



Brussels, 17.10.2023
COM(2023) 647 final

2023/0375 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

repealing Regulation (EU) No 524/2013 and amending Regulations (EU) 2017/2394 and (EU) 2018/1724 with regards to the discontinuation of the European ODR Platform

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

In its Communication on long-term competitiveness of the EU¹, the Commission has reaffirmed its commitment to actively screen the EU legislation in terms of its fitness for purpose, in particular to reduce the compliance costs for businesses and public administrations.

The European legislation on out-of-court consumer redress (the Alternative Dispute Resolution (ADR) Directive² and the Online Dispute Resolution (ODR) Regulation)³ was adopted in 2013 and has not been amended since notwithstanding the drastic changes of the consumer market, notably in relation to its rapidly expanding digital dimension.

While the ADR Directive establishes a general framework for consumer redress, obliging Member States to ensure that consumers can submit their disputes to ADR entities meeting common quality criteria, and can resolve disputes fairly, quickly and affordably, the ODR Regulation was adopted for the sole purpose of establishing the European Online Dispute Resolution Platform (the ODR Platform) where consumers and traders could refer their disputes over online purchases to ADR entities.

The ODR platform has been operating since 2016 as a fully multilingual digital infrastructure where consumers can request online traders to solve a dispute using an ADR entity. Despite a high number of visits, the ODR platform is only enabling on average 200 cases EU wide to be treated by an ADR entity per year.

This level of performance does not justify the costs incurred by the Commission to maintain the tool, nor the cost borne by public administrations and by online businesses to comply with their obligations under the ODR Regulation. The objective of this proposal is therefore to repeal the ODR Regulation, thus discontinuing the ODR platform and remove the obligation on the online businesses to provide a link to the ODR platform and manage an email for communication.

• Consistency with other Union legal texts.

The proposal also amends the legislation which currently references the ODR Regulation as a possible communication means between consumers and traders, including Single Digital Gateway Regulation⁴.

¹ Communication from the Commission to the European Parliament, the Council the European Economic and Social Committee and the Committee of Regions: Long-term competitiveness of the EU: looking beyond 2030, Brussels, 16.3.2023, COM(2023) 168 final,

https://commission.europa.eu/system/files/2023-03/Communication_Long-term-competitiveness.pdf

² Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR)

³ Regulation (EU) 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 (Regulation on consumer ODR) OJ L 165, 18.6.2013, p. 1–12

⁴ Regulation (EU) 2018/1724 of the European Parliament and of the Council of 2 October 2018 establishing a single digital gateway to provide access to information, to procedures and to assistance and

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis for the proposal (the same as the basis for the ODR Regulation) is Article 114 TFEU on internal market completion, with due regard to Article 169 TFEU⁵. It confers upon the EU the competence to enact measures for the approximation of national rules regarding the establishment and functioning of the internal market.

- **Subsidiarity (for non-exclusive competence)**

The ODR Regulation was justified out of subsidiarity considerations: in 2011, when it was adopted by the Commission, digital markets were still developing, with no assurance of adequate private or public digital tools to assist online traders reach out to ADR entities. However, these considerations became irrelevant due to the rapid development of online complaint-handling systems of digital marketplaces, which themselves rapidly became one of the main dispute resolution channels for SMEs trading online.

- **Proportionality**

The repeal of the ODR Regulation eliminates the existing burden on public and private actors.

- **Choice of the instrument**

As the objective of this proposal is to primarily repeal the ODR Regulation, a Regulation is the appropriate choice.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

Article 21 of the ODR regulation foresees the yearly publication of a report on the performance of the platform and periodic reports on the application of the ODR Regulation. In view of the information contained in these reports demonstrating the very low use of the platform to promote the use of ADR procedures in online markets, it was not necessary to carry a detailed evaluation. Annex 7 of the Impact Assessment carried out to review the ADR directive, however, details the reasons behind the low performance of the ODR platform.

- **Stakeholder consultations and studies**

As part of its endeavour to evaluate the ADR Directive, the Commission carried out extensive consultations throughout 2021 and 2022, where some questions were relevant for the ODR Regulation: two multi-lingual public consultations with a backward and forward-looking approach on ADR and Call for Evidence on its Have your Say website.

In addition, regular discussions with stakeholders were held on the performance of the ODR platform including studies for improving the design and functionalities of the platform which contained surveys and interviews with the consumers, traders, ADR entities and the national ODR contact points. The following events were also opportunities to discuss the performance of the platform such as the ODR contact points meeting of 13 September 2022 and various

problem-solving services and amending Regulation (EU) No 1024/2012 (Text with EEA relevance.) OJ L 295, 21.11.2018, p. 1–38

⁵ Article 169 TFEU states that the objectives of promoting the interests of consumers and ensuring a high level of consumer protection can be achieved through measures adopted pursuant to Article 114 TFEU.

workshops including the ADR entities assembly held in 2021; a panel discussion at the 2022 Consumer Summit and a roundtable about Cross-border ADR also held in 2022.

There was a general consensus that the useful effect of the ODR Platform was very limited and thus not cost-effective. The ODR platform however was considered an important source of information to obtain the list of ADR entities that have been accredited by national authorities in the Union according to the ADR Directive, an obligation however stemming from this Directive and implemented by the Commission on the ODR platform and which will thus continue to be maintained. Stakeholders also valued the advising role of ODR Contact points in relation to cross-border purchases. For the majority of the cases, the role of ODR contact points were taken up by the European Consumer Centres.

The Commission also received internal IT advice on improving the design and functionalities of the ODR platform which showed that a very substantial overhaul of the ODR platform was necessary to make it up to current IT standards.

- **Impact assessment**

An impact assessment was carried out to review the ADR Directive which included a detailed analysis of the functioning of the ODR platform in its Annex 6.

This Annex reviews the statistics about the use of the ODR platform since its beginning in 2016 in order to understand why so few cases are treated by ADR bodies (less than 200 per year EU wide). The analysis shows that the platform receives between two to three million visitors per year. However, a minority (about 2%) of these visitors decide to contact the concerned trader to propose to launch an ADR process. Most visitors leave the platform after a few seconds. Despite improving the home page of the platform (providing information and an interactive Q&A system), the number of requests for an ADR process did not increase but on the contrary decreased when consumers were better informed of the objectives and functioning of the system. Once a request is made by the consumer, the trader has 30 days to agree to launch the ADR process. Only 2% agree to do so, about 40% of the traders contact the consumers directly outside the platform to settle the matter while the majority of traders simply remain silent as participation is not compulsory. ADR bodies, perform a test of eligibility on the cases reaching them (about 400 per year) and on average keep only half of the requests. The poor results of the ODR platform is therefore the result of a succession of facts linked to the lack of prior information of visitors on how ADR works, the very limited interest of traders and the uneven completeness or relevance of the consumer complaints in relation with the eligibility criteria set by ADR entities.

This limited use of the ODR platform led the Commission to study various solutions to improve the uptake by both traders and consumers, which however were not conclusive on the means that would permit to increase the use of the platform.

On the contrary, discontinuing the ODR platform would save the European Commission about EUR 500,000 per year⁶, i.e. EUR 4.4 million in 10 years.⁷ A behavioural study conducted on ADR information requirements⁸ showed that the current requirement for traders

⁶ See Annex 7 for more information on the costs of the ODR Platform. This figure also takes into account the costs of replacing the ODR platform with signposting tools, which are estimated to amount 100 000 maximum.

⁷ EUR 600,000 every year saved if the ODR platform stops to be maintained, minus EUR 100,000 every year for other developed solutions to redirect consumers to the right ADR entity (e.g. artificial intelligence-powered lawbots/chatbots).

⁸ Behavioural study on disclosure of ADR information to consumers by traders and ADR entities.

to clearly disclose on their websites the ODR link does not positively impact on consumer's intention to use ADR procedure. Thus, removing this link would not produce any negative consequences on consumer engagement in ADR.

Impact on SMEs: Businesses operating online, the majority of which are SMEs, would not need to maintain an e-mail address for ODR correspondence, saving EUR 100 per year.⁹ The total benefit for EU businesses would then be EUR 370 million saved per year.

Social impacts: Replacing the ODR Platform would have no social impact on employment as Member States contact points (about 50 FTEs throughout the EU) would be absorbed by ECCs or other bodies tasked to provide advice on cross-border ADR and other redress possibilities.

Environmental impacts: discontinuing the ODR platform would reduce the digital carbon footprint of the European Commission.

- **Fundamental rights**

The proposal takes due account of the rights related to personal data by providing a clear date when the platform is discontinued (and an earlier date when the platform will still operate, but no new complaints can be submitted). The proposal ensures that all personal data is deleted as soon as the platform is discontinued, to minimise the risk of data breaches.

4. BUDGETARY IMPLICATIONS

As evaluated in Annex 6 of the ADR Directive Impact Assessment, the discontinuation of the ODR platform would permit to save costs for businesses, Member States and for the Commission, while the cost for ADR entities would not be impacted. Discontinuing the platform therefore does not have any negative budgetary implications.

5. OTHER ELEMENTS

n/a

⁹ The average cost of maintaining this e-mail address, considering the due diligence of conducting business which would require to read the correspondence on a daily basis, is assumed to amount to EUR 0.5 per working day. Prospective ADR dispute requests (400,000 per year) would only occasionally reach the mailbox of a business (about 3,700,000 retailers operates online, Eurostat).

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(Text with EEA relevance)

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 Committee,
Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Regulation (EU) No 524/2013 of the European Parliament and of the Council¹⁰ established, and mandated the Commission to develop and maintain, the European Online Dispute Resolution ('ODR') Platform at Union level, which offers a single point of entry to consumers and traders seeking to resolve disputes arising from online transactions out-of-court.
- (2) The ODR platform takes the form of an interactive website where consumers may request traders to agree to use an alternative dispute resolution (ADR) body listed on the platform, which complies with Directive 2013/11/EU of the European Parliament and of the Council¹¹.
- (3) Regulation (EU) No 524/2013 requires online traders and online marketplaces to provide an easily accessible link to the ODR platform on their website. That obligation, together with information campaigns made by the Commission and national stakeholders, has brought between two and three million visitors to the platform's website every year.
- (4) However, only a minority of visitors use the platform to launch a complaint, and only 2% of those actually receive a positive reply from traders so that their request can be transmitted to an ADR body listed on the platform. All in all, this represents about 200 cases across the Union. The Commission published a call for evidence on adapting out-of-court dispute resolution to digital markets, which ran from 28 September to 21

¹⁰ Regulation (EU) 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 (OJ L 165, 18.6.2013, p. 1).

¹¹ 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 (OJ L 165, 18.6.2013, p. 63).

- December 2022 and concluded that the platform had been used by only 5% of consumers who responded, while the majority of respondents considered that the platform should be substantially improved or discontinued as it was not cost-effective.
- (5) The evidence strongly suggests that further maintenance of the European ODR Platform with no more than 200 cases transferred per year to an ADR entity does not correspond to the principles of efficiency and effectiveness as provided for Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council¹².
 - (6) The ODR platform should be discontinued and Regulation (EU) No 524/2013 should therefore be repealed. Appropriate time should be provided to ensure that ongoing cases in the platform can be adequately terminated.
 - (7) Article 12 of the Regulation (EU) No 524/2013 establishes the rule for processing the personal data related to a dispute and stored in the database of the ODR platform maintained by the Commission.
 - (8) Pursuant to Article 12(3) of Regulation (EU) No 524/2013, personal data related to a dispute is kept in the database for the time necessary to achieve the purposes for which the data were collected and to ensure that data subjects are able to access their personal data in order to exercise their rights. That data should be automatically deleted, at the latest six months after the date of conclusion of the dispute which has been transmitted to the ODR platform. The Commission should inform users of the platform with open ADR cases of the closure of the platform in good time, and in any case at least four months before the platform is discontinued. The Commission should offer assistance to those users of the platform who wish to retrieve their case data.
 - (9) As the ODR platform is referred to as a platform that enables consumers to request traders to agree to an out of court dispute resolution in other Union legal acts, those acts should be amended to remove references to that platform. Regulations (EU) 2017/2394¹³ and (EU) 2018/1724¹⁴ of the European Parliament and of the Council should therefore be amended accordingly.
 - (10) Certain Directives contain references to Regulation (EU) No 524/2013. Therefore, its repeal makes it necessary to amend Directives (EU) 2015/2302¹⁵, (EU) 2019/2161¹⁶

¹² Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

¹³ Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004 (OJ L 345, 27.12.2017, p. 1).

¹⁴ Regulation (EU) 2018/1724 of the European Parliament and of the Council of 2 October 2018 establishing a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services and amending Regulation (EU) No 1024/2012 (OJ L 295, 21.11.2018, p. 1).

¹⁵ Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC (OJ L 326, 11.12.2015, p. 1).

¹⁶ Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules (OJ L 328, 18.12.2019, p. 7).

and (EU) 2020/1828¹⁷ of the European Parliament and of the Council, which is to be done in Directive [xxx/xxx] of the European Parliament and of the Council amending Directive 2013/11/EU on alternative dispute resolution for consumer disputes^[18],

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 524/2013 is repealed with effect [*insert date six months after the date of entry into force of this Regulation*].

Article 2

1. The European ODR Platform shall be discontinued.
2. The submission of complaints shall be discontinued on [*insert date [two months after the date of entry into force of this Regulation/ four months before the repeal of this Regulation]*].
3. The Commission shall inform users of the platform with open ADR cases of the discontinuance of the platform by [*insert date two months after the date of entry into force of this Regulation/four months before the repeal of this Regulation*] and offer assistance to retrieve case data accessible to them if they wish to do so.
4. At the latest as of [*dd/mm/yy, i.e. six months after the date of entry into force of this Regulation*] all information including personal data related to the disputes in the ODR platform shall be deleted.

Article 3

Amendment to Regulation (EU) 2017/2394

In the Annex to Regulation (EU) 2017/2394, point 22 is deleted.

Article 4

Amendment to Regulation (EU) 2018/1724

In Annex III to Regulation (EU) 2018/1724, point 7 is replaced by the following:

‘The list of alternative consumer dispute resolution entities established by the Commission pursuant to Article 20(4) of the Directive 2013/11/EU’¹⁹.

Article 5

Entry into force

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

¹⁷ Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC (OJ L 409, 4.12.2020, p. 1).

¹⁸ [OP: please insert reference to COM(2023) 649]

¹⁹ 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 (OJ L 165, 18.6.2013, p. 63).

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President