



The EU Framework for Consumer ADR and ODR

**Conference on Banking and Financial
Dispute Resolution**

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ADR/ODR legislation and the Single Market

- *High costs and length of court settlements undermine consumer confidence*
- *Alternative dispute resolution (ADR) tackles this issue*
- *Traders also benefit from clear and consistent dispute resolution rules across the Single Market*
- *Online shopping calls for online dispute resolution (ODR)*
- *EU legislation of May 2013 addresses these needs; important prerequisite of the Digital Single Market Strategy*



Two pieces of legislation

- *Directive 2013/11/EU on consumer ADR (the « ADR Directive »)*
 - **To be implemented by July 2015**
- *Regulation (EU) No 524/2013 on consumer ODR (the "ODR Regulation")*
 - **EU-wide online platform to be established by January 2016**

ADR/ODR legislation: approach and impact

ADR Directive

ODR Regulation

What the
new
legislation
brings

- Access to ADR entities and procedures
- Harmonised high level of quality
- ADR awareness

Establishment of the European ODR platform for disputes arising from *online* sales or service contracts ("*buy online – settle your dispute online*")

economic
impact

- Consumers save money when they are confident to shop for the best offers in the Single Market
- Business more likely to expand across borders, more competition
- Reduced legal costs, higher productivity
- More growth

Directive 2013/11/EU on consumer ADR

ADR coverage



ADR quality



ADR information





Objective

(Art. 1 ADR Directive)

"Article 1

Subject matter

*The purpose of this Directive is, through the achievement of a **high level of consumer protection**, to contribute to the **proper functioning of the internal market** by ensuring that consumers can, on a voluntary basis, submit complaints against traders to entities offering **independent, impartial, transparent, effective, fast and fair alternative dispute resolution procedures**. [...]"*



Scope (1)

(Art. 2(1) ADR Directive)

Procedures for the out-of-court resolution of:

- *disputes concerning contractual obligations stemming from sales or service contracts*
- *between a trader and a consumer, both established/resident in the Union*
- *through the intervention of an ADR entity which*
 - proposes a solution;
 - imposes a solution; or
 - brings the parties together with the aim of facilitating an amicable solution



Scope (2)

(Art. 2(2) ADR Directive)

Not covered, in particular:

- *disputes submitted by traders against consumers (B2C disputes)*
- *disputes between traders (B2B disputes)*
- *direct negotiation between the parties*
- *settlement attempts made by a judge in the course of judicial proceedings*
- *"procedures before dispute resolution entities where the natural persons in charge of dispute resolution are employed or remunerated exclusively by the individual trader" (unless MS decide otherwise)*
- *disputes concerning health services or public providers of further or higher education*

Core elements (1)

A. Ensuring access to ADR entities and ADR procedures ("full coverage")

"Article 5

Access to ADR entities and ADR procedures

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 can be submitted to an ADR entity which complies with the requirements set out in this Directive.*

[...]."

Core elements (2)

B. Establishing binding quality requirements for ADR entities and ADR procedures

- *Organisational requirements (Art. 5)*
- *Expertise, independence and impartiality (Art. 6)*
- *Transparency (Art. 7)*
- *Effectiveness (Art. 8)*
- *Fairness (Art. 9)*
- *Liberty (Art. 10)*
- *Legality (Art. 11)*
- *Effect on limitation and prescription periods (Art. 12)*



Core elements (3)

C. Control of compliance with quality requirements through national competent authorities

Member States designate competent authorities that perform the following tasks (Art. 20):

- *Assess whether dispute resolution entities intending to get listed as "ADR entities" comply with the quality requirements established by the Directive;*
- *List/De-list compliant/no longer compliant dispute resolution entities as "ADR entities";*
- *Report on development and functioning of ADR entities in respective MS*



Core elements (4)

D. Consumer information by traders (Art. 13)

Traders who commit or are obliged to use ADR must inform consumers about ADR in a clear and comprehensible way

- on their websites (if they have one);
- in general terms and conditions (if applicable)

All traders must inform consumers about ADR when a complaint submitted to them directly by the consumer could not be settled bilaterally

State of Play of Implementation (31/07/2017)



- *27 Member States have notified complete transposition; transposition check ongoing*
- *26 Member States have notified more than 300 ADR entities*
- *ADR/ODR legislation applicable to EEA countries (Iceland, Liechtenstein, Norway) since 1 July 2017.*

Regulation (EU) No 524/2013 on consumer ODR

ODR platform



ODR contact points



ODR information



Scope (1) **(Art. 2(1) ODR Regulation)**

Out-of-court resolution of

- *disputes concerning contractual obligations stemming from online sales or service contracts;*
- *between a trader and a consumer, both established/resident in the Union;*
- *through the intervention of an ADR entity listed in accordance with Article 20(2) ADR Directive;*
and
- *involving the use of the ODR platform*

Scope (2)

(Art. 2(1) and (2) ODR Regulation)

Not covered:

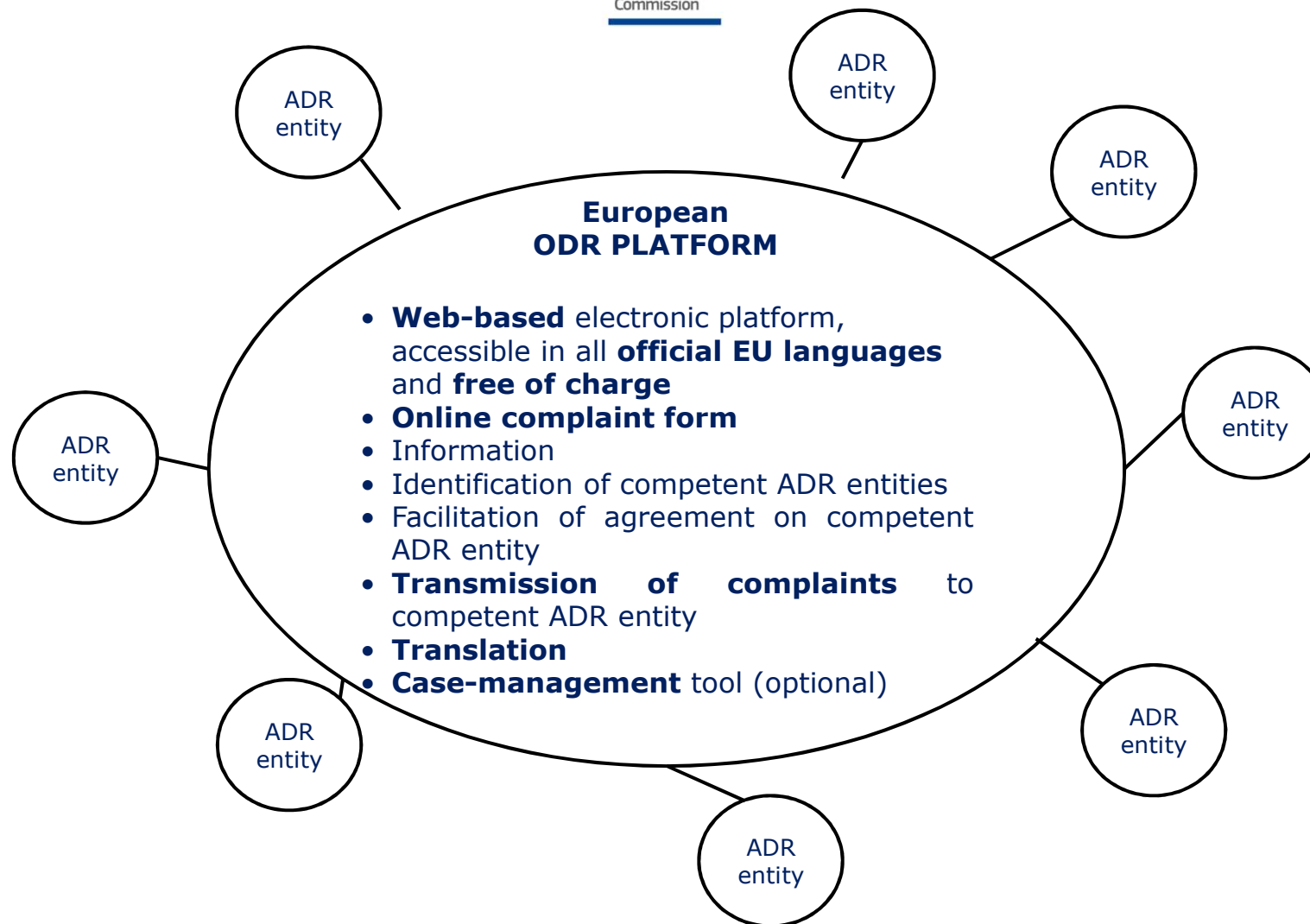
- *Same exemptions as ADR Directive* (reference to "ADR entity listed in accordance with Article 20(2) [ADR Directive]")
- *But: B2C disputes covered if legislation of MS in which consumer is habitually resident allows for such disputes to be resolved through ADR (cf. Art. 2(2))*

Core elements (1)

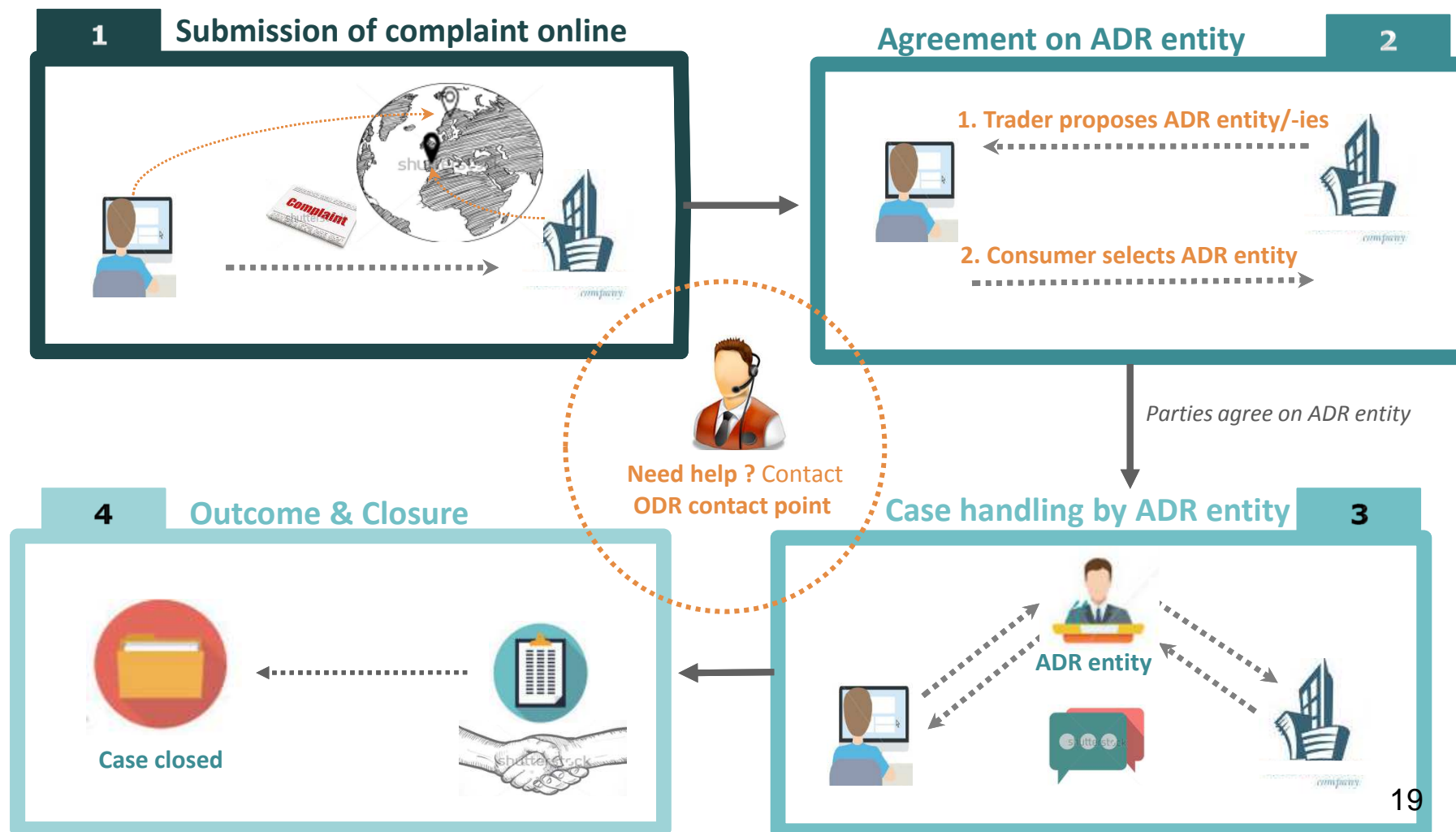
The ODR Platform



(simplified schema)



FOUR STEPS TO RESOLVE A DISPUTE



Core elements (2)

The ODR contact points

Designation

- One ODR contact point per Member State
- At least 2 ODR advisors per contact point
- Functions may be restricted to cross-border cases

Tasks

- Assisting with the complaint submission
- Providing information on consumer rights
- Providing information about the ODR platform
- Explaining the rules of procedure of the ADR entities
- Informing about other means of redress
- Reporting to the Commission every 2 years



Core elements (3)



Consumer Information

- Online traders and online marketplaces established in the EU to inform consumers about the ODR platform by providing an easily accessible link to it on their websites
- Online traders that are obliged or committed to use ADR to inform consumers about the possibility to use ODR platform on their websites and, *where applicable*, in e-mails and general terms and conditions

ODR Regulation – state of play of implementation (31/07/2017)



- Platform accessible to EU consumers and traders since 15 February 2016: ec.europa.eu/consumers/odr
- 298 ADR entities from 26 Member States registered (no ADR entities available from Romania and Spain)
- More than 37,000 complaints lodged, More than 3 million visitors
- 64% domestic cases, 36% cross-border cases
- Top 5 retail sectors: clothing and footwear; airlines; information and communication technology; electronic goods; mobile telephone services.

ADR, ODR and financial services

- *Importance of ADR long recognised: FIN-NET founded in 2001*
- *Puts consumers in contact with ADRs that can help them across borders*
- *Tries to promote a common ADR culture*
- *ADR/ODR infrastructure needs to be complemented by close cooperation of ADR schemes to promote common approaches*