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Changing the dispute resolution culture – will the EU consumer disputes legislation lead to an increased awareness of ADR in Member States?

Emma Reade (Young Mediators' Group) · Monday, April 4th, 2016 · Young Mediators Initiative (YMI)

On 15 February 2016, the European platform for solving disputes arising out of online purchases (<https://webgate.ec.europa.eu/odr>) the **ODR Platform**, based on EU Regulation 524/2013 (the **Regulation**) was officially launched. The platform enables EU consumers and traders to settle their disputes by putting them in touch with the ADR providers selected by Member States. This platform is the result of a legislative drive by the European Union to promote ADR mechanisms for consumer disputes. The aim of the European Commission, as provided in Directive 2013/11/EU (the **Directive**) is to boost consumers' confidence in the market by ensuring access to 'simple, efficient, fast and low-cost ways of resolving domestic and cross border disputes which arise from sales or service contracts'.

Pursuant to its article 2(3), the Directive will 'establish harmonized quality requirements for ADR entities and procedures in order to ensure that, after its implementation, consumers have access to high-quality, transparent, effective and fair out-of-court redress mechanisms, no matter where they reside in the Union'.

Whether the dispute resolution bodies created or reinforced by Member States to comply with the Directive do indeed provide high quality, transparent, effective and fair resolution of disputes is a debate in itself and will probably take a few years to be meaningfully decided upon. There is however one potentially very important long-term effect of this legislation which should already be highlighted.

In paragraph 6 of its preamble, the Directive specifically refers to the general lack of awareness of the existing out-of-court redress mechanisms and, importantly so. One of the biggest challenges faced by the ADR community today is the lack of education of consumers and small business owners about the dispute resolution solutions available to them.

The European legislator tried to tackle this issue through article 14 of the Regulation, which requires all traders to have a link to a relevant ADR entity on their website and in their general terms and conditions of sales contracts or service contracts. Further, in situations where disputes have arisen with customers, traders must direct their clients to an appropriate certified ADR provider and must indicate whether or not they intend to use that provider.

Ultimately, this obligation of information should lead to a greater awareness of the existing dispute

resolution solutions, for consumers as well as traders. Traders will be forced, by the legal requirement of article 14, to develop an understanding of dispute resolution and consumers will be given a easier access to better information. This should result in a better understanding of the dispute resolution landscape and should help parties make better-informed decisions in situations of conflict. Ultimately and, in my view hopefully, this broadened understanding will result in a cultural shift towards less adversarial methods of solving disputes in the EU.

However, legal change does not necessarily translate into social change and the challenge will be to ensure that the relevant stakeholders (consumers and traders) are made aware of the existence of the legal instruments and of the obligations imposed on them. Thus, effective legislative measures and enforcement mechanisms introduced by Member States to ensure that businesses are informed of their obligations pursuant to the Directive and Regulation and that they comply with them are of utmost importance. But equally important will be the structures introduced to help businesses successfully understand and implement these new processes.

By way of example, in the UK, where the ODR platform was introduced under the Alternative Dispute Resolution for Consumer Disputes (Amendment) Regulations 2015 (SI 2015/1392), many initiatives have been led by the government to ensure that the relevant stakeholders are aware of their new obligations. The UK Department for Business, Innovation and Skills Published a Policy Paper for consumers on 23 June 2015 and a Guidance Note for businesses on 29 January 2016. Further, the UK Citizens Advice Bureau has created a dedicated helpline for consumer disputes.

Going forward it will be interesting to see how Member States decide to help traders and consumers transition to this new approach and enforce these new obligations. Only when all that is done and some time has passed will we be able to have an informed debate on the quality of the new EU legislation introduced.

But in the meantime, I would like to ask readers the following question: what measures have been taken to integrate the Directive and Regulation in your Member State and do you believe these will help businesses and consumers use alternative dispute resolution in a meaningful way?

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