Annual ODR report

1st January 2023 – 31 December 2023

European Consumer Centre Luxembourg –

ODR contact point

Table of contents

I - Introduction

2023 has been the eight year since the EU-wide launch of the Online Dispute Resolution Platform (ODR-platform) in April 2016. The ODR platform aims to facilitate the online resolution of disputes between consumers and traders over online transactions.

The legal basis of the platform can be found in the consumer ADR directive 2013/11/EU and the ODR regulation no 524/2013. Both are implemented in Luxembourg's "Code de la consommation" through the legal text dated 17th February 2016 ("Loi du 17 février 2016") in the newly created articles L. 411-1 to L. 432-17. These articles cover dispute resolution for domestic, cross-border and e-commerce consumer disputes.

Within the system of alternative dispute resolution entities in Luxembourg, the European Consumer Centre Luxembourg GIE (ECC Luxembourg) is in its initial role entitled to ensure defence for customers involved in cross-border conflicts.

As foreseen in Article 7 of the ODR regulation no 524/2013 *"Each Member State shall designate one ODR contact point".* The regulation left space for the choice of a proper emplacement, stating that *"The Member States may confer responsibility for the ODR contact points on their centres of the European Consumer Centres Network, on consumer associations or on any other body".*

As in most of the Member States, since 18th April 2016 the ECC Luxembourg has been appointed by Luxembourg's Government as the national contact point in relation of the ODR Platform according to Article L. 412-3 "Code de la consommation".

In order to ensure the implementation of ECC Luxembourg as ODR contact point, a protocol was established between the Ministry of Consumer Protection and the ECC Luxembourg. The latest version of this protocol is dated 10 May 2021.

Neighbour states like Germany, Belgium and France also implemented the ODR contact point in the ECC. All in all, 21 ODR contact points are hosted by the national European Consumer Centre.

As soon as the ECC Luxembourg has been appointed ODR contact point, it has set up the ODR email address: odr@cecluxembourg.lu.

According to Article 7 paragraph 2 of the Regulation, the role of the ODR contact point is described as follows: "*ODR contact points shall provide support to the resolution of disputes relating to complaints submitted through the ODR platform*".

The Regulation stipulates in Article 7 paragraph 3 that the National ODR contact points are not obliged to handle domestic disputes. The Member States are free to decide whether the ODR contact point also *"performs one or more functions listed in paragraph 2 in the case of disputes where the parties are habitually resident in the same Member State".*

Luxembourg's legislator codified under Article L. 412-3 that the ODR contact point in Luxembourg is entitled to also perform functions with regards to domestic disputes.

The financial funding of the ODR entity relies upon the Ministry of Consumer Protection until October 2023. Since 17 November 2023, it became the Directorate of Consumer Protection at the Ministry of Agriculture, Food and Viticulture. With regards to Article 7 paragraph 1 of the ODR Regulation, each ODR contact point should have at least two ODR advisors. Therefore, ECC Luxembourg employed two advisors. Both took part in various activities since and also before the launch in 2016, e.g. ODR-trainings, communication campaigns, presentations or ODR-advisor meetings at the European Commission.

In 2023, the working time of the two ODR advisors were as follows:

- 1 January 2023– 31 December 2023, KM, 15h/week
- 1 January 2023– 31 December 2023, NO, 5h/week

For the remaining time both employees work for the ECC Luxembourg: 15h/week KM and 20h/week NO.

II - Functioning of the ODR platform

The main goal of the ODR platform is to provide a simple and efficient way to settle a conflict between a consumer and a trader arisen from online transactions. Since 15th February 2016 the ODR platform is accessible through https://ec.europa.eu/consumers/odr/.

Concerning the functioning, the complaints can be introduced by both consumers and traders. The ODR platform allows consumers and traders to initiate a procedure by submitting a complaint electronically to a trader respectively to a consumer. They can choose any of the EU official languages for their interaction within the platform. An automatic translation tool is available for free text communication.

Once the complaint submitted, the adversary party is automatically informed and the platform allows the adversary party to identify the competent ADR entity. In case that both parties agree on the ADR body, the platform refers the complaint to the chosen ADR entity and an out-of-court settlement should be found in a short period.

If the parties do not manage to agree to an entity or if the adversary party does simply not respond within 30 days after the complaint has been submitted within the platform, the case will be automatically closed in the system.

The ADR process should take maximum 90 days. So that in the end, the duration of an ODR procedure from the introduction of the complaint on the ODR platform to its resolution shall be theoretically maximum 120 days. This is significantly shorter than a court action which can take up to several years, without mentioning the related costs of a judicial procedure.

With the tool “direct talks” consumers and traders are able to use the platform to exchange messages and attachments before submitting the complaint officially. This opens the opportunity to agree on a mutually acceptable solution without lodging a complaint. Every party remains free to interrupt the “direct talks” at any time and to continue the procedure within the platform, which means that the parties should agree on an ADR body.

III - Methods of work

According to Article 7.2 of the Regulation, the role of the ODR contact point is defined as follows: *"ODR contact points shall provide support to the resolution of disputes relating to complaints submitted through the ODR platform".*

It is to note that the ODR advisors are not enabled to access the details of a case within the dashboard if none of the parties have submitted a question or notification concerning their complaint. All introduced complaints in which the parties have not submitted a question, remain invisible for the ODR advisor, mainly for reasons of data protection.

To explain the methods of work of the ODR advisor we need to distinguish between the two ways the requests can be introduced: requests within the platform and the requests received outside from the platform via the ODR e-mail address or by phone.

3.1 Requests within the platform

Once a complaint is introduced within the platform, customers and traders have the possibility to contact the national ODR contact point via the platform and submit any question regarding the process of their case.

These requests or notifications are related to cases that have already been submitted in the ODR dashboard with a respective case reference number. The ODR advisor responds to these requests directly within the platform.

The question can be various like e.g. guidance on the process of forwarding to an ADR body, information that a case can be closed as a solution had been found outside the platform etc.. In 2023, we encoded 14 requests within the platform that required a direct response from us. The inquiries came all from consumers who stated that the trader did not react. Therefore, they wanted to know how the ODR advisor may intervene to solve their issue or what the consumer can alternatively do to find a solution to her/ his issue.

3.2 Requests outside from the platform

The second type of requests encoded is the requests outside from the platform mainly via the e-mail address odr@cecluxembourg.lu and very seldom by phone.

During the last years we observed that nearly none of these requests via ODR e-mail address were related to a complaint within the platform, or to a general question concerning ODR. The majority of these requests concerned consumer problems regarding a specific complaint.

The technical questions that arise are often when traders needed support to access a complaint that had been submitted to them via the ODR platform.

If we consider that a complaint could not be settled via the ODR platform (for instance offline purchase) we gave general information on consumer rights and on alternative means of redress. The information is given no matter if the complaint concerns a cross-border or a domestic dispute. Due to our experience as ECC case-handler we can easily suggest other means of redress to the consumer. We make continuous efforts to explain the functioning of the ODR platform, but we also recommend to transfer cross-border disputes within the ECC-Net if we consider it more advantageous for the consumer (e.g. acknowledge that the trader does not participate in the ODR procedure, but cooperates with ECC - Net).

We also inform consumer and traders about the competent ADR body and in some cases advise the complainant to file the complaint directly to the notified ADR body, respecting the requirements of admissibility.

In case of a domestic dispute we recommend to contact the National Consumer Protection Organization “Union Luxembourgeoise des Consommateurs” (ULC) or the Mediator of Consumption “Service national du Médiateur de la Consommation”. Our responses obviously depend of the nature of the request.

IV - Statistics

4.1 Statistics released by the European Commission

The fourth statistical report on the functioning of the ODR platform dated from 20th December 2021 was released by the European Commission to the European Parliament, the Council and the European economic and social committee and resumes the figures of 2020. Until now it is the latest report available to us.

Based on the information provided by this report, in 2020, the platform received a total of 3.3 million unique visitors, averaging around 275 000 unique visitors per month. However, out of those visitors, only a small proportion, specifically 17461 consumers, submitted a finalized complaint, where 30 319 visitors requested "direct talks."

As a reminder: in its report of 25th September 2019, the European Commission released statistics about the ODR platform related to all the complaints lodged on the platform until 1st July 2019. In its report the Commission presented a detailed analysis of the complaint life-cycle on the platform. This analysis showed that 80% of the introduced complaints were automatically closed within 30 calendar days (i.e. deadline for the consumer and the trader to agree on a competent ADR body). Only in about 2% of the complaints the normal workflow of the platform was followed: the parties agreed on an ADR body and the case was transferred to the competent ADR entity.

By December 2023 since the launch of the platform in April 2016, a total of 6274 complaints were filed within the platform involving Luxembourg. Compared to December 2022 were the number of complaints counted were only 4993. Out of them only 55 were domestics disputes. Luxembourg remains far away from the EU-wide trend that states that about 50,14% of the disputes are domestic. Regarding the EU figures most disputes are about airlines (20,31%), followed by clothing and footwear (9,39%).

The total number of complaints submitted on the ODR platform is released by the European Commission and available on the ODR Platform.

The current general statistics on the percentage on national and cross-border complaints are available on the ODR website (https://ec.europa.eu/consumers/odr/main/?event=main.statistics.show), as well as the aforementioned statistical report from the European Commission of December 2021.

4.2 Statistics encoded by ODR contact point Luxembourg

The majority of requests accessible to the Luxembourg's ODR advisors are the requests outside from the platform via the e-mail address odr@cecluxembourg.lu.

During 2023 the ODR contact point Luxembourg encoded 14 requests within the platform that required a direct response from us. The ODR contact point received 7 requests outside ODR platform via its e-mail address. Out of those 7 requests, all were on behalf of consumers, the majority of the questions were related to a specific issue where the consumer asked for assistance in their matter.

The number of requests we have received outside the platform has changed significantly compared to 2022 when the ODR contact point received 41 requests. We attribute this change to the modification made to the ECC Luxembourg's website on 8 December 2022. As a result, we now exclusively receive inquiries regarding the ODR platform via the ODR email address, unlike our previous experience in previous years.

V – Cooperation with stakeholders

The ECC Luxembourg has constant exchange of information and meet on regular basis at conferences and meetings with the National Organization of Consumer Protection " Union Luxembourgeoise des Consommateurs" (ULC) and with notified ADR entities. Currently five certified entities exist in Luxembourg:

- Commission de Surveillance du Secteur Financier (CSSF)
  Financial Sector Supervisory Commission.
- Commission luxembourgeoise des litiges de voyages (CLLV)
  Luxembourg Commission for Travel Disputes
- Institut Luxembourgeois de Régulation (ILR)
  Luxembourg Regulatory Authority
- Médiateur en assurances (ACA)
  Mediator in Insurance
- Le service national du médiateur de la consommation (Médiateur)
  The National Service of the Mediator of consumption

Altogether, the certified entities are covering the fields of financial services, package travels, insurance, communication services and general consumer rights.

The ECC Luxembourg assisted at meetings with the ADR entities. We have signed a cooperation charter with almost all of the certified ADR entities. Those charters provide practical guidance to the ODR advisor to ensure an effective cooperation with the ADR entity.

ECC Luxembourg attended two meetings with the Directorate of Consumer Protection on 12 July 2023 and on 14 December 2023, to discuss the current status of the ODR contact point.

The ODR support team, managed by the European Commission, allows users to ask questions about the platform. They provide training through webinars for ODR advisors to become familiar with the platform and offer technical support if any problems arise.

Furthermore, we are in permanent cooperation with the European Consumer Centres (ECC-Network). We have a constant exchange via the common platform called "Wiki" for ODR advisors.

We keep on to have constant exchange of information with "Union Luxembourgeoise des Consommateurs" (ULC). We meet on regular basis at conferences and meetings.

The trader associations participate on regular basis at our conference “Midi du Consommateur”. The “Midi du Consommateur” is a one-hour conference at noon on European Consumer Law. The ECC Luxembourg organizes the conference on a regular basis together with the “Information office of the European Parliament” and the “Representation of the European Commission”. The participation of the trader associations at our conference gives us the opportunity to ask questions and exchange information on relevant topics concerning consumer matters.

VI – Conclusions

After eight years since the launch we still observe that users are not always aware of the function of the ODR platform and its normal workflow. Some users are confused and think that the ODR platform or the advisor may resolve their conflict directly, although the main use of the platform is to facilitate the access to ADR. Also, during discussions with other ODR contact points, the reluctance of professionals to engage in the process has been frequently mentioned. Some may perceive alternative dispute resolution entities as advocating for consumer interests, considering them biased in favor of consumers. The ODR contact point has an essential role in providing clarity and managing user expectations.

According to the European Commission, only 2% of disputes were transferred to alternative dispute resolution bodies in the first year of the website's launch, a figure that has not been updated since.

Over the course of time, the emphasis on fostering communication between parties through the platform has progressively overshadowed the primary objective of facilitating access to ADR. Despite the shifting focus, the inclusion of the self-test tool and "direct talks" modules within the platform has provided valuable resources for enhancing clarity in the dispute resolution process. These tools offer parties the opportunity to assess their positions and engage in direct conversations, facilitating a clearer understanding of their respective perspectives and potentially promoting more effective resolution outcomes. They allow the user to identify which redress solution would be the most appropriate for the specific issue: launching a complaint on the ODR platform, contacting the trader bilaterally, an European Consumer Centre or an ADR entity directly.

During the last annual ODR contact point meeting organized by the European Commission September 2022, the European Commission has already indicated, that without undergoing significant changes the platform does not exactly meet the user’s expectations. Regarding the experience of ECC Luxembourg, we share this opinion. The ECC Luxembourg welcomes the proposals of the European Parliament and the Council aiming to repeal the regulation. Since the launch of the platform in April 2016, the ODR contact point has observed that the number of requests directly entered by the ODR contact point has not significantly increased.

The obligatory link that traders have to insert on their website might have contributed to a certain visibility of the ADR/ODR process on the trader’s side. Even, if the main aim to facilitate the access to the ADR entities has not been yet achieved, the consumers and traders shall still be encouraged to use the possibilities of out-of-court settlement. This might be likely more closely tied to the revision of the ADR Directive 2013/22/EU than the revision of the ODR Regulation 524/2013.

Luxembourg, 24 April 2024