

Ecommerce Europe's comments on the cross-border enforcement of consumer protection

Introduction

In its [New Consumer Agenda](#), published on 13 November 2020, the European Commission stressed the importance of business compliance with rules to guarantee an effective enforcement of consumer rights. As a result, all parties, meaning consumers, public authorities as well as traders, should cooperate to ensure that consumer law is properly understood and implemented.

In this respect, the New Consumer Agenda identified the facilitation of individual redress as a priority to be addressed within the assessment of the current framework with regards to its effectiveness. On 4 April 2022, the Commission opened a [public consultation](#) on the functioning of cross-border consumer law enforcement in the EU. As laid down in the Consumer Protection Cooperation (CPC) Regulation (EU) 2017/2394 as well as the Alternative Dispute Resolution (ADR) Directive 2013/11 and Online Resolution Directive (ODR) Regulation (EU) 524/2013, the Commission committed to submitting, respectively, a report on the application of the Regulation on CPC (Article 40), and a joint ADR/ODR application report in accordance with Article 26 of the Directive on ADR and Article 21 of the Regulation on ODR by 2023.

Ecommerce Europe welcomes the EU's initiative to evaluate the redress mechanisms available for EU consumers to enforce the rights to which they are entitled under the above-mentioned instruments. The current framework has been effective in creating a standard EU-wide out-of-court commercial dispute resolution mechanism. EU consumers have benefitted from more efficient ways of resolving domestic and cross-border disputes related to contractual obligations. Wide-spread infringements have been better tackled thanks to an enhanced cooperation among EU public authorities. However, Ecommerce Europe notes that there is a margin for improvement as regards businesses' involvement in the framework. While we recognise that this legislation is meant to streamline and harmonise consumers' rights within commercial disputes, we believe that traders should be enticed to actively participate in it to achieve a mutually beneficial situation. With this paper, we would like to share our views on the most relevant aspects to include in the reflection on the ongoing evaluation initiatives.

Key points

1. Invest in **harmonisation** of the rules and **incentives to facilitate traders' involvement** in consumer protection
2. Adjust the rules to the **omnichannel and cross-border nature** of e-commerce
3. Ensure **better involvement of stakeholders** in establishing goals and priorities of the competent national authorities

Harmonisation of cross-border consumer protection

Harmonised rules protecting consumers online and offline ensures the upholding of a frictionless Single Market both for consumers and traders, who can enjoy legal certainty and be fit for purpose. A fast complaint handling systems lies at the heart of a trustworthy online shopping environment. With this objective, the EU promoted the development of out-of-court dispute settlements by introducing the Directive on ADR and the Regulation on ODR in 2013. Nevertheless, regulatory frameworks across the EU are often not fully harmonised. In the case of ADR, the legislative landscape strongly diverges per country, with differences not only in terms of languages, applicable laws, and funding mechanisms but also with regards to their procedures (e.g., the legal value of solutions proposed by an ADR entity might be binding or non-binding). For instance, Member States are free to decide whether an “ADR entity brings the parties together with the aim of facilitating an amicable solution, or [whether it] proposes a solution or [it] imposes a solution”¹. As regards the ODR, the applicability of the Regulation is unequal for traders and consumers and varies across countries. While the latter are allowed to file a complaint before an ADR entity regardless of their country of establishment or the country where a trader is situated, a trader is only allowed to initiate a dispute against a consumer “in so far as the legislation of the Member State where the consumer is habitually resident allows for such disputes to be resolved through the intervention of an ADR entity”². Concretely, a trader can complain against a consumer only if they reside in Belgium, Germany, Luxemburg, or Poland. Considering the cross-border nature of e-commerce, this creates challenges for consumers and businesses wishing to make use of dispute mechanisms in a cross-border context.

Against this backdrop, traders, who usually have interest in selling at an EU scale, are faced with even more hurdles than consumers when it comes to their incentives to participate in consumer protection rules. While traders are not obliged, under the ADR Directive, to participate in ADR procedures, their participation “should be encouraged as far as possible”³, regardless of their country of establishment. Ecommerce Europe fully supports the setting up of EU-wide stimuli to nudge EU traders into alignment, instead of laying down obligations. However, as of now, the scope of the incentives remains national and generally unappealing to the traders. **Ecommerce Europe recognises that there is leeway for the EU to introduce and harmonise incentives across EU Member States while building on lessons learnt at national level and involving the businesses and their representatives in the process.** In so doing, the European Commission might drive a more positive and inclusive image of consumer protection legislation before the traders, spurring their active involvement.

Digital uptake

As mentioned in the Regulation on ODR, “[an] easy and low-cost dispute resolution can boost consumers’ and traders’ confidence in the digital Single Market”⁴. Ecommerce Europe entirely agrees with this statement and recommends making all possible joint endeavours to achieve an equally accessible and free dispute resolution mechanisms. Furthermore, we note that the definition and role of the digital Single Market has evolved drastically since 2013, when the ODR Regulation was drafted. We would like to point out that there is space for improvement as for the digital uptake within consumer protection, which could both enhance existing practices and increase of ambition of consumers’ rules. For instance, we recognise the need to update wording on the availability of digital tools to settle commercial dispute, notably by amending Recital 8 of the Regulation on ODR, which states that “there is currently a lack of mechanisms which allow consumers and traders to resolve such disputes through electronic means”. We would also like to stress the need to make the most of lessons learnt throughout the multiple reports available on ADR and ODR. As already highlighted in Recital 50 of the Directive on ADR as well as Recital 24 of the Regulation on ODR,

¹ Recital 21 of Alternative Dispute Resolution (ADR) Directive 2013/11

² Article 2.2 of Online Resolution Directive (ODR) Regulation (EU) 524/2013

³ Recital 49 of Alternative Dispute Resolution (ADR) Directive 2013/11

⁴ Recital 7 of Online Resolution Directive (ODR) Regulation (EU) 524/2013

consumers and traders should be encouraged to directly solve their dispute bilaterally, while the ODR platform should not replace such direct and timesaving litigation settlement. Moreover, as showed by the European Commission's implementation report of the ADR Directive and the ODR Regulation⁵, the initial purpose of the ODR platform, functioning as a single point of contact for consumers and traders to be referred to a competent ADR entity, seems to leave the potential of the tool partly untapped. Indeed, the ODR platform has showed a considerable added value⁶ for facilitating communication and direct settlements between the consumer and the trader including in cross-border disputes where the platform's multilingualism and translation functions enable communication between the parties. This suggests reviewing the legally prescribed workflow on the ODR platform in light of the deeper digital uptake within the consumer protection ecosystem and the increased share of cross-border cases submitted on the ODR platform (1/3 of cases in 2017⁷, 40% in 2018⁸, 44% in 2019⁹, 50% in 2020¹⁰ and in 2021¹¹).

To support the growing number of cross-border cases as well as to adjust the consumer protection rules to the omnichannel nature of commerce, the **Regulation on ODR should be enabled to apply to sales or service contracts concluded offline, making it channel-neutral**. It is clear that the ODR platform, which provides access to pan-European, multilingual online information on commercial litigations, would constitute an effective tool for omnichannel traders to initiate a dispute settlement with consumers regardless of the sale channel in which the transaction was concluded. We therefore suggest deleting Recital 15 and amending Article 2 of the Regulation on ODR by allowing the ODR platform to treat omnichannel sales or services. In addition, **we would like to invite the European Commission to explore ways to better integrate the ADR system and the ODR platform on the basis of Recital 11 of the Directive on ADR, while involving traders' association in this process**.

Enforcement

Ecommerce Europe is adamant that an effective enforcement of consumers rights would benefit the wider retail sector while enabling a smooth functioning of the Single Market and creating trust inducive to growth and innovation. While we welcome the European Commission's initiative to evaluate the application of the CPC Regulation expected in 2023, we would like to draw attention to complementary ways to achieve systematic enforcement. Notably, we think that traders could contribute more to attain the intended objective by facilitating their involvement in these procedures. The Directive on ADR sets out that ADR procedures "should preferably be free of charge for the consumer. In the event that costs are applied, the ADR procedure should be accessible, attractive and inexpensive for consumers"¹². Ecommerce Europe supports this important principle but notes the absence of similar rights for traders. In practice, traders are often charged for procedural costs or fees for ADR dispute settlement even when the outcome of the procedure is favourable to them. Moreover, when an ADR entity is even only partially privately funded, a regulatory choice that rests with Member States¹³, this means that traders already bear the general administrative costs. Consequently, **we would advise exploring alternative forms of funding at the EU level in order to minimise costs for both consumers and traders and to raise the level of involvement**

⁵ European Commission, 25.09.2019, [Implementation Report on the application of Directive 2013/11/EU of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and Regulation \(EU\) No 524/2013](#)

⁶ *Ibid.* page 15

⁷ European Commission, 13.12.2017, [Report from the Commission on the functioning of the European Online Dispute Resolution platform established under Regulation \(EU\) No 524/2013 on online dispute resolution for consumer disputes](#)

⁸ European Commission, 06.12.2018, [Second Report from the Commission on the functioning of the European Online Dispute Resolution platform established under Regulation \(EU\) No 524/2013 on online dispute resolution for consumer disputes](#)

⁹ See footnote 2

¹⁰ European Commission, 17.12.2020, [Third Report from the Commission on the functioning of the European Online Dispute Resolution platform established under Regulation \(EU\) No 524/2013 on online dispute resolution for consumer disputes](#)

¹¹ European Commission, 20.12.2021, [Fourth Report from the Commission on the functioning of the European Online Dispute Resolution platform established under Regulation \(EU\) No 524/2013 on online dispute resolution for consumer disputes](#)

¹² Recital 41 of the Directive on Alternative Dispute Resolution (ADR) Directive 2013/11

¹³ Recital 46 of the Directive on Alternative Dispute Resolution (ADR) Directive 2013/11

in these procedures by traders. Additionally, to avoid overburdening ADR entities while creating unnecessary costs for traders, we recommend introducing a minimum threshold for the transactions to be submitted to ADR entities, while adjusting the workflow of the ODR platform to tackle them.

Ecommerce Europe recognises the key role of the Regulation on CPC in spurring competent national authorities to cooperate on the enforcement of consumer protection law especially in case of cross-border infringements as it provides legal certainty for businesses. We especially applaud the European Commission's initiative to assess the Regulation's effectiveness of enforcement in addressing EU-wide practices that contravene consumer law. To assist the evaluation process, **we would like to recommend a better involvement of the relevant stakeholders, such as consumer organisations and trader organisations, in the setting out of specific goals for the competent national authorities.** To summarise, we believe that traders' compliance with the rules should be facilitated and given priority to public authorities' lengthy procedures yielding sanctions and generating unnecessary costs.