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from: General Secretariat
to: Permanent Representatives Committee / Council
Subject: Proposal for a Directive of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR) – Outcome of the European Parliament's first reading (Strasbourg, 11 to 14 March 2013)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

¹ OJ C 145, 30.6.2007, p.5

In this context, the rapporteur, Mr. Louis GRECH (S&D, MT) presented one compromise amendment (amendment 167) to the proposal for a Directive, on behalf of the Committee on the Internal Market and Consumer Protection. This amendment had been agreed during the informal contacts referred to above.

II. VOTE

When it voted on 12 March 2013, the plenary adopted the compromise amendment to the proposal for a Directive. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto¹. The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position. The act would then be adopted in the wording which corresponds to the Parliament's position.

¹ The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in *bold and italics*. The symbol "■" indicates deleted text.

Alternative consumer dispute resolution *I**

European Parliament legislative resolution of 12 March 2013 on the proposal for a directive of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR) (COM(2011)0793 – C7-0454/2011– 2011/0373(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2012)0793),
 - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0454/2011),
 - having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Netherlands Senate and by the German Bundesrat, asserting that the draft legislative act does not comply with the principle of subsidiarity,
 - having regard to the opinion of the European Economic and Social Committee of 28 March 2012¹,
 - having regard to the undertaking given by the Council representative by letter of 12 December 2012 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
 - having regard to Rules 55 and 37 of its Rules of Procedure,
 - having regard to the report of the Committee on the Internal Market and Consumer Protection and the opinion of the Committee on Legal Affairs (A7-0280/2012),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

¹ OJ C 181, 21.6.2012, p. 93.

- Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Position of the European Parliament adopted at first reading on 12 March 2013 with a view to the adoption of Directive 2013/.../EU of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Acting in accordance with the ordinary legislative procedure²,

¹ OJ C 181, 21.6.2012, p. 93.

² Position of the European Parliament of 12 March 2013.

Whereas:

- (1) Article 169(1) and point (a) of Article 169(2) of the Treaty on the Functioning of the European Union (TFEU) provide that the Union is to contribute to the attainment of a high level of consumer protection through measures adopted pursuant to Article 114 TFEU. Article 38 of the Charter of Fundamental Rights of the European Union provides that Union policies are to ensure a high level of consumer protection.
- (2) In accordance with Article 26(2) TFEU, the internal market is to comprise an area without internal frontiers in which the free movement of goods and services is ensured. *The internal market should provide consumers with added value in the form of better quality, greater variety, reasonable prices and high safety standards for goods and services, which should promote a high level of consumer protection.*
- (3) *Fragmentation of the internal market is detrimental to competitiveness, growth and job creation within the Union. Eliminating direct and indirect obstacles to the proper functioning of the internal market and improving citizens' trust is essential for the completion of the internal market.*
- (4) *Ensuring access to simple, efficient, fast and low-cost ways of resolving domestic and cross-border disputes which arise from sales or service contracts should benefit consumers and therefore boost their confidence in the market. That access should apply to online as well as to offline transactions, and is particularly important when consumers shop across borders.*

- (5) Alternative dispute resolution (ADR) offers a simple, fast and low-cost out-of-court solution to disputes between consumers and traders. However, ADR is not yet sufficiently *and consistently* developed across the Union. *It is regrettable that, despite Commission Recommendations 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes¹ and 2001/310/EC of 4 April 2001 on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes², ADR has not been correctly established and is not running satisfactorily in all geographical areas or business sectors in the Union. Consumers and traders are still not aware of the existing out-of-court redress mechanisms, with only a small percentage of citizens knowing how to file a complaint with an ADR entity. Where ADR procedures are available, their quality levels vary considerably in the Member States and cross-border disputes are often not handled effectively by ADR entities.*
- (6) *The disparities in ADR coverage, quality and awareness in Member States constitute a barrier to the internal market and are among the reasons why many consumers abstain from shopping across borders and why they lack confidence that potential disputes with traders can be resolved in an easy, fast and inexpensive way. For the same reasons, traders might abstain from selling to consumers in other Member States where there is no sufficient access to high-quality ADR procedures. Furthermore, traders established in a Member State where high-quality ADR procedures are not sufficiently available are put at a competitive disadvantage with regard to traders that have access to such procedures and can thus resolve consumer disputes faster and more cheaply.*

¹ OJ L 115, 17.4.1998, p. 31.

² OJ L 109, 19.4.2001, p. 56.

- (7) *In order for consumers to exploit fully the potential of the internal market, ADR should be available for all types of domestic and cross-border disputes covered by this Directive, ADR procedures should comply with consistent quality requirements that apply throughout the Union, and consumers and traders should be aware of the existence of such procedures. Due to increased cross-border trade and movement of persons, it is also important that ADR entities handle cross-border disputes effectively.*
- (8) *As advocated by the European Parliament in its resolutions of 25 October 2011 on alternative dispute resolution in civil, commercial and family matters and of 20 May 2010 on delivering a single market to consumers and citizens, any holistic approach to the single market which delivers results for its citizens should as a priority develop simple, affordable, expedient and accessible system of redress.*
- (9) In its Communication of 13 April 2011 entitled 'Single Market Act - Twelve levers to boost growth and strengthen confidence - "Working together to create new growth" **COM(2011) 206** , the Commission identified legislation on ADR which includes an electronic commerce (e-commerce) dimension, as one of the twelve levers to boost growth **COM(2011) 206** , strengthen confidence *and make progress towards completing* the Single Market.

- (10) In its conclusions of 24-25 March and 23 October 2011, the European Council invited the European Parliament and the Council to adopt, by the end of 2012, a first set of priority measures to bring a new impetus to the Single Market. ***Moreover, in its Conclusions of 30 May 2011 on the Priorities for relaunching the Single Market, the Council of the European Union highlighted the importance of e-commerce and agreed that consumer ADR schemes can offer low-cost, simple and quick redress for both consumers and traders. The successful implementation of those schemes requires sustained political commitment and support from all actors, without compromising the affordability, transparency, flexibility, speed and quality of decision-making by the ADR entities falling within the scope of this Directive.***

- (11) *Given the increasing importance of online commerce and in particular cross-border trade as a pillar of Union economic activity, a properly functioning ADR infrastructure for consumer disputes and a properly integrated online dispute resolution (ODR) framework for consumer disputes arising from online transactions are necessary in order to achieve the Single Market Act's aim of boosting citizens' confidence in the internal market.*
- (12) *This Directive and Regulation (EU) No .../2013⁺ of the European Parliament and of the Council of ..⁺⁺. on online dispute resolution for consumer disputes¹ are two interlinked and complementary legislative instruments. Regulation (EU) No/.../2013 provides for the establishment of an ODR platform which offers consumers and traders a single point of entry for the out-of-court resolution of online disputes, through ADR entities which are linked to the platform and offer ADR through quality ADR procedures. The availability of quality ADR entities across the Union is thus a precondition for the proper functioning of the ODR platform.*

⁺ OJ: Please insert the serial number of Regulation in document PE-CONS 80/12-2011/0374 (COD).

⁺⁺ OJ: Please insert the date of Regulation in document PE-CONS 80/12-2011/0374 (COD).

¹ OJ L ...

- (13) *This Directive should not apply to non-economic services of general interest. Non-economic services are services which are not performed for economic consideration. As a result, non-economic services of general interest performed by the State or on behalf of the State, without remuneration, should not be covered by this Directive irrespective of the legal form through which those services are provided.*
- (14) *This Directive should not apply to health care services as defined in point (a) of Article 3 of Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare¹.*

¹ *OJ L 88, 4.4.2011, p. 45.*

- (15) The development within the ■ Union of properly functioning ADR is necessary to strengthen consumers' confidence in the internal market, including in the area of online commerce, *and to fulfil the potential for and opportunities of cross-border and online trade*. Such development should build on existing ADR procedures in the Member States and respect their legal traditions. *Both existing and newly established properly functioning dispute resolution entities that comply with the quality requirements set out in this Directive should be considered as “ADR entities” within the meaning of this Directive. The dissemination of ADR can also prove to be important in those Member States in which there is a substantial backlog of cases pending before the courts, preventing Union citizens from exercising their right to a fair trial within a reasonable time.*

- (16) This Directive should apply to **■** disputes between consumers and traders ***concerning contractual obligations stemming*** from ***sales*** or **■** ***services contracts, both online and offline***, in all economic sectors, other than the exempted sectors. This should include ***disputes arising from the sale or provision of digital content for remuneration***. ***This Directive should apply to*** complaints submitted by consumers against traders. ***It should not apply to complaints submitted by traders against consumers or*** to disputes between traders. ***However***, it should not prevent Member States from adopting or maintaining in force provisions on procedures for the out-of-court resolution of such disputes.
- (17) ***Member States should be permitted to maintain or introduce national provisions with regard to procedures not covered by this Directive, such as internal complaint handling procedures operated by the trader. Such internal complaint handling procedures can constitute an effective means for resolving consumer disputes at an early stage.***
- (18) The definition of “consumer” should cover natural persons who are acting outside their trade, business, craft or profession. However, if the contract is concluded for purposes partly within and partly outside the person’s trade (dual purpose contracts) and the trade purpose is so limited as not to be predominant in the overall context of the supply, that person should also be considered as a consumer.

- (19) *Some existing Union legal acts already contain provisions concerning ADR. In order to ensure legal certainty, it should be provided that, in the event of conflict, this Directive is to prevail, except where it explicitly provides otherwise. In particular, this Directive should be without prejudice to Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters¹, which already sets out a framework for systems of mediation at Union level for cross-border disputes, without preventing the application of that Directive to internal mediation systems. This Directive is intended to apply horizontally to all types of ADR procedures, including to ADR procedures covered by Directive 2008/52/EC.*

¹ OJ L 136, 24.5.2008, p. 3.

- (20) ADR entities are highly diverse across the Union but also within the Member States. This Directive should cover any entity that is established on a durable basis **■**, offers the resolution of a dispute *between a consumer and a trader* through an ADR procedure *and is listed in accordance with this Directive. This Directive may also cover, if Member States so decide, dispute resolution entities which impose solutions which are binding on the parties. However, an out-of-court procedure which is created **■** on an ad hoc basis for a single dispute between a consumer and a trader should not be considered as an ADR procedure.*
- (21) *Also ADR procedures are highly diverse across the Union and within Member States. They can take the form of procedures where the ADR entity brings the parties together with the aim of facilitating an amicable solution, or procedures where the ADR entity proposes a solution or procedures where the ADR entity imposes a solution. They can also take the form of a combination of two or more such procedures. This Directive should be without prejudice to the form which ADR procedures take in the Member States.*
- (22) *Procedures before dispute resolution entities where the natural persons in charge of dispute resolution are employed or receive any form of remuneration exclusively from the trader are likely to be exposed to a conflict of interest. Therefore, those procedures should, in principle, be excluded from the scope of this Directive, unless a Member State decides that such procedures can be recognised as ADR procedures under this Directive and provided that those entities are in complete conformity with the specific requirements on independence and impartiality laid down in this Directive. ADR entities offering dispute resolution through such procedures should be subject to regular evaluation of their compliance with the quality requirements set out in this Directive, including the specific additional requirements ensuring their independence.*

- (23) *This Directive should not apply to procedures before consumer-complaint handling systems operated by the trader, nor to direct negotiations between the parties. Furthermore, it should not apply to attempts made by a judge to settle a dispute in the course of a judicial proceeding concerning that dispute.*
- (24) Member States should ensure that disputes covered by this Directive can be submitted to an ADR entity ***which complies with*** the requirements set out in this Directive ***and is listed in accordance with it***. Member States should have the possibility of fulfilling this obligation by ***building*** on existing ***properly functioning*** ADR entities and adjusting their scope of application, if needed, or by providing for the creation of new ADR entities. ***This Directive should not preclude the functioning of existing dispute resolution entities operating within the framework of national consumer protection authorities of Member States where State officials are in charge of dispute resolution. State officials should be regarded as representatives of both consumers' and traders' interests.*** This Directive should not oblige Member States to create a specific ADR entity in each retail sector. ***When necessary, in order to ensure full sectoral and geographical coverage by and access to ADR,*** Member States should have the possibility to provide for the creation of a residual ADR entity that deals with disputes for the resolution of which no specific ***ADR*** entity is competent. ***Residual ADR entities are intended to be a safeguard for consumers and traders by ensuring that there are no gaps in access to an ADR entity.***

(25) *This Directive should not prevent Member States from maintaining or introducing legislation on procedures for out-of-court resolution of consumer contractual disputes which is in compliance with the requirements set out in this Directive. Furthermore, in order to ensure that ADR entities can operate effectively, those entities should have the possibility of maintaining or introducing, in accordance with the laws of the Member State in which they are established, procedural rules that allow them to refuse to deal with disputes in specific circumstances, for example where a dispute is too complex and would therefore be better resolved in court. However, procedural rules allowing ADR entities to refuse to deal with a dispute should not impair significantly consumers' access to ADR procedures, including in the case of cross-border disputes. Thus, when providing for a monetary threshold, Member States should always take into account that the real value of a dispute may vary among Member States and, consequently, setting a disproportionately high threshold in one Member State could impair access to ADR procedures for consumers from other Member States. Member States should not be required to ensure that the consumer can submit his complaint to another ADR entity, where an ADR entity to which the complaint was first submitted has refused to deal with it because of its procedural rules. In such cases Member States should be deemed to have fulfilled their obligation to ensure full coverage of ADR entities.*

- (26) *This Directive should allow traders established in a Member State to be covered by an ADR entity which is established in another Member State. In order to improve the coverage of and consumer access to ADR across the Union, Member States should have the possibility of deciding to rely on ADR entities established in another Member State or regional, transnational or pan-European ADR entities, where traders from different Member States are covered by the same ADR entity. Recourse to ADR entities established in another Member State or to transnational or pan-European ADR entities should, however, be without prejudice to Member States' responsibility to ensure full coverage by and access to ADR entities.*

- (27) This Directive should be without prejudice to Member States maintaining or introducing ADR procedures dealing jointly with identical or similar disputes between a trader and several consumers. ***Comprehensive impact assessments should be carried out on collective out-of-court settlements before such settlements are proposed at Union level. The existence of an effective system for collective claims and easy recourse to ADR should be complementary and they should not be mutually exclusive procedures.***
- (28) The processing of information relating to disputes covered by this Directive should comply with the rules on the protection of personal data laid down in the laws, regulations and administrative provisions of the Member States adopted pursuant to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data¹.

¹ OJ L 281, 23.11.1995, p. 31.

- (29) *Confidentiality and privacy should be respected at all times during the ADR procedure. Member States should be encouraged to protect the confidentiality of ADR procedures in any subsequent civil or commercial judicial proceedings or arbitration.*
- (30) *Member States should nevertheless ensure that ADR entities make publicly available any systematic or significant problems that occur frequently and lead to disputes between consumers and traders. The information communicated in this regard could 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.*

- (31) *Member States should ensure that ADR entities resolve disputes in a manner that is fair, practical and proportionate to both the consumer and the trader, on the basis of an objective assessment of the circumstances in which the complaint is made and with due regard to the rights of the parties.*
- (32) *The independence and integrity of ADR entities is crucial in order to gain Union citizens' trust that ADR mechanisms will offer them a fair and independent outcome. The natural person or collegial body in charge of ADR should be independent of all those who might have an interest in the outcome and should have no conflict of interest which could impede him or it from reaching a decision in a fair, impartial and independent manner.*
- (33) The natural persons in charge of ADR should only be considered impartial if they cannot be subject to pressure that potentially influences their attitude towards the dispute. *In order to ensure the independence of their actions, those persons should also be appointed for a sufficient duration, and should not be subject to any instructions from either party or their representative.*

- (34) *In order to ensure the absence of any conflict of interest, natural persons in charge of ADR should disclose any circumstances that might affect their independence and impartiality or give rise to a conflict of interest with either party to the dispute they are asked to resolve. This could be any financial interest, direct or indirect, in the outcome of the ADR procedure or any personal or business relationship with one or more of the parties during the three years prior to assuming the post, including any capacity other than for the purposes of ADR in which the person concerned has acted for one or more of the parties, for a professional organisation or a business association of which one of the parties is a member or for any other member thereof.*
- (35) *There is a particular need to ensure the absence of such pressure where the natural persons in charge of ADR are employed or receive any form of remuneration from the trader. Therefore, specific requirements should be provided for in the event that Member States decide to allow dispute resolution procedures in such cases to qualify as ADR procedures under this Directive. Where natural persons in charge of ADR are employed or receive any form of remuneration exclusively from a professional organisation or a business association of which the trader is a member, they should have at their disposal a separate and dedicated budget sufficient to fulfil their tasks.*

- (36) *It is essential for the success of ADR, in particular in order to ensure the necessary trust in ADR procedures, that the natural persons in charge of ADR possess the necessary expertise, including a general understanding of law. In particular, those persons should have sufficient general knowledge of legal matters in order to understand the legal implications of the dispute, without being obliged to be a qualified legal professional.*
- (37) *The applicability of certain quality principles to ADR procedures strengthens both consumers' and traders' confidence in such procedures. Such quality principles were first developed at Union level in Recommendations 98/257/EC and 2001/310/EC. By making some of the principles established in those Commission Recommendations binding, this Directive establishes a set of quality requirements which apply to all ADR procedures carried out by an ADR entity which has been notified to the Commission.*

- (38) *This Directive should establish quality requirements of ADR entities, which should ensure the same level of protection and rights for consumers in both domestic and cross-border disputes. This Directive should not prevent Member States from adopting or maintaining rules that go beyond what is provided for in this Directive.*
- (39) *ADR entities should be accessible and transparent.* In order to ensure the transparency of ADR entities and of ADR procedures it is necessary that the parties receive ■ the *clear and accessible* information they need *in order* to take an informed decision before engaging in an ADR procedure. *The provision of such information to traders should not be required where their participation in ADR procedures is mandatory under national law.*

(40) A properly functioning ADR entity should conclude online and offline dispute resolution proceedings expeditiously within a timeframe of 90 calendar days starting on the date on which the ADR entity has received the complete complaint file including all relevant documentation pertaining to that complaint, and ending on the date on which the outcome of the ADR procedure is made available. The ADR entity which has received a complaint should notify the parties after receiving all the documents necessary to carry out the ADR procedure. In certain exceptional cases of a highly complex nature, including 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 timeframe for the purpose of undertaking an examination of the case in question. The parties should be informed of any such extension, and of the expected approximate length of time that will be needed for the conclusion of the dispute.

(41) 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. To that end, costs should not exceed a nominal fee.

(42) ADR procedures should be fair so that the parties to a dispute are fully informed about their rights and the consequences of the choices they make in the context of an ADR procedure. ADR entities should inform consumers of their rights before they agree to or follow a proposed solution. Both parties should also be able to submit their information and evidence without being physically present.

(43) An agreement between a consumer and a trader to submit complaints to an ADR entity should not be 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. Furthermore, in ADR procedures which aim at resolving the dispute by imposing a solution, the solution imposed should 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 should not be required if national rules provide that such solutions are binding on traders.

(44) *In ADR procedures which aim at resolving the dispute by imposing a solution on the consumer, in a situation where there is no conflict of laws, the solution imposed should 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. 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 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)¹, the solution imposed by the ADR entity should 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 the consumer is habitually resident. 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 obligations², the solution imposed by the ADR entity should not result in the consumer being deprived of the protection afforded to the consumer by the mandatory rules of the law of the Member State in which the consumer is habitually resident.*

¹ OJ L 177, 4.7.2008, p. 6.

² OJ L 266, 9.10.1980, p. 1.

(45) *The right to an effective remedy and the right to a fair trial are fundamental rights laid down in Article 47 of the Charter of Fundamental Rights of the European Union. Therefore, ADR procedures should not be designed to replace court procedures and should not deprive consumers or traders of their rights to seek redress before the courts. This Directive should not prevent parties from exercising their right of access to the judicial system. In cases where a dispute could not be resolved through a given ADR procedure whose outcome is not binding, the parties should subsequently not be prevented from initiating judicial proceedings in relation to that dispute. Member States should be free to choose the appropriate means to achieve this objective. They should have the possibility to provide, inter alia, that limitation or prescription periods do not expire during an ADR procedure.*

- (46) *In order to function efficiently, ADR entities should have sufficient human, material and financial resources at their disposal. Member States should decide on an appropriate form of funding for ADR entities on their territories, without restricting the funding of entities that are already operational. This Directive should be without prejudice to the question of whether ADR entities are publicly or privately funded or funded through a combination of public and private funding. However, ADR entities should be encouraged to specifically consider private forms of funding and to utilise public funds only at Member States' discretion. This Directive should not affect the possibility for businesses or for professional organisations or business associations to fund ADR entities.*
- (47) When a dispute arises it is necessary that consumers are able to identify quickly which ADR entities are competent to deal with their complaint and to know whether or not the trader concerned will participate in proceedings submitted to an ADR entity. Traders *who commit to use ADR entities to resolve disputes with consumers should inform consumers of the address and website of the ADR entity or entities by which they are covered. That information should be provided in a clear, comprehensible and easily accessible way on the trader's website, where one exists, and if applicable in the general terms and conditions of sales or service contracts between the trader and the consumer. Traders should have the possibility of including on their websites, and in the terms and conditions of the relevant contracts, any additional information on their internal complaint handling procedures or on any other ways of directly contacting them with a view to settling disputes with consumers without referring them to an ADR entity. Where a dispute cannot be settled directly, the trader should provide the consumer, on paper or another durable medium, with the information on relevant ADR entities and specify if he will make use of them.*

- (48) *The obligation on traders to inform consumers about the ADR entities by which those traders are covered should be without prejudice to provisions on consumer information on out-of-court redress procedures contained in other Union legal acts, which should apply in addition to the relevant information obligation provided for in this Directive.*
- (49) This Directive should not require the participation of traders in ADR procedures to be mandatory or the outcome of such procedures to be binding on traders, when a consumer has lodged a complaint against them. However, *in order to ensure that consumers have access to redress and that they are not obliged to forego their claims, traders should be encouraged as far as possible to participate in ADR procedures. Therefore,* this Directive should be without prejudice to any national rules making the participation of traders in such procedures mandatory or *subject to incentives or sanctions or making* their outcome binding on traders, provided that such legislation does not prevent the parties from exercising their right of access to the judicial system as provided for in Article 47 of the Charter of Fundamental Rights of the European Union.

- (50) *In order to avoid an unnecessary burden being placed on ADR entities, Member States should encourage consumers to contact the trader in an effort to solve the problem bilaterally before submitting a complaint to an ADR entity. In many cases, doing so would allow consumers to settle their disputes swiftly and at an early stage.*
- (51) *Member States should involve the representatives of professional organisations, business associations and consumer organisations when developing ADR, in particular in relation to the principles of impartiality and independence.*
- (52) Member States should ensure that ADR entities cooperate on the resolution of cross-border disputes.

- (53) Networks of ADR entities ■ , such as the financial dispute resolution network “FIN-NET” in the area of financial services, should be strengthened within the Union. Member States should encourage ADR entities to become part of such networks.
- (54) Close cooperation between ADR entities and national authorities *should strengthen the effective application* of Union legal acts on consumer protection. *The Commission and the Member States should facilitate cooperation between the ADR entities, in order to encourage the exchange of best practice and technical expertise and to discuss any problems arising from the operation of ADR procedures. Such cooperation should be supported inter alia through the Union’s forthcoming Consumer Programme.*

(55) In order to ensure that ADR entities function properly and effectively, they should be closely monitored. *For that purpose, each Member States should designate a competent authority or competent authorities which should perform that function.* The Commission and competent authorities under this Directive should publish and update a list of ADR entities that comply with this Directive. *Member States should ensure that ADR entities, the European Consumer Centre Network, and, where appropriate, the bodies designated in accordance with this Directive publish that list on their website by providing a link to the Commission's website, and whenever possible on a durable medium at their premises. Furthermore, Member States should also encourage relevant consumer organisations and business associations to publish the list. Member States should also ensure the appropriate dissemination of information on what consumers should do if they have a dispute with a trader.* In addition, competent authorities should publish regular reports on the development and functioning of ADR entities *in their Member States*. ADR entities should notify to competent authorities specific information on which those reports should be based. Member States should encourage ADR entities to provide such information using Commission Recommendation 2010/304/EU of 12 May 2010 on the use of a harmonised methodology for classifying and reporting consumer complaints and enquiries¹ .

¹ OJ L 136, 2.6.2010, p. 1.

- (56) It is necessary for Member States to lay down **rules on** penalties for infringements of the **national** provisions **adopted to comply with** this Directive **■** and to ensure that **those rules** are **implemented**. The penalties should be effective, proportionate and dissuasive.
- (57) Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation)¹ **■** should be amended to include a reference to this Directive in its Annex so as to reinforce cross-border cooperation on enforcement of this Directive.
- (58) Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests² (Injunctions Directive) should be amended to include a reference to this Directive in its Annex so as to ensure that the consumers' collective interests laid down in this Directive are protected.
- (59) ***In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011³, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.***

¹ OJ L 364, 9.12.2004, p. 1.

² OJ L 110, 1.5.2009, p. 30.

³ ***OJ C 369, 17.12.2011, p. 14.***

- (60) Since the objective of this Directive, namely to contribute, *through the achievement of a high level of consumer protection and without restricting consumers' access to the courts*, to the proper functioning of the internal market **■**, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (61) This Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and specifically Articles 7, 8, 38 and 47 thereof.
- (62) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data¹ and delivered an opinion on 12 January 2012²,

HAVE ADOPTED THIS DIRECTIVE:

¹ OJ L 8, 12.1.2001, p. 1.

² OJ C 136, 11.5.2012, p. 1.

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

*The purpose of this Directive is, through the achievement of a high level of consumer protection, to contribute to the **proper** functioning of the internal market ■ by ensuring that ■ consumers **can, on a voluntary basis, submit complaints against** traders ■ to entities offering **independent, impartial, transparent, effective, fast** and fair alternative dispute resolution procedures. **This Directive is without prejudice to national legislation making participation in such procedures mandatory, provided that such legislation does not prevent the parties from exercising their right of access to the judicial system.***

Article 2

Scope

1. This Directive shall apply to procedures for the out-of-court resolution of **domestic and cross-border disputes concerning** contractual **obligations stemming from sales contracts or service contracts between** a trader established in the Union **and** a consumer resident in the Union through the intervention of **an ADR** entity which proposes or imposes a solution or brings the parties together with the aim of facilitating an amicable solution ■ .
2. This Directive shall not apply to:
 - (a) procedures before dispute resolution entities where the natural persons in charge of dispute resolution are employed **or remunerated** exclusively by the **individual trader, unless Member States decide to allow such procedures as ADR procedures under this Directive and the requirements set out in Chapter II, including the specific requirements of independence and transparency set out in Article 6(3), are met;**

- (b) procedures before consumer complaint-handling systems operated by the trader;
- (c) *non-economic services of general interest*;
- (d) *disputes between traders*;
- (e) direct negotiation between the consumer and the trader **■** ;
- (f) attempts made by a judge to settle a dispute in the course of a judicial proceeding concerning that dispute;
- (g) *procedures initiated by a trader against a consumer*;
- (h) *health services provided by health professionals to patients to assess, maintain or restore their state of health, including the prescription, dispensation and provision of medicinal products and medical devices*;
- (i) *public providers of further or higher education*.

3. *This Directive establishes harmonised quality requirements for ADR entities and ADR procedures in order to ensure that, after its implementation, consumers have access to high-quality, transparent, effective and fair out-of-court redress mechanisms no matter where they reside in the Union. Member States may maintain or introduce rules that go beyond those laid down by this Directive, in order to ensure a higher level of consumer protection.*

4. *This Directive acknowledges the competence of Member States to determine whether ADR entities established on their territories are to have the power to impose a solution.*

Article 3

Relationship with other Union legal acts

- █
1. *Save as otherwise set out in this Directive, if any provision of this Directive conflicts with a provision laid down in another Union legal act and relating to out-of-court redress procedures initiated by a consumer against a trader, the provision of this Directive shall prevail.*
 2. *This Directive shall be without prejudice to Directive 2008/52/EC.*
 3. *Article 13 of this Directive shall be without prejudice to provisions on consumer information on out-of-court redress procedures contained in other Union legal acts which shall apply in addition to that Article.*

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Article 4

Definitions

1. For the purposes of this Directive:
 - (a) "consumer" means any natural person who is acting for purposes which are outside his trade, business, craft or profession;
 - (b) "trader" means any natural persons, or any legal person irrespective of whether privately or publicly owned, who is acting, including through any person acting in his name or on his behalf, for purposes relating to his trade, business, craft or profession;

- (c) *"sales contract" means any contract under which the trader transfers or undertakes to transfer the ownership of goods to the consumer and the consumer pays or undertakes to pay the price thereof, including any contract having as its object both goods and services;*
- (d) *"service contract" means any contract other than a sales contract under which the trader supplies or undertakes to supply a service to the consumer and the consumer pays or undertakes to pay the price thereof;*
- I**
- (e) *"domestic dispute" means a contractual dispute arising from a sales or service contract where, at the time the consumer orders the goods or services, the consumer is resident in the same Member State as that in which the trader is established;*
- (f) *"cross-border dispute" means a contractual dispute arising from a sales or service contract where, at the time the consumer orders the goods or services, the consumer is resident in a Member State other than the Member State in which the trader is established;*
- (g) *"ADR procedure" means a procedure, as referred to in Article 2, which complies with the requirements set out in this Directive and is carried out by an ADR entity;*
- (h) *"ADR entity" means any entity, however named or referred to, which is established on a durable basis and offers the resolution of a dispute through an ADR procedure and that is listed in accordance with Article 20(2);*

■

(i) *"competent authority" means any public authority designated by a Member State for the purposes of this Directive and established at national, regional or local level.*

2. *A trader is established:*

- *if the trader is a natural person, where he has his place of business;*
- *if the trader is a company or other legal person or association of natural or legal persons, where it has its statutory seat, central administration or place of business, including a branch, agency or any other establishment.*

3. *An ADR entity is established:*

- *if it is operated by a natural person, at the place where it carries out ADR activities;*
- *if the entity is operated by a legal person or association of natural or legal persons, at the place where that legal person or association of natural or legal persons carries out ADR activities or has its statutory seat*
- *if it is operated by an authority or other public body, at the place where that authority or other public body has its seat.*

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 off-line;*

- (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.../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.*

⁺ OJ: please insert the serial number of document PE-CONS 80/12.

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;*

- (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).*

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;

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- (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.

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

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- (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.*

CHAPTER III

INFORMATION AND COOPERATION

Article 13

Consumer information by traders

1. Member States shall ensure that traders established on their territories inform consumers about the ADR *entity or ADR* entities by which those traders are covered, *when those traders commit to or are obliged to use those entities to resolve disputes with* consumers. *That* information shall include the *website address* of the relevant ADR *entity or ADR entities*.
2. The information referred to in paragraph 1 shall be provided in *a clear, comprehensible and* easily accessible way on the *traders'* website, where one exists *and, if applicable*, in the general terms and conditions of *sales or service* contracts between the trader and a consumer.
3. *Member States shall ensure that, in cases where a dispute between a consumer and a trader established in their territory could not be settled further to a complaint submitted directly by the consumer to the trader, the trader provides the consumer with the information referred to in paragraph 1, specifying whether he will make use of the relevant ADR entities to settle the dispute. That information shall be provided on paper or on another durable medium.*

Article 14

Assistance for consumers

1. Member States shall ensure that, ■ with regard to ■ disputes arising from cross-border sales *or service contracts, consumers can obtain assistance* to access the ADR entity operating in another Member State which is competent to deal with their cross-border dispute.
2. Member States *shall* confer responsibility for the task referred to in paragraph 1 on their centres of the European Consumer Centre Network, on consumer organisations or on any other body.

Article 15

General information

1. Member States shall ensure that ADR entities ■ , the centres of the European Consumer Centre Network and, where appropriate, the bodies designated in accordance with Article 14(2), make publicly available *on their websites by providing a link to the Commission's website, and whenever possible on a durable medium* at their premises, *the list of ADR entities referred to in Article 20(4)*.

2. *Member States shall encourage relevant consumer organisations and business associations to make publicly available on their websites and, by any other means they consider appropriate the list of ADR entities referred to in Article 20(4).*
3. *The Commission and Member States shall ensure appropriate dissemination of information on how consumers can access ADR procedures for resolving disputes covered by this Directive.*
4. *The Commission and the Member States shall take accompanying measures to encourage consumer organisations and professional organisations, at Union and at national level, to raise awareness of ADR entities and their procedures and to promote ADR take-up by traders and consumers. Those bodies shall also be encouraged to provide consumers with information about competent ADR entities when they receive complaints from consumers.*

Article 16

Cooperation *and exchanges of experience* between ADR entities ■

1. Member States shall ensure that ADR entities cooperate in the resolution of cross-border disputes *and conduct regular exchanges of best practices as regards the settlement of both cross-border and domestic disputes.*
2. *The Commission shall support and facilitate the networking of national ADR entities and the exchange and dissemination of their best practices and experiences.*
3. Where a network of ADR entities facilitating the resolution of cross-border disputes exists in a sector-specific area within the Union, Member States shall encourage ADR entities that deal with disputes in that area to become a member of that network.
4. The Commission shall publish a list containing the names and contact details of the networks referred to in paragraph 3. The Commission shall, *when* necessary, update this list ■.

Article 17

Cooperation between ADR entities and national authorities enforcing Union legal acts on consumer protection

1. Member States shall ensure cooperation between ADR entities and national authorities entrusted with the enforcement of Union legal acts on consumer protection.
2. This cooperation shall *in particular* include mutual exchange of information on **■** practices *in specific business sectors* about which consumers have *repeatedly* lodged complaints. It shall also include the provision of technical assessment and information by such national authorities to ADR entities where such assessment or information is necessary for the handling of individual disputes *and is already available*.
3. Member States shall ensure that cooperation and mutual information exchanges referred to in paragraphs 1 and 2 comply with the rules on the protection of personal data laid down in Directive 95/46/EC.
4. *This Article shall be without prejudice to provisions on professional and commercial secrecy which apply to the national authorities enforcing Union legal acts on consumer protection. ADR entities shall be subject to rules of professional secrecy or other equivalent duties of confidentiality laid down in the legislation of the Member States where they are established.*

CHAPTER IV

THE ROLE OF COMPETENT AUTHORITIES AND THE COMMISSION

Article 18

Designation of competent authorities

1. Each Member State shall designate a competent authority ***which shall carry out the functions set out in Articles 19 and 20. Each Member State may designate more than one competent authority. If a Member State does so, it shall determine which of the competent authorities designated is the single point of contact for the Commission.*** Each Member State shall communicate the competent authority ***or, where appropriate, the competent authorities, including the single point of contact*** it has designated, to the Commission.
2. The Commission shall establish a list of the competent authorities ***including, where appropriate, the single point of contact*** communicated to it in accordance with paragraph 1, and publish that list in the *Official Journal of the European Union*.

Article 19

Information to be notified to competent authorities by *dispute resolution* entities

1. Member States shall ensure that *dispute resolution* entities established on their territories, ***which intend to qualify as ADR entities under this Directive and be listed in accordance with Article 20(2)***, notify to the competent authority the following:
 - (a) their name, contact details and website address;
 - (b) information on their structure and funding, including information on the natural persons in charge of dispute resolution, their ***remuneration, term of office*** and by whom they are employed;
 - (c) their procedural rules;
 - (d) their fees, if applicable;

- (e) the *average* length of the dispute resolution procedures;
- (f) the language or languages in which complaints can be submitted and the dispute resolution procedure conducted;
- (g) a statement on the *types of disputes covered by the dispute resolution procedure*;
- (h) *the grounds on which the dispute resolution entity may refuse to deal with a given dispute in accordance with Article 5(4)*;

■

- (i) a reasoned statement ■ on whether *the entity* qualifies as an ADR entity falling within the scope of this Directive and complies with the *quality requirements* set out in *Chapter II*.

In the event of changes to the information referred to in points (a) to (h), ADR entities shall *without undue delay* notify those changes to the competent authority.

2. *Where Member States decide to allow procedures as referred to in point (a) of Article 2(2), they shall ensure that ADR entities applying such procedures notify to the competent authority, in addition to the information and statements referred to in paragraph 1, the information necessary to assess their compliance with the specific additional requirements of independence and transparency set out in Article 6(3).*
3. Member States shall ensure that ADR entities communicate to the competent authorities *every two years* information *on*:
 - (a) the number of disputes received and the types of complaints to which they related;
 - (b) the percentage share of ADR procedures which were discontinued before an outcome was reached;
 - (c) the average time taken to resolve the disputes received;

(d) the rate of compliance, if known, with the outcomes of the ADR procedures;

■

(e) any *systematic or significant* problems *that occur frequently and lead* to disputes between consumers and traders. *The information communicated in this regard may be accompanied by recommendations as to how such problems can be avoided or resolved in future;*

(f) where applicable, an assessment of the effectiveness of their cooperation within networks of ADR entities facilitating the resolution of cross-border disputes;

(g) *where applicable, the training provided to natural persons in charge of ADR in accordance with Article 6(6);*

(h) *an* assessment of the effectiveness of the ADR procedure offered by the entity and of possible ways of improving its performance.

Article 20

Role of the competent authorities and of the Commission

1. Each competent authority shall assess, *in particular* on the basis of the information it has received in accordance with Article 19(1), whether the *dispute resolution* entities notified to it qualify as ADR entities falling within the scope of this Directive and comply with the quality requirements set out in *Chapter II and in national provisions implementing it, including national provisions going beyond the requirements of this Directive, in conformity with Union law*.

2. Each competent authority shall, on the basis of the assessment referred to in paragraph 1, list **all** the ADR entities that **have been notified to it and** fulfil the conditions set out in paragraph 1.

That list shall include the following:

- (a) the name, the contact details and the website addresses of the ADR entities referred to in the first subparagraph;
- (b) their fees, if applicable;
- (c) the language or languages in which complaints can be submitted and the ADR procedure conducted;
- (d) *the types of disputes covered by the ADR procedure;*
- (e) *the sectors and categories of disputes covered by each ADR entity;*
- █
- (f) the need for the physical presence of the parties or of their representatives, if applicable, *including a statement by the ADR entity on whether the ADR procedure is or can be conducted as an oral or a written procedure;* █

- (g) the binding or non-binding nature of the outcome of the procedure; **and**
- (h) ***the grounds on which the ADR entity may refuse to deal with a given dispute in accordance with Article 5(4).***

Each competent authority shall notify the ***list referred to in the first subparagraph of this paragraph*** to the Commission. If any changes are notified to the competent authority in accordance with the second subparagraph of Article 19(1), that list shall be updated ***without undue delay and the relevant information notified to the Commission.***

If a dispute resolution entity listed as ADR entity under this Directive no longer complies with the requirements referred to in paragraph 1, the competent authority concerned shall contact that dispute resolution entity, stating the requirements the dispute resolution entity fails to comply with and requesting it to ensure compliance immediately. If the dispute resolution entity after a period of three months still does not fulfil the requirements referred to in paragraph 1, the competent authority shall remove the dispute resolution entity from the list referred to in the first subparagraph of this paragraph. That list shall be updated without undue delay and the relevant information notified to the Commission.

3. ***If a Member State has designated more than one competent authority, the list and its updates referred to in paragraph 2 shall be notified to the Commission by the single point of contact referred to in Article 18(1). That list and those updates shall relate to all ADR entities established in that Member State.***

4. The Commission shall establish a list of the ADR entities notified to it in accordance with paragraph 2 and update that list whenever changes are notified to the Commission **■**. The Commission shall make publicly available that list and its updates ***on its website and on a durable medium. The Commission shall*** transmit ***that list and its updates*** to the competent authorities. Where a Member State has designated a single point of contact in accordance with Article 18(1), the Commission shall transmit that list and its updates to the single point of contact.
5. Each competent authority shall make publicly available the consolidated list of ADR entities referred to in paragraph 4 on its website ***by providing a link to the relevant Commission website. In addition, each competent authority shall make publicly available that consolidated list on a durable medium.***
6. ***By...**** ***and every four years thereafter***, each competent authority shall publish ***and send to the Commission*** a report on the development and functioning of ADR entities. That report shall in particular:

■
 - (a) identify best practices of ADR entities;

* *OJ please insert date: Five years after entry into force of this Directive.*

- (b) point out the shortcomings, supported by statistics, that hinder the functioning of ADR entities for both domestic and cross-border disputes, where appropriate;
- (c) make recommendations on how to improve the *effective and efficient* functioning of ADR entities, where appropriate.

7. ***If a Member State has designated more than one competent authority in accordance with Article 18(1), the report referred to in paragraph 6 of this Article shall be published by the single point of contact referred to in Article 18(1). That report shall relate to all ADR entities established in that Member State.***

CHAPTER V

FINAL PROVISIONS

Article 21

Penalties

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted *in particular* pursuant to Article 13 ■ and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

Article 22

Amendment to Regulation (EC) No 2006/2004

In the Annex to Regulation (EC) No 2006/2004, the following point is added:

"20. Directive 2013/.../EU⁺ of the European Parliament and of the Council of ...⁺⁺ on alternative dispute resolution for consumer disputes (OJ L..., ..., p. ...) ⁺⁺⁺: Article 13."

⁺ OJ: Please insert the serial number of this Directive.

⁺⁺ OJ: Please insert the date of this Directive.

⁺⁺⁺ OJ: Please insert the publication data of this Directive.

Article 23

Amendment to Directive 2009/22/EC

In **Annex I** to Directive 2009/22/EC the following point is added:

"14. Directive 2013/.../EU⁺ of the European Parliament and of the Council of ...⁺⁺ on alternative dispute resolution for consumer disputes (OJ L..., ..., p. ...) ⁺⁺⁺: Article 13."

Article 24

Communication

1. By ...^{*} Member States shall communicate to the Commission:
 - (a) where appropriate, the names and contact details of the bodies designated in accordance with Article 14(2); and
 - (b) the competent authorities ***including, where appropriate, the single point of contact,*** designated in accordance with Article 18(1).

Member States shall inform the Commission of any subsequent changes to this information.

2. By ...^{**}, Member States shall communicate to the Commission the first list referred to in Article 20(2).
3. The Commission shall transmit to the Member States the information referred to in point (a) of paragraph 1.

⁺ OJ: Please insert the serial number of this Directive.

⁺⁺ OJ: Please insert the date of this Directive.

⁺⁺⁺ OJ: Please insert the publication data of this Directive.

^{*} OJ: Please insert date two years after entry into force of this Directive.

^{**} OJ: Please insert date *two* years and six months after entry into force of this Directive.

Article 25
Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ...^{*}. They shall forthwith communicate to the Commission the text of those provisions ■ .

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 26
Report

By ...^{**}, and every **four** years thereafter, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Directive. That report shall consider the development and the use of ADR entities and the impact of this Directive on consumers and **traders, in particular on the awareness of consumers and the level of adoption by** traders. That report shall be accompanied, where appropriate, by proposals for amendment of this Directive.

Article 27
Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

* OJ: **two years** after entry into force of this Directive.

** OJ: **six years** after entry into force of this Directive.

Article 28
Addressees

This Directive is addressed to the Member States.

Done at,

For the European Parliament

For the Council

The President

The President

■