

Module 5

Alternative Dispute Resolution (ADR) & Online Dispute Resolution (ODR)

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“Alternative Dispute Resolution allows me to solve disputes with a consumer in a quick and simple way”

Trader

“Being able to rely on an impartial body is a relief when a dispute with a trader happens”

Consumer

“The ODR platform allows me to take care of complaints from consumers from another EU country, which allows me to improve my business”

Trader

Introduction

Dear entrepreneur,

This Handbook is part of the ConsumerLaw Ready project addressed specifically to micro, small and medium-sized companies that interact with consumers.

The ConsumerLaw Ready project is a European-wide project managed by BEUC (the European Consumer Organisation) in a consortium with UEAPME (the Voice of SMEs in Europe) and Eurochambres (the association of European Chambers of Commerce and Industry). It is funded by the European Union with the support of the European Parliament and the European Commission.

The objective of the project is to assist you in complying with the requirements of EU consumer law.

EU consumer law consists of different pieces of legislation adopted by the European Union over the last 25 years and transposed by each EU Member State in their respective national law. In 2017, the European Commission has concluded an evaluation to check whether the rules are still fit for purpose. The result was overall positive^[1]. The main finding was that the existing rules need to be better enforced by authorities and better known by businesses and consumers. The ConsumerLaw Ready project aims to enhance the knowledge of traders, in particular of SMEs, regarding consumer rights and their corresponding legal duties.

The Handbook consists of five modules. Each one deals with one particular topic of EU consumer law:

- Module 1 deals with the rules on pre-contractual information requirements,
- Module 2 presents the rules on the consumer's right to withdraw from distance and off-premises contracts
- Module 3 concentrates on the remedies which traders must provide when do not conform with the contract
- Module 4 focuses on unfair commercial practices and unfair contract terms
- Module 5 introduces alternative dispute resolution and the Online Dispute Resolution (ODR) platform, an official website managed by the European Commission dedicated to helping consumers and traders resolve their disputes out-of-court.

This Handbook is just one of the learning materials created within the ConsumerLaw Ready project. The website consumerlawready.eu contains other learning tools, such as videos, quizzes and an 'e-test' through which you can obtain a certificate. You can also connect with experts and other SMEs through a forum.

The Module 5 of the Handbook aims to make you familiar with ADR (Alternative Dispute Resolution) and ODR (Online Dispute Resolution). It presents what ADR is, what an ADR body is, what your legal obligations related to ADR are and how to use ADR. It also explains what ODR (Online Dispute Resolution) is, what your legal obligations related to ODR are and how to use ODR. It gives you tips to make it easier for you to comply with the law.

^[1] You can find more information about the evaluation, its findings and follow-up actions on the website of the European Commission: http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=59332

The Module presents the ADR/ODR laid down in Directive 2013/11/EU of the European Parliament and of the Council of 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC as well as the Regulation No 524/2013 of the European Parliament and of the Council of 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC.

We hope that you find the information provided in the Handbook useful.

Examples

Example 1, national version

A customer who bought one laptop in your store returns it after a few days claiming that it does not work and seeking a refund. Although the laptop does not work properly now, you do not believe that the product was defective at the time of purchase.

Example 1, online version

A customer from a neighbouring country buys a laptop from your website. A few days after delivery, he writes you an e-mail claiming that it does not work and requesting a full refund. You do not believe that the product was defective when it was delivered.

Example 2

Your shop sells furniture, art pieces and other high quality interior decorations. One customer is not happy about the quality of a product you sold her and asks for a discount. You disagree.

Example 3

Your newly launched restaurant has been advertised in the media promising a complimentary bottle of champagne with dinner during the opening week. However, before the week finishes, the champagne has run-out, and the new order has not been yet delivered. One of your customers has not received the complimentary bottle and complains as he feels cheated.

In each of the above scenarios, you have a dispute with a customer that may not be possible to settle with your customer directly. Perhaps the customer will feel unfairly treated and won't buy from your shop or website again. Perhaps your customer will post a negative review online which will impact negatively on your business. Perhaps the customer will bring you to court which will be time consuming, expensive and damaging to your reputation.

So what can be done?

Clearly, the best thing is to avoid disputes in the first place.

The next best thing, if disputes arise, is to resolve them directly with your customer.

If no direct solution can be found, court proceedings may be an option but these, as noted above, could be costly and time-consuming. Furthermore, if your customer is based in a different EU country, European law may allow your customer to sue you in his/her own country¹, which can increase the inconvenience and expense involved for you as a trader.

¹ Please see Module 1 on Pre-contractual information requirements (the chapter on Cross-border sales: what happens when I offer my products or services to consumers outside my country)

Thankfully, a better solution exists: Alternative dispute resolution.

In this module, we will discuss:

Alternative Dispute Resolution (ADR) & Online Dispute Resolution (ODR)

- **Alternative Dispute Resolution (ADR)** is an out-of-court process for solving disputes between you and your customers, with the assistance of an ADR body².
- **Online Dispute Resolution (ODR)** is when ADR happens online. The European Commission platform provides on the EU web portal to facilitate ODR between you and your online customers.

This module will answer these 10 questions:

1. What is Alternative Dispute Resolution (ADR)? (I)
2. What are the advantages of ADR? (I)
3. What is an ADR body? (II)
4. What baseline standards do all ADR bodies have to comply with? (III)
5. What different techniques do ADR bodies use to resolve disputes? (IV)
6. How does ADR work in your country and in your sector? (V)
7. How can you find an ADR body for your business sector? (V)
8. What are your legal obligations related to ADR? (VI)
9. A dispute arises that you can't resolve – how to use ADR? (VII)
10. When you trade online – how to use ODR? (VIII-X)

² Throughout the whole module when the ADR body is mentioned, we mean the ADR body that complies with the requirements of the EU Directive, and hence is notified to the European Commission.

Section I - Alternative Dispute Resolution (ADR)

I. What is Alternative Dispute Resolution (ADR)?

Alternative Dispute Resolution (ADR), also sometimes called '**out-of-court dispute resolution**' is a procedure for solving disputes between consumers and traders without going to court. It involves the use of an ADR body which is an impartial body that uses dispute resolution techniques that may include mediation, arbitration or mixed methods.

Under European law, ADR can be used for any dispute arising from a contract between a trader and consumer, whether the product was bought online or offline or whether you and your customer live in the same or in different EU countries.



What are the advantages of ADR?

ADR is easy to use

It is designed to be easy to use and is generally less formal than court procedures.

ADR is impartial

It observes certain baseline standards of impartiality so that you and your customers know the processes are fair.

ADR is inexpensive

It is provided for free or for a nominal fee.

ADR is efficient

A dispute referred to ADR will be resolved, except for exceptional cases, within 90 days.

ADR promotes goodwill

Using ADR will be seen by your customers as a sign of good-will and a commitment to fairness and good customer care.

ADR is private

Unlike courts, ADR is not generally conducted in public thus minimizing the risk of reputational damage that could arise from a dispute.

ADR is flexible

Using ADR can result in pragmatic solutions which you and your customer may consider more convenient than what might be prescribed by law or imposed by a court.

Remember this example from the introduction?

A customer from a neighbouring country buys a laptop from your website. A couple of days after delivery, he writes you an e-mail claiming that it does not work and requesting a full refund. You do not believe that the product was defective when it was delivered.

Simple solution – Our advice

This dispute can be referred to ADR. The ADR body chosen will hear from both sides and propose a solution. This service will be provided for free or for a nominal fee and you will not have to use a lawyer. The ADR body may find for you or the consumer or may propose a compromise solution that is considered fair by both sides: for example, you may agree to the return of the laptop or to repair of any defects found.

II. What is an ADR body?

An ADR body is an impartial organization or individual that helps consumers and traders resolve disputes without going to court. ADR bodies have existed in many European countries for some time. Dispute Boards, Arbitration services, Conciliators, Mediators and even Ombudsmen: all of these can be considered ADR bodies.

However, a problem with ADR in the past was that, depending on the country, ADR was available for disputes only in particular sectors, such as travel or electricity. Furthermore, in the past, ADR bodies were not all equally independent and did not all have similarly user-friendly procedures.

The European Union was aware of the advantages of ADR for consumers and for traders. It knew that ADR could contribute to increasing confidence in the Single Market and promoting growth. To address the problems that existed with ADR, therefore, it adopted legislation in this area.

The ADR Directive³ came into force on 9 July 2015 and applies to:

1. All consumer sectors (except for healthcare and public higher education services).
2. All EU countries
3. Online and offline purchases,

Under the legislation, an ADR body can apply to the competent authority in the member state where it is based to become a notified ADR body. If an ADR body is notified under the legislation, it is a guarantee that it complies with certain quality standards relating to fairness, efficiency and accessibility. Throughout the

whole module when the ADR body is mentioned, we mean the ADR body that complies with the requirements of the EU Directive, and notified to the European Commission.

ADR in Malta

In Malta there are currently a number of agencies/dispute resolution bodies which offer ADR.

These are:

- ADR Malta⁴
- the Complaints and Conciliation Directorate (Residual ADR) within the Malta Competition and Consumer Affairs Authority⁵ and
- Office of the Arbiter for Financial Services⁶
- Malta Mediation Centre⁷

For more information on the details of what each body offers kindly view the links provided or alternatively click on the following link and select the 'Malta' option: <https://ec.europa.eu/consumers/odr/main/?event=main.adr.show2>

III. What baseline standards do notified ADR bodies have to comply with?

ADR bodies that are notified under the terms of the ADR Directive must comply with the following standards:

They are impartial

Notified ADR bodies will usually be fully independent from the consumer and the trader in a dispute. In some cases, trader groups may be allowed to finance approved ADR bodies but only under strict conditions

³ Directive 2013/11/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC

⁴ <https://mac.org.mt/en/Pages/Welcome-MAC.aspx>

⁵ <http://www.mccaa.org.mt/en/complaints>

⁶ <https://financialarbiter.org.mt/en/Pages/Home.aspx>

⁷ <https://justice.gov.mt/en/mmc/Pages/home.aspx>

that guarantee the impartiality of the dispute resolution process.

They are competent

Notified bodies will be expert in ADR procedure so that the services they provide can be both fair and effective. They will also be expert in the substantive law in the area or areas in which they work (for example: an ADR body that deals with consumer disputes related to air passenger rights will know the law in this area).

They are affordable

Notified ADR bodies must provide their services for free or for a nominal charge.

They are efficient

Notified ADR bodies should complete a case within 90 days (except for disputes of exceptional complexity which may take longer). It should not be necessary for you or the consumer to physically attend the process. Neither you nor your customer will need to use a lawyer.

They are transparent

Notified ADR bodies will publish details of business sectors they deal with; the procedures they employ; the costs (if any) involved; and the legal consequences of their decisions. They are also required to publish annual reports giving information on the number of disputes handled; the number and nature of disputes which they refused to deal with; and the average time taken to resolve a dispute.

Case Study: The Furniture Ombudsman in the UK publishes not only the statistics and the list of subscribed retailers, but also various guides both to consumers and to companies

<http://www.thefurnitureombudsman.org/>

These are baseline standards all notified ADR bodies must comply with. However, not all ADR bodies work in exactly the same way. In addition to the above-mentioned standards, some ADR bodies might need to comply with additional standards because of the business sector they deal with or the member state in which they are based. Also different ADR bodies will use different techniques to resolve disputes.

Before using a particular ADR body, therefore, you may wish to find out more about how it carries out its work.

IV. What are the different models of ADR?

ADR bodies may use different dispute resolution techniques including the following:

Mediation

In mediation, the ADR body will clarify the facts of a dispute; establish the views of you and your consumer; and help you agree a resolution that is acceptable to you both.

Case Study: The Belgian Consumer Mediation Service gives several examples of cases where it was possible to find a compromise, such as a discount for the next bill in the restaurant or, in the case of a fitness club subscription, a temporary interruption of the subscription during renovation works.

<http://www.mediationconsommateur.be>

Arbitration

An arbitrator will listen to both sides of the dispute, assess what the outcome of the dispute should be, and propose a solution based on the assessment.



- Although traders and consumers, once a dispute between them arises, may agree to submit to an ADR process, traders are not permitted to include contract terms at the point of sale that oblige customers to use ADR instead of the courts should a dispute arise

Case Study: the decisions of the Travel Sector Complaints Board in the Netherlands are binding on the trader and have to be complied with within 2 months.

Mixed Methods

Some ADR bodies will combine different techniques within their procedure. For example, they might begin with mediation, and if agreement is impossible, then propose a solution based on their own assessment of the situation.

The resolutions provided by ADR may be binding or non-binding:

- Some ADR bodies issue decisions or recommendations that you and your customer can choose to accept or not (non-binding).
- Some ADR bodies make recommendations or decisions that you will be obliged to follow (binding). Depending on the ADR body, these decisions might only be binding on you or be binding on you and your customer.

The following points can be noted about binding and non-binding ADR:

- If the decision of an ADR body is to be binding, you will be informed of this at the beginning of the process.
- If a binding decision is made but you disagree with it and question its fairness, the decision can still be challenged in court.

As stated above, all notified ADR bodies must publish information on their procedure and on their work. This information will be available on the website of the ADR or will be given to you in a durable form on request.

Different ADR Bodies in Malta – remit and procedure

1. ADR Malta⁸ deals with a number of consumer goods issues which include:

Food - Fruit and vegetables

Food - Meat

Clothing (including tailor-made goods) and footwear

Large domestic household appliances (including vacuum cleaners and microwaves)

Small domestic household appliances (including coffee machines and food- processing appliances)

Electronic goods (non-ICT/recreational)

Information and communication technology (ICT) goods

Leisure goods (sports equipment, musical instruments, etc)

New cars

Second-hand cars

This entity is competent on disputes initiated by consumers against traders and for disputes against traders established in Italy and Malta.

⁸ <https://mac.org.mt/en/Pages/Welcome-MAC.aspx>

The entity handles procedure in Maltese, English and Italian with an average length of the procedure of 30 days.

The procedure is conducted in writing or orally and the entity requires the physical presence of the parties and/or their representative in some cases.

The procedure is binding upon agreement by one or both parties.

The Entity can refuse a case on the following grounds:

- The consumer did not attempt to contact the trader first to try and resolve the matter bilaterally
- The dispute is frivolous or vexatious
- The complaint is being or has previously been considered by another dispute resolution body or by a court
- The value of the claim is below or above the required threshold.

Fixed fees have to be paid by both the consumer and trader. A €35.40 standard fee to be paid by the consumer and €59 per hour paid equally by the Consumer and the trader, whatever the value of the goods or services involved.

2. The Complaints and Conciliation Directorate (Residual ADR) within the Malta Competition and Consume Affairs Authority⁹

The CCD deals directly with the following disputes related to consumer goods:

- Food - Fruit and vegetables
- Food - Meat
- Food - Bread and Cereals
- Food - Health food and nutrients
- Food - Other
- Non-alcoholic beverages
- Alcoholic beverages
- Clothing (including tailor-made goods) and footwear
- House maintenance and improvement goods
- Furnishings

Small domestic household appliances (including coffee machines and food- processing appliances)

Electronic goods (non-ICT/recreational)

Leisure goods (sports equipment, musical instruments, etc)

New cars

Second-hand cars

Other personal transport

Spares and accessories for vehicles and other means of personal transport

Fuels and lubricants for vehicles and other means of personal transport

Books, magazines, newspapers, stationery (excluding postal delivery)

Pets and pet goods

Electrical appliances for personal care

Cosmetics and toiletries for personal care

Jewellery, silverware, clocks, watches and accessories

Baby and child care articles

Cleaning and maintenance products, articles for cleaning and non-durable household articles

Energy and Water

Water

Electricity

Gas

Other energy sources

This entity is competent for complaints initiated by consumers against traders (B2C) and only deals with traders based in Malta.

There are no fees to be paid by either the consumer or the trader and the entity handles the procedure in English, Maltese and Italian.

The procedure has an average length of 30 days. The procedure is binding upon agreement by one or both parties.

This entity can refuse disputes on the following grounds:

- The consumer did not attempt to contact the trader first to try and resolve the matter bilaterally
- The dispute is frivolous or vexatious
- The complaint is being or has previously been considered by another dispute resolution body or by a court

⁹ <http://www.mccaa.org.mt/en/complaints>

-The value of the claim is below or above the required threshold

-The consumer has not submitted the complaint to the dispute resolution body within the required time limit.

It must be noted at this stage that in the instance where an amicable solution is not reached, you can either (at the consumer's request): submit a claim before the Consumer Claims Tribunal (CCT¹⁰) or withdraw the complaint.

3. Office of the Arbiter for Financial Services¹¹

The Office of the Arbiter for Financial Services is a body set up by law with power to mediate, investigate and adjudicate complaints filed by customers against all financial services providers

This body is competent in disputes related to:

Financial Services

Financial Services - Payment account and payment services

Financial Services - Credit (excluding mortgage/home loans)

Financial Services - Mortgages / Home loans

Financial Services - Savings

Financial Services - Other

Investments, pensions and securities

Non-life Insurance - Home and property

Non-life Insurance - Transport

The entity is also competent for disputes initiated by Consumers against traders. The procedure has an average length of 90 day(s) and the outcome is binding on consumers and traders.

It also important to note that the procedure is carried out in writing or orally and the entity requires the physical presence of the parties and/or their representative in some specific cases.

¹⁰ Consumer Claims Tribunal - procedure

<http://www.mccaa.org.mt/en/consumer-claims-tribunal>

¹¹ Office of the Arbiter for Financial Services

<https://financiararbiter.org.mt/en/Pages/Home.aspx>

The process is mainly carried out on a mediation basis.

Participation in the mediation by the parties to a complaint is on a voluntary basis, and a party may withdraw from participation at any time.

This body can refuse disputes on the following grounds:

-The consumer did not attempt to contact the trader first to try and resolve the matter bilaterally

-The dispute is frivolous or vexatious

-The complaint is being or has previously been considered by another dispute resolution body or by a court

-The consumer has not submitted the complaint to the dispute resolution body within the required time limit.

The entity is only competent for disputes against traders established in Malta.

It must also be pointed out that there are some fees in place which the consumer has to pay, no fees apply to traders. The fee stands at 25 euros which can be fully reimbursable if:

- the complainant decides to withdraw his or her complaint;

- the parties involved in the complaint agree on a settlement of the dispute.

V. Do any country or sector specific factors apply?

We have looked at the basic standards all notified ADR bodies must comply with and looked at different techniques ADR bodies use to resolve disputes. For many traders, using ADR is not compulsory and they will choose to use it for the advantages it offers. These traders can make informed decisions on using ADR and choosing an ADR body based on what we have covered so far.

It is important to note, however, that there may be **additional** requirements and rules for your business relating to ADR depending on your country or your business sector.

In this section, we will find out whether any of these apply to you.

ADR in Malta

In Malta ADR remains prevalently a voluntary process. There are rare instances where for example arbitration is mandatory such as in the instances mentioned in the fourth schedule of the Malta Arbitration Act¹². The National competent authority is the Malta Consumer Affairs Council¹³ which is responsible, amongst others, to maintain a database of compliant notified ADR bodies. The Council has up until 9th July 2018 and every 4 years thereafter to publish and send to the European Commission a report on the development and functioning of ADR entities. This is in accordance to the Consumer Alternative Dispute Resolution(General) Regulations¹⁴

For more information about the different ADR bodies present in Malta, please see the note in this handbook under Heading IV entitled ‘

Some sectors in some countries may be obliged to use particular ADR bodies. These ADR bodies, however, in certain instances, may not be notified bodies under the ADR legislation.

E.g. Irish banks are obliged to submit to ADR by the Irish Financial Services Ombudsman, but this ADR body is not yet a notified body in Ireland.

Also some businesses may be "committed" to ADR but the ADR body they use may be notified in a different European member state. E.g. car rental companies in a number of European countries are committed to using the European Car Rental Conciliation Service which is a notified ADR in the UK.

Some traders may be members of a trade association that involves referral of consumer complaints to a particular ADR body.

Sector Specific ADR in Malta

E.g. Maltese banks or any other Financial service provider are not obliged to submit to ADR by the Office of the Arbiter for Financial Services¹⁵. The Office of the Arbiter for Financial Services is a body set up by law¹⁶ with power to mediate, investigate and adjudicate complaints filed by customers against all financial services providers. The mediation remains purely voluntary and any party involved in a dispute can decide to drop at any moment.

The Arbiter has the remit to investigate complaints against all financial services providers licensed by the Malta Financial Services Authority (the financial regulator in Malta), whether still holding a licence or not. This means, therefore, that the Arbiter would still have the competence and power to investigate complaints against providers whose licence has been surrendered or withdrawn by the MFSA, but which were licensed during the period in relation to which a complaint has been made to Office. The following is an overview of the financial service providers against whom a complaint may be lodged:

¹⁵ <https://financialarbiter.org.mt/en/Pages/Home.aspx>

¹⁶ Chapter 555 of the Maltese Laws- Arbiter for Financial Services Act - <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12477&l=1>

¹² Malta Arbitration Act

<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8854&l=1>

¹³ Consumer Affairs Council -

<https://justice.gov.mt/en/cac/Pages/NEW%20WEBSITE/Welcome.aspx>

¹⁴ Consumer Alternative Dispute Resolution(General) Regulations, 2015 -

<http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=27169&l=1>

- Banks;
- Financial Institutions (such as Bureaux de Change);
- Insurance companies (general and life insurance);
- Insurance intermediaries (such as agents, brokers and tied insurance intermediaries);
- Investment services providers (such as financial advisers and stockbrokers);
- Trustees; and
- Pension providers

It is important to note that this office can help traders as well as individuals as long as the trader is considered a Micro enterprise namely sole traders, companies, partnerships, and cooperatives which employ fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed €2,000,000.

ADR process in Malta

(a) How does the ADR process work in Malta?

Please see the note under section IV of this handbook for the details of how each ADR body present in Malta operates.

(b) How does ADR work in your sector?

Apart from Financial Services, there are no sector specific ADR bodies in Malta. A full list of ADR approved bodies can be found in section IV of this handbook.¹⁷

VI. What are your legal obligations related to ADR?

If you are obliged to use ADR owing to your business sector and/or the country in which you are based [see "V" above], or if you have committed to using ADR you may have legal obligations to inform your

¹⁷ There are also ADR bodies that are listed as notified in certain countries, but take complaints from a number of countries. Eg. The Car Rental Conciliation Service (which is notified in the UK and deals with complaints from many countries).

customers about ADR. Please see the detailed obligations below and in the checklist.

1. Before any dispute arises

If you are obliged to use ADR or have committed to using ADR, you have to inform your customers about the ADR body or bodies that you deal with on your website (if you have one) and, if applicable, in the general Terms and Conditions of your customer contracts. In providing this information, you need to give the website of the ADR body or bodies.

2. If you have a dispute with a customer:

If you are obliged or committed to using ADR [see above] and a dispute arises which you do not succeed in resolving directly, you have to inform the customer about your ADR obligations and commitments, the ADR body or bodies that are relevant in this regard, and specify whether you will make use of the relevant ADR body or bodies for the dispute in question. This information has to be provided to the customer on paper or in another 'durable' format that the customer can store electronically (e.g., an email, a USB drive etc.).

VII. A dispute arises that you can't resolve - How to use ADR

Once the consumer makes a complaint about your business, you will receive notification of this from the ADR body.

On receipt of this notification, you will be furnished with certain information about the procedure and it will be possible to find out more information about the ADR body from the ADR body's website or by request.

Depending on your obligations as a trader, you may choose at this point not to submit to the ADR process, albeit that the customer may then take further steps to pursue the issue elsewhere.

It may also be possible at this stage to settle the dispute immediately (and thus terminate the procedure); for example, by providing redress to the consumer.

You may choose to continue with the ADR process and put forward your side of the story. In the course of an ADR process, there might be a number of rounds of explanations, both from you and your customer.

As the process progresses, the ADR body will explain all the steps that need to be or can be taken and the consequences of those steps.

Once an outcome has been reached, it will be binding or non-binding, depending on the ADR body involved.

In resolving your dispute, the ADR body will also explain the practical aspects of the suggested solution. (For example, if it suggests you to give a financial compensation to the consumer for a defective laptop, it should also tell you by when you would have to pay, whether you or and the consumer could appeal such proposed solution in court, etc.).

For Malta's specific procedures in the different ADR bodies present kindly view section IV in this handbook.



Section II – Online Dispute Resolution (ODR)

VIII. You sell online – What is Online Dispute Resolution (ODR)?

Alongside the growth of e-commerce, the number of disputes relating to online purchases has also grown. In such disputes, you, the trader, typically will not have ever met the customer face-to-face and, furthermore, you may not share a common language with one another. This potentially makes the resolution of such disputes more complicated.

Examples

Example 1

You sell measuring equipment tools online to many EU countries. One day you receive an e-mail in a language you do not speak. The email appears to be from a consumer who is dissatisfied with one of your products and wants his money back. The withdrawal period for returning the item has already expired, and you are convinced there was no problem with the product you provided.

Example 2

You have an online business selling handmade jewellery. A customer orders a necklace made of semi-precious stone and glass beads. However, it is broken when delivered. You do not think it is your fault, as your packaging usually prevents any damage.

The Online Dispute Resolution (ODR) Platform is provided by the European Commission to help you resolve disputes with your online customers. It has been created under a piece of EU law called the

Regulation on online dispute resolution of consumer disputes.¹⁸

The ODR platform has been operational since February 2016 and it can be used for any contractual dispute arising from online purchases of goods or services where the trader and consumer are both based in the EU or EEA.

ec.europa.eu/odr



The ODR platform is designed to facilitate communication between you, your customer and an ADR body. Because the ODR platform uses only notified ADR bodies, the information already provided in the first section about the quality guarantees for notified ADR bodies (SECTION I. ALTERNATIVE DISPUTE RESOLUTION) is also relevant here.

The ODR platform, however, makes ADR even easier by providing automated translations between all EU languages, as well as information and support throughout the process.

¹⁸ Regulation No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC

Examples

Example 1

Your customer wanted his money back after the withdrawal period had expired.

Subsequently, you receive a notification from the ODR Platform informing you that this customer has launched a complaint. You register on the Platform and find out that there are several ADR bodies that can help you find a solution. Using the platform, you propose a specific ADR body and your customer agrees. The dispute is then automatically transferred to the ADR body. After requesting further information from you and your customer, the ADR body suggests that you reimburse your customer 25% of the price due to the fact that the information on your website was not clear enough. You both agree and the case is closed. Throughout the process, you and your customer communicate in your native languages and the platform ensures the translation.

Example 2

Your customer complains about this broken necklace via the ODR Platform. You agree on what ADR body to use and the dispute is transferred there. Upon examination of the packaging and of all other relevant facts, the ADR body decides in your customer's favour and suggests that you provide reimbursement. Although you are surprised at the outcome, you are satisfied that the ADR body reached its decision fairly.

Example 3¹⁹

If you are an online trader and wish to demonstrate your commitment to high standards of customer care, you can register as a trader on the ODR platform even if no complaint has been made against you.

By registering on the platform, you will make it easier for your customers to engage with you and you will ensure that any complaints made about you using the platform are received by you at your chosen email address.

IX. You trade online – what are your obligations regarding the ODR Platform?

If you trade online, you have the following obligations in relation to the ODR platform. These obligations APPLY TO ALL ONLINE TRADERS whether they intend to use the ODR platform or not:

1. You have to clearly provide your e-mail address on your website. Providing only an interactive contact form is not sufficient.
2. You have to provide a link from your website to the Online Dispute Resolution Platform ec.europa.eu/odr. This link has to be visible and easily accessible on the website.²⁰

IF you trade online **and** are legally obliged or committed to using ADR [see section v above] you must also do the following:

1. Inform your customers about the existence of the ODR platform and the possibility of using the ODR platform to resolve their disputes. You have to provide a link from your website to the Online Dispute Resolution Platform and should also include information regarding the ODR Platform in the standard terms and conditions you use for your consumer contracts.

¹⁹

You send the ordered necklace to your customer but didn't get paid. In this case, you can also go on the ODR platform and submit your complaint against that customer

²⁰

To assist you in fulfilling this legal obligation, you can use a ready-made banner (banners are available in all languages). You can find banners on http://europa.eu/youreurope/promo/odr-banners/index_en.htm

2. When you send your customer an e-mail suggesting to use an ADR body, you also have to include the link to the ODR Platform.

X. A dispute arises that you can't resolve with an online customer – how the ODR Platform works

- The customer makes a complaint on the platform.²¹
- You receive an e-mail notification that there is a complaint against you.
- You follow the link, go to the platform and register (if you are not registered yet) to be able to see the complaint.
- You select the ADR body you want to use (or the one you are obliged to use, according to the rules in your country/sector) and send this proposal to your customer.
- Your customer can accept your proposed ADR body or can suggest another ADR body from the list suggested in the platform.
- Once you both find an agreement on the ADR body to be used, the complaint goes to that ADR body.
- After the complaint was transferred to the ADR body, the rules and procedures of that body apply.
- You will be updated on the progress of your case via email notifications and will be able to engage with the process as necessary via the ODR Platform.
- Throughout the process you will be able to use the translation tool for all the documents and messages you send and receive.
- The ODR process will be completed within 90 days.

The Platform also has a very clear tutorial on how to use it. To access it, please go to the ODR platform ec.europa.eu/odr and look for the user guide.



²¹ In countries where trader initiated ODR is possible, the LEAD trainer will need to insert a proviso that the description provided refers to customer-initiated ODR but that trader initiated ODR is also possible.

Annexes

For ALL traders

When a customer dispute arises

Checklist – ADR information obligations

Before any customer dispute arises

Checklist– ADR information obligations

- Have you informed your customer about the possibility to use ADR?
- Have you informed your customer about it either by e-mail or provided on paper or other 'durable' means?
- Have you informed your customer (by e-mail, on paper or by other 'durable' means) whether you will make use of any ADR body to solve this dispute?

For ONLINE traders

Before any customer dispute arises

Checklist– ADR information obligations

Please note that you also have to comply with the checklist above.

1. Do you comply with the checklist “for all traders”?

NB: Online traders must comply with the checklist above called “for all traders”

2. Do you provide your e-mail address on your website in a way that people can easily find it?

NB: An online contact form that does not show the email address is not sufficient to meet this requirement.

3. Do you clearly provide a link to the ODR platform (<http://ec.europa.eu/odr>)?

For ONLINE traders

When a customer dispute arises

Checklist– ADR information obligations

If you suggest to a customer to use an ADR body, do you also inform the consumer about the ODR Platform and include the relevant link in your e-mail?

Definitions for the glossary on Alternative Dispute Resolution (from the legislation)

'consumer' means any natural person who is acting for purposes which are outside his trade, business, craft or profession;

'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;

'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;

'ADR procedures' - 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 body which proposes or imposes a solution or brings the parties together with the aim of facilitating an amicable solution.

'online sales or service contract' means a sales or service contract where the trader, or the trader's intermediary, has offered goods or services on a website or by other electronic means and the consumer has ordered such goods or services on that website or by other electronic means;

'electronic means' means electronic equipment for the processing (including digital compression) and storage of data which is entirely transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means (e.g. an e-mail or a video message).

Links to legislation

[Directive 2013/11/EU](#) of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (available in all EU languages)

[Regulation No 524/2013](#) of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (available in all EU languages)

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