

Cross-border ADR roundtable discussion

Topic 1: Can digitalisation enhance ADR in a cross-border context?

This paper aims to spur reflection on how digitalisation can improve the tackling of cross-border cases by ADR entities. First, it gives an overview of the current functioning of existing EU-driven digital channels for complaint handling (such as the European ODR platform) and briefly mentions the role played by retailers. Second, it brings up some of the most relevant issues to be addressed by policymakers to identify the way forward. Finally, it raises some questions intended to be used as food for thought for participants in the roundtable.

The retail sector has been undergoing major changes, most of which have been accelerated by the COVID-19 outbreak. The industry has proven to be resilient and e-commerce has helped many businesses accelerate, or even start, their digital transformation. According to figures published by Eurostat¹, consumers are also increasingly opting for online shopping (up 11 percentage point from 2016 in 2021, totalling 74% of e-shoppers among EU internet users). Moreover, preliminary findings of Ecommerce Europe's annual B2C report suggest that these figures will grow further in 2022, with forecasts showing an increase among internet users (92% up from 90% the previous year) as well as e-shoppers (76% compared to 74% in 2021)². To support the growth of online shopping and to improve customers' experience online, the development of appropriate tools for after sales services is fundamental. Notably, a fast complaint handling system lies at the heart of a trustworthy online shopping environment. With this objective, the EU fostered the development of out-of-court dispute settlements by introducing the Directive on Alternative Dispute Resolution (ADR) in 2013. The aim was to set minimum common standards on the establishment and the functioning of national dispute resolution bodies.

While digital commerce is increasingly cross-border^{3,4}, regulatory frameworks across the EU are often not fully harmonised. In the case of ADR, the legislative landscape strongly diverges per country, with differences for instance in terms of languages, applicable laws and funding mechanisms. Considering the cross-border nature of e-commerce, this creates challenges for consumers and businesses wishing to make use of dispute mechanisms in a cross-border context.

Digitalisation can be a key to streamline out-of-court commercial litigations. In 2013, the technological uptake within this field resulted in the creation of an online tool managed by the European Commission, the so-called European Online Dispute Resolution (ODR) platform, established by Regulation (EU) 524/2013. Its main objective is to provide a single point of entry to consumers and traders seeking to resolve disputes which have arisen from online transactions in an easy and quick manner, mainly by channelling the parties to a competent ADR entity. Alongside EU policy initiatives, retailers are also closely following the

¹ Eurostat, 02.02.2022, [Online shopping ever more popular.; Use of digital technologies among EU enterprises](#), Eurostat, 20.01.2022; [Online sales continue to grow among EU enterprises](#), Eurostat, 28.12.2021

² European E-commerce Report 2022, Ecommerce Europe & EuroCommerce, executed by the Amsterdam University of Applied Sciences, Preliminary findings (report available on Ecommerce Europe's website as of 28.06.2022)

³ *Ibid*, page 12

⁴ [European E-commerce Report 2021](#), Ecommerce Europe & EuroCommerce, executed by the Amsterdam University of Applied Sciences

digitalisation and channel-neutral trends by exploring digital solutions to enhance their in-house or outsourced customer service channels⁵ (e.g., AI-powered bots).

Throughout the years, the function of the European ODR platform and its interplay with the ADR framework evolved. As showed by the European Commission's implementation report of the ODR Regulation⁶, the initial purpose of the European ODR platform seems to leave the potential of the tool partly untapped. While the European ODR platform has showed a considerable added value⁷ for facilitating communication and direct settlements between the consumer and the trader, further reflection is needed on whether the mechanism has been able to fulfil its intended objectives. Moreover, the European ODR platform recorded an increasing number of cross-border cases submitted throughout the years (1/3 of cases in 2017⁸, 40% in 2018⁹, 44% in 2019¹⁰, 50% in 2020¹¹ and in 2021¹²).

The digital commerce sector is now facing the opportunity to drive these developments by merging the positive effects of digitalisation, cross-border and omnichannel commerce, and swift mechanisms for after sales litigations resolution. To improve the workflow of the out-of-court ecosystem, priority should be given to studying how digitalisation can enhance the existing ADR ecosystem.

Further reflection is needed on how ADR entities could benefit from a better technology uptake, notably by offering multilingualism and translation functions for cross-border cases and by applying cost-effective technologies to case-handling. The set-up of ADR entities and their legally prescribed workflow might be reviewed to better fit the digital environment. A restructuring of ADR cooperation, based on digital solutions, could also be needed to tackle the growing number of cross-border cases.

Questions to be addressed during the Round Table:

- How could the ADR mechanism be interfaced with the European ODR platform to better tackle cross-border cases (e.g., expanding the scope of the European ODR platform and existing digital solutions to commercial litigations related to offline transactions, or for traders to file complaints against a consumer)?
- Can you name any challenges for ADR entities or ODR procedures to offer a fully digital mechanism (e.g., localisation of conformity checks carried out on products)?
- Can digitalisation help defining the most suitable moment for an ADR entity to come in within a dispute settlement mechanism (e.g., complaint, dispute stage)?
- If we were to digitalise the ADR framework and enhance its interplay with the European ODR platform, how would procedures be best updated to facilitate an equal participation to the dispute settlement of both traders and consumers involved in a given cross-border setting (e.g., choice of a competent ADR entity)?

⁵ [Ecommerce Customer Care Guide Trends & Figures](#), Guide 2022, Salesupply. *Disclaimer: this study draws on multiple non-EU figures and sources and is therefore not representative of EU-focussed trends.*

⁶ [Implementation Report on the application of Directive 2013/11/EU of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and Regulation \(EU\) No 524/2013](#), European Commission, 25.9.2019

⁷ *Ibid.* page 15

⁸ European Commission, 13.12.2017, [Report from the Commission on the functioning of the European Online Dispute Resolution platform established under Regulation \(EU\) No 524/2013 on online dispute resolution for consumer disputes](#)

⁹ European Commission, 06.12.2018, [Second Report from the Commission on the functioning of the European Online Dispute Resolution platform established under Regulation \(EU\) No 524/2013 on online dispute resolution for consumer disputes](#)

¹⁰ European Commission, 25.09.2019, [Implementation Report on the application of Directive 2013/11/EU of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and Regulation \(EU\) No 524/2013](#)

¹¹ European Commission, 17.12.2020, [Third Report from the Commission on the functioning of the European Online Dispute Resolution platform established under Regulation \(EU\) No 524/2013 on online dispute resolution for consumer disputes](#)

¹² European Commission, 20.12.2021, [Fourth Report from the Commission on the functioning of the European Online Dispute Resolution platform established under Regulation \(EU\) No 524/2013 on online dispute resolution for consumer disputes](#)