

## Impact of the digital era on e-commerce: online dispute resolution for consumer disputes – from 15 February 2016



“One in three consumers experienced a problem when buying online in the past year. But a quarter of these consumers did not complain – mainly because they thought the procedure was too long or they were unlikely to get a solution. The new online platform will save time and money for consumers and traders. I am confident the platform will be widely used to solve consumer grievances”. **Věra Jourová**, Commissioner for Justice, Consumers and Gender Equality

Starting with 15 February 2016 the European Commission new online dispute resolution (“**ODR**”) platform for consumer disputes is envisaged to become fully **functional**. This alternative dispute resolution mechanism (“**ADR**”) is aimed at allowing consumers and traders to settle their disputes stemming from an online contractual relationship, at the click of a mouse, both for domestic and cross-border purchases, thus avoiding lengthy and costly court proceedings, and is meant to strengthen consumers’ trust in online purchases.

## Legal background

The idea of ADR for consumer disputes was introduced through Directive 2013/11/UE on alternative dispute resolution for consumer disputes<sup>1</sup> (the “**Directive**”). The functioning of the ODR platform and the procedure are detailed in Regulation No. 524/2013 on online dispute resolution for consumer disputes<sup>2</sup> (the “**Regulation**”). These provisions are transposed in Romanian Law through Ordinance no. 38/2015 on alternative resolution of disputes between consumers and traders, which entered into force on 7 September 2015 (the “**Ordinance**”).

## What kind of disputes can be submitted for online resolution?

According to the Ordinance, the ODR platform can be used for out-of-court resolution of **domestic and cross-border disputes** concerning contractual obligations stemming from **sales contracts** or **service contracts** between a trader established in Romania and a consumer resident in the EU, 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**.

The ODR platform **does not apply** to:

- internal procedures of consumer complaint-handling systems operated by the trader;
- non-economic services of general interest;
- trader to trader disputes;
- direct negotiation between the consumer and the trader;
- attempts made by a judge to settle a dispute in the course of a judicial proceeding concerning that dispute;
- procedures initiated by a trader against a consumer;
- health services provided by health professionals to patients to assess, maintain or restore their state of health, including the prescription, dispensation and provision of medicinal products and medical devices;
- public institutions and public entities of graduate and postgraduate education.

## How does it work and how long does it take?

- The ODR platform gathers a series of ADR entities appointed by each member state based on criteria of expertise, independence and impartiality, which are responsible for the resolution of the disputes submitted online by the entitled consumers against traders established<sup>3</sup> in the same member state as the respective ADR entity;
- The procedure **cannot exceed 90 days** from the submission of a **complete complaint file** to an ADR entity;
- Complaints are **submitted online** by means of an user-friendly online form which requires the completion of general information such as: name, e-mail address and geographical address of the complainant and the plaintiff, type of goods or services that are object of the complaint, whether the good or service was bought online or through another electronic mechanism, date of acquisition, price, description of the facts of the case, whether the complainant has contacted the plaintiff prior to the submission of the complaint on the ODR platform, etc<sup>4</sup>;
- Both the complainant and the plaintiff **must agree** to submit their dispute for resolution with an ADR entity. Failure to do so within 30 calendar days from the submission of the online complaint, or refusal of the plaintiff to resort to this method leads to closure of the online procedure. In such event the claimant must submit the claim to court;

<sup>1</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0063:0079:EN:PDF>

<sup>2</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0001:0012:EN:PDF>

<sup>3</sup> For individuals, the place of establishment is the place where it conducts its commercial activity. For legal entities it is the place where it has its headquarters, the place of exercise of its main commercial activity, including a subsidiary, agency, or any other secondary establishment.

<sup>4</sup> The list of requested information is provided in the Annex of the Regulation.

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- The ADR entity can either **impose** a solution to the parties, or **suggest** a solution to the parties. Both mechanisms are clearly described in art. 11 and 12 of the Ordinance and the parties may opt for either of them, depending on whether the respective ADR entity is working within both mechanism or not. In case of a **suggested solution** the parties can either agree or disagree with the proposal of the ADR entity. If they opted for the **imposed solution**, such solution is compulsory for the parties and none of them can withdraw from the procedure;
- The ADR entity will issue a motivated decision which must be communicated to the parties within 15 calendar days from adoption and produces effects as of the date of communication. Such decisions may be appealed with the competent court within 15 calendar days from the communication date. Non-appealed decisions become writ of enforcement;
- A procedure on the ODR platform blocks the start of prescription of the right to obtain damages, and if such prescription has already started it will be suspended for the duration of the procedure.

## What should I know as a consumer?

- Prior to submitting a complaint via the ODR platform I **must have contacted the trader** and followed its internal complaint procedure;
- My complaint submitted on the ODR platform **will be assigned to an ADR entity in the state of the trader**;
- If I have submitted an identical complaint which has **already been analyzed** by a different ADR entity or a national court, **my complaint will not be accepted**;

- I must submit my complaint within **1 year** from the date I have submitted my complaint to the trader, the date of the occurrence of the generating cause of the dispute, or, in the case of continuous violation, the date such violation has ceased.

## What should I do as a trader?

- **Am I a trader?** Any legal entity or individual, public or private, exercising a commercial activity, an industrial activity or production, artisanal or liberal activity and any other individual or legal entity acting for this purpose on my behalf, is considered a trader;
- If I **wish to resolve potential online commerce disputes with my clients** through the ODR platform, I must inform all my users about the ADR entities established in my member state of provenance. Such information must include a link to the websites of the respective entities and a link to the ODR platform;
- If I am an online trader, irrespective of whether the Terms and Conditions on my online platform or web-application make reference to out-of-court resolution of disputes, I should make a reference to the ODR platform as an alternative method for resolution of online commerce disputes and **provide a functional link to the ODR platform**;

In Romania the ADR entity will be established within the National Consumer Protection Authority. For the banking sector, a Center for the alternative resolution of banking disputes has been established <sup>5</sup>;

<sup>5</sup> [http://www.arb.ro/wp-content/uploads/Regulament\\_CSALB.pdf](http://www.arb.ro/wp-content/uploads/Regulament_CSALB.pdf)

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## Important information for both consumers and traders:

- The ODR platform is available for consumers and traders, residents in the EU;
- The procedure is **free of charge**;
- The **European Consumer Center Romania<sup>6</sup>** offers information and guidance for submission of complaints on the ODR platform;
- Legal representation is not compulsory. However, consumers have the right to be represented or assisted by a lawyer and are entitled to independent guidance and counseling;
- Starting with 15 February 2016 the ODR platform can be accessed by both consumers and traders at the following link: <http://ec.europa.eu/consumers/odr/>

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<sup>6</sup> <http://www.eccromania.ro/EN>

Should you require additional information do not hesitate to contact our colleagues here at Biriş Goran.

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