

## New legal framework for out-of-court settlement of consumer disputes: consequences for businesses established in Luxembourg

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On 17 February 2016, the legislator enacted, a new law to promote out-of-court settlement of consumer disputes (the “Law”). The Law applies to disputes arising from sales or service contracts between a trader established in Luxembourg and a consumer residing in the EU (including Luxembourg), and transposes the Directive 2013/11/EU[1] obliging EU Member States to create alternative dispute resolution (“ADR”) entities for consumer disputes.

Online sales and service contracts also fall into the scope of Regulation (EU) No 524/2013[2] establishing a **multilingual online dispute resolution (“ODR”) platform** for the resolution of consumer disputes relating to online transactions.

The Law creates a new body, the Consumer Ombudsman (in French, “*Médiateur de la consommation*”), which will (i) serve as a point of information on the ADR procedure for consumer disputes, (ii) receive all consumer ADR complaints, and (iii) handle disputes for which no other entity is competent. This new entity **will coexist with existing sectorial ADR entities**, competent for specific disputes (e.g. “*Commission de surveillance du secteur financier*”, “*Commissariat aux assurances*”, “*Institut luxembourgeois de régulation*”, etc.), and will be competent only if no other ADR entity is competent.

**The Law does not prescribe a general obligation to use ADR.** Consumers and traders will still be able to resolve their disputes in court and the solutions proposed by ADR entities are non-binding.

However, **traders who commit to or are obliged, due a sectorial regulation, to use ADR procedure for resolving their dispute with consumers**, are required to provide consumers, prior to the conclusion of the contract, in a clear, comprehensible and easily accessible way, **on their website and/or in their general terms and conditions**, with the following information:

- the ADR entity/entities by which the traders are covered (including the website address of the relevant ADR entity),
- the existence of the ODR platform and the possibility of using this platform,
- an electronic link to the ODR platform.

In all cases, traders established within the UE and **engaging in online sales or service contracts**, must, via their websites, provide consumers with an electronic link to the ODR platform, together with their e-mail addresses.

Further, where **a dispute between a consumer and a trader could not be settled through a complaint submitted directly by the consumer to the trader**, the Law requires the trader to provide the consumer with

the above information, specifying whether it will make use of the relevant ADR entity/entities to settle the dispute. That information must be provided on paper or on another durable medium.

We would be happy to help you to review your website and general terms and conditions to make sure that they meet the requirements of the new legal framework.

Please contact us for more information.

[1] Directive 2013/11/EU 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 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC