

# Digital Single Market: launch of the online dispute resolution platform

On 15 February 2016, the European Commission's new online dispute resolution (ODR) platform became operational. This web-based platform enables traders and consumers to settle disputes about online transactions electronically without having to go through expensive and lengthy court proceedings. The ODR platform aims to enhance the protection of consumer rights and strengthen consumer confidence in online cross border trading, thereby contributing to the European Union's Digital Single Market strategy.

**The ODR platform offers a single point of entry to consumers and traders seeking the out-of-court resolution of disputes concerning contractual obligations under online sales or service contracts through the intervention of an alternative dispute resolution (ADR) entity. ADR entities have been able to familiarize themselves with the platform since 9 January of this year. Upon becoming operational for traders and consumers on 15 February, online traders established within the European Union are now required to provide a link to the ODR platform on their websites.**

The principal rules concerning online dispute resolution and the ODR platform are set forth in EU Regulation No 524/13 and the Commission's Implementing Regulation 2015/1051. These ODR rules complement Directive 2013/11/EU, which requires Member States to ensure that all disputes between consumers resident and traders established in the EU which arise from the sale of goods or provision of services can be submitted to an ADR entity. Ensuring that all these ADR entities are registered with the ODR platform should allow for full coverage in online out-of-court resolution for disputes arising from online sales or service contracts.

## How will the ODR platform work in practice?

Both consumers and traders will be able to submit a complaint about online transactions through the ODR platform. The ODR platform will notify the other party (the respondent party) of the complaint. If the respondent party

is the trader, it is required to reply within 10 days whether it is obliged (by law, contract or otherwise) to use a specific ADR entity or, if it is not so obliged, whether it is willing to use an ADR entity to resolve the dispute. If the trader is unwilling and not obliged to use ADR, the complaint shall not be processed further. If the respondent party is the consumer and the trader is obliged to use a specific ADR entity, the consumer will be invited through the ODR platform to agree within 10 calendar days on that ADR entity or, if the trader is not obliged to use a specific ADR entity, to select one or more competent ADR entities. If the trader and consumer cannot agree on the ADR entity within 30 days after the complaint was submitted (assuming no obligation to use a specific ADR entity), the complaint will not be further processed. Once the consumer and trader agree on which ADR entity to use for their dispute, the ODR platform automatically transfers the complaint to that entity and, unless the ADR entity refuses to deal with the dispute, it is required to handle the case entirely online and rule on the dispute within 90 days.

## What do online traders have to do?

Online traders who intend to enter into online contracts with consumers for the sale of goods, services or digital content via their own websites and any online marketplace have to provide an electronic link to the ODR Platform:

**<http://ec.europa.eu/consumers/odr/>**. This link must be easily accessible to consumers. Furthermore, traders have to state their own email address on their website. Traders are required to provide an electronic link to the ODR platform, but are not obliged to actually use ADR, unless

required by law, contract or otherwise.

For traders who have committed or are required to use ADR, additional requirements apply, in particular the following:

- Online traders must inform consumers about the existence of the ODR platform and the possibility to use the platform to settle their disputes. Traders must also specify with which specific ADR entity or entities they are associated and include the website addresses of these entities on their own website.
- If commercial offers are made to consumers via e-mail, similar information as set forth in the above should be included in the e-mail.
- The above information must also be provided in the general terms and conditions applicable to online sales and service contracts.
- In the event a consumer has filed a complaint directly with the trader and parties are not able to settle such dispute, the trader is required to inform the consumer (via a durable medium) about the ADR entity with which the trader is associated and whether the trader shall make use of this entity to settle the dispute.

### Specific requirements for financial services providers

The abovementioned rules are fully applicable to financial services providers that enter into online sales or service contracts with consumers, such as internet banks. Local financial supervision laws and regulations may furthermore prescribe the use of specific ADR entities.

For example, in the Netherlands, the Dutch Financial Supervision Act (*Wet op het financieel toezicht*, or "FSA") provides that financial undertakings that are authorized under the FSA to provide financial services, including banks, investment firms, payment services providers, insurance brokers, and consumer credit providers and intermediaries, are in principle required to join the relevant ADR entity specified in the Decree on Designated ADR bodies (*Besluit aanwijzing geschilleninstanties Wft*). In respect of disputes relating to payment services, financial services or financial products (other than certain health insurances), the relevant

ADR entity is the Financial Services Complaints Tribunal (*Klachteninstituut Financiële Dienstverlening*, or "Kifid"). In addition to the general rules for online traders set out above, the FSA states that if a financial services provider rejects a complaint from a customer, in whole or in part, it shall inform the customer about the possibility to lodge the complaint with Kifid, specifying the applicable time limits. The financial services provider shall also state that a dispute can also be brought directly before a civil court.

### Conclusion

The implementation of the ODR platform marks a further step in the efforts to advance the use of alternative dispute resolution procedures in EU Member States to resolve consumer disputes. Enabling easy, cost-effective online ADR aims to strengthen the protection of consumer rights and boost consumer confidence in cross border online trading. All of this fits into the EU's digital single market strategy, and more generally into the trend in many Member States to advance the use of alternative dispute resolution procedures to allow for a lower threshold to dispute resolution for consumers and also unburden national courts.

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