

Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR)

CHAPTER II

ACCESS TO AND REQUIREMENTS APPLICABLE TO ADR ENTITIES AND ADR PROCEDURES

Article 5

Access to ADR entities and ADR procedures

1 Member States shall facilitate access by consumers to ADR procedures and shall ensure that disputes covered by this Directive and which involve a trader established on their respective territories can be submitted to an ADR entity which complies with the requirements set out in this Directive.

2 Member States shall ensure that ADR entities:

- a maintain an up-to-date website which provides the parties with easy access to information concerning the ADR procedure, and which enables consumers to submit a complaint and the requisite supporting documents online;
- b provide the parties, at their request, with the information referred to in point (a) on a durable medium;
- c where applicable, enable the consumer to submit a complaint offline;
- d enable the exchange of information between the parties via electronic means or, if applicable, by post;
- e accept both domestic and cross-border disputes, including disputes covered by Regulation (EU) No 524/2013; and
- f when dealing with disputes covered by this Directive, take the necessary measures to ensure that the processing of personal data complies with the rules on the protection of personal data laid down in the national legislation implementing Directive 95/46/EC in the Member State in which the ADR entity is established.

3 Member States may fulfil their obligation under paragraph 1 by ensuring the existence of a residual ADR entity which is competent to deal with disputes as referred to in that paragraph for the resolution of which no existing ADR entity is competent. Member States may also fulfil that obligation by relying on ADR entities established in another Member State or regional, transnational or pan-European dispute resolution entities, where traders from different Member States are covered by the same ADR entity, without prejudice to their responsibility to ensure full coverage and access to ADR entities.

4 Member States may, at their discretion, permit ADR entities to maintain and introduce procedural rules that allow them to refuse to deal with a given dispute on the grounds that:

- a the consumer did not attempt to contact the trader concerned in order to discuss his complaint and seek, as a first step, to resolve the matter directly with the trader;
- b the dispute is frivolous or vexatious;
- c the dispute is being or has previously been considered by another ADR entity or by a court;

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- d the value of the claim falls below or above a pre-specified monetary threshold;
- e the consumer has not submitted the complaint to the ADR entity within a pre-specified time limit, which shall not be set at less than one year from the date upon which the consumer submitted the complaint to the trader;
- f dealing with such a type of dispute would otherwise seriously impair the effective operation of the ADR entity.

Where, in accordance with its procedural rules, an ADR entity is unable to consider a dispute that has been submitted to it, that ADR entity shall provide both parties with a reasoned explanation of the grounds for not considering the dispute within three weeks of receiving the complaint file.

Such procedural rules shall not significantly impair consumers' access to ADR procedures, including in the case of cross-border disputes.

5 Member States shall ensure that, when ADR entities are permitted to establish pre-specified monetary thresholds in order to limit access to ADR procedures, those thresholds are not set at a level at which they significantly impair the consumers' access to complaint handling by ADR entities.

6 Where, in accordance with the procedural rules referred to in paragraph 4, an ADR entity is unable to consider a complaint that has been submitted to it, a Member State shall not be required to ensure that the consumer can submit his complaint to another ADR entity.

7 Where an ADR entity dealing with disputes in a specific economic sector is competent to consider disputes relating to a trader operating in that sector but which is not a member of the organisation or association forming or funding the ADR entity, the Member State shall be deemed to have fulfilled its obligation under paragraph 1 also with respect to disputes concerning that trader.

Article 6

Expertise, independence and impartiality

1 Member States shall ensure that the natural persons in charge of ADR possess the necessary expertise and are independent and impartial. This shall be guaranteed by ensuring that such persons:

- a possess the necessary knowledge and skills in the field of alternative or judicial resolution of consumer disputes, as well as a general understanding of law;
- b are appointed for a term of office of sufficient duration to ensure the independence of their actions, and are not liable to be relieved from their duties without just cause;
- c are not subject to any instructions from either party or their representatives;
- d are remunerated in a way that is not linked to the outcome of the procedure;
- e without undue delay disclose to the ADR entity any circumstances that may, or may be seen to, affect their independence and impartiality or give rise to a conflict of interest with either party to the dispute they are asked to resolve. The obligation to disclose such circumstances shall be a continuing obligation throughout the ADR procedure. It shall not apply where the ADR entity comprises only one natural person.

2 Member States shall ensure that ADR entities have in place procedures to ensure that in the case of circumstances referred to in point (e) of paragraph 1:

- a the natural person concerned is replaced by another natural person that shall be entrusted with conducting the ADR procedure; or failing that

- b the natural person concerned refrains from conducting the ADR procedure and, where possible, the ADR entity proposes to the parties to submit the dispute to another ADR entity which is competent to deal with the dispute; or failing that
- c the circumstances are disclosed to the parties and the natural person concerned is allowed to continue to conduct the ADR procedure only if the parties have not objected after they have been informed of the circumstances and their right to object.

This paragraph shall be without prejudice to point (a) of Article 9(2).

Where the ADR entity comprises only one natural person, only points (b) and (c) of the first subparagraph of this paragraph shall apply.

3 Where Member States decide to allow procedures referred to in point (a) of Article 2(2) as ADR procedures under this Directive, they shall ensure that, in addition to the general requirements set out in paragraphs 1 and 5, those procedures comply with the following specific requirements:

- a the natural persons in charge of dispute resolution are nominated by, or form part of, a collegial body composed of an equal number of representatives of consumer organisations and of representatives of the trader and are appointed as result of a transparent procedure;
- b the natural persons in charge of dispute resolution are granted a period of office of a minimum of three years to ensure the independence of their actions;
- c the natural persons in charge of dispute resolution commit not to work for the trader or a professional organisation or business association of which the trader is a member for a period of three years after their position in the dispute resolution entity has ended;
- d the dispute resolution entity does not have any hierarchical or functional link with the trader and is clearly separated from the trader's operational entities and has a sufficient budget at its disposal, which is separate from the trader's general budget, to fulfil its tasks.

4 Where the natural persons in charge of ADR are employed or remunerated exclusively by a professional organisation or a business association of which the trader is a member, Member States shall ensure that, in addition to the general requirements set out in paragraphs 1 and 5, they have a separate and dedicated budget at their disposal which is sufficient to fulfil their tasks.

This paragraph shall not apply where the natural persons concerned form part of a collegial body composed of an equal number of representatives of the professional organisation or business association by which they are employed or remunerated and of consumer organisations.

5 Member States shall ensure that ADR entities where the natural persons in charge of dispute resolution form part of a collegial body provide for an equal number of representatives of consumers' interests and of representatives of traders' interests in that body.

6 For the purposes of point (a) of paragraph 1, Member States shall encourage ADR entities to provide training for natural persons in charge of ADR. If such training is provided, competent authorities shall monitor the training schemes established by ADR entities, on the basis of information communicated to them in accordance with point (g) of Article 19(3).

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Article 7

Transparency

1 Member States shall ensure that ADR entities make publicly available on their websites, on a durable medium upon request, and by any other means they consider appropriate, clear and easily understandable information on:

- a their contact details, including postal address and e-mail address;
- b the fact that ADR entities are listed in accordance with Article 20(2);
- c the natural persons in charge of ADR, the method of their appointment and the length of their mandate;
- d the expertise, impartiality and independence of the natural persons in charge of ADR, if they are employed or remunerated exclusively by the trader;
- e their membership in networks of ADR entities facilitating cross-border dispute resolution, if applicable;
- f the types of disputes they are competent to deal with, including any threshold if applicable;
- g the procedural rules governing the resolution of a dispute and the grounds on which the ADR entity may refuse to deal with a given dispute in accordance with Article 5(4);
- h the languages in which complaints can be submitted to the ADR entity and in which the ADR procedure is conducted;
- i the types of rules the ADR entity may use as a basis for the dispute resolution (for example legal provisions, considerations of equity, codes of conduct);
- j any preliminary requirements the parties may have to meet before an ADR procedure can be instituted, including the requirement that an attempt be made by the consumer to resolve the matter directly with the trader;
- k whether or not the parties can withdraw from the procedure;
- l the costs, if any, to be borne by the parties, including any rules on awarding costs at the end of the procedure;
- m the average length of the ADR procedure;
- n the legal effect of the outcome of the ADR procedure, including the penalties for non-compliance in the case of a decision having binding effect on the parties, if applicable;
- o the enforceability of the ADR decision, if relevant.

2 Member States shall ensure that ADR entities make publicly available on their websites, on a durable medium upon request, and by any other means they consider appropriate, annual activity reports. Those reports shall include the following information relating to both domestic and cross-border disputes:

- a the number of disputes received and the types of complaints to which they related;
- b any systematic or significant problems that occur frequently and lead to disputes between consumers and traders; such information may be accompanied by recommendations as to how such problems can be avoided or resolved in future, in order to raise traders' standards and to facilitate the exchange of information and best practices;
- c the rate of disputes the ADR entity has refused to deal with and the percentage share of the types of grounds for such refusal as referred to in Article 5(4);

- d in the case of procedures referred to in point (a) of Article 2(2), the percentage shares of solutions proposed or imposed in favour of the consumer and in favour of the trader, and of disputes resolved by an amicable solution;
- e the percentage share of ADR procedures which were discontinued and, if known, the reasons for their discontinuation;
- f the average time taken to resolve disputes;
- g the rate of compliance, if known, with the outcomes of the ADR procedures;
- h cooperation of ADR entities within networks of ADR entities which facilitate the resolution of cross-border disputes, if applicable.

Article 8

Effectiveness

Member States shall ensure that ADR procedures are effective and fulfil the following requirements:

- (a) the ADR procedure is available and easily accessible online and offline to both parties irrespective of where they are;
- (b) the parties have access to the procedure without being obliged to retain a lawyer or a legal advisor, but the procedure shall not deprive the parties of their right to independent advice or to be represented or assisted by a third party at any stage of the procedure;
- (c) the ADR procedure is free of charge or available at a nominal fee for consumers;
- (d) the ADR entity which has received a complaint notifies the parties to the dispute as soon as it has received all the documents containing the relevant information relating to the complaint;
- (e) the outcome of the ADR procedure is made available within a period of 90 calendar days from the date on which the ADR entity has received the complete complaint file. In the case of highly complex disputes, the ADR entity in charge may, at its own discretion, extend the 90 calendar days' time period. The parties shall be informed of any extension of that period and of the expected length of time that will be needed for the conclusion of the dispute.

Article 9

Fairness

- 1 Member States shall ensure that in ADR procedures:
 - a the parties have the possibility, within a reasonable period of time, of expressing their point of view, of being provided by the ADR entity with the arguments, evidence, documents and facts put forward by the other party, any statements made and opinions given by experts, and of being able to comment on them;
 - b the parties are informed that they are not obliged to retain a lawyer or a legal advisor, but they may seek independent advice or be represented or assisted by a third party at any stage of the procedure;
 - c the parties are notified of the outcome of the ADR procedure in writing or on a durable medium, and are given a statement of the grounds on which the outcome is based.

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2 In ADR procedures which aim at resolving the dispute by proposing a solution, Member States shall ensure that:

- a The parties have the possibility of withdrawing from the procedure at any stage if they are dissatisfied with the performance or the operation of the procedure. They shall be informed of that right before the procedure commences. Where national rules provide for mandatory participation by the trader in ADR procedures, this point shall apply only to the consumer.
- b The parties, before agreeing or following a proposed solution, are informed that:
 - (i) they have the choice as to whether or not to agree to or follow the proposed solution;
 - (ii) participation in the procedure does not preclude the possibility of seeking redress through court proceedings;
 - (iii) the proposed solution may be different from an outcome determined by a court applying legal rules.
- c The parties, before agreeing to or following a proposed solution, are informed of the legal effect of agreeing to or following such a proposed solution.
- d The parties, before expressing their consent to a proposed solution or amicable agreement, are allowed a reasonable period of time to reflect.

3 Where, in accordance with national law, ADR procedures provide that their outcome becomes binding on the trader once the consumer has accepted the proposed solution, Article 9(2) shall be read as applicable only to the consumer.

Article 10

Liberty

1 Member States shall ensure that an agreement between a consumer and a trader to submit complaints to an ADR entity is not binding on the consumer if it was concluded before the dispute has materialised and if it has the effect of depriving the consumer of his right to bring an action before the courts for the settlement of the dispute.

2 Member States shall ensure that in ADR procedures which aim at resolving the dispute by imposing a solution the solution imposed may be binding on the parties only if they were informed of its binding nature in advance and specifically accepted this. Specific acceptance by the trader is not required if national rules provide that solutions are binding on traders.

Article 11

Legality

1 Member States shall ensure that in ADR procedures which aim at resolving the dispute by imposing a solution on the consumer:

- a in a situation where there is no conflict of laws, the solution imposed shall not result in the consumer being deprived of the protection afforded to him by the provisions that cannot be derogated from by agreement by virtue of the law of the Member State where the consumer and the trader are habitually resident;
- b in a situation involving a conflict of laws, where the law applicable to the sales or service contract is determined in accordance with Article 6(1) and (2) of Regulation

(EC) No 593/2008, the solution imposed by the ADR entity shall not result in the consumer being deprived of the protection afforded to him by the provisions that cannot be derogated from by agreement by virtue of the law of the Member State in which he is habitually resident;

- c in a situation involving a conflict of laws, where the law applicable to the sales or service contract is determined in accordance with Article 5(1) to (3) of the Rome Convention of 19 June 1980 on the law applicable to contractual obligations, the solution imposed by the ADR entity shall not result in the consumer being deprived of the protection afforded to him by the mandatory rules of the law of the Member State in which he is habitually resident.

2 For the purposes of this Article, ‘habitual residence’ shall be determined in accordance with Regulation (EC) No 593/2008.

Article 12

Effect of ADR procedures on limitation and prescription periods

1 Member States shall ensure that parties who, in an attempt to settle a dispute, have recourse to ADR procedures the outcome of which is not binding, are not subsequently prevented from initiating judicial proceedings in relation to that dispute as a result of the expiry of limitation or prescription periods during the ADR procedure.

2 Paragraph 1 shall be without prejudice to provisions on limitation or prescription contained in international agreements to which Member States are party.