

ALTERNATIVE AND ONLINE CONSUMER DISPUTE RESOLUTION PROCEDURES

Background

On 21 May 2015 the National Assembly of the Republic of Bulgaria adopted at first reading an Act amending and supplementing the Consumers Protection Act (the "Act"). The Act implements primarily the provisions of Directive 2013/11/EU¹ (the "Directive") and facilitates the application of Regulation (EU) No 524/2013² (the "Regulation").

The Directive aims to introduce a minimum set of criteria for the Alternative dispute resolution (ADR) bodies while the Member States may build on these criteria. Thus, a comprehensive network of ADR entities, competent to resolve almost any type of consumer to business agreement breach dispute, is to be established. However, there are several types of dispute that are not covered by the Directive, for instance, non-economic services of general interest, health care, further and higher education.

All Member States should have the Directive's provisions implemented at national level and entered into force by 9 July 2015.

The Regulation, which is directly applicable in all Member States starting 9 January 2016, applies to out-of-court dispute resolution concerning contractual obligations originating from online sales or service agreements between consumers and traders. The Regulation provides a European online dispute resolution platform ("ODR platform") which facilitates the "independent, impartial, transparent, effective, fast and fair out-of-court resolution of disputes between consumers and traders online". The ODR platform does not intend to resolve a dispute, but rather to channel the dispute to a relevant ADR entity in case both parties agree. The ODR platform should become operational in January 2016.

The two interlinked and complementary legislative instruments aim to provide a high level of out-of-court, fair, quicker, low-cost consumer protection by Member States. By virtue of these acts, the EU aim to promote the use of ADR schemes in disputes involving consumers' complaints throughout the EU.

Changes in the Bulgarian Consumer Protection Act

The suggested new provisions and the amendments to the existing ones, in general

¹ 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;

² 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);

terms, set the primary criteria for ADR entities and ADR procedures.

The ADR procedures should apply to disputes between consumers and traders, however, disputes between traders, as well as trader-against-consumer complaints, shall not fall in the scope of the new provisions of the Consumers Protection Act.

The ADR entity can be comprised of either one physical person or it can be a collegial body. The Minister of Economy should establish general conciliation committees and sector conciliation committees with the Consumers Protection Commission to act as ADR entities.

On the one hand, general conciliation committees should resolve domestic and cross-border disputes between consumers and traders related to sale and service agreements, including in connection with guarantee liability of the traders and consumers' right to complain of goods or services.

On the other hand, sector conciliation committees should assist in the resolution of domestic and cross-border disputes between consumers and traders related only to the energy, water and sewerage services, electronic communications and postal services, transport and financial services.

The ADR procedures are optional and it is up to the involved parties whether to file a complaint with the ADR entity or with the court. In case the parties have recourse to ADR procedure, the outcome of which is not binding, the parties are not subsequently prevented from initiating court proceedings in relation to that dispute as a result of the limitation expiry or prescription periods during the ADR procedure.

The ADR procedures should be available and easily accessible online and offline to both parties.

Impact on Businesses

It is expected that these new EU regulations will promote cross-border online sale throughout the EU by way of better protection to EU customers who purchase products and services online from traders established within the EU.

As a result of the new legislative updates, all businesses which sell goods or services online will be required to provide on their website information about their email address and link referring to the ODR platform. All traders should provide information to the consumers also about the ADR entities by which those traders are covered, as well as when those traders commit to or are obliged to use ADR entities to resolve disputes with consumers.

In view of the above, businesses will have to amend and supplement not only their internal policies and procedures for complaint handling, but also their websites and terms and conditions.

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