

Member States Implement EU ADR/ODR

Legislation for Consumer Disputes

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The UK Government has recently published the new law which will implement and bring into effect the EU legislations on Alternative Dispute Resolution and Online Dispute Resolution published on 18th June 2013 which encourage the use of ADR in resolution of consumer disputes.

The European Union published two legislation on this matter:

1. Directive 2013/11/EU on Alternative Dispute Resolution for Consumer Disputes – which seeks to promote and facilitate the use of ADR for resolution of consumer complaints against traders and businesses. The Directive does not apply to non-economic services of general interest. Furthermore, disputes between traders inter se and a complaint of a trader against a consumer (eg. Non-payment of dues) is also not covered under this Directive.
2. The Directive requires Member States to ensure that ADR entities in their respective States are impartial and transparent and resolve disputes within 90 days. Furthermore, the ADR entities should provide these services free of cost or at minimal cost. However, it is not imperative for Member States to create sector specific ADR entities.

In addition, all Member States must ensure that:

- ADR entities maintain updated websites and allow online submission of complaints and supporting documents in relation to domestic and cross-border disputes;
- there must exist a residual ADR entity to deal with disputes involving a trader established on their territory, although this obligation can be fulfilled by reliance on an ADR entity established in another Member State;
- the natural persons in charge of ADR entities must possess necessary skills and expertise;
- The traders established in their territory inform consumers about the ADR entity or ADR entities by which those traders are covered;
- ADR entities cooperate in the resolution of cross-border disputes.

3. Regulation (EU) No 524/2013 on Online Dispute Resolution for Consumer Disputes which provides for the creation of an EU-wide Online Platform which will deal with disputes arising from online transactions. This platform will link national ADR entities to the Commission and will operate in all the EU official languages. It is an interactive website on which consumers and traders will be able to initiate ADR to resolve disputes arising from domestic or trans-national online transactions. This excludes disputes between consumers and traders that arise from sales or service contracts concluded offline and to disputes between traders.

4. The ODR platform is expected to be extremely user friendly. After lodgement of complaint, it will identify the correct ADR entity to handle the matter, translate the complaint (if necessary) and forward the dispute to them.
5. The ODR Platform shall maintain confidentiality and protect the personal data of all the Parties involved.

The rationale behind the legislations, as captured in the Recitals of the regulation is that *“being able to seek easy and low-cost dispute resolution can boost consumers’ and traders’ confidence in the digital Single Market.”*

Thus, the legislations aim to provide ADR (if the parties wish to use it) for all domestic and trans-national contractual disputes between an EU consumer against an EU trader through a national certified ADR Body which adheres to minimum quality standards. However, the use of ADR entities and the ODR platform requires an agreement between both the consumer and the trader regarding the same. In the absence of such an agreement, ADR/ODR cannot be attempted. This limits the practical applicability of the legislations.

Member States are expected to implement the legislations by July 2015 and the ODR platform will be operational by January 2016.

In line with this objective, the United Kingdom has published its legislation implementing the ADR/ODR EU legislations. With effect from 1st October 2015, it requires businesses that are obliged or have committed to use ADR to give information about it on their website

and as part of the contractual terms. Additionally, all businesses, irrespective of whether or not they have committed to use ADR, must inform the consumer of the appropriate ADR entity and willingness of the business to resolve the dispute through ADR. Furthermore, with effect from 9th January 2016, all businesses must provide a link to the EU ODR Platform on their website.

All other EU Member States are expected to follow through on the implementing legislation within a month. Thus, there is significant overhaul of consumer dispute redressal mechanism currently underway in the European Union.