



## Proposal for:

1. Amending the Directive on Alternative Dispute Resolution (ADR), and
2. Repealing the Regulation on Online Dispute Resolution (ODR)

## Response Template

Closing Date for Responses: 12 noon, 27 March 2024

E-mail Response Template to - [conspol@enterprise.gov.ie](mailto:conspol@enterprise.gov.ie)

### Important:

Please note that completed templates from all respondents will be collated. Therefore, it would be appreciated if formatting text within the table could be avoided (for example, bullet points, carriage returns).

Contact details:	Respondent:
Name	Competition and Consumer Protection Commission
E-mail address	
Phone number	+353 (0)1 402 5500
Postal address	Bloom House, Railway Street, Dublin 1, D01 C576

The following sections set out a description of the changes proposed, the proposed wording of the amended text or the wording of the text proposed for deletion. Details are taken from EU documentation reference 2023/0376 (COD) and 2023/0375 (COD).

## 1. Alternative Dispute Resolution Amendments

### Article 2 – Scope

The current scope of the ADR Directive is limited to disputes which stem from contractual obligations for the sale of goods or services. Through this revision, the Commission is proposing to extend the scope:

- to voluntary ADR processes against any traders selling goods or services, including digital content and digital services, to consumers residing in the EU, and
- to cover disputes related to other key statutory rights of consumers such as the right not to be subjected to geo-blocking practices, to switch telecommunication providers or to access to basic financial services.
- to disputes related to pre-contractual stages during which consumer rights exist irrespective of whether the consumer ultimately concludes a contract

The third example relates, for example, to misleading advertising, missing, unclear or misleading information, unfair terms or guarantee rights.

### Proposed Wording:

This Directive shall apply to procedures for the out-of-court resolution of disputes between consumers resident in the Union and traders offering goods or services, including digital content and digital services, to those consumers, 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 concerning one of the following:

- (a) contractual obligations stemming from sales contracts, including for the supply of digital content, or service contracts;
- (b) consumer rights applicable to non-contractual and pre-contractual situations and provided in Union law concerning:
  - (i) unfair commercial practices and terms,
  - (ii) compulsory precontractual information,
  - (iii) non-discrimination on the basis of nationality or place of residence,
  - (iv) access to services and deliveries,
  - (v) remedies in case of non-conformity of products and digital content,
  - (vi) right to switch providers, and
  - (vii) passenger and travellers' rights.

Member States may apply the ADR procedures set out in this Directive, also to categories of disputes other than those listed the first subparagraph, point (b).’.

**Response:**

The CCPC welcomes the proposed expansion of the scope of the ADR Directive, as it will broaden consumer access to dispute resolution in a larger number of scenarios. The CCPC strongly believes that all consumers should have access to fair and timely dispute resolution and redress mechanisms. The CCPC has a statutory function under Section 10(3)(c) of the Competition and Consumer Protection Act 2014 to *“promote, where appropriate, the development of alternative dispute resolution procedures as a means of resolving disputes arising out of consumer transactions”*.

The revised Art. 2 will significantly expand the scope of disputes that may be subject to ADR processes. More guidance and explanation as to how ADR procedures could be employed in relation to pre-contractual matters would be welcome.

The expansion of ADR to dispute types beyond a trader’s contractual obligations is significant. The proposed Directive widens the scope of potential issues to include, *inter alia*, ‘unfair commercial practices and terms’ and ‘compulsory pre-contractual information’. This would mean that a consumer would be entitled, for example, to lodge a dispute in relation to a trader’s failure to provide pre-contractual information set out in Art.6 and Art. 7 of the Consumer Rights Directive (Directive 2011/83/EU) and Schedules 2 & 3 of the Consumer Rights Act 2022. This could significantly increase the number of disputes that can come within the scope of the ADR procedure.

With respect to Art. 2(1)(v), consideration should be given to an expanded wording, for example *“remedies in case of non-conformity of products, services, digital content and digital services and failure of supply of services, digital content or digital services”*.

## Article 4 – Definitions

Currently, the definitions of “domestic disputes” and “cross border disputes” in the ADR Directive are in line with the current scope and only make reference to contractual disputes with traders established in the Union. The Commission is proposing to modify those definitions to cover all disputes related to key statutory rights of consumers. Moreover, the new definition of a “cross-border dispute” aims to also cover cases where the trader is established outside of the Union.

### Proposed Wording:

In Article 4(1), points (e) and (f) are replaced by the following:

‘(e) ‘domestic dispute’ means a dispute between a consumer and a trader, related to contractual obligations and/or consumer rights provided in Union laws as referred to in article 2(1), where the consumer is resident in the same Member State as that in which the trader is established;

(f) ‘cross-border dispute’ means a dispute between a consumer and a trader, related to contractual obligations and/or consumer rights provided in Union acts as referred to in article 2(1), where the consumer is resident in a Member State other than the Member State in which the trader is established or where the consumer is resident in a Member State and the trader is established outside of the Union;’.

### Response:

The CCPC welcomes the proposed definitions of “domestic disputes” and “cross border disputes”. The CCPC notes that these changes may provide consumers with access to dispute resolution mechanisms in a much larger number of scenarios than in the current context. In particular, Art. 4(1)(f), which would expand ADR availability beyond EU/EEA member states, may have important implications post-Brexit for Ireland as more Irish consumers, per capita, purchase from UK based traders than their EU counterparts.

## Article 5 – Access to ADR entities and ADR procedures

Currently, Article 5(1) provides for the Member States to ensure the existence of ADR entities compliant with the requirements of the ADR Directive, that deal with disputes between consumers and traders established in their respective territories. With the proposed extension of the scope, traders established outside of the EU may also participate, on a voluntary basis, to ADR procedures. The Commission proposes to create an obligation for Member States to establish ADR entities that will have the competence to deal with disputes between consumers and non-EU traders.

In order to safeguard consumers with limited digital literacy skills;

- Article 5(2)(a) refers to the possibility for vulnerable consumers to send and access documents in a non-digital format, upon request.
- Article 5(2)(b) accentuates the needs of vulnerable consumers to have an easy access to ADR procedures by means of inclusive tools,
- Article 5(2)(c) ensures the right for the revision of an automated procedure by a natural person.

Article 5(2)(d) strengthens the possibility already existing in certain Member States for ADR entities to bundle similar cases against one specific trader to save ADR resources and time for the trader and consumers concerned, while giving the right to the consumers concerned to object to such bundling.

Article 5(4)(a) clarifies that although consumers are obliged to try to resolve the dispute bilaterally with the trader, ADR entities should not put in place disproportionate rules on how to contact the trader before being able to proceed to ADR.

Article 5(8) introduces the duty to reply on traders with the objective to incentivise them to participate more in ADR. Although they are not obliged to participate in ADR, unless specifically provided for in national legislation or EU sector-specific legislation, it is proposed that they are obliged to reply to a request by an ADR entity, within a period not exceeding 20 working days, as to whether they plan to participate in an ADR process against them, or not.

**Proposed Wording:**

Article 5 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘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, or a trader not established in the territory of any Member State but offering goods or services, including digital content and digital services, to consumers residing in their respective territories, can be submitted to an ADR entity which complies with the requirements set out in this Directive.’;

(b) in paragraph 2, points (a) to (d) are replaced by the following:

‘(a) ensure that consumers can submit complaints and the requisite supporting documents online in a traceable manner and ensure that consumers may also submit and access these documents in a non-digital format upon request;

(b) offer digital ADR procedures through easily accessible and inclusive tools;

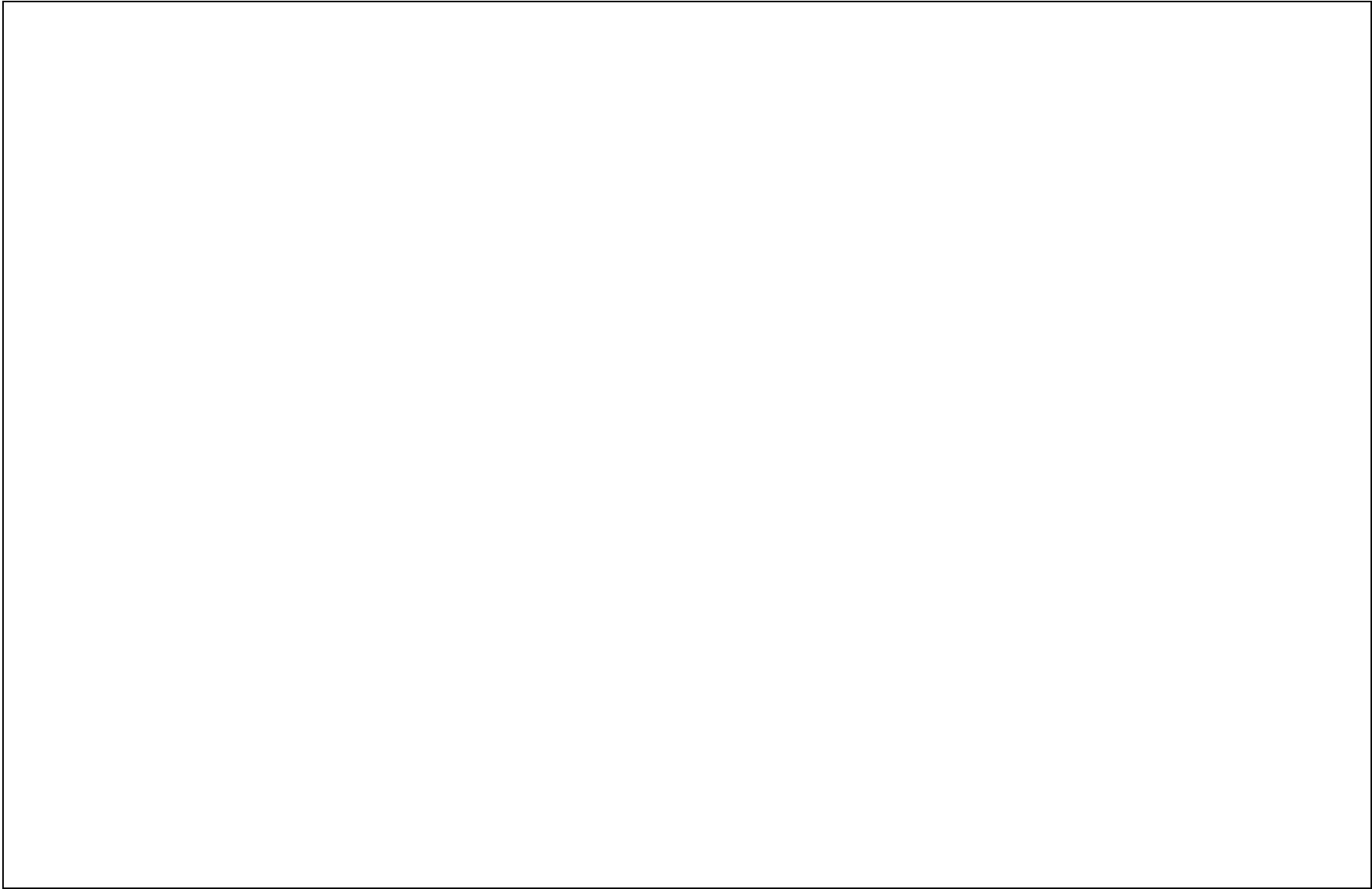
(c) grant the right to the parties to the dispute to request that the outcome of the ADR procedure be reviewed by a natural person when the procedure was carried out by automated means;

(d) may bundle similar cases against one specific trader into one procedure, under condition that the consumer concerned is informed and does not object to that;’

(c) in paragraph 4, point (a) is replaced by the following:

‘(a) the consumer did not attempt to contact the trader concerned in order to discuss the complaint and seek, as a first step, to resolve the matter directly with the trader, without introducing disproportionate rules about the format of such contact’;

(d) the following paragraph 8 is added:



'8. Member States shall ensure that traders established in their territories that are contacted by an ADR entity from their country or from another Member State, inform that ADR entity whether, or not, they accept to participate in the proposed procedure and reply within a reasonable period of time that shall not exceed 20 working days.'

**Response:**

The CCPC notes the proposed amendment to Article 5(1) to require Member States to ensure that ADR entities established in their territories have the competence to provide dispute resolution procedures in disputes between traders established outside of the Union and consumers residing in their territory. Consumers in Ireland buy from traders in the United Kingdom in much greater proportion than from traders in the rest of the EU. Every year thousands of consumers contact the CCPC's helpline to seek advice in relation to a dispute with a trader. Our Consumer Contacts Report 2023 shows that, while the vast majority of such contacts relate to a trader based in Ireland, 6% relate to traders in the UK. This can be compared with 4% of contacts relating to traders in the EU. Provisions to allow for any disputes between a consumer based in Ireland and a trader based in the UK would be of considerable value.

The CCPC is aware that there is an increased use of online tools for ADR. The CCPC therefore welcomes Art. 5(2)(b) in relation to an online ADR procedure, as it is in line with the EU's Digital strategy and will help improve consumer ease of access to the procedure. The CCPC also welcomes the inclusion of measures aiming to safeguard easy access for consumers with limited digital literacy skills to ADR procedures.

The CCPC strongly welcomes Art. 5(2)(c) which ensures the right for the revision of an automated procedure by a natural person. Having regard to the potential for artificial intelligence to play an ever-increasing role in customer service provision, the CCPC suggests that consumers should have the right to be informed that the ADR procedure is subjected to automated means/AI, and ADR entities should be required to disclose whether customers using a channel of communication will be interacting with AI. Such a disclosure would align with an objective of the Proposal for a Regulation of the European Parliament and of the Council laying down harmonized rules on artificial intelligence, for the use of AI systems intended to interact with natural persons to be transparent to those persons.

The CCPC welcomes this and other measures which increase options for consumers to have their disputes resolved. We see efficiencies in the ADR process for consumers which could be brought about by the bundling of cases against a specific trader. However, this should not lead to delays in the resolution of a dispute where, for example, a threshold of cases must be reached before a dispute can be resolved.

In general, the CCPC considers that the use of AI in ADR may raise some questions in relation to decision making and justice. AI may present an opportunity to address and remove disputes which are straightforward in nature at an early stage. However, in many instances, ADR may require a person to make a reasoned decision based on the evidence provided. The CCPC further notes that under Article 22 of the General Data Protection Regulation (GDPR), consumers have the right not to be subject to automated decision-making, although Article 22(2) GDPR stipulates that this rule may not apply in certain circumstances, and notably under the condition that consumers give their explicit consent.

The CCPC welcomes Art. 5(8). It is a positive proposal to include a 20 day notification period.





## Article 7 – Transparency

The proposed change from “annual” activity reports published by ADR entities to “biennial” activity reports is intended to alleviate the administrative burden and costs for such entities. Although cooperation is encouraged, Article 7(2)(h) is proposed to be deleted, so ADR entities will no longer be required to report on cooperation on the resolution of cross-border disputes.

### **Proposed wording and proposed text for deletion:**

Article 7, paragraph 2 is amended as follows:

in the introductory phrase, the first sentence is replaced by the following:

‘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, biennial activity reports’.

It is proposed to delete Article 7, paragraph 2(h).

(h) cooperation of ADR entities within networks of ADR entities which facilitate the resolution of cross-border disputes, if applicable.

### **Response:**

The CCPC has no substantive observations with respect to this proposed amendment. We note it may lead to a reduction in administrative obligations and costs. This may encourage greater participation by ADR entities in Ireland.

With regard to the proposed amendment to Art 7(2), the CCPC considers that the change from an annual to a biennial reporting period may encourage more ADR entities to enter the market by reducing administrative obligations and costs. An increase in the number of ADR entities in Ireland would be welcome, and in particular if they provide for greater means for a wider range of disputes to be resolved.



### Article 13 – Consumer Information by traders

Article 13(3) of the Directive requires traders to provide information on ADR to consumers whether or not they intend to use an ADR process.

It is considered that Article 13(1) makes Article 13(3) redundant for those traders who commit to engage in ADR, and it obliges traders not willing to engage in ADR to inform consumers about this fact. This information requirement discourages consumers from opting for an ADR process and is considered counterproductive and an unjustified burden on traders.

It is proposed to delete Paragraph 3 of Article 13.

#### **Article 13(3) – To be deleted:**

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.

#### **Response:**

The CCPC welcomes the proposed change as a common sense measure.

## Article 14 – Assistance for consumers

There is a low ADR uptake in cross-border cases. The Directive proposes that ADR contact points should be created, preferably within European Consumer Centres to promote the use of ADR and to assist consumers and traders with ADR processes. The text of Article 14 is replaced by the following text.

### **Proposed Wording:**

#### ***Assistance for consumers***

1. Member States shall ensure that, with regard to cross-border disputes, consumers and traders are able to obtain assistance to access the ADR entity or entities competent to deal with their cross-border dispute.
2. Each Member State shall designate an ADR contact point in charge of the task referred to in paragraph 1. Each Member State shall communicate the name and contact details of its ADR contact point to the Commission. Member States shall confer responsibility for the operation of the ADR contact points on their centre belonging to the European Consumer Centres Network, or, if not possible, on consumer organisations or on any other body dealing with consumer protection.
3. The ADR contact points shall facilitate communication between the parties and the competent ADR entity, which may include, in particular:
  - (a) assisting with the submission of the complaint and, where appropriate, relevant documentation;
  - (b) providing the parties and ADR entities with general information on EU consumer rights;
  - (c) providing the parties with explanations on the procedural rules applied by the specific ADR entities;
  - (d) informing the complainant party of other means of redress when a dispute cannot be resolved through an ADR procedure.
4. Member States may grant ADR contact points the right to provide assistance referred to in this Article to consumers and traders when accessing ADR entities also with regard to domestic disputes.

5. Member States shall ensure that any actors assisting consumers in cross-border or domestic disputes, act in good faith to allow parties to the dispute to reach an amicable settlement and provide relevant information to consumers in full transparency, including information regarding procedural rules and any applicable fees.’.

**Response:**

The CCPC welcomes the proposed change of Art.14 (2) to ensure consumers have guidance on accessing ADR for resolution of their disputes.

With respect to Art. 14(5), consideration could be given to the alternative wording “*act in good faith to allow parties to the dispute to resolve the dispute*”. This would also then refer to ADR entities that can impose a solution.

The CCPC understands that the ECC Network support the Commission’s proposal where ECCs are ADR Contact Points. This position is based on the ECCs having, and being provided with, the relevant experience, resources and the organizational set-up to fulfill this role.

## Article 19 – Information to be notified to competent authorities by dispute resolution entities

It is proposed to delete Paragraphs 19(3) (f), (g) and (h). They remove some of the reporting obligations on ADR entities, thereby reducing their administrative burden.

### **Proposed wording to be deleted:**

- (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)

### **Response:**

With respect to the proposed deletion of Art.19(3)(h), this information on grounds for refusal to deal with a dispute (for example the value below or above a financial threshold) would be of benefit to consumers when choosing an ADR entity.

## Article 20 – Role of the competent authorities and of the Commission

The Commission will develop and maintain user-friendly tools to improve signposting for consumers, ensuring that those looking for information on how to solve a consumer dispute will be able to get an answer quickly on the best ADR entity to contact for their case. The new tools will integrate the existing multilingual list of ADR entities and will provide interactive solutions for consumers to seek the best ADR entities for their specific disputes. These tools should also offer information about other redress mechanisms and links to the newly set ADR contact points.

The following paragraph 8 is added to Article 20:

### **Proposed Wording:**

‘20(8) The Commission shall develop and maintain a digital interactive tool that provides general information on consumer redress and links to the webpages of the ADR entities notified to it in accordance with paragraph 2 of this Article.’.

### **Response:**

The CCPC welcomes the insertion of Article 20(8) to the Directive and notes that it is aligned with other provisions in EU law which require the European Commission to host single information points.



## Article 24 - Communication

Article 24(4) obliges Member States to communicate the names and the contact details of the designated ADR contact points by a certain date.

The following paragraph 4 is added to Article 24:

### Proposed Wording:

24(4). By [*insert date*] Member States shall communicate to the Commission the names and contact details of the ADR contact points designated in accordance with Article 14(2).’.

### Response:

This proposed change is to be welcomed as an efficient administrative measure, ensuring that up to date details on ADR contact points are available across Member States.

## Amendment to Directive (EU) 2015/2302 - On package travel and linked travel arrangements

**In Article 7(2) of Directive (EU) 2015/2302, point (g) is replaced by the following:**

‘(g) information on available in-house complaint handling procedures and on alternative dispute resolution (‘ADR’) mechanisms pursuant to Directive 2013/11/EU of the European Parliament and of the Council<sup>12</sup> and, where applicable, on the ADR entity by which the trader is covered;’.

### Response:

Nil response

## **Amendment to Directive (EU) 2019/2161 – On the better enforcement and modernisation of Union consumer protection rules**

**In Article 5 of Directive (EU) 2019/2161, point (b) is replaced by the following:**

‘(b) submit a complaint to the competent centre of the European Consumer Centres Network, depending on the parties involved.’.

**Response:**

Nil response

## **Amendment to Directive (EU) 2020/1828 – on Representative Actions**

In Annex I to Directive (EU) 2020/1828, point (44) is deleted.

**Response:**

Nil response

## 2. Online Dispute Resolution Amendments

### Article 1 – Subject Matter

**Article 1 sets the date for the repeal of Regulation No 524/2013 as follows:**

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

**Response:**

Nil response

### Article 2 - Scope

**Article 2 sets the discontinuation of the ODR Platform as follows:**

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.

**Response:**

Nil response

**Amendment to Directive (EU) 2017/2394 – on Cooperation between national authorities**

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

**Response:**

Nil response

**Amendment to Regulation (EU) 2018/1724 – on Establishing a single digital gateway**

**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’.

**Response:**

Nil response

### 3. General Comments on the Proposals

The CCPC welcomes the European Commission's Proposal to amend the ADR Directive. The CCPC strongly believes that all consumers should have access to fair and timely dispute resolution and redress mechanisms. It therefore welcomes recent EU initiatives such as these Proposals and the measures of the Representative Actions Directive, which all seek to improve consumer access to justice and redress.

There are a number of other mechanisms by which consumers can bring forward a dispute if they feel their rights are not upheld. Consumers can take an individual private action against a trader – in the small claims court for amounts under €2,000 and in the [circuit court or high court] for higher amounts. In some cases, consumers may be able obtain redress on foot of enforcement action by the CCPC or a sectoral regulator.

In some sectors, consumers are provided with alternative dispute resolution services or complaint procedures to a sector ombudsman or a sector regulator. However, not all sectors are covered by these. ADR has been slow to develop in Ireland, with only four entities having notified the CCPC of their intent to provide such services (the Commission for Regulation of Utilities, the Financial Services and Pensions Ombudsman, the Royal Institute of the Architects of Ireland and NetNeutral EU Ltd) and relatively low volumes of activity to date.

Overall, the CCPC believes that there is scope for dispute resolution and redress mechanisms to be enhanced. The CCPC Consumer Detriment research found that 39% of consumers surveyed in 2023 said they had at least one issue that cost them money or time or caused them stress. This works out as roughly 1.6 million of the total adult population of Ireland. The research also found that consumer disputes with a trader could sometimes take a long time to be resolved. Consumer problems relating to the most serious issues lasted between one and four weeks before they were resolved. 10% were still dealing with their most serious issue more than six months after they first contacted the seller.