, the analysis of the current situation indicates that action taken solely at national level has not produced sufficient coverage of ADR. A number of shortcomings still hinder the effectiveness of ADR schemes and well functioning and accessible ODR schemes for cross-border e-commerce transactions remain underdeveloped. European consumers therefore do not enjoy the same level of access to ADR schemes across the EU. Neither is the provision of information to consumers on ADR in all retail market sectors guaranteed. If the development of ADR is left to Member States' action alone, quality ADR schemes will continue to be absent in some sectors of the retail market and in some geographical areas of the EU. Consumers' and businesses' awareness levels will remain low, while the monitoring of national ADR will be done by Member States on a voluntary basis. Finally, there will be no assurance that ADR/ODR schemes respect key principles guaranteeing their quality. This insufficient and fragmented development of ADR in the EU is in contrast with the objectives of the TFEU since it will undermine or create new obstacles to the functioning of the internal market, create unequal consumer protection in the EU and variable commercial conditions for business. Moreover, without a well-functioning system of domestic ADR on which cross-border ADR can be based and anchored, the development of an efficient and effective ADR for cross-border disputes will not be achieved.

The lack of efficient ADR/ODR limits the potential of this means of dispute resolution and creates imbalances in the effectiveness of handling consumer disputes in different Member States, in particular as regards cross-border disputes. This situation affects consumers' confidence in shopping across borders. Both businesses⁴ and consumers clearly state that concerns about potential redress problems in another Member State discourage them from selling and buying across borders and thus not fully reaping the potential benefits of internal market⁵. Particular attention needs to be paid to generating consumer confidence of in the internal market and to ensuring a level playing field for businesses across Member States.

⁴ In particular for SMEs since their limited administrative capacity would not allow them to pursue claims through judicial means. The availability of easy dispute resolution such as ADR could address such concerns of small and medium enterprise.

⁵ Reportedly, 1 in 20 consumers faced problems with cross-border purchases of goods or services, while 59% of traders said that an important obstacle to them selling cross-border is the potentially higher cost in resolving complaints and conflicts cross-border compared to domestically.

Furthermore, despite the low level of current cross-border e-commerce transactions, there is a rapidly expanding digital retail market within the Member States⁶. Thus, ensuring simple, low-cost and effective means of out-of-court redress is even more important for consumers and traders in order to engage in online transactions across border. Action at Member State level will not lead to the establishment of an EU-wide online dispute resolution which, as indicated in the Digital Agenda, is an essential tool in promoting e-commerce.

The objectives pursued can be better achieved by measures at EU level by reason of its effects and scale. A clear advantage in the definition of common principles and criteria for ADR schemes in all Member States will be an effective and adequate treatment of consumer disputes linked both to the domestic and cross-border transactions. It will also ensure that ADR/ODR is developing in a more homogenous manner in the EU.

Unilateral actions at Member State level cannot sufficiently provides consumer and traders with the benefits mentioned above. Uncoordinated efforts by Member States are likely to result in further fragmentation of ADR, which in turn will contribute to unequal treatment for consumers and traders in the internal market and create diverging levels of consumer redress in the EU.

4. POLICY OBJECTIVES

The general objectives are the following: i) To improve the functioning of the retail internal market, including the retail digital market; ii) To achieve a high level of consumer protection; iii) To enable consumers and traders to resolve their disputes in an effective manner. The table below describes the specific and operational objectives:

Specific Objectives	Operational Objectives
<i>ADR coverage, information and quality</i>	
To ensure access to ADR schemes to facilitate out-of-court dispute resolution for consumers in domestic and cross-border disputes with traders.	<ul style="list-style-type: none"> To increase the proportion of domestic and cross-border consumer disputes solved by ADR schemes. To reduce the number of unresolved consumer problems with purchased goods or services at the national level and in cross-border cases.
To ensure that consumers and businesses are aware of the existence of ADR schemes	<ul style="list-style-type: none"> To ensure that consumers receive information about the ADR scheme competent to deal with their dispute, in particular in cross-border situations. To ensure that consumers and businesses are aware of the general information related to ADR schemes and to their use, in particular in cross-border situations.
To ensure that ADR schemes offer a quality service to consumers and businesses	<ul style="list-style-type: none"> To ensure that ADR schemes provide an impartial service to businesses and consumers. To ensure that ADR schemes provide a competent and transparent service to businesses and

⁶ Between 2004 and 2010, the percentage of individuals who ordered goods or services over the internet in the EU-25 rose significantly, from 22% to 37%, in particular in the UK, Luxembourg, Germany, the Netherlands, France and the Nordic countries, where 45% to 65% of internet users are online buyers.

	<p>consumers.</p> <ul style="list-style-type: none"> • To ensure that ADR schemes provide an effective service. • To ensure that ADR schemes are regularly monitored.
<i>Online Dispute Resolution (ODR) for cross-border e-commerce transactions</i>	
To ensure that consumers and businesses can rely on a mechanism to solve their cross-border, e-commerce disputes online.	<ul style="list-style-type: none"> • To give consumers and businesses the possibility to handle all cross-border e-commerce disputes online and out-of-court by providing a web-based tool at EU level. • To develop common criteria upon which the web-based system will be based in order to boost its effectiveness.

5. POLICY OPTIONS AND ITS ANALYSIS

The tables below summarise the policy options identified for the two problem areas.

5.1. ADR coverage, information and quality

Option 1	No EU action (baseline scenario)
Option 2	Non-binding legal instrument to encourage the development of quality ADR schemes for all domestic and cross-border consumer disputes, to encourage businesses to provide consumers with information on the ADR scheme competent to deal with their dispute and to encourage ADR schemes to participate in existing EU sector-specific ADR networks.
Option 3	Binding legal instrument to ensure that consumers can refer all their domestic and cross-border disputes to quality ADR schemes, covering also online services; that consumers receive information on the ADR scheme competent to deal with their dispute; and that ADR schemes participate in existing EU sector-specific ADR networks.
Option 4	Binding legal instrument to establish an EU model for quality national ADR schemes to cover all domestic and cross-border consumer disputes, including in relation to online purchases. This legal instrument will also ensure that consumers receive information on the ADR scheme competent to deal with their dispute and that EU networks of sector-specific ADR schemes are created.

5.2. Online Dispute Resolution (ODR) for cross-border e-commerce transactions

Option 1	No EU action (baseline scenario)
Option 2	Non-binding legal instrument to connect national ADR schemes dealing with cross-border e-commerce disputes online in an EU network.
Option 3	Binding legal instrument to establish a EU system consisting of a web-based platform directly accessible by consumers, which will be based on national ADR schemes and will be able to deal with cross-border e-commerce disputes online (ODR); and to define common criteria for the functioning of the web-based platform.
Option 4	Binding legal instrument to create a single EU body dealing with all cross-border e-

	commerce disputes online.
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6. THE COMPARISON OF OPTIONS AND THEIR IMPACTS

An assessment of the policy options related to the problem areas against the criteria of effectiveness, efficiency and coherence was carried out by using a scale from 0 to 5. The scores of each combined option for each of the criteria (effectiveness, efficiency, coherence) are presented in the cumulative table below. The final results show the extent to which each combined option is expected to contribute to the policy objectives.

Cumulative impact (effectiveness, efficiency and coherence)	Online Dispute Resolution for cross-border e-commerce transactions			
	Policy Option 1	Policy Option 2	Policy Option 3	Policy Option 4
ADR coverage, information and quality				
Policy Option 1	0	3	5	7
Policy Option 2	3	6	6	8
Policy Option 3	6	9	15	11
Policy Option 4	8	8	13	12

From the rating of the table above it can be concluded that the combination of options that entails no EU action will preserve the status quo and therefore the problems that have been identified will not be tackled. The combination of options that foresees the adoption of non-binding legal instruments to tackle the problems identified is neither efficient nor effective. Consequently, consumers' problems will remain unresolved and losses suffered in the internal market unrecovered. An additional Recommendation is not expected to bring an added value to tackle the current problems.

The combination of options that foresees the adoption of binding legal instruments that require making ADR schemes, which are also able to deal with disputes online, available in sectors of the economy where they do not currently exist (option 3 ADR) will ensure full ADR coverage. As a consequence of the full ADR coverage, the required framework will be created, on the basis of which a EU web-based system can effectively deal with disputes related to cross-border e-commerce transactions (option 3 ODR). This combination of options would therefore represent the most effective and efficient means to improve the way domestic and cross-border disputes are dealt with.

The combination of options that entails a high level of harmonisation in the areas of ADR and ODR (options 4) would provide for a full coverage but would be disproportionate to the objectives of the overall initiative. This has also been confirmed by the replies to the public consultation and the bilateral discussions held by the Commission services with Member States. In addition, creating a single EU ODR body would make ADR schemes that currently exist at national level and deal with disputes online, redundant. Finally, such development does not take into account the national situation and is disproportionate as it implies a strong EU "top-down" intervention that also creates unnecessary costs for the EU.

In conclusion, the objectives pursued can be best achieved through separate but complementary instruments. The preferred option is the combination of the two following policy options:

- (1) A framework Directive to ensure that consumers can refer all their domestic and cross-border disputes to quality ADR schemes, covering also online services; that they receive information on the ADR scheme competent to deal with their dispute and that ADR schemes participate in existing EU sector-specific ADR networks (Option 3). It will be binding to Member States while leaving them the choice of form and methods (how to "fill the gaps"); and
- (2) A Regulation to establish a EU system, consisting of a web-based platform directly accessible by consumers, which will be based on national ADR schemes and will be able to deal with cross-border e-commerce disputes online (ODR); and to define common criteria for the functioning of the web-based platform (Option 3).

6.1. The impact of the preferred option

The preferred option will make a real difference for **consumers**.

Consumers will be able to address all their disputes (no matter the business sector, the channel of purchase or the country where the product or service was purchased from) to an ADR scheme. Moreover, they will be assured that all ADR schemes will be transparent and will deal with their dispute effectively and impartially, thus feeling better equipped and more empowered to turn to ADR. As a result, more consumer problems will be raised and solved. The recovered losses can be then re-used in the internal market for the purchase of goods and services. Similarly the savings by introducing quality ADR will be important, accounting for about 0.17% of EU GDP. They will receive information on which ADR to turn to in case of a dispute with a trader in all contracts and commercial documents (e.g. receipts, invoices). Consequently, ADR will become common knowledge for consumers and the levels of awareness will increase substantially.

The overall impact on **businesses** will be reasonable. A number of costs will occur for businesses, namely: i) Businesses may be required to set up and fund -partly or totally- ADR schemes in the sectors where they do not exist. The related costs will depend on the sector, the disputes received and the country. The Member States which will be more affected are those that have a few or no ADR schemes in place. However, costs for businesses in relation to the obligation of full coverage are not directly linked to the existing coverage in ADR in the Member State where they are established. Full ADR coverage will not require systematically businesses to create a specific ADR scheme in each retail sector. Member States, in collaboration with businesses or not, may decide instead to create a single or residual cross-sectoral body to 'fill the gaps' in their territory. In addition, it should be noted that funding of ADR schemes by businesses is already a common practice in many sectors and Member States. ii) Businesses will have to adapt their contracts and commercial documents to include information on the relevant ADR schemes. This will generate certain costs to them, which will be one-off and will amount to about €771 million EU wide (€254 per business).

On the other hand businesses, including SMEs, will save on a yearly basis, if they use ADR instead of court proceedings, from €1.7 billion to €3 billion, while at the same time saving 258 days. In addition, they will enhance their reputation with consumers and to a significant

extent address issues of reputational risk, by showing willingness to solve disputes in a non expensive and easily accessible way. Full coverage for all online, off-line, domestic and cross-border goods and services will therefore enable businesses to use ADR. This will allow them to avoid lengthy and costly in-court procedures and maintain their business reputation. As a result, businesses, and in particular SMEs, will have incentives to also improve their internal complaint handling systems and better competition will be secured. As a result businesses will be more inclined to offer products and services via the internet.

Similarly, the impact on **Member States** will be reasonable. Costs will occur for the set up and running of new ADR, which Member States may need to bear partly or totally (depending on the nature of the funding of ADR, either public or financed through private sector contribution or both). The relevant implementation costs will be similar to the ones described above for businesses. Member States will have the possibility to meet the obligation of full coverage through several options. Member States will also incur marginal costs for reporting on the development of ADR schemes.

The impact on the **EU budget** should also be considered. The EU will bear the costs to develop a web-based system for disputes linked to cross-border e-commerce transactions and the expertise required within the ECC network. Taking into account existing ADR schemes dealing with disputes online as well as similar EU tools, the budget needed for the set up of the web-based system can be estimated to about €2 million and annual maintenance and running costs will amount to approximately €300.000.

Finally, the scope of the intervention of the EU is limited to strictly necessary actions to achieve the objectives set. A framework Directive on the development of ADR and a Regulation on the establishment of an ODR system at EU level will provide the most effective means to achieve the pursued objectives at the lowest comparative costs. The action at EU level takes account of existing national ADR schemes. The burden to businesses and Member States resulting from the preferred option are the most proportionate as the objectives will be achieved at the lowest costs avoiding duplication of expenses or unnecessary administrative burdens. In conclusion, the preferred option respects the principle of proportionality.

7. CONCLUSION / MONITORING AND EVALUATION

The proposed legislative initiatives would include a provision stating that a report on the application of the initiative and its appropriateness and effectiveness in meeting the objectives should be carried out. In addition, a number of monitoring indicators will be used to measure the progress towards meeting the objectives pursued by the initiatives. These will include the increase in the number of ADR cases and in the number of consumers and traders buying and selling cross-border online; the increase in awareness levels, the increase in the number of businesses that are willing to sell online in other Member States by 20% by 2020 and in the number of consumers who are willing to buy online from another Member State by 10% by 2020; and the compliance levels of ADR schemes to the quality principles.