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Résumé/Abstract (300-500 mots/words):

On March 13, 2013, the European Parliament adopted the Regulation on consumer ODR to promote online resolution of consumer disputes. The purpose of the present work is to present the broad strokes of the regulation in the form of a FAQ.

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FAQ
Regulation on online dispute resolution for consumer disputes (Regulation on consumer ODR)

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GENERAL POINTS

Q1. What is the purpose of the *Regulation on consumer ODR*?

The *Regulation on consumer ODR* has two objectives: on one hand, to contribute to the growth of the European internal market, especially the digital dimension, and, on the other hand, to strengthen consumer protection by making available a European online dispute resolution platform (Art. 1).

It applies only if three criteria are met:

1/ A material criterion: the case must involve alternative resolution of a dispute concerning contractual obligations between a consumer and a trader (Art. 2.1). The notion of "alternative resolution of disputes" is broad in that it can involve an entity that either proposes or imposes a solution, or even brings the parties together with a view to facilitating the search for an out-of-court settlement (negotiation, mediation, arbitration, etc.).

2/ A technological criterion: the case has to involve a contract for the sale of goods or services online (Art. 2.1), in other words, a contract in which the trader offers, via electronic means, goods or services that the consumer orders using electronic means (Art. 4.1(e)).

3/ A geographical criterion: the consumer and the trader have to be, respectively, residents of and established in the European Union (Art. 2.1).

The *Regulation on consumer ODR* can moreover apply to alternative dispute resolution initiated by a trader against a consumer if this is in compliance with the applicable legislation in the Member States (Art. 2.2).

Q2. How will the Regulation on consumer ODR operate?

The *Regulation on consumer ODR* is designed to set up an online dispute resolution platform at the European level (Art. 5.1). The platform would take the form of an interactive, free Internet site offering consumers and traders one-stop service for alternative resolution of disputes arising out of electronic commercial transactions (Art. 5.2).

The European Commission is responsible for the platform's development, operation, maintenance, funding and data security (Art. 5.1).

Q3. To whom will the *Regulation on consumer ODR* apply?

The *Regulation on consumer ODR* will apply, on one hand, to consumers and, on the other hand, to traders.

A "consumer" is a physical person not acting in the framework of a commercial, industrial, trade or professional activity (Art. 4.1(a)).

A "trader" is a public or private physical individual or corporate body. Traders take direct or indirect action to pursue purposes consistent with the framework of their commercial, industrial, trade or professional activity (Art. 4.1(b)).

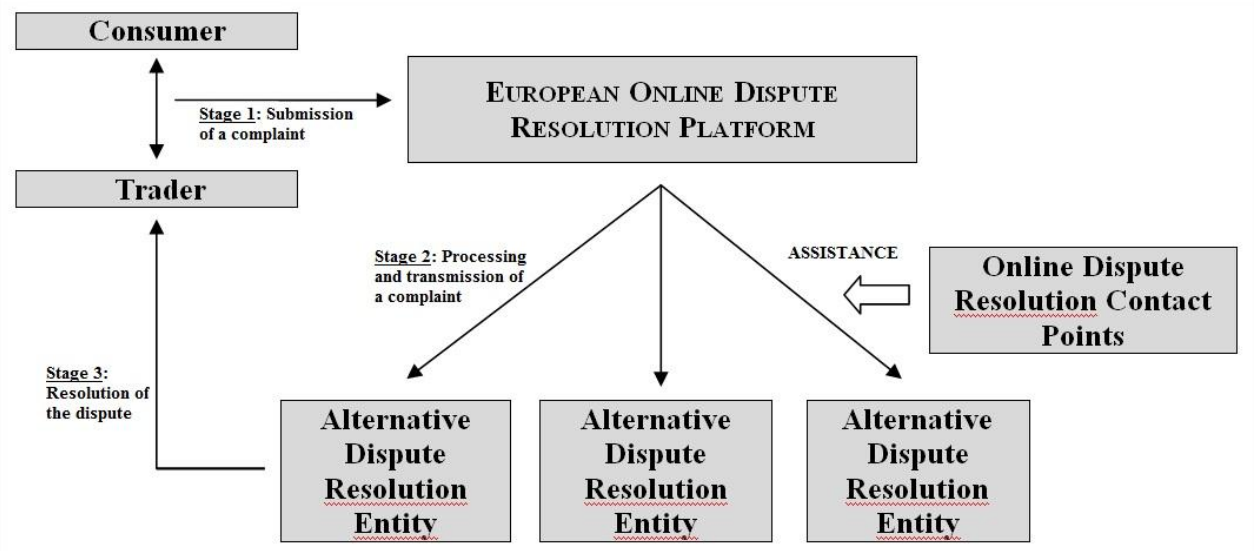
Q4. When will the *Regulation on consumer ODR* come into effect?

The *Regulation on consumer ODR* will come into effect on the twentieth day following its publication in the *Official Journal of the European Union* (Art. 22). It is binding in its entirety and directly applicable in all Member States.

Following a series of tests (Art. 6), the platform should be operational six months after the transposition of the *Directive on alternative dispute resolution for consumer disputes* by the Member States (in other words, in 2015).

For example, in France there is not yet a one-stop system for alternative resolution of consumer disputes (conciliation, mediation, etc. procedures). With the adoption of the *Directive on alternative dispute resolution for consumer disputes*, France will have to unify and expand its legislation on alternative resolution to all consumer disputes.

THE PROCESS AT A GLANCE



THE MAIN PLAYERS IN THE PROCESS

Q5. What are the missions of the European online dispute resolution platform?

The European online dispute resolution platform ("ODR platform") consists in an interactive Internet site accessible free-of-charge online in all the official languages of European Union institutions (Art. 5.2).

The main functions of the ODR platform are the following (Art. 5.4):
1/ Provide an electronic complaint form and suggest to the parties one or more alternative dispute resolution entities ("ADR entities");
2/ Transmit the complaint to the ADR entity that the parties have agreed to use;
3/ Make available to the public, in particular, statistics on the outcomes of disputes and provide a feedback system so that the parties can give their opinions on the process.

Q6. What are the missions of ADR entities?

ADR entities have a threefold mission (Art. 10):
1/ Complete the proceedings within 90 days of the date of reception of the completed complaint file (the deadline may be extended for extremely complex disputes);
2/ Unless consent is given, not require the physical presence of the parties or their representatives;
3/ Immediately convey to the ODR platform the date of reception of the complaint file, the object of the dispute, the date of completion of the ODR proceedings and the outcome.

Finally, note that ADR entities are not required to conduct proceedings using the platform. If a dispute is submitted to it directly, an ADR entity can process it without going through the ODR platform. The objective is not to create obstacles to the operation of ADR entities in the European Union.

Q7. What is the role of the contact points in online dispute resolution?

Each Member State designates a contact point for online dispute resolution ("contact points for ODR"), and conveys its name, address and other contact information to the Commission (Art. 7.1).

The main functions of the contact points for ODR are the following (Art. 7.3):
1/ Facilitate, on request, communication between the parties and the competent ADR entity;

2/ Inform the parties of the advantages and disadvantages of the procedures followed by the proposed ADR entities and other possible avenues;
3/ Submit a report on its activities to the Commission and Member States every two years.

In the end, the objective is to establish a network of contact points for ODR based on cooperation (Art. 7.5).

Q8. What is the role of the European Commission?

The Commission is responsible for the ODR platform (Art. 5.1), especially for establishment of the electronic complaint form (Art. 7.4).

Moreover, the Commission takes the measures necessary to establish and update an electronic database inventory of ODR platform activities and information transmitted by ADR entities (Art. 11). Finally, the Commission submits regular reports to the European Parliament and Council on the functioning of the ODR platform (Art. 21).

THE MAJOR STAGES OF THE PROCESS

Q9. How can a complaint be submitted to the European ODR platform?

A consumer or trader can submit a complaint using an electronic form available in all of the Union's official languages (Art. 8.1). In support of the complaint, the consumer or trader can attach any document in electronic form (Art. 8.2).

The Annex of the *Regulation on consumer ODR* specifies the information to be included on the electronic complaint form. In essence, the information concerns the legal status of the complainant and the defendant (surname, first name, place of residence/establishment, email address, etc.), the type of good or service of which the sale or delivery is the object of the complaint, the reasons for the complaint, etc.

Q10. How are complaints processed and transmitted to ADR entities?

A complaint is processed only if all the required fields of the form have been completed (Art. 9.1), with the possibility to provide missing information later (Art. 9.2).

On the basis of the information appearing in the complaint form, the platform suggests one or more ADR entities to the parties. It also gives the parties the contact information of the ADR

entity, and information on the cost of the proceedings, the language(s) used, the average time required for proceedings and the binding nature of the decision (Art.9.5).

- If the parties come to an agreement on an ADR entity, the platform then automatically transmits the complaint to that entity Art. 9.6).
- If, within 30 days following submission of the complaint, the parties have not managed to agree on a competent ADR entity or the entity has refused to handle the case, the complaint is abandoned. The complainant can then communicate with a contact point for ODR to obtain general information on other forms of recourse (Art. 9.7). If the parties do not come to an agreement on an ADR entity, the proceedings are automatically abandoned (Art. 9.3). In other words, this means that a trader could systematically refuse out-of-court dispute resolution without have to explain why.

Q11. How are disputes resolved?

In principle, the ADR entities to which complaints are transmitted complete the proceedings within 90 days of the date of reception of the complete complaint file (Art. 10).