

# 2015

## NEW EU legislation

### WHITEPAPER



## “NEW EU LEGISLATION ON OUT-OF-COURT DISPUTE RESOLUTION FOR CONSUMER DISPUTES”

### Alternative Dispute Resolution (ADR)

tools for resolving consumer disputes (mediation, conciliation, arbitration...) have existed in Europe for several decades.

They have proven to be a healthy alternative to judicial court proceedings, which are usually too intimidating, lengthy and – yes – also costly. In 2013, the EU decided to further promote the use of **alternative dispute resolution (ADR)** and adopted **two pieces of legislation**.

### DIRECTIVE

**2013/11/EU** on **Alternative Dispute Resolution for Consumer Disputes** (Directive on consumer ADR) requires Member States to ensure that all disputes between consumers and traders established in the Union, and which arise from the sale of goods or provisions of services can be submitted to an ADR entity = settled out-of-court.

### REGULATION (EU)

**No 524/2013** on **Online Dispute Resolution for Consumer Disputes** (Regulation on consumer ODR) has charged the Commission with setting up the European ODR platform (a web portal), through which consumers can opt for an out-of-court resolution of disputes online in the cross-border issues.



# GOAL: TRUST INCREASED = BUSINESS BOOSTED

As a result of these initiatives, it is believed that both consumers' confidence and the internal market performance should be boosted. We have seen in the past how fast and trustworthy system for resolution of shopping issues can be a major element in the business' success on the example of PayPal. Embracing the change and opportunities that the new EU legislation brings can prove to be a competitive advantage to European companies and market to compete successfully on a global scale.

## WHAT'S NEXT?

By **July 9, 2015**, all **EU member states have to enact national legislation**, which will describe how exactly the Directive will translate into rights and obligations of traders and consumers.

The national laws should come into force as of January 2016. Also obligations stemming from the Regulation on the EU ODR Platform will come into force as of January 9, 2016.

There is a considerable free space for the national governments to step in, and it still remains to be seen how each of the countries will adopt various areas of this new legislation. In this very

document, we are going to state what the EU legislation describes.

## 1. ADR Bodies in EU Countries

Some member states already have a full ADR coverage – their structure comprises of a general national body, plus a number of sector-specific ADR bodies that cover the main specialist areas (telecoms, energy, utilities, etc.). In some other member states, like France, Germany, Ireland, there exist some sector-specific bodies, but not a central national body filling in the gaps, so the full coverage is not guaranteed. In some of the EU countries, there is no history of ADR (apart from some activities involving judicial mediation or arbitration).

**It seems that almost all EU countries will establish a new national** (residual) body to cover whatever gap exists.

**One NOTE:** *Wherever we use the term ADR, we are referring to the alternative dispute resolution as such, not distinguishing between offline and online proceedings. Each ADR entity, if they want to be listed by the European Commission, should also provide the online alternative of proceedings (**Online Dispute Resolution – ODR**).*



## 2. ADR Scheme Can Be Made either Mandatory or Voluntary For Traders to Participate In

The new directive allows for the traders to specify in advance (in their general terms and conditions, for example) which ADR entities they have chosen to use. Even ADR entities based abroad can be selected. However, such a clause should not be binding for consumers in case it could have the effect of depriving them of their right to bring an action to court. If, however, this right is protected, such clauses are permitted.



In countries where the system is going to be mandatory for traders, it seems that the consumer would always be entitled to also choose the national residual body.

## 3. Traders' Duty To Inform Customers

**a)** On the website, as well as in the general term will be obliged to inform consumers about the ADR entity or ADR entities, whose services they use (voluntarily), and/or which they are requested to use by law. That information shall include the website address of the relevant ADR entity/entities. A link to the EU ODR Platform portal (for cross-border issues) should be provided as well.

**b)** On "durable medium". In case where a dispute between a consumer and a trader could not be settled further to a complaint submitted directly by the consumer to the trader, the trader provides the consumer with the information on the applicable ADR entities by email or another "durable medium" (e.g. paper).



## 4. Other Duties of Traders

Some other duties towards consumers can also be imposed on traders by the national legislation. Typically, this could be an obligation to actively participate in a proceeding by submitting



information as requested by an ADR entity. Both parties should be able to submit their information and evidence without being physically present.

As **online dispute resolution (ODR)** is a comfortable solution for both parties, not to mention it is also perfect for resolving cross-border disputes, consumers should be able to complain online wherever possible.

## 5. Consumer Is Obligated to Contact the Trader First

Consumers should contact a trader first in an effort to resolve the problem bilaterally before submitting a complaint to an ADR entity.

## 6. Decision Binding or Non-binding

In ADR procedures, which aim to resolve a dispute by suggesting a resolution (ADR can also have a form of mediation where the mediator does not propose a concrete solution), this resolution can be binding or non-binding. If the ADR entity wishes to achieve a binding nature of its resolutions, two conditions have to be met:

**1)** Before commencement of the proceedings, parties have to be

informed they can withdraw from the procedure at any stage.

**2)** After the solution is proposed (before agreeing or following a proposed solution), parties have to be informed that they still have the choice not to agree to/follow the proposed solution.

At the same time, the directive allows member states to grant these two rights (of withdrawal and consent with the decision) only to consumers. Also traders might provide their consent to abide by the proposed resolution in advance, before the decision is issued or even in general before the dispute arises (e.g. if it is mandated by terms of participation of an association or business system in which the trader participates).

## 7. Fees

The directive suggests that ADR procedures should **preferably be free of charge for the consumer**. In the event that costs be applied, the ADR procedure should be made as accessible and inexpensive for consumers as possible. The decision on the fee policy towards traders is fully in favour of national governments. However, it is possible to run an ADR entity also outside the scope of the Directive (outside the new national legislation transposing it). In such case, the ADR entity (run, for example, by a trade



association) will have full freedom to set out their fees.

## 8. The Duration of Resolving a Complaint

An ADR entity should conclude online and offline dispute resolution proceedings within 90 calendar days, starting on the date the selected ADR entity has received a complete complaint file, including all relevant documentation. In certain exceptional cases of a highly complex nature only, such as the situation where one of the parties is unable - on justified grounds - to take part in the ADR procedure, ADR entities should be able to extend the original timeframe.

In some sectors, especially when using sophisticated IT system for online proceedings, the duration of proceeding **can be significantly reduced.**

## 9. Cross-border Disputes

In case a problematic shopping issue in question is a cross-border one, and the trader has not satisfactorily met consumer's request, the consumer will be able to either:

- a) Click on the web address of the EU ODR Portal (which each trader has to provide on their website) and be redirected to a relevant ADR, or
- b) Click on the button of a trust mark with affiliated ADR service the trader is a member of and contact an ADR entity directly.

## 10. Smart Implementation of the New Legislation via Youstice

The new legislation and accompanying information campaigns by national governments is going to raise customer awareness about ADR, and expectations that



“their” traders will use ADR. Traders, both online and brick-and-mortar ones, who wish to use the new legislation to their advantage can integrate Youstice into their website and turn ADR into their best marketing tool.

**How we do it?** Traders download Youstice into their website’s customer service section. Customers digitally negotiate with the trader about their shopping complaints, both sides just clicking into standardized forms (customized for various sectors – retail, travel, PC games...). The platform is multilingual, so even parties speaking different languages can conveniently negotiate in their own languages. If they don’t reach an agreement, then the customer can transfer the case to a third neutral party (ADR entity partnering with Youstice) for a decision. This treatment of fairness and respect is also a tool a) to prevent customer negative reviews on Internet and social media, and b) to build customer trust and loyalty. The party who lost the case pays a small fee of EUR 15 – 30, depending on the country of dispute. Traders using Youstice are required to implement agreements/decisions and can display Youstice’s trusted service logo on their site. Customers are bound by ADR decisions, if they didn’t express their disapproval within 3 days from the moment the resolution was proposed by the neutral party. Both can still use their right to go to the regular court, should they wish so. Youstice is the new standard in handling customer complaints and disputes.

## CONCLUSIONS

The justice system as we know it can

change dramatically over the course of next months. **How will it change the relations between traders and consumers?**

If traders smartly adapt to the new situation in Europe, brought about by the new EU legislation, as well as **enhance their negotiation mechanisms** for dealing with consumer issues and **wisely choose their ADR bodies** (and possibly also a connected trust mark), many problems as they stand today will turn into issues of communication and further information, and not into disputes. And even if a problem persists, then a more friendly and discreet way of resolving a dispute can be applied. In case of ADR proceedings, the parties can remain partners and not be enemies in a dispute.

**For consumers, this can lead to higher satisfaction and confidence** as the gap between them and traders is bridged. **For traders, this can eventually mean cost reduction** rather than increase, less reputational damage in social media and elsewhere (what with limiting negative feedback), and higher customer retention. And for the European market, it is a chance to stand up to the challenges of global competition.

*The whitepaper has been put together by the **team of experts from Youstice** – an award-winning application to handle complaints, which also offers an option to resolve disputes via ODR to businesses and consumer worldwide.*

*More information here:*  
**[www.youstice.com](http://www.youstice.com)**

