



CONSUMER E-DISPUTE: ONLINE DISPUTE RESOLUTION IN TURKEY

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ABSTRACT

Due to the rise of computer use worldwide and continuing crisis in access to justice, the need for Online Dispute Resolution is obvious and will continue to grow. Nowadays, electronic commerce enhances rapidly with the motivation of developed Information and Communication Technology all over the world. At the same time, dispute is inevitable when the parties may be quite far from each other and the claims may be small amount. Particularly, for consumer, sometimes it could be difficult to access to justice. For this reason, ODR could be the best option to resolve consumer disputes arising from B2C e-commerce transactions.

Through analysing online dispute resolution systems and its capability of resolving consumer disputes arising from Business to Consumer, this thesis targets to answer whether Online Dispute Resolution system is possible to implement Turkey's legislation. The ADR and ODR approach has been broadly adopted by the EU; therefore this thesis also examines the EU legislation, particularly the Netherlands and the UK which are pertinent to be analysed for the further implementation of online dispute resolution in an absence of ODR Regulation in Turkey, specifically, on the aspect of consumer protection.

By considering Turkey's EU accession procedure as well as the need for low-cost and non-bureaucratic methods of dispute resolution, this thesis provides the groundwork for future research into Turkey's use of ODR. Finally, the thesis gives several suggestions on the implementation of ODR Regulation in Turkey.

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“It looks impossible until it is done” (Nelson Mandela)

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INTRODUCTION OF THE THESIS

Background of the Problem

With the development of modern technology and the subsequent growth of the Internet, people can easily connect with each other across continents and obtain information synchronically from the variety of sources. The Internet has become a portal to an ever-growing and globalized electronic marketplace for consumer goods and services.¹ The combination of the physical world with the digital world has led to an increase of the percentage of the world's population with access to the Internet, from 1% in 1995 to around 50% in 2017.² Due to the Information and Communication Technology (hereinafter 'ICT'), businesses also have changed, how retailers and consumers buy, distribute and customize products.³ Moreover, the advent of the Internet and the evolution in ICT has further created the phenomenon of e-commerce which has created a significant amount of transactions such as Business to Business (B2B), Business to Consumer (hereinafter 'B2C') transactions and many other interactions between businesses and consumers.

E-commerce expands as a speedy and cost-effective way of conducting business, various types instantaneous transactions are being facilitated, and disputes arising from these transactions are transactions with an increasing effect being had on the landscape of these disputes.⁴ It is inevitable that this issue is considerably more prevalent than in the past "*conflict is a growth industry*."⁵ More particularly, consumers can avoid disputes neither in the physical world nor in virtual. In cyberspace, electronic consumers (e-consumers) can face more problems which

¹Amy J. Schmitz, 'Building Trust in Ecommerce through Online Dispute Resolution' (Lawweb.colorado.edu, 2015) <<https://lawweb.colorado.edu/profiles/pubpdfs/schmitz/SchmitzBuildingTrustinEcommerceThroughOnlineDisputeResolution.pdf>> accessed 25 May 2018.

² 'World Consumer Rights Day 2018 Briefing: E-Commerce Backgrounder Making Digital Marketplaces Fairer' (Consumersinternational.org, 2017) <<https://www.consumersinternational.org/media/154916/e-commerce-overview-report.pdf>> accessed 24 May 2018.

³'Barriers to E-Commerce Adoption: Consumers' Perspectives from a Developing Country' (File.scirp.org, 2013) <http://file.scirp.org/pdf/IB_2013062716581603.pdf> accessed 24 May 2018.

⁴ Aashit Shah, 'Using ADR to Resolve Online Disputes' (Scholarship.richmond.edu, 2004) <<https://scholarship.richmond.edu/cgi/viewcontent.cgi?referer=https://www.google.nl/&httpsredir=1&article=1196&context=jolt>> accessed 25 May 2018.

⁵ Roger Fisher William Ury, 'Getting to YES Negotiating an Agreement without Giving In' (Fd.unl.pt, 1981) <http://www.fd.unl.pt/docentes_docs/ma/AGON_MA_25849.pdf> accessed 25 May 2018.

activities take place amongst strangers, the risk for misunderstanding, mistake and fraud can be encountered.⁶

Due to the characteristics of the virtual environment, jurisdictions with the complex legal issues and conflict of laws are one of the hurdles to the improvement of a coherent legal system for resolving disputes, whereas consumer disputes arising from B2C e-commerce (hereinafter 'consumer e-disputes') are generally small-value claims compared with the business disputes.⁷ Disputes arising out of online transactions may become much more complicated and numerous than traditional conflicts. According to Chin Eang Ong:

*"in a traditional marketplace, consumers know means of enforcing their rights, but in an electronic marketplace in an online transaction, delegating liability and providing access for redress might be a problem for consumers. A transaction is curable when it takes place within a single jurisdiction, i.e. access to local court, but e-commerce is borderless and recourse to courts in any cross-border electronic transaction is complicated by difficulty jurisdiction over such dispute and the applicable law."*⁸

Therefore, traditional dispute resolution mechanisms such as court proceedings which are inconvenient, inherently dependent on jurisdictions and have a burden of many cases may not satisfy parties' needs. In particular, for consumers, these traditional dispute resolution methods can be costly, time-consuming and also come with their own set of legal issues and this fact causes many risks and legal uncertainties. As a natural response, Online Dispute Resolution (hereinafter 'ODR') mechanisms have emerged with the aim of providing an effective way to

⁶ Pablo Cortés, 'Online Dispute Resolution for Consumers' (Pdfs.semanticscholar.org, 2011) <<https://pdfs.semanticscholar.org/14f8/a7d1993977c485cc3e32fa690c99ac96606d.pdf>> accessed 11 August 2018.

⁷ Mirèze Philippe, 'ODR Redress System for Consumer Disputes · International Journal of Online Dispute Resolution · Eleven Journals' (Elevenjournals.com, 2014) <https://www.elevenjournals.com/tijdschrift/ijodr/2014/1/IJODR_2014_001_001_004/fullscreen> accessed 5 May 2018.

⁸Chin Eang Ong, 'B2C E-Commerce Trust in Redress Mechanism (Cross Border Issues)' (Pdfs.semanticscholar.org, 2003) <<https://pdfs.semanticscholar.org/da71/0f25b5d2af58d25c2c2eeb4240b11a45b63f.pdf>> accessed 25 May 2018.

overcome the trust issues and helping disputants prevent, manage and resolve any disputes that they encounter.⁹

The need for a new system capable of the new ways of communication such as e-mails and video conferences for the resolution of disputes occurred over the past two decades and assumed that the most suitable approach would be found in modernizing existing means of alternative dispute resolution.¹⁰ Although Alternative Dispute Resolution (hereinafter 'ADR') methods¹¹ as a procedure are designed to resolve disputes outside of the courtroom in a faster way, in the digital era, ODR prevails concerning being more flexible, a less formal process, with more procedures that are confidential and lead to quick settlements.¹² As a result, the combination of ICT tools and ADR create a new field called ODR. As the Vice President of ODR for Tyler Technologies, Colin Rule has simply stated it *"ODR is an outgrowth of ADR, which uses the broad umbrella of different tools and techniques."*¹³

⁹ Colin Rule, 'Expanding Access to Justice through Online Dispute Resolution - Legal Talk Network' (Legal Talk Network, 2018) <<https://legaltalknetwork.com/podcasts/digital-edge/2018/02/expanding-access-to-justice-through-online-dispute-resolution/>> accessed 25 May 2018.

¹⁰ Karim Benyekhlef and Fabien Gélinas, 'Online Dispute Resolution' (*Lex-electronica.org*, 2018) <http://www.lex-electronica.org/files/sites/103/10-2_benyekhlef-gelinas.pdf> accessed 12 July 2018.

¹¹ *During the last quarter of the 20th century, before ODR, ADR has emerged dramatically including the several methods such as negotiation, mediation, and arbitration as an alternative to the court system which has been used to resolve disputes more rapidly and effectively.* Lekkas Zissis, 'Disputes in the Digital Era the Evolution of Dispute Resolution and the Model ODR System' (Thesis, Toulouse University 2015).

¹² Fahimeh Abedi, 'Universal Standards For The Concepts Of Fairness, Trust And Security In Online Dispute Resolution In B2C E-Disputes' (Vuir.vu.edu.au, 2017) <<http://vuir.vu.edu.au/id/eprint/35013>> accessed 21 August 2018.

¹³ Colin Rule, 'Expanding Access to Justice through Online Dispute Resolution - Legal Talk Network' (Legal Talk Network, 2018)<<https://legaltalknetwork.com/podcasts/digital-edge/2018/02/expanding-access-to-justice-through-online-dispute-resolution/>> accessed 25 May 2018.

During the past decade, international organizations (e.g., UNCITRAL¹⁴, the OECD,¹⁵ and ICPEN¹⁶), governments and consumer associations, and private business sectors are all interested in promoting e-commerce and have thus seen the promotion of ADR and ODR as part of this process. Some private companies such as eBay and PayPal have built their own online dispute resolution systems and successfully managed to bridge the gap between consumer and businesses, resulting in practical solutions in disputes relating to their services.¹⁷ Moreover, the EU understood the potential of ODR by adopting two legal instruments for consumer disputes i.e. the ADR Directive (2013/11/EU) (hereinafter 'the Directive')¹⁸ and ODR Regulation EU No (524/2013) (hereinafter the 'Regulation').¹⁹ Taking into consideration initiatives by more developed nations such as European Union Member States notably the United Kingdom (UK) and the Netherlands, aimed to boost the internal market and to enhance its cross-border transactions by providing the means to resolve consumer e-disputes. In the same vein, ODR Platform also increases access to justice for many e-commerce players.

¹⁴ UNCITRAL works recently regarding the development of ODR standards for the resolution of B2B and B2C e-commerce disputes. 'General Assembly United Nations Commission On International Trade Law Forty-Third Session New York, 21 June-9 July 2010' (Cisg.law.pace.edu, 2018) <http://www.cisg.law.pace.edu/cisg/ODR/Institute_ODR_paper.pdf> accessed 1 August 2018.

¹⁵ The Organization for Economic Co-operation and Development (OECD)'s committee on Consumer Policy has been working the field of dispute resolution and redress for a number of years to provide consumers "meaningful access to fair and timely dispute resolution and redress without undue cost or burden" and recognize the need to devote "special attention to the development of effective cross-border redress systems." 'CONSUMER DISPUTE RESOLUTION AND REDRESS IN THE GLOBAL MARKETPLACE' (Oecd.org, 2006) <<https://www.oecd.org/sti/consumer/36456184.pdf>> accessed 18 July 2018.

¹⁶ The website namely www.icpen.org includes information about how consumers can find help and file a complaint in cross-border disputes. Turkey is a member of ICPEN and it started operating on 1st of July, 2017. 'Turkey Takes up the Presidency of International Consumer Protection and Enforcement Network (ICPEN) 2017-2018' (english.gtb.gov.tr) <<https://english.gtb.gov.tr/news/turkey-takes-up-the-presidency-of-international-consumer-protection-and-enforcement-network-icpen20172018>> accessed 7 August 2018.

¹⁷ Leo Andersson, 'Consumer Arbitration Online Pre-Dispute Arbitration Agreements in an E-Commerce Context' (*Diva-portal.org*, 2015) <<http://www.diva-portal.org/smash/get/diva2:853887/FULLTEXT01.pdf>> accessed 7 July 2018.

¹⁸ '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 (Directive On Consumer ADR)' (Eur-lex.europa.eu, 2013) <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0011&from=EN>> accessed 15 August 2018.

¹⁹ '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)' (Eur-lex.europa.eu, 2013) <<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0001:0012:EN:PDF>> accessed 12 July 2018.

It is appropriate for Turkey to consider developing a dispute resolution mechanism to tackle consumer e-disputes, to foster e-commerce and the future economic growth of Turkey. ODR can be as an alternative to civil proceedings to abstain from sophisticated, high-cost legal issues and boost consumer trust in B2C transactions in the online environment. Due to highly increasing B2C e-commerce in Turkey, the country is also one of the new e-commerce hotspots for the various investors around the world.²⁰ This means that Turkey is in a situation to increase its economic standing by ensuring effective dispute resolution mechanisms for consumers who are skeptical of these e-commerce transactions due to a lack of reassurance regarding the potential problems. They may assume that it is difficult to resolve complaints and settle disputes, especially when online sellers are located internationally. Without effective remedies in the “*borderless marketplace*” consumer and businesses have concerns and may decide not to make transactions.

The Purpose of the Thesis

With consideration to the above, the purpose of this thesis is to establish an ODR system to resolve consumer disputes arising from B2C e-commerce context through the following research question; how can Turkish legislation create an Online Dispute Resolution System to resolve consumer disputes in the context of Business to Consumer e-commerce transactions, drawing from ODR Platforms and other online alternative resolution systems. The answer to this question reveals whether a legal transplant of the EU Regulation can be successfully implemented in Turkey.

²⁰ For instance, eBay is the world’s largest online marketplace which connects hundreds of millions of buyers and sellers globally on a daily basis, acquired 93% of Turkey’s largest auction site, GittiGidiyor. Pinar Bülent and Eylül Topanoğlu, 'Turkey’s New Emerging Market: E-Commerce - Consumer Protection - Turkey' (Mondaq.com, 2018) <<http://www.mondaq.com/turkey/x/377342/Consumer+Law/Turkeys+New+Emerging+Market+ECommerce>> accessed 8 June 2018. According to a report in the Turkish language daily, Dünya, “with e-commerce giant Amazon poised to enter the Turkish market, local companies, online retailers, and financiers are bracing for impact.” 'Turkish Companies Brace for Amazon's Arrival' (DailySabah, 2018) <<https://www.dailysabah.com/business/2018/01/31/turkish-companies-brace-for-amazons-arrival>> accessed 8 June 2018.

For further clarifications, the research contains several sub-questions. The first sub-question is to address the concept of ODR Systems. A second sub-question evaluates the ODR Platform concerning EU legal framework and their capability of resolving consumer e-disputes. A third sub-question considers how the EU Member States' legislation, specifically the Netherlands and UK, attempt through ADR procedures for consumer disputes following with ODR Platform, are compared with each other. A fourth sub-question explores the need for the legal framework in Turkey and whether it is necessary to lead an effective ODR system to resolve e-commerce disputes and enhance consumer trust through B2C e-commerce and how Turkey can take full of advantage of the lessons learned from these jurisdictions and ODR experiences.

The Methodology

In order to answer the research question in chapter one, it is imperative that the methodology used stands up to the scrutiny. It is important to mention that the research strategy of this thesis is doctrinal, it examines the wordings of Organization for Economic Co-operation and Development for Consumer Protection Policy as well as the rationale behind the protection of consumers for facilitation and distribution of justice. Additionally, the thesis adopts a comparative method by examining the difference of mechanisms with respect to ADR Directive, in the United Kingdom²¹ and the Netherlands.

As a comparative methodology is adopted, it is relevant to mention that reason for case selection; i.e., the underlying goal of the study is to discover whether the compared interpretation of ODR regulation, its scope, and applicability, share functional equivalence. Nevertheless, it is essential to emphasize that this does not entail the traditional functional method as set out by Zweigert & Kotz.²² An element of intuition seems distinct, as the UK and Netherlands can be broadly seen as “Western Worlds” and part of EU, they would share similar values. However as the analysis of

²¹ The result of Brexit on the legal framework is not immediate therefore it is not taken into consideration under the scope of this thesis. Jonathan Goldsmith, 'Dispute Resolution And Brexit' (Law Society Gazette, 2016) <<https://www.lawgazette.co.uk/commentary-and-opinion/dispute-resolution-and-brexit/5053792.article>> accessed 16 August 2018.

²² Konrad Zweigert and Hein Kotz, *An Introduction To Comparative Law* (Oxford University Press 1997).

the thesis would show that there can be a considerable difference that would result in one system being better than the other.

By moving forward to the choice of jurisdiction, the study primarily focuses on legal rules, namely the legislation about ODR. There is a possibility of sizable differences in the domestic legislation of in UK and Netherlands, these dissimilarities will further be compared and the one best suited for Turkey would be taken into consideration. This would be done with a certain level of abstraction, as cultural and social aspects would not be taken into consideration, other than consumer awareness. In order to perform a legal transplant, this thesis would stick to the definition by Alan Watson, wherein social and cultural aspects would not be prevalent as law in never in context, there has to be a point of similarity, in order to perform legal transplant and it would ultimately depend on the legislators who would hold the 'borrowed rules' in a manner that the country borrowing would subscribe to.

The consideration for choosing these jurisdictions are as follows; to start with both the jurisdictions are predominantly English speaking and have their laws in English which makes it easy for comprehension and interpretation for a comparison. Secondly, they have similar political values, birthed out of EU. Third and most important they have a robust system of Online Dispute Resolution to be studied. The efficiency of the legislation in the two selected jurisdictions are significantly higher than that of any other EU Member State, thus leaving out other jurisdictions, like Germany. Also due to the fact, there is a language barrier in the regulation of ODR in Germany, thus placing it beyond the scope of the thesis and even as a nascent comparison.

The Outline

The first chapter of the thesis starts with the concept of ODR systems by introducing ODR and its theoretical framework in the way of respect to the literature view and continues with the critical factors of developments of ODR systems are examined. The role of preliminary regulatory initiatives has fundamental principles relating to ODR, are discussed.

Chapter two evaluates the differences between the current ADR Directive and ODR Regulation for consumer disputes by focusing the requirements of the ODR Regulation which will be the solution for the research question. The web-based platform, namely, ODR Platform and how it works are emphasized in this chapter.

Chapter three consists of the analysis of two legislations under the EU, the Netherlands, and UK, to understand the attempts through ADR procedure for consumer disputes. It is important to note that an effective ODR is based on well-controlled ADR procedures in these countries. By analyzing the earlier initiatives towards ODR Platform, this chapter goes into the analysis of whether the Netherlands or UK is convenient for Turkey's path through ODR.

Chapter four portrays the need for the legal framework for consumer e-disputes with the absence of regulation in Turkey. Firstly, it indicates the background of Turkey and the developments towards the ODR systems including the regulatory developments especially under the scope of Consumer Protection Law. This chapter seeks to find whether ODR can be a practical solution for consumer e-disputes in Turkey, compared with the most prosperous country in this field.

Finally, the conclusion of the thesis by discussing the main findings of this research; a legal mechanism in the way of ODR for dispute resolution as one is fast moving towards an era of digitalization, and playing on a global platform requires just regulatory measures.

1. INTRODUCING THE CONCEPT OF ODR SYSTEMS

*"ODR has spawned a new culture of dispute resolution with new norms, schemes, and applications."*²³

Even though there is no universal definition and the field has a variety of forms of ODR Systems' existence, this chapter introduces ODR briefly and examines theoretical framework in the literature. Currently, European Consumer Protection Law is being extended to include ODR into the toolbox of European consumer redress.²⁴ To tackle consumer problems regarding goods and services purchased on the EU's internal market, lately, the European Commission has become increasingly active on ODR such as ODR Platform.

To illustrate a cascading domino effect, the widespread acceptance and increase in use of the internet leads to the rise of e-commerce which also leads electronic disputes. These conflicts relate to price, late delivery, defects, and specifications.²⁵ The Internet has navigated into almost all areas of our life. The characteristics of dispute resolution have also undergone a paradigm shift, giving birth to dispute resolution in an online format. This brings out the concept of ODR more likely to be accepted, mainly by those who use ADR and others who ODR providers the only practical matter of dispute resolution that arises in the digital era.

Almost every business, from medicine, investment fund management, to entertainment, has been changed by the extension of ICT. Therefore ODR mainly contains ADR processes, a vast scale of the assistance of the speed and convenience of ICT and the Internet, is also suitable for

²³ Colm Brannigan, 'Review of Online Dispute Resolution: Theory and Practice' (Webjcli.org, 2012) <<http://webjcli.org/article/view/292/404>> accessed 8 April 2018.

²⁴ Julia Hornle, 'Encouraging Online Dispute Resolution in the EU and Beyond- Keeping Costs Low or Standards High' (Odr.info, 2012) <<http://odr.info/files/julia.pdf>> accessed 9 June 2018.

²⁵ 'EU Legal Analysis of a Single Market for the Information Society (SMART 2007/0037)' (*Digital Single Market*, 2009) <<https://ec.europa.eu/digital-single-market/en/news/legal-analysis-single-market-information-society-smart-20070037>> accessed 7 July 2018.

resolving e-commerce disputes. Just like ADR, ODR relates a process whereby disputes are substantially handled through ADR mechanism such as arbitration, mediation, and negotiation with the difference being that the latter is conducted entirely online. Due to the nature of the e-disputes, ODR appears to reduce or even eliminate to the fullest extent of the need for the parties' physical existence at the meeting or the disputes which at the lower end of the value. According to Lilian Edwards and Caroline Wilson, *"Online Dispute resolution introduces very powerful and efficient tools for dispute resolution and increases access to redress mechanisms."*²⁶

1.1. The theoretical framework

ODR is being operated in many forms and forums across Europe, United States, Canada, and other countries.²⁷ A bright future for ODR has been discussed by many scholars since late 1990s²⁸ however, definitions already indicated in the literature is an obstacle in ensuring a more exact and widespread accepted definition of ODR which can mean different things from one to another. Hence, ODR is not a limited concept, and it is a broad field. Therefore, some authors contend that it is more precise not to talk about ODR, but instead of ODR methods,²⁹ or even of *"a plethora of online dispute resolution services"*³⁰ committed to the easy and fast resolution of

²⁶ Lilian Edwards and Caroline Wilson, 'Redress And Alternative Dispute Resolution In EU Cross-Border E-Commerce Transactions' (Tandfonline.com, 2007) <<http://www.tandfonline.com/doi/full/10.1080/13600860701701603>> accessed 11 August 2018.

²⁷ Rafal Morek, 'Regulation of Online Dispute Resolution: Between Law and Technology' (Studylib.net, 2005) <<http://studylib.net/doc/5911383/regulation-of-online-dispute-resolution-#>> accessed 9 June 2018.

²⁸ Pablo Cortés and Arno R. Lodder, 'Consumer Dispute Resolution Goes Online: Reflections on the Evolution of European Law for Out-Of-Court Redress' (Lra.le.ac.uk, 2014) <https://lra.le.ac.uk/bitstream/2381/33184/5/MJ_21_01_0014.pdf> accessed 9 June 2018.

²⁹ Julia Hörnle, 'Online Dispute Resolution-The Emperor's New Clothes? Benefits And Pitfalls of Online Dispute Resolution and Its Application to Commercial Arbitration' (Egov.ufsc.br, 2007) <<http://www.egov.ufsc.br/portal/sites/default/files/anexos/18561-18562-1-PB.pdf>> accessed 9 June 2018.

³⁰ Leon E. Trakman, 'From the Medieval Law Merchant to E-Merchant Law' (2003) 53 The University of Toronto Law Journal <<https://www.jstor.org/stable/3650876>> accessed 7 July 2018.

disputes.³¹ As pointed out by Colin Rule, a common definition of ODR is *“the use of information and communications technology to help parties manage, transform and resolve their conflicts.”*³²

Due to its broad definition, ODR contains a variety of technologies deployed in different ways.³³ When the process occurs online, requirements such as the initial filings, discussions, neutral appointments, evidentiary procedures, oral hearings (if needed), and even the rendering of binding settlements transfer to the online era.³⁴ Also, ODR presents as a medium to resolve disputes, some of which are ODR automated. The others, despite being held exclusively online, contain human intervention.³⁵ While some ODR mechanisms facilitate procedures of agreement like as online mediation, others deal with procedures of advice or systems of decision such as tools supporting negotiation and online arbitration respectively. Sometimes ODR plays a neutral and non-judgmental role as a facilitator. Other times it becomes an absolute decision making authority.

ODR is a dispute resolution mechanism outside the courts, based on ICT and in particular, based on the power of computers to efficiently process enormous amounts of data, store and organize such data and communicate it across the internet on a global basis and with speed.³⁶ As Julia Hörnle emphasized, that ODR is assisted by new tools and techniques³⁷ (information management tools and communication tools) whether proposed at the resolution, peace-

³¹ Rafal Morek, 'Regulation of Online Dispute Resolution: Between Law and Technology' (Studylib.net, 2005) <<http://studylib.net/doc/5911383/regulation-of-online-dispute-resolution-#>> accessed 9 June 2018.

³² Doug Leigh and Frank Fowlie, 'Online Dispute Resolution (ODR) Within Developing Nations: A Qualitative Evaluation of Transfer and Impact' (mdpi.com, 2014) <<http://www.mdpi.com/2075-471X/3/1/106>> accessed 11 August 2018.

³³ *“There are four types of ODR systems, such as Online settlement, using an expert system to automatically settle financial claims; Online arbitration, using a website to resolve disputes with the aid of qualified arbitrators; Online resolution of consumer complaints, using e-mail to handle certain types of consumer complaints; Online mediation, using a website to resolve disputes with the aid of qualified mediators; however they are not fully developed yet. Online settlement and online mediation are currently the most advanced.”* Feliksas Petrauskas and Eglė Kybartienė, 'ONLINE DISPUTE RESOLUTION IN CONSUMER DISPUTES' (Www3.mruni.eu, 2011) <<https://www3.mruni.eu/ojs/jurisprudence/article/viewFile/584/545>> accessed 1 June 2018.

³⁴ Ibid.

³⁵ Rafal Morek, 'Regulation of Online Dispute Resolution: Between Law and Technology' (Studylib.net, 2005) <<http://studylib.net/doc/5911383/regulation-of-online-dispute-resolution-#>> accessed 9 June 2018.

³⁶ Julia Hornle, 'Encouraging Online Dispute Resolution in the EU and Beyond- Keeping Costs Low or Standards High' (Odr.info, 2012) <<http://odr.info/files/julia.pdf>> accessed 9 June 2018.

³⁷ Ibid.

building, or conflict management as a solution for disputes arising in an online environment.³⁸ In other words, ODR takes advantage of the speed and convenience of the Internet and online case management tools for resolving disputes arising in cyberspace particularly e-commerce disputes.

Although there are some misunderstandings about the concept of ODR, i.e., it is only valid for small claims, or it exclusively depends on automated technology or ODR can just settle disputes arising online, the reality is that ODR also has been used for resolving offline and large value disputes.³⁹ One of the aspects of ODR it is not solely a tool advantageous to e-commerce, but additionally, the term of ODR has also addressed for mechanisms as diversified as prevention of disputes (education, outreach, rating and feedback programs), ombudsman programs, blind bidding, automated negotiation, early neutral evaluation and assessment, mediation/conciliation, mediation-arbitration (binding and/or non-binding), arbitration, expert determination, and executive tribunals or virtual juries.⁴⁰

It is important to mention that ODR brings excellent advantages to parties, in the sense of e-commerce for businesses and consumers. One of the significant benefits of ODR is perceived lower cost, higher speed, confidentiality, the flexibility of process, clear, more informal and solution-oriented, and fewer jurisdictional problems.⁴¹ Moreover, by providing access to justice, ODR reduces the power imbalances between parties because generally, the stronger party are

³⁸ Ibid.

³⁹ "ODR is not limited to e-commerce disputes. For example, Cybersettle uses blind-bidding negotiation to settle insurance and commercial disputes. Parties make confidential offers that will only be disclosed when both offers match certain standards (usually ranging from 30 to 5 percent) or a given amount of money. The settlement is the midpoint of the two offers. CyberSettle has been working online since 1998 settling over 200,000 disputes. Also, the UDRP, developed by ICANN, is an adjudicative ODR process that allows trade mark owners to fight cybersquatting (domain name holders, who had registered a domain name in bad faith for the purpose of reselling it for a profit, or taking advantage of the reputation of a trademark). The UDRP is similar to non-legally binding (but enforceable) arbitration. These two examples contains generally neutral third parties to resolve the disputes." Pablo Cortés, 'WHAT IS ONLINE DISPUTE RESOLUTION?' (Law.ox.ac.uk, 2011) <https://www.law.ox.ac.uk/sites/files/oxlaw/dr_pablo_cortes.pdf> accessed 11 August 2018.

⁴⁰ Rafal Morek, 'Regulation of Online Dispute Resolution: Between Law and Technology' (Studylib.net, 2005) <<http://studylib.net/doc/5911383/regulation-of-online-dispute-resolution-#>> accessed 9 June 2018.

⁴¹ Rafal Morek, 'Regulation of Online Dispute Resolution: Between Law and Technology' (Studylib.net, 2005) <<http://studylib.net/doc/5911383/regulation-of-online-dispute-resolution-#>> accessed 9 June 2018.

not interested whether there is a power imbalance and therefore, any economic or other power imbalance that involves between parties is covered by ADR practitioner to give fair and effective communication.⁴² It is beneficial for both parties such as for consumers, as ODR can provide redress for problems when going to court is not a preferable option and for traders, it could also augment trust, advance reputation and allow for rapid, and fair handling of complaints, unpaid invoices and other unwelcome business distractions.⁴³

1.2. The Key Factors of the Development of ODR

After briefly giving general definitions, the evolution of ODR has brought two basic concepts, i.e., e-commerce and outgrowth of some traditional and existing forms of ADR procedures which are taken into an online environment. Briefly, the development of ODR which contains four phases.⁴⁴ The first which occurred from 1990 to 1996, was seen as an amateur stage in which electronic solutions were being tested. In the following years 1997-1998, ODR enhanced rapidly, and the first commercial web portals that offered services in this field were established. The third phase was business which emerged from 1999 to 2000, and this led many companies demonstrated projects based on electronic dispute resolution however many of them did not achieve the success and finally, in the year 2000, ODR techniques were introduced into institutions such as courts and administrative authorities.⁴⁵

1.2.1. The combination of ICT and ADR in Dispute Resolution Process

“ODR is emerging out of the history of offline ADR.” (Rule)

It would be beneficial to go through what ODR mainly consists of: a dispute resolution process with the combination of ICT and ADR which has a capability of resolving consumer e-disputes.

⁴² Lekkas Zissis, 'Disputes in the Digital Era the Evolution of Dispute Resolution and the Model ODR System' (Thesis, Toulouse University 2015).

⁴³ David J. Bilinsky, 'David Bilinsky - Thoughtful Legal Management' (Thoughtfullaw.com, 2012) <<http://thoughtfullaw.com/2012/01/19/online-dispute-resolution-expansion-in-the-eu/#more-2092>> accessed 21 August 2018.

⁴⁴ Karolina Mania, 'Online Dispute Resolution: The Future of Justice' (Ac.els-cdn.com, 2015) <<https://doi.org/10.1016/j.icj.2015.10.006>> accessed 11 August 2018.

⁴⁵ Ibid.

There is a general conclusion that can be drawn that the field of ODR has a similar practice, theory and ethical foundations as ADR. It is a fact that the first ODR initiatives were precise of offline ADR proceedings, just coded into software rather than conducted by human mediators.⁴⁶ ODR is also considered as private dispute resolution based on the consent of the parties in the same manner as alternative dispute resolution models.⁴⁷ The resolution of disputes is improved when assisted by ICT, when distance communications are used, it is unnecessary to travel which in advance eliminates costs and enhances access to justice.⁴⁸ As Jim Melamed, CEO of Mediate.com, has mentioned: *"If you squint your eyes a bit and look out into the future it's very hard to tell ODR and ADR apart. That becomes truer with each passing day."*⁴⁹

The civil justice was and still is inadequate and inefficient due to excessive caseloads of private disputes overloading the civil courts of all developed countries.⁵⁰ Therefore, in the last few years, traditional ADR has increased noteworthy acceptance among the overall population and the legal profession for resolving specific industry sectors. Courts throughout the world have been encouraging the use of ADR⁵¹ as a substitute for litigation, typically mediation, which allows the parties to resolve their dispute outside of the courtroom while avoiding the strict regulations of litigation. Because of its ability to use different forms depending on the nature of the conflict, ADR methods can be seen as the best approach to establish flexible ODR platforms for consumer disputes.⁵²

⁴⁶ 'Is ODR ADR? A Response to Carrie Menkel-Meadow' (Colinrule.com, 2018) <<http://www.colinrule.com/writing/ijodr.pdf>> accessed 25 April 2018.

⁴⁷ Riikka Koulu, 'Dispute Resolution and Technology: Revisiting the Justification of Conflict Management' (Comi.fi, 2016) <<http://www.comi.fi/julkaisu/koulu1.pdf>> accessed 16 July 2018.

⁴⁸ Pablo Cortés, 'Online Dispute Resolution for Consumers' (Pdfs.semanticscholar.org, 2011) <<https://pdfs.semanticscholar.org/14f8/a7d1993977c485cc3e32fa690c99ac96606d.pdf>> accessed 11 August 2018.

⁴⁹ 'Is ODR ADR? A Response to Carrie Menkel-Meadow' (Colinrule.com, 2018) <<http://www.colinrule.com/writing/ijodr.pdf>> accessed 25 April 2018.

⁵⁰ Lekkas Zisis, 'Disputes in the Digital Era the Evolution of Dispute Resolution and the Model ODR System' (Thesis, Toulouse University 2015).

⁵¹ Broadly ADR is any alternative-to-trial method for resolving disputes between parties. ADR can be separated into adjudicative processes (e.g. arbitration or private tribunal), consensual processes (e.g. negotiation or mediation and/or conciliation), and mixed processes (e.g. mediation-arbitration ("med-arb"), arbitration-mediation ("arb-med"), mini trial, summary jury trial, early neutral evaluation, fact-finding, ombudsman, or other settlement processes). Ibid.

⁵² Sodiq Omoola and Umar Oseni, 'Towards an Effective Legal Framework for Online Dispute Resolution in E-Commerce Transactions: Trends, Traditions and Transitions' (Journals.iium.edu.my, 2016) <<http://journals.iium.edu.my/iiumlj/index.php/iiumlj/article/view/236>> accessed 11 August 2018.

The assistance of ICT has been pointed out by Katsh & Rifkin, the power of the technology can be seen as an additional party in the classic model of dispute resolution which is called 'fourth party'⁵³ because of its independence input to the management of the dispute. It is also referred Online ADR, which is another term of ODR started out as the evolvement of ADR process online related to the methods that mentioned above, involves primarily ADR methods assisted mostly by ICT such as the use of e-mail to the intensive use of particular software applications, without barring the variations and hybrids that keep on being created.⁵⁴ It is widely believed that the expansion of these methods provide fair and adequate redress and help to establish the matter of trust between Internet business and other users, including consumers, and thus contribute to the growth of e-commerce.⁵⁵

As already indicated, ADR with ICT has brought within a new mindset. ODR is a developed version of ADR, which is primarily based on ADR procedures,⁵⁶ such as mediation or arbitration⁵⁷ and various hybrids by expanding advanced information technology innovation to aid access to

⁵³ The term 'Fourth Party' was coined by Ethan Katsh and Janet Rifkin in their 2011 book *Online Dispute Resolution: Resolving Conflicts in Cyberspace*. The Fourth Party refers to technology used in the practice of conflict engagement, and specifically refers to the influence that technology has on the conflict engagement process. Daniel Rainey, 'Third-Party Ethics in the Age of the Fourth Party' (*Elevenjournals.com*, 2014) <https://www.elevenjournals.com/tijdschrift/ijodr/2014/1/IJODR_2014_001_001_003.pdf> accessed 8 July 2018.

⁵⁴ 'Alternative Dispute Resolution (ADR) Online Mechanisms for SME Cross-Border Dispute' (*Oecd.org*, 2004) <<http://www.oecd.org/cfe/smes/31919270.pdf>> accessed 2 May 2018.

⁵⁵ 'Building Trust In The Online Environment: Business to Consumer Dispute Resolution Joint Conference of the OECD, HCOPIL, ICC Report Of The Conference' (*oecd.org*, 2001) <[http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?doclanguage=en&cote=DSTI/ICCP/REG/CP\(2001\)2](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?doclanguage=en&cote=DSTI/ICCP/REG/CP(2001)2)> accessed 11 August 2018.

⁵⁶ "The main forms of alternative dispute resolution (ADR) are arbitration, mediation and negotiation, processes that are effective in settling disputes out of court and in a manner that is less formal than litigation in court. Some authors exclude arbitration from ADR through, emphasizing amicable (conciliatory) nature of ADR, as opposed to adjudicative procedures, such as litigation or arbitration." Rafal Morek, 'Regulation of Online Dispute Resolution: Between Law and Technology' (*Studylib.net*, 2005) <<http://studylib.net/doc/5911383/regulation-of-online-dispute-resolution-#>> accessed 9 June 2018.

⁵⁷ Consumers are more willing to choose ADR methods like as mediation and arbitration. However, these ADR methods are not the same as traditional ADR for commercial and civil disputes. Traditional ADR is characterized as other option to the court framework, in which disputants may analyse the result they could attain in a court with that offered in a settlement. Usually, consumer ADR is introduced as the realistic choice for consumers who are seeking for minimum effort and efficient redress in cross-border disputes. Pablo Cortes, 'The Impact of EU Law in the ADR Landscape in Italy, Spain And The UK: Time For Change Or Missed Opportunity?' (*Ira.le.ac.uk*, 2015) <<http://hdl.handle.net/2381/33050>> accessed 11 August 2018.

justice. In comparison ODR with ADR, ODR has only one difference such as ODR's lack of face to face interaction which is the cornerstone of ADR. Accordingly, Rule has argued that in the future the distinction between ADR and ODR will turn out to be considerably more blurry, as the technological solutions are refined, and practitioners become more aware of ODR techniques it will turn out to be more integrated.⁵⁸ Although ODR has many advantages, still the most remarkable one is that its allowance of communication at a distance in this respect, it reduces traveling and costs. ODR has generally the same advantages mentioned above such as higher efficiency, greater party control, easy way to access to justice, transparency of dispute resolution, satisfaction, lower costs and eventually justice.⁵⁹ It is important to note that using ICT enhances the value of ADR and its advantages over litigation. The collaboration of the ADR and ICT via Internet has brought as a significant feature of ODR.

1.2.2. The impact of E-commerce and Consumer E-disputes

The growth of ICT and access to the Internet has brought in the nullification of natural barriers and geographic borders that also separated national markets. Accordingly, markets are changing quickly and becoming denationalized. In the late 1990s, roughly between 2% and 5% of the world's population used the internet.⁶⁰ By 2018, according to the global internet statistics, there are 52% of the world's population.⁶¹ Looking at the specific EU Member States there are 8 out of 10 internet users in the United Kingdom (87%), and 82% of the Dutch shopped online during the previous year.⁶² These data show that the combination of internet characteristics with business has created easy access to the global market with an approachable assortment sort of goods and

⁵⁸ Colin Rule, 'Online Dispute Resolution for Business B2B, E-Commerce, Consumer, Employment, Insurance, And Other Commercial Conflicts' (Leseprobe.buch.de, 2002) <<https://leseprobe.buch.de/images-adb/e8/60/e86009b6-15f2-44d8-9770-9c61202ff15c.pdf>> accessed 15 August 2018.

⁵⁹ Colin Rule, 'Is ODR ADR? A Response to Carrie Menkel-Meadow' (Colinrule.com, 2016) <<http://www.colinrule.com/writing/ijodr.pdf>> accessed 28 June 2018.

⁶⁰ 'Conference On Empowering E-Consumers: Strengthening Consumer Protection in the Internet Background Report' (Oecd.org, 2009) <<https://www.oecd.org/ict/econsumerconference/44047583.pdf>> accessed 16 August 2018.

⁶¹ 'Global Internet Statistics For 2018 - Navigating Digital Disruption' (Navigating Digital Disruption, 2018) <<http://www.mikekujawski.ca/2018/02/20/2018-global-internet-statistics-update/>> accessed 12 July 2018.

⁶² [3] 'Digital Economy and Society in the EU - Online Shoppers & E-Purchases' (Digital economy and society in the EU, 2017) <<http://ec.europa.eu/eurostat/cache/infographs/ict/bloc-2a.html>> accessed 27 May 2018.

services, therefore, e-commerce has become the fastest growing segment for consumers, traders, governments, international organization and especially for the economic development.

Since the electronic marketplace has been expanding, companies have started to invest heavily in the technological advancements to make successful e-commerce websites. Due to initiatives of companies and its convenient features such as an absence of time limitations, limitless choice of goods and services and particularly high demand on online shopping, the field of B2C e-commerce has become more apparent.⁶³ It has increased cross-border trade which is not only beneficial for the consumers but also competition in the internal market. When individual consumers conduct a vast number of e-commerce settings, such as transactions that take place business to business (B2B), business to consumer⁶⁴ (B2C), consumer to business (C2B) and consumer to consumer (C2C) in the online context.⁶⁵ These transactions have created some concerns⁶⁶ about conducting a variety of transaction in cyberspace. Consumers' concerns may also lead complaints⁶⁷ and eventually disputes arising from those transactions, and for this reason, a huge demand appropriate dispute mechanisms become inevitable. Gilliéron also admitted that "[t]he growth of e-commerce is bound to be linked with online disputes."⁶⁸

⁶³ According to the Eurostat statics 68% of internet users in the EU shopped online in 2017. E-Commerce Statistics For Individuals - Statistics Explained' (Ec.europa.eu, 2017) <http://ec.europa.eu/eurostat/statistics-explained/index.php/E-commerce_statistics_for_individuals> accessed 27 May 2018.

⁶⁴ The term "business-to-consumer Internet transaction" ("B2C Internet transaction"), refers to the sale of goods and services over the Internet from business entities to individuals acting in their personal capacity. Haitham A. Haloush, 'Online Alternative Dispute Resolution as A Solution To Cross-Border Electronic Commercial Disputes - White Rose Etheses Online' (Etheses.whiterose.ac.uk, 2003) <<http://etheses.whiterose.ac.uk/id/eprint/1394>> accessed 15 August 2018.

⁶⁵ 'Ecommerce Definition & Types of Ecommerce (B2B, B2C, C2B, & C2C)' (DigitSmith.com, 2011) <<http://www.digitSmith.com/ecommerce-definition.html>> accessed 28 June 2018.

⁶⁶ In spite of the fact that the cyberspace removes borders and brings the new way to conduct transactions and contracts are being ended up by one click, it does not exclude consumers' concerns about the delivery, the defect and the absence of specifications of the good. The lack of information about quality and reliability makes consumers reluctant to make purchases.

⁶⁷ With the growth of B2C e-commerce, an increasing number of complaints occurred. The ECC-Net has been dealing with approximately 50.000 cases involving e-commerce, being the distance and the online sales factors, which had a big portion in 2014 with 31,7% over the rest of the complaints. Maria Lorena Florez Rojas, 'Industry Self-Regulation Models in Dispute Resolution of E-Commerce B2C' (Arno.uvt.nl) <<http://arno.uvt.nl/show.cgi?fid=138533>> accessed 15 August 2018.

⁶⁸ Philippe Gilliéron, 'From Face-To-Face To Screen-To-Screen: Real Hope or True Fallacy?' (Hdl.handle.net, 2008) <<http://hdl.handle.net/1811/76846>> accessed 15 August 2018.

It is deemed that effective mechanisms to resolve online disputes influence on the improvement of e-commerce, as a result, big trade companies have begun to provide dispute resolution mechanisms in their websites. Although ODR has been provided by several different intermediaries such as e-commerce platforms, private ODR providers, credit card companies, or private actors performing public functions as the significant success in this field is eBay, which solves sixty million e-commerce disputes per year and resolves over 80% of these disputes adequately without human involvement through its Resolution Centre.⁶⁹ Although B2C e-commerce has been promoted by corporate websites (for example; Zara) and marketplaces, (Amazon) where traders and consumers interact, consumers would still prefer buying from within national borders. In a 2017 survey of 24,225 Internet users in 24 countries by CIGI-Ipsos, 55% indicated that they prefer purchasing online goods and services made in their own country.⁷⁰ CIGI-Ipsos' one of survey mentioned that 22% of online respondents said that they never shop online.⁷¹ Of this 22%, 49% had concerns about the lack of trust.⁷² Many researchers in the e-commerce era have interpreted that the lack of confidence is the crucial factor which results in a decrease in the number of consumers affiliating to e-commerce transactions. If consumers trust that their interests that are being sufficiently protected, e-commerce will grow unhindered. It is important to note that while consumers intensively purchase services and intangibles, for the time being, consumer confidence plays a crucial role in conducting online transactions and in essence the shape of the economy.

Considering the various views which were outlined for online ADR or ODR, ODR has come out as a response to the developing online business, and need to settle the disputes arising online environment. It is reasonable to use the same medium (Internet) for resolving e-commerce

⁶⁹Alexandra Zaltman, 'Online Dispute Resolution: Theory and Practice – A Treatise on Technology and Dispute Resolution' (Pdf.semanticscholar.org, 2012) <<https://pdfs.semanticscholar.org/738a/9f7f6572650766dcea1ba1dd80db5bba2700.pdf>> accessed 16 July 2018.

⁷⁰'2017 CIGI-Ipsos Global Survey on Internet Security and Trust' (*Centre for International Governance Innovation*, 2017) <<https://www.cigionline.org/internet-survey-2017>> accessed 12 July 2018.

⁷¹ Ibid.

⁷²'World Consumer Rights Day 2018 Briefing: E-Commerce Backgrounder Making Digital Marketplaces Fairer' (*Consumersinternational.org*, 2017) <<https://www.consumersinternational.org/media/154916/e-commerce-overview-report.pdf>> accessed 12 July 2018.

disputes when parties are far away from each other. ODR supports the quickened growth of e-commerce and brings with profit realization and consumer maintenance. The ODR process urges people to conduct more and more transactions online which in turn increases the profit margin for online businesses. ODR makes it the best option for providing redress to consumer grievances, strengthening consumer trust in more reliable e-commerce.⁷³ With ODR brings *'the availability of reliable and efficient resolution system'*⁷⁴ which could greatly help to shape of the economy and boost the confidence in the Digital Single Market.⁷⁵

1.3. The role of Preliminary Initiatives towards ODR Regulation on Consumer Disputes

As previously mentioned, major economies in e-commerce activities such as the European Union, noticed have long ago that online consumer dispute resolution mechanisms have helped to build up consumer confidence in e-commerce. The topic of consumer redress in e-commerce has been debated since 2000 by several international organizations, relating to the same issue. Also, the global initiatives have occurred with the aim of promoting cross-border trade. For instance, in 2000, the US Federal Trade Commission (FTC) and Department of Commerce (DOC) mentioned in a joint workshop that, *"This online marketplace also has created challenges; among them, how best to resolve disputes involving cross-border consumer transactions. Consumers must be confident that they will have access to redress for problems arising in the online marketplace."*⁷⁶

Consumer redress in cross-border e-commerce transactions has been the primary concerns; additionally the EU has incorporated and expanded two softly regulated initiatives in fostering in

⁷³Regulation (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)' (*Eur-lex.europa.eu*, 2013)

<<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0001:0012:EN:PDF>> accessed 12 July 2018.

⁷⁴ Ibid.

⁷⁵ Colin Rule, 'New EU Online Dispute Resolution Regulations' (*Mediate.com*, 2013) <<https://www.mediate.com/articles/euodr.cfm>> accessed 19 June 2018.

⁷⁶ 'Consumer Protection in the Global Electronic Marketplace' (*Ftc.gov*, 2000) <<https://www.ftc.gov/sites/default/files/documents/reports/consumer-protection-global-electronic-marketplace-looking-ahead/electronicmkpl.pdf>> accessed 13 July 2018.

the use of ODR, namely the publication of recommendations for 'decision-making bodies'⁷⁷ in 1998 and another in 2001.⁷⁸ The first recommendation 98/257/EC applies to consumer ADR schemes which either propose or impose a solution to resolve a dispute (arbitration-like mechanisms) and enhances out-of-court bodies responsible for settling consumer disputes to apply seven principles (independence, transparency, effectiveness, legality, liberty, representation and adversarial principle)⁷⁹ that must be taken into account by the authorities in each Member State and their bodies that provide resolution services for consumer disputes.

The second Recommendation 2001/310/EC provides a more consensual resolution of disputes, where the third party attempts to resolve the dispute by common consent (mediation-like mechanisms) and offers four principles (impartiality, transparency, effectiveness, and fairness)⁸⁰ to ensure greater choice and flexibility for consumers.⁸¹ To enhance ODR schemes for consumer disputes the Commission of the EU also stated in 2001 that:

"The continuing development of new forms of commercial practices involving consumers such as electronic commerce, and the expected increase in cross-border transactions, require that particular attention be paid to generating the confidence of consumers, in particular by ensuring easy access to practical, effective and inexpensive means of redress,

⁷⁷ 'Commission Recommendation Of 30 March 1998 On the Principles Applicable to the Bodies Responsible for Out-Of-Court Settlement of Consumer Disputes (Text with EEA Relevance)' (Eur-lex.europa.eu, 1998) <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31998H0257&from=LT>> accessed 11 July 2018.

⁷⁸ 'Commission Recommendation Of 4 April 2001 On The Principles For Out-Of-Court Bodies Involved In The Consensual Resolution Of Consumer Disputes (Notified Under Document Number C(2001) 1016) (Text With EEA Relevance) (2001/310/EC' (Eur-lex.europa.eu, 2001) <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32001H0310>> accessed 15 August 2018

⁷⁹ 'Commission Recommendation Of 30 March 1998 On the Principles Applicable to the Bodies Responsible for Out-Of-Court Settlement of Consumer Disputes (Text with EEA Relevance)' (Eur-lex.europa.eu, 1998) <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31998H0257&from=LT>> accessed 11 July 2018.

⁸⁰ Commission Recommendation Of 4 April 2001 On The Principles For Out-Of-Court Bodies Involved In The Consensual Resolution Of Consumer Disputes (Notified Under Document Number C(2001) 1016) (Text With EEA Relevance) (2001/310/EC' (Eur-lex.europa.eu, 2001) <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32001H0310>> accessed 15 August 2018. It sets out the principles of objectivity, transparency, efficiency and fairness.

⁸¹ Urša Jeretina and Alan Uzelac, 'Alternative Dispute Resolution For Consumer Cases: Are Divergences An Obstacle To Effective Access To Justice?' (Alanuzelac.from.hr, 2014) <http://www.alanuzelac.from.hr/pubs/B57MRJU_jeretina-uzelac.pdf> accessed 15 July 2018.

*including access by electronic means of ... for e-commerce to reach its full potential consumer confidence must be enhanced ... by promoting access to alternative dispute resolution systems.”*⁸²

In the year 2000, the first initiatives about ODR were introduced explicitly ('the creation of new dispute settlement schemes, in particular with an online application') relating to online mechanisms for dispute resolution in a Council Resolution.⁸³ These two recommendations on ADR have only mentioned principles which were not binding for the parties but having the foundations for the ODR Regulation.

In addition, European Union encouraged the hidden ODR almost from the outset of ODR when it included the requirement particularly, Article 17(1) of the Directive says '*in the event of disagreement between an information society service provider and the recipient of the service, their legislation does not hamper the use of out-of-court schemes, available under national law, for dispute settlement, 'including appropriate electronic means'* in E-commerce Directive.⁸⁴ By mentioning electronic means, it is apparent that these both practical and legal initiatives have enlightened the use of technology relating to the field of ODR. Furthermore, the Mediation Directive⁸⁵ was established, purposed to extrajudicial proceedings for consumer disputes by promoting the amicable settlement of disputes with the mediation and providing a balanced relationship between mediation and legal proceedings.⁸⁶

⁸² Commission Recommendation Of 4 April 2001 On The Principles For Out-Of-Court Bodies Involved In The Consensual Resolution Of Consumer Disputes (Notified Under Document Number C(2001) 1016) (Text With EEA Relevance) (2001/310/EC' (Eur-lex.europa.eu, 2001) <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32001H0310>> accessed 15 August 2018.

⁸³ 'COUNCIL RESOLUTION Of 25 May 2000 On A Community-Wide Network Of National Bodies For The Extra-Judicial Settlement Of Consumer Disputes (2000/C 155/01)' (Eur-lex.europa.eu, 2000) <[https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32000Y0606\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32000Y0606(01)&from=EN)> accessed 15 August 2018.

⁸⁴ 'Directive 2000/31/EC Of The European Parliament And Of The Council Of 8 June 2000 On Certain Legal Aspects Of Information Society Services, In Particular Electronic Commerce, In The Internal Market (Directive On Electronic Commerce)' (Eur-lex.europa.eu, 2000) <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32000L0031&from=EN>> accessed 5 August 2018.

⁸⁵ Ibid.

⁸⁶ 'Council Resolution Of 25 May 2000 On A Community-Wide Network Of National Bodies For The Extra-Judicial Settlement Of Consumer Disputes (2000/C 155/01)' (Eur-lex.europa.eu, 2000) <[https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32000Y0606\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32000Y0606(01)&from=EN)> accessed 15 August 2018. Article 1.

Besides the regulatory initiatives, ODR has also developed specialized networks such as the European Consumer Centre Network (ECC Net)⁸⁷ and FIN Net.⁸⁸ The information portals have been working since they were established; therefore the ECC-Net has at least one office in each Member State and gives privilege for consumers by assisting them when they buy online and face with the cross-border disputes.⁸⁹ If consumers have disputes or complaints, they may approach the ECC in their country. Moreover, the ECC has evidenced by dealing with approximately 50.000 cases involving e-commerce, being the distance and the online sales factors, which had a significant portion in 2014 with 31,7% over the rest of the complaints.⁹⁰ Mainly, one ODR activity which the ECC Centres in Ireland and the UK engaged in was the Internet Ombudsman project with “TheMediationRoom” that consumer submitted their complaints concerning product or services was bought online.⁹¹

The goal of all initiatives is a kind of promotion of stimulation of trade, building up consumers’ trust in the Internal Market particularly in the digital era of cross-border trade is the main aim for the EU legislation. In this way, consumer rights in the EU would be more accessible, and the consumer law would be examined with the process of unification and clarification which is also expanding down to the national level.⁹² Furthermore, ADR and ODR are clarified as one of the

⁸⁷ The ECC-Net was launched in 2005 to provide information on the consumer rights under European consumer legislation and give advice and assistance in the resolution of their individual cross-border complaints. 'The European Consumer Centres Network 10 Years Serving Europe's Consumers Anniversary Report 2005-2015' (Ec.europa.eu, 2015) <https://ec.europa.eu/info/sites/info/files/ecc_net_-_anniversary_report_2015_en.pdf> accessed 20 July 2018.

⁸⁸ The FIN-Net was established in 2001 as a network of national ADR schemes in the European Economic Area countries to settle cross-border disputes between consumer and financial services providers, such as banks, insurance companies, investment firms and others. 'FIN-NET Activity Report' (Ec.europa.eu, 2016) <https://ec.europa.eu/info/sites/info/files/2016-activity-report_en.pdf> accessed 20 July 2018.

⁸⁹ 'The European Consumer Centres Network 10 Years Serving Europe's Consumers Anniversary Report 2005-2015' (Ec.europa.eu, 2015) <https://ec.europa.eu/info/sites/info/files/ecc_net_-_anniversary_report_2015_en.pdf> accessed 20 July 2018.

⁹⁰ Ibid.

⁹¹ Marta Poblet and Graham Ross, 'ODR In Europe' (Mediate.com, 2003) <https://www.mediate.com/pdf/poblet_ross.pdf> accessed 22 July 2018.

⁹² For example, while THE UK implement the consumer rights directive 2011/83/ EU is analysing a process of harmonizing and clarifying UK national consumer law. 'Report on 'Enhancing Consumer Confidence By Clarifying Consumer Law Consultation on the Supply of Goods, Services and Digital Content' (Assets.publishing.service.gov.uk, 2012) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/31350/12-937-enhancing-consumer-consultation-supply-of-goods-services-digital.pdf> accessed 20 July 2018.

critical actions for re-launching growth and strengthening consumer confidence in the Single Market.⁹³ After valuable experience with these initiatives mentioned above, the European Commission published a recent legislative framework to resolve disputes out-of-court.

2. THE POTENTIAL ODR PLATFORM UNDER EU LEGAL FRAMEWORK

*"The mixture of ODR Regulation and ADR Directive is a promising move towards a comprehensive solution for consumers to access out-of-court solutions."*⁹⁴

For a long time, the Digital Single Market has appeared as the weakest zone of the European Single Market. The Europe Union's purpose is to stimulate the Internal Market through the development of consumer redress that would enhance confidence in a more competitive and integrated cross-border market. It is important to mention that the ODR is an ADR procedure conducted entirely online which means the Regulation (524/2013) and the Directive (2013/11/EU) (hereinafter 'EU legislation') should be used together.⁹⁵ For this reason, this part of the thesis introduces the current EU legislation since the scope of the Regulation in tandem with the Directive. However, to further delineate the topic, the essential points of the Directive in conjunction with the Regulation are examined. These two legal instruments are the answer to the expectation of ODR that have been discussed by both scholars and governments for many years.

⁹³ 'Communication From The Commission To The European Parliament, The Council, The Economic And Social Committee And The Committee Of The Regions Single Market Act Twelve Levers To Boost Growth And Strengthen Confidence "Working Together To Create New Growth"' (Eur-lex.europa.eu, 2011) <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011DC0206&from=en>> accessed 22 August 2018.

⁹⁴ Iris Benöhr, EU Consumer Law And Human Rights (1st edn, Iris Benöhr 2013).

⁹⁵ Filip Tereszkiw, 'The EU Online Dispute Resolution Platform For Consumer Disputes: A Step Towards An EU Digital Single Market' (researchgate.net, 2016) <<https://www.researchgate.net/publication/309682284>> accessed 7 August 2018.

As the global economy is becoming digital, it is important to mention that the European Commission has published its Digital Single Market Strategy for Europe, which aims to strengthen consumers' trust by facilitating cross-border e-commerce, is one of its ten political priorities.⁹⁶ European Commission has realized that disputes with purchased goods or services often go unresolved because it is hard for consumers to access to ADR across the EU is inconsistent and also inadequate.⁹⁷

2.1. The Scope of the ADR Directive in comparison with ODR Regulation

Due to the absence of quality standards,⁹⁸ the low levels of consumer awareness on ADR schemes and the availability of ADR in all sectors for the resolution of consumer complaints, the EU legislation were passed to provide consumers have access to alternative options for resolving their disputes with traders. The primary purpose of a specific legislative framework is to *encourage the use of alternative dispute resolution entities*⁹⁹ who brings together parties or settles consumer disputes both in domestic and cross-borders. Therefore, the Directive covers the quality of ADR schemes by guaranteeing a certain level of minimum standards¹⁰⁰ and the

⁹⁶ 'Report From The Commission To The European Parliament And The Council On The Functioning Of The European Online Dispute Resolution Platform Established Under Regulation (EU) No 524/2013 On Online Dispute Resolution For Consumer Disputes' (Ec.europa.eu, 2017) <https://ec.europa.eu/info/sites/info/files/first_report_on_the_functioning_of_the_odr_platform.pdf> accessed 6 August 2018.

⁹⁷ Pablo Cortés, 'The New Landscape of Consumer Redress: The European Directive on Consumer Alternative Dispute Resolution and the Regulation on Online Dispute Resolution' (Oxfordscholarship.com, 2016) <<http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780198766353.001.0001/acprof-9780198766353-chapter-2#acprof-9780198766353-chapter-2-note-42>> accessed 11 July 2018.

⁹⁸ 'Commission Recommendation Of 30 March 1998 On the Principles Applicable to the Bodies Responsible for Out-Of-Court Settlement of Consumer Disputes (Text with EEA Relevance)' (Eur-lex.europa.eu, 1998) <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31998H0257&from=LT>> accessed 11 July 2018.

⁹⁹ '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 (Directive On Consumer ADR)' (Eur-lex.europa.eu, 2013) <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0011&from=EN>> accessed 15 August 2018. Article 5 para.1

¹⁰⁰ *Expertise, independence and impartiality, transparency, effectiveness, fairness, liberty and legality are the main principles by means of ADR proceedings must comply under ADR Directive.* Directive on Consumer ADR Article 6-11.

Regulation provides an ODR Platform to offer a cross-border resolution for online disputes with the speedy assistance of modern technologies.¹⁰¹

Despite the fact that two legal instruments are different from each other, they are interlinked and complementary which are based on consumers' access to a comprehensive landscape of quality ADR bodies and eventually the ODR platform indicates to '*strengthening consumers' and traders' confidence in shopping and trading online both in their country and abroad.*'¹⁰² The Regulation relies on the Directive and therefore, the operation of the platform includes both pieces of legislation.¹⁰³ It is relevant to emphasize that Member States' compliance with the legal framework governing ADR/ODR is a significant condition for the functioning and effective operation of the ODR platform.¹⁰⁴

The Regulation is based on the same principles of the Directive,¹⁰⁵ and however in comparison with the Directive, the Regulation has broader and narrower scope. It is broader because the Regulation is applied to B2C disputes initiated by a trader against a consumer.¹⁰⁶ In contrast, the Directive only concerns in favor of consumers.¹⁰⁷ Moreover, the Regulation is narrower while it

¹⁰¹ Pavel Loutocký, 'Online Dispute Resolution To Resolve Consumer Disputes From The Perspective Of European Union Law: Is The Potential Of ODR Fully Used?' (Journals.muni.cz, 2016) <<https://journals.muni.cz/mujlt/article/view/4878/5667>> accessed 21 August 2018.

¹⁰² 'Report From The Commission To The European Parliament And The Council On The Functioning Of The European Online Dispute Resolution Platform Established Under Regulation (EU) No 524/2013 On Online Dispute Resolution For Consumer Disputes' (Ec.europa.eu, 2017) <https://ec.europa.eu/info/sites/info/files/first_report_on_the_functioning_of_the_odr_platform.pdf> accessed 6 August 2018.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ Filip Tereszkiwi, 'The EU Online Dispute Resolution Platform for Consumer Disputes: A Step towards an EU Digital Single Market' (researchgate.net, 2016) <<https://www.researchgate.net/publication/309682284>> accessed 7 August 2018.

¹⁰⁶ '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)' (*Eur-lex.europa.eu*, 2013) <<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0001:0012:EN:PDF>> accessed 12 July 2018. Article 2 para. 2

¹⁰⁷ '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 (Directive

only applies in cases related to online sales and service contracts.¹⁰⁸ Whereas, the Directive obliges the Member states must provide that access to ADR no matter what product or service is being bought or whether via the Internet or not.¹⁰⁹ In this sense, the Directive is much broader than the Regulation. In details, all ADR entities (that at least dealing with consumer contracts) has to be accessible electronically, and they offer ODR services (that they enable the parties to exchange information with them via electronic means) with regard to all consumer disputes, pertaining to both domestic and cross-border consumer contracts, both online and offline.¹¹⁰

Last but not least, the Directive establishes the framework for the transposition in the Member States, but the practical details of implementation are up to each state.¹¹¹ The regulation has to be binding on individuals and forms part of the domestic law as soon as it is released. To remove barriers to the free movement of goods in the internal market, each Member States aim to provide the same level of consumer protection and ADR procedures across to the EU under the EU legislation.¹¹²

On Consumer ADR)' (Eur-lex.europa.eu, 2013) <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0011&from=EN>> accessed 15 August 2018. Article 2 para. 2 letter (g).

¹⁰⁸ '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)' (*Eur-lex.europa.eu*, 2013) <<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0001:0012:EN:PDF>> accessed 12 July 2018. Article 2 para. 2

¹⁰⁹ Filip Tereszkiwi, 'The EU Online Dispute Resolution Platform For Consumer Disputes: A Step Towards An EU Digital Single Market' (researchgate.net, 2016) <<https://www.researchgate.net/publication/309682284>> accessed 7 August 2018.

¹¹⁰ 'Report From The Commission To The European Parliament And The Council On The Functioning Of The European Online Dispute Resolution Platform Established Under Regulation (EU) No 524/2013 On Online Dispute Resolution For Consumer Disputes' (*Ec.europa.eu*, 2017) <https://ec.europa.eu/info/sites/info/files/first_report_on_the_functioning_of_the_odr_platform.pdf> accessed 6 August 2018.

¹¹¹ Directives are only legally binding on the states they are addressed to, rather than their citizens. Naomi Creutzfeldt, 'Implementation Of The Consumer ADR Directive' (Ssrn.com, 2016) <<https://ssrn.com/abstract=2729208>> accessed 16 August 2018.

¹¹² '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)' (*Eur-lex.europa.eu*, 2013) <<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0001:0012:EN:PDF>> accessed 12 July 2018.

2.2. The ODR Regulation on Consumer Disputes

The main contribution of the Regulation is to develop an interactive website, namely Online Dispute Resolution Platform (hereinafter 'the Platform') for resolving disputes arising from online transactions. The Regulation underlines the significance of the platform to be user-friendly and to be utilizable by all consumers as much as possible. The platform also states general information to the parties as well as information concerning their submission or competent ADR entities, which are entitled to decide the case. Moreover, it suggests the possibility to use electronic case management tool free of charge where the parties can submit all necessary information online.¹¹³

Another significant point has to be emphasized; the Platform is not considered as an ADR entity under the Regulation. It transmits disputes only to bodies who are included in the national list which indicates that the Regulation stresses upon improving cooperation between member states by establishing one single point to remote communication between the parties and ADR schemes.¹¹⁴ The European Commission has responsibility for the Platform in the matter of operations, administration and security, storage and use of personal data.

The Commission hoped that the establishment of ODR platform ensures a practical tool for consumers by removing language and location barriers.¹¹⁵ The role of the technology in the

¹¹³ '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)' (Eur-lex.europa.eu, 2013) <<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0001:0012:EN:PDF>> accessed 12 July 2018. Recital 18.

¹¹⁴ Filip Tereszkiw, 'The EU Online Dispute Resolution Platform For Consumer Disputes: A Step Towards An EU Digital Single Market' (researchgate.net, 2016) <<https://www.researchgate.net/publication/309682284>> accessed 7 August 2018.

¹¹⁵ Jocelyn Paulley, 'New EU Online Dispute Resolution Platform: Obligations For Businesses' (Uk.practicallaw.thomsonreuters.com, 2016) <[https://uk.practicallaw.thomsonreuters.com/9-623-5187?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1&comp=pluk](https://uk.practicallaw.thomsonreuters.com/9-623-5187?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1&comp=pluk)> accessed 22 July 2018.

platform can be a good example of how modern technology and dispute resolution interact with each other.¹¹⁶

2.2.1. The Potential Mechanism for consumer e-disputes: The Platform

The Platform has been accessible to consumers and traders since 15 February 2016. Parties can transmit their complaints to an ADR entity which is authorized to deal with their dispute. The leading role of the Platform affords assistance to the consumer by giving one point of entry, in finding the nationally approved ADR body to assist them to classify their complaints about e-commerce.¹¹⁷ The platform is particularly consumer friendly; therefore there are only four steps to resolve a dispute; an online complaint form has to be filled by consumer or trader, then the complaint is sent to the relevant respondent party, who proposes an ADR body to the consumer.¹¹⁸ Once both consumer and trader agree on an ADR entity, the platform transfers the complaint automatically to that entity.¹¹⁹ Finally, the case can be handled online by ADR body which reaches an outcome in a maximum of 90 days.¹²⁰

The scope of the Platform has some limitations. The platform only addresses the disputes arising B2C context; therefore it deals with the conflicts between consumers (C2C) or between traders (B2B).¹²¹ Furthermore, it does not ensure a theoretical framework for direct negotiation with the

¹¹⁶ Filip Tereszkiw, 'The EU Online Dispute Resolution Platform For Consumer Disputes: A Step Towards An EU Digital Single Market' (researchgate.net, 2016) <<https://www.researchgate.net/publication/309682284>> accessed 7 August 2018.

¹¹⁷ 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)' (Eur-lex.europa.eu, 2013) <<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0001:0012:EN:PDF>> accessed 12 July 2018. Article 5 para 2.

¹¹⁸ Ibid. Article 8 para. 1.

¹¹⁹ Ibid.

¹²⁰ '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 (Directive On Consumer ADR)' (Eur-lex.europa.eu, 2013) <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0011&from=EN>> accessed 15 August 2018. Article 8 letter (e)

¹²¹ 'Report From The Commission To The European Parliament And The Council On The Functioning Of The European Online Dispute Resolution Platform Established Under Regulation (EU) No 524/2013 On Online Dispute Resolution For Consumer Disputes' (Ec.europa.eu, 2017)

parties. The settlement attempts made by a judge in the course of judicial proceedings and disputes concerning health services, or public providers of further or higher education are excluded.¹²²

Currently, the platform is well-received regarding the technical functionality, user-friendliness of the ODR Platform and the complaint form including translation, approximately 71% of the participants, are satisfied by the way how the complaint was handled via this procedure.¹²³ Assertively, the ODR Platform was considered that is easy to use and navigate, based on precise information and easy to understand and submit the complaint form.¹²⁴ In its first year, over 24000 consumer complaints were lodged.¹²⁵ Around 85 % of cases were automatically closed within 30 days after submission.¹²⁶ Moreover, it solved about 44% of the over 2000 complaints successfully with bilateral negotiation between traders and consumers outside the scope of the platform.¹²⁷

<https://ec.europa.eu/info/sites/info/files/first_report_on_the_functioning_of_the_odr_platform.pdf> accessed 6 August 2018.

¹²² '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 (Directive On Consumer ADR)' (Eur-lex.europa.eu, 2013) <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0011&from=EN>> accessed 15 August 2018. Article 2 para 2.

¹²³ 'Report From The Commission To The European Parliament And The Council On The Functioning Of The European Online Dispute Resolution Platform Established Under Regulation (EU) No 524/2013 On Online Dispute Resolution For Consumer Disputes' (Ec.europa.eu, 2017) <https://ec.europa.eu/info/sites/info/files/first_report_on_the_functioning_of_the_odr_platform.pdf> accessed 6 August 2018.

¹²⁴ Ibid.

¹²⁵ 'European Commission - PRESS RELEASES - Press Release - Buying Online And Solving Disputes Online: 24.000 Consumers Used New European Platform In First Year' (Europa.eu, 2017) <http://europa.eu/rapid/press-release_IP-17-727_en.htm> accessed 8 August 2018.

¹²⁶ Xandra Kramer, 'Functioning of the ODR Platform: EU Commission Publishes First Results' (Conflict of Laws, 2017) <<http://conflictoflaws.net/2017/functioning-of-the-odr-platform-eu-commission-publishes-first-results/>> accessed 8 August 2018.

¹²⁷ 'REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL On The Functioning Of The European Online Dispute Resolution Platform Established Under Regulation (EU) No 524/2013 On Online Dispute Resolution For Consumer Disputes' (Ec.europa.eu, 2017) <https://ec.europa.eu/info/sites/info/files/first_report_on_the_functioning_of_the_odr_platform.pdf> accessed 6 August 2018.

As Věra **Jourová**, Commissioner for Justice, Consumers and Gender Equality, indicated that:

*“While we are still in an early phase of this new tool, we can already say that the Online Dispute Resolution platform has been well received by consumers. We also see that the mere fact of a consumer using the platform often is incentive enough for traders to resolve the dispute. We are giving consumers a practical tool to help them benefit from their rights in practice. On the other side, traders also have a lot to gain from this platform and should use it more. Particularly for online traders, it is essential to be seen as reliable by potential consumers. Using this tool will help them earn consumer trust, while providing them with a simple and fast way of resolving disputes.”*¹²⁸

ODR Platform is such an innovative and additional tool for consumers to solve their disputes, will not deter the possibility of going to court, which is more costly and time-consuming. Moreover, it is also beneficial for traders because they can easily apply for ADR procedures and avoid costly litigation fees and remain good customer relation.

2.2.2. Requirements of the Regulation for the EU Member States

The most significant provision is to designate one ODR contact point which should ensure support to the resolution of disputes regarding complaints submitted via the Platform.¹²⁹ The contact point should also operate communication between parties and the competent ADR body. This communication includes;

¹²⁸ 'European Commission - PRESS RELEASES - Press Release - Buying Online And Solving Disputes Online: 24.000 Consumers Used New European Platform In First Year' (Europa.eu, 2017) <http://europa.eu/rapid/press-release_IP-17-727_en.htm> accessed 8 August 2018.

¹²⁹ '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)' (Eur-lex.europa.eu, 2013) <<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0001:0012:EN:PDF>> accessed 12 July 2018. Article 7 para 1

“assisting with the submission of the complaint and, relevant documentation; (ii) providing the parties and ADR entities with general information on consumer rights in relation to sales and service contracts (iii) providing information on the functioning of the ODR platform; (iv) providing the parties with explanations on the procedural rules applied by the ADR entities identified; (v) informing the complainant party of other means of redress when a dispute cannot be resolved through the ODR platform.”¹³⁰

Finally, these contact point should submit an activity report to the European Commission and the Member States every two years based on practical experience gained.¹³¹ Furthermore, each Member State provides one contact point, which can be a part of their national European Consumer Centers, and each contact point present at least two ODR advisors who give parties technical and language support.¹³²

Traders who are established within the Union and engaged in online sales or service have few mandatory provisions imposed by the Regulation.¹³³ They should provide on their websites an electronic link to the ODR platform and inform consumers about the existence of the ODR platform and the possibility of using it for resolving disputes.¹³⁴ The information can also be provided in the general terms and conditions if it is necessary.¹³⁵

¹³⁰ ADR Directive on Consumer Disputes Article 7 para. 2 letter (a) however the ODR contact point shall not be mandated to perform all these functions in the case of disputes where the parties are habitually resident in the same member state.

¹³¹ '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)' (Eur-lex.europa.eu, 2013)
<<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0001:0012:EN:PDF>> accessed 12 July 2018.
Article 7 para.2 letter (b)

¹³² Ibid.

¹³³ Ibid. Article 14

¹³⁴ Ibid. 14 para. 2.

¹³⁵ Ibid. Article 14 para. 2

More precisely, the submission of the complaint form should be completed by the complainant party, i.e., consumers should fill a standard electronic complaint form in their language that also is sent to the trader in traders' language. As it was indicated in the Annex of the Regulation that the complaint form consists of information about parties such as;

“the name and e-mail and geographical address of the consumer; the name and e-mail, website and geographical address of the trader; the language of the complainant party and respondent party (if known); the type of goods or service to which the complaint relates; the price of the goods or service purchased; the date on which the consumer purchased the goods or service; whether the consumer has made direct contact with the trader; whether the dispute is being or has previously been considered by an ADR entity or by a court; the type of complaint; and the description of the complaint.”¹³⁶

The main requirement of the platform is to transmit the information that the parties have to agree on an ADR entity in order for the complaint to be transmitted¹³⁷ information about the ADR entity or entities which are competent to deal with the complaint¹³⁸ and the name and contact details of the ODR contact point in the Member State where the respondent party is established or resident. ADR entity has to conclude the ADR process within the deadline. Moreover, it has to transmit information such as; (i) *the date of receipt of the complaint file*; (ii) *the subject-matter of the dispute*; (iii) *the date of conclusion of the ADR procedure*; (iv) *the result of the ADR procedure*; without delay.¹³⁹ This process has to be concluded in an easily understandable and without delay.¹⁴⁰

¹³⁶ Ibid. Annex of the ODR Regulation.

¹³⁷ Ibid. Article 9 para 3 (a)

¹³⁸ Ibid. Article 9 para 3 (b)

¹³⁹ Ibid. Article 10 letter (c)

¹⁴⁰ Ibid. Article 9 para 4

As a result, the ADR entity, which is chosen to resolve the dispute, has few requirements established by the Regulation. However, the Directive has the main requirements that ADR entities must comply with the dispute resolution process. In summary, the Directive ensures ADR procedures exist for all consumers by monitoring of the functioning of ADR entities. It also guarantees the quality of ADR entities. By providing information on ADR and cooperation which encourages ADR entities and national authorities entrusted with the enforcement of consumer protection legislation. The EU legislation presents an integrated system for resolving consumer disputes in the EU. It also indicates a fertile testing ground for the theory which technology-integrated ADR or known as ODR would become the next wave in dispute resolution.¹⁴¹

3. THE ANALYSIS OF THE LEGAL FRAMEWORK FOR ODR IN THE UK AND THE NETHERLANDS

*The first step towards the acceptance of ODR is making the public aware of offline ADR.*¹⁴²

This chapter critically examines the ODR framework in two different jurisdictions; namely the Netherlands and the UK. Currently, the sector in which consumer ADR operates most widely is the telecoms sector in the UK; yet processes in this and other industries vary significantly.¹⁴³ Both of the jurisdictions have outgoing attempt to facilitate ADR schemes before the Regulation. This chapter analyses to the current state and ongoing development of ODR in those jurisdictions which are well developed about e-commerce and resolving consumer e-disputes, therefore it is sufficient to highlight its significant achievements to adapt in Turkey's legislation. The UK and Netherlands are chosen because they have a long tradition in well-developed ADR schemes. While the UK gives importance to the regulation of the sector for ADR, the Netherlands has broad

¹⁴¹ David J. Bilinsky, 'David Bilinsky - Thoughtful Legal Management' (Thoughtfullaw.com, 2012) <<http://thoughtfullaw.com/2012/01/19/online-dispute-resolution-expansion-in-the-eu/#more-2092>> accessed 21 August 2018.

¹⁴² Esther van den Heuvel, 'Online Dispute Resolution As A Solution To Cross-Border E-Disputes An Introduction To ODR' (Oecd.org) <<http://www.oecd.org/internet/consumer/1878940.pdf>> accessed 5 August 2018.

¹⁴³ Pablo Cortes, 'The Impact of EU Law in the ADR Landscape in Italy, Spain And The UK: Time For Change Or Missed Opportunity?' (Ira.le.ac.uk, 2015) <<http://hdl.handle.net/2381/33050>> accessed 11 August 2018.

coverage of ADR provisions.¹⁴⁴ Before the analysis of two jurisdictions, it is pertinent to mention that in 12 European Union Member States¹⁴⁵ has no such alternative resolution systems for consumer disputes; nonetheless, Germany, Italy, Netherlands, and Austria use alternative dispute resolution mechanisms online within an efficient manner.¹⁴⁶ However, due to the language barriers in the regulation of ODR in Germany, it is beyond the scope of the thesis and also as a nascent comparatist.

3.1. The Impact of ADR in the United Kingdom

The ADR field in the UK does not procure comprehensive sector coverage and the same to other countries has different ADR models in operation.¹⁴⁷ In the UK, the ADR schemes are characterized for being specialized.¹⁴⁸ In general, there are two categories to assort ADR schemes in the UK. ADR is mandatory in certain sectors that where there is a high risk of consumer detriment or complex disputes.¹⁴⁹ In another sector where there are no legal requirements for businesses to join in an ADR scheme, ADR is voluntary. Traders can decide to join, and these are often combined with the trade associations. Those sectors which are obliged to adhere ADR with

¹⁴⁴ Naomi Creutzfeldt, 'Implementation Of The Consumer ADR Directive' (Ssrn.com, 2016) <<https://ssrn.com/abstract=2729208>> accessed 16 August 2018.

¹⁴⁵ These Member States are Sweden, Slovenia, Slovakia, Czech Republic, Romania, Norway, Luxemburg, Latvia, Ireland, Cyprus, Belgium and Lithuania. Feliksas Petrauskas and Eglė Kybartienė, 'Online Dispute Resolution In Consumer Disputes' (*Www3.mruni.eu*, 2011) <<https://www3.mruni.eu/ojs/jurisprudence/article/viewFile/584/545>> accessed 1 June 2018.

¹⁴⁶ *Ibid.*

¹⁴⁷ 'Alternative Dispute Resolution For Consumers Government Response To The Consultation On Implementing The Alternative Dispute Resolution Directive And The Online Dispute Resolution Regulation' (Assets.publishing.service.gov.uk, 2014) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/377522/bis-14-1122-alternative-dispute-resolution-for-consumers.pdf> accessed 27 July 2018.

¹⁴⁸ Pablo Cortes, 'The Impact of EU Law in the ADR Landscape in Italy, Spain And The UK: Time For Change Or Missed Opportunity?' (*Ira.le.ac.uk*, 2015) <<http://hdl.handle.net/2381/33050>> accessed 11 August 2018.

¹⁴⁹ Lorraine Conway, 'Alternative Dispute Resolution (ADR) And Consumer Disputes' (Researchbriefings.parliament.uk, 2017) <<https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7336#fullreport>> accessed 14 August 2018.

a single body operating as an ombudsman in sectors such as financial¹⁵⁰ and legal services¹⁵¹ and private ADR bodies dealing with other sectors (estate agents, telecommunications).¹⁵²

Regarding the Department for Business Innovation and Skills (BIS), there is a diverse or patchy approach to ADR in the UK; therefore ADR landscape¹⁵³ is complicated and confusing for consumers. For this reason, the UK government proposed consumer complaints “help desk” to help the consumer by advising and assisting in the dispute resolution process.¹⁵⁴ Despite the fact that ensuring ADR available across the board, the mixed approach of having mandatory ADR in specific areas and in others permitting businesses a choice of whether to use, the UK government remained these the same. The main role of creating a single point of contact which focuses on domestic disputes and its two ODR advisers lead the consumer to understand the ADR landscape and the law on ADR to and to ensure consumers with practical assistance in making complaints.¹⁵⁵

¹⁵⁰ The UK Financial Ombudsman Service was established by statute in 2000 as the mandatory ADR body in the financial services sector. Its function is to resolve disputes between consumers and UK-based financial businesses quickly and with minimum formality. Its casework process is designed around the principle that a dispute is usually best resolved at the earliest possible stage and that most problems can be resolved without needing a formal determination by an ombudsman. 'Online Dispute Resolution For Small Claims Online Dispute Resolution Advisory Group' (Judiciary.uk, 2015) <<https://www.judiciary.uk/wp-content/uploads/2015/02/Online-Dispute-Resolution-Final-Web-Version1.pdf>> accessed 16 August 2018.

¹⁵¹ In the UK, when there is mandatory for all businesses operating in specific sector to adhere to certified ADR scheme, which also might be public such as Legal Ombudsman. Pablo Cortes, 'The Impact of EU Law in the ADR Landscape in Italy, Spain And The UK: Time For Change Or Missed Opportunity?' (Ira.le.ac.uk, 2015) <<http://hdl.handle.net/2381/33050>> accessed 11 August 2018.

¹⁵² Lorraine Conway, 'Alternative Dispute Resolution (ADR) And Consumer Disputes' (Researchbriefings.parliament.uk, 2017) <<https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7336#fullreport>> accessed 14 August 2018.

¹⁵³ The main ADR scheme for consumer disputes is a private ombudsman scheme which is considered similar to mediation and arbitration procedures, however the final outcome is not legally binding on the consumer whereas it is binding for the business. Ombudsman are normally funded by the sector in which they operate, and they provide feedback to adhering traders, enforcement bodies and the regulators, particularly in the regulated sector. The dispute resolution process is free for consumers and they do not ensure redress, however they operate de facto an 'advisory body' resolving consumer queries. Pablo Cortes, 'The Impact of EU Law in the ADR Landscape in Italy, Spain And The UK: Time For Change Or Missed Opportunity?' (Ira.le.ac.uk, 2015) <<http://hdl.handle.net/2381/33050>> accessed 11 August 2018.

¹⁵⁴ 'Alternative Dispute Resolution For Consumers Government Response To The Consultation On Implementing The Alternative Dispute Resolution Directive And The Online Dispute Resolution Regulation' (Assets.publishing.service.gov.uk, 2014) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/377522/bis-14-1122-alternative-dispute-resolution-for-consumers.pdf> accessed 27 July 2018.

¹⁵⁵ Ibid.

In this way, the UK government minimize confusion and also enhances access and awareness to ADR among businesses.¹⁵⁶

Hence, consumers with e-commerce disputes will be able to find information about certified ADR entities in the EU ODR platform, while consumers with 'off-line' domestic disputes could obtain this information through the national helpdesk, and for cross-border disputes will continue to use the European Consumer Centres.¹⁵⁷ Consequently, the role of the helpdesk may in time become less necessary, and possibly even confusing, if this role is already carried out adequately by the traders who already have the obligation to point consumers towards ADR entities.

The combined initiative of the Directive and the Regulation has further underlined a regular shift was falling into the UK's civil justice system. The UK government has transposed the core provisions of the ADR Directive through the two sets of regulation, i.e., the ADR for Consumer Disputes (Competent Authorities and Information) Regulations 2015¹⁵⁸ and the (Amendment) Regulations 2015¹⁵⁹ (hereinafter 'UK Regulation').¹⁶⁰ The operational provisions of the UK Regulation which apply to the whole of the UK came into force on 9 July 2015, and the information requirements for the business took effect from 1 October 2015.¹⁶¹

Requirements of the Directive

The UK is not strict in implementing the ADR Directive. Although it has developed ADR schemes in operation however in some sectors, it was difficult to access to ADR which is limited. The

¹⁵⁶ Ibid.

¹⁵⁷ Pablo Cortes, 'The Impact of EU Law in the ADR Landscape in Italy, Spain And The UK: Time For Change Or Missed Opportunity?' (Ira.le.ac.uk, 2015) <<http://hdl.handle.net/2381/33050>> accessed 11 August 2018.

¹⁵⁸ 'The Alternative Dispute Resolution For Consumer Disputes (Competent Authorities And Information) Regulations 2015' (Legislation.gov.uk, 2015) <http://www.legislation.gov.uk/uksi/2015/542/pdfs/uksi_20150542_en.pdf> accessed 7 August 2018.

¹⁵⁹ 'The Alternative Dispute Resolution For Consumer Disputes (Amendment) Regulations 2015' (Legislation.gov.uk, 2015) <https://www.legislation.gov.uk/uksi/2015/1392/pdfs/uksi_20151392_en.pdf> accessed 7 August 2018.

¹⁶⁰ 'Explanatory Memorandum To The Alternative Dispute Resolution For Consumer Disputes (Amendment) (NO.2) REGULATIONS 2015 2015 No. 1972' (Legislation.gov.uk, 2015) <http://www.legislation.gov.uk/uksi/2015/1972/pdfs/uksiem_20151972_en.pdf> accessed 16 August 2018. para.9

¹⁶¹ Ibid.

principal obligation for UK government is to ensure that ADR provided by a certified ADR body has to be available for any dispute concerning contractual obligations between consumer and trader. The disputes such as discrimination claims and disputes between businesses are out of the scope of the Directive.¹⁶²

The UK government has adopted a minimalistic approach to the implementation of the ADR Directive. The UK government did not create a new residual ADR scheme for consumer disputes because many suppliers were willing to fill the current gap in the provision of ADR services. In other words, the legal requirement could be supplied by the open market ADR landscape.¹⁶³

Secondly, the government arranges for the appointment of the Trading Standards Institute (TSI) as the principal competent authority to certify and monitor relevant ADR provider permanently by taking the minimum requirements by clarifying the standards which ADR bodies must meet to achieve certification such as, impartiality, independence, and quality of expertise.¹⁶⁴ Moreover the competent authorities in the UK that scrutinize ADR entities to become certified to offer ADR processes which are not limited to formal mediation, conciliation, adjudication nor is it limited to Ombudsman services to consumers and traders, for instance, the Financial Conduct Authority and the Legal Services Board are the foremost competent authorities in the UK.¹⁶⁵ Also, it is not necessary for ADR entity to be established in the UK. Substantially for online traders, there are

¹⁶² Further exclusions apply to health services and public providers of further higher education. '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 (Directive On Consumer ADR)' (Eur-lex.europa.eu, 2013) <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0011&from=EN>> accessed 15 August 2018. Article 2 para2.

¹⁶³ Pablo Cortes, 'The Impact of EU Law in the ADR Landscape in Italy, Spain And The UK: Time For Change Or Missed Opportunity?' (lra.le.ac.uk, 2015) <<http://hdl.handle.net/2381/33050>> accessed 11 August 2018.

¹⁶⁴ Lokke Moerel and Laura Steen, 'ODR And ADR: How Will The New EU Rules On Dispute Resolution Affect E-Commerce?' (Media2.mofo.com, 2015) <https://media2.mofo.com/documents/150817odrandaadr.pdf?utm_source=mondaq&utm_medium=syndication&utm_campaign=view-original> accessed 9 August 2018.

¹⁶⁵ Ibid.

obligations about consumer information. In other words, the UK Regulation forces information requirements on businesses selling to under Article 19 of UK Regulation;¹⁶⁶

“(1) where a trader is obliged to use ADR services provided by an ADR entity, by law or by the rules of a trade association, the trader must provide both the name and website address of the ADR entity on its website (if it has a website) and in general terms and conditions of sales or service contracts made between it and consumers.”

“(2) where a trader has exhausted its internal complaints handling procedure, the trader must inform the consumer (a) that the dispute cannot be settled, (b) of the name and address of an ADR entity that would be competent to handle the dispute, and (c) if the trader is obliged (by law or by the rules of a trade association) or willing to submit to ADR procedures run by the ADR entity identified.”

As a result, the operative provisions of the UK Regulation for the traders took effect on 1 October 2015 whereas the Directive does not make it obligatory for traders to enter into ADR schemes, traders that wish to join have to ensure the information mentioned above. The detail of the provisions However, a trader may be mandated by its trade association or legislation to use ADR in specific sectors. UK government selected to proceed with regulating a ‘residual’ ADR scheme, which is an option where businesses are not mandated or committed to using another ADR scheme. By setting up a consumer complaints helpdesk to support consumers to navigate the ADR landscape and lead them to the proper ADR scheme(s).

¹⁶⁶ '2015 No. 1392 CONSUMER PROTECTION The Alternative Dispute Resolution For Consumer Disputes (Amendment) Regulations 2015' (Legislation.gov.uk, 2015)
<https://www.legislation.gov.uk/uksi/2015/1392/pdfs/uksi_20151392_en.pdf> accessed 9 August 2018.

3.2. The Impact of ADR in the Netherlands

The Netherlands has a sustained convention of settling consumer disputes out of court that – to some degree – originates before European efforts empowering extra-judicial consumer redress. The combination of the stable national culture of dividing differences by consensus-driven dialogue rather than by conflicts and litigation, and the government's civil justice approach providing a broad range of dispute resolution mechanism in the Netherlands gave the space for the foundation of a well-balanced Dutch Consumer Dispute Resolution field.¹⁶⁷ It is an exceptional scene, which has been introduced to the Dutch system (The Geschillencommissie, hereinafter 'SGC')¹⁶⁸ which also means 'The Consumer Disputes Board' rated very highly.¹⁶⁹ It is a kind of umbrella organization which controls 50 sectoral ADR schemes in 3 pillars, i.e., consumer protection is one of them.¹⁷⁰ The most significant point of this system is the binding opinion. It indicates that the default procedure that Dutch ADR field has a unique type of adjudicative ADR method in which an independent third party gives the binding decision that resolves the dispute between parties.¹⁷¹ Online services are already being used in the procedures in different ADR entities especially the SGC fulfills the online process even before the Regulation.¹⁷² This is because courts could often not provide de facto access to justice for consumer claims as consumers were reluctant to tackle the institutional hurdles of duration, formalism, and relatively high costs inherent in the Dutch civil procedure.¹⁷³

¹⁶⁷ *As of 2011, the Board oversaw 50 sector specific ADR schemes and served as a single point of contact for Dutch consumers, directing them to the appropriate board. Consumers could, and still can, conduct their complaint fully online.* Joanna Page and Laurel Bonnyman, 'ADR And ODR—Achieving Better Dispute Resolution For Consumers In The EU' (link.springer.com, 2016) <<https://link.springer.com/content/pdf/10.1007%2Fs12027-016-0424-5.pdf>> accessed 9 August 2018.

¹⁶⁸ The Geschillencommissie (SGC) system is an outstanding success, and one of the leading European examples of ADR. . The SGC now comprises fifty consumer boards and 5 commercial boards. For consumers, the costs involved in dispute resolution via the SGC are relatively low.

¹⁶⁹ 'Alternative Consumer Dispute Resolution In The EU (Commissie Voor Consumentenaangelegenheden Alternatieve Geschillenbeslechting In De EU (2012/3)' (Ser.nl, 2012) <https://www.ser.nl/~media/files/internet/talen/engels/2012/2012_03.ashx> accessed 8 August 2018.

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

¹⁷² In 2011, SGC transferred its workflow system and it made the ADR procedure—online ('e-SGC') which has been operational since 2011, parties can submit their documents online and follow the process entirely there. Ibid.

¹⁷³ Ibid.

Requirements of the Directive

The implementation of the Directive did not take too long in the Netherlands, comparing it to other countries. The Dutch government has timely transcribed the '*Implementatiewet buitengerechtelijke geschillenbeslechtin gconsumenten*' (hereafter; 'Implementation Act') into its national law by refusing to exercise discretionary powers under the Directive.¹⁷⁴ The Dutch government does not consider in-house trader dispute resolution processes as a subject to the Directive.¹⁷⁵ The main purpose of the implementation process in the Netherlands was to underline the Implementation Act with the successful Dutch ADR landscape as much as possible. Dutch system already facilitates the Consumer Complaint Boards which is an umbrella scheme, is operating entirely electronically and includes sector-specific complaint boards. Therefore, the Directive has been implemented by building on the already existing successful system of extrajudicial redress for consumer disputes. The Consumer Complaint Boards (SGC), along with the Financial Services Complaints Institute Foundation (KiFiD) and the Foundation of Health Insurance Complaints (SKGZ) have been authorized as ADR entities under the Directive.¹⁷⁶ In the same vein, particularly Articles 4 and 7(a) of the Implementation Act, mandates certified ADR bodies for consumer disputes to ensure full ODR services for both domestic and cross-border disputes.

The critical points of the Dutch legislator are to provide for a legal framework for ADR in consumer disputes and the establishment of a residual ADR body for consumer disputes. The Directive was implemented by the Dutch government via separate act instead of applying the provisions of the Directive into different existing laws because the government gives importance to principles such as accessibility, transparency, and coherence of this implementation

¹⁷⁴ Joanna Page and Laurel Bonnyman, 'ADR And ODR—Achieving Better Dispute Resolution For Consumers In The EU' (link.springer.com, 2016) <<https://link.springer.com/content/pdf/10.1007%2Fs12027-016-0424-5.pdf>> accessed 9 August 2018.

¹⁷⁵ Ibid.

¹⁷⁶ Marte Knigge and Charlotte Pavillon, 'The Legality Requirement Of The ADR Directive: Just Another Paper Tiger?' (Papers.ssrn.com, 2016) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2745886> accessed 16 August 2018.

method.¹⁷⁷ Moreover, according to the Dutch government, most of the provisions laid down in the Implementation Act are of a public law nature, and these provisions by their nature would not fit in with the existing national laws.¹⁷⁸

Taking into consideration that the Dutch system is already sufficiently provided in consumer dispute resolution with ADR schemes, therefore, the Implementation Act was issued on 30 April 2015 and came into force on 9 July 2015. It is pertinent to emphasize that three Dutch ADR bodies (SGC, Kifid, and SGKZ) have to alter their rules of procedure concerning the quality requirements set out in the Implementation Act, particularly, ensuring that they provide full ODR services.

3.3. Conclusion: The New Regulation for Consumer Disputes

In general, the Netherlands, the UK, and Turkey are entirely different regarding demographic and geographical settings and economic conditions. Pursuant to Article 14 of the Regulation directly imposes an obligation on all businesses selling goods or services online to provide on their website a link to the ODR platform. The same article also includes information about the existence of the ODR platform in their general terms and conditions applicable to their sales and service contracts. All Member States have to apply this rule.

The successful implementation of the ADR Directive in the Member States is an essential necessity for the success of the ODR platform and more generally the empowerment of consumers in the Digital Internal Market. It is important to mention that the ODR Platform can

¹⁷⁷ Laws like the Civil Code, the Code of Civil Procedure and the Law on the Enforcement of Consumer Protection. Eline Verhage, 'The Implementation Of The Consumer ADR Directive In The Netherlands' (Oxfordscholarship.com, 2016) <<http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780198766353.001.0001/acprof-9780198766353-chapter-12#acprof-9780198766353-chapter-12-biblitem-786>> accessed 8 August 2018.

¹⁷⁸ 'Alternative Consumer Dispute Resolution In The EU (Commissie Voor Consumentenaangelegenheden Alternatieve Geschillenbeslechting In De EU (2012/3)' (Ser.nl, 2012) <https://www.ser.nl/~media/files/internet/talen/engels/2012/2012_03.ashx> accessed 5 August 2018.

only work effectively if the national ADR entities are available to provide high-quality standards. In this way, consumers can rely on ADR procedures.

As it mentioned above the government of UK and the Netherlands are already ready to embrace the rationale behind the EU's legislation. Nevertheless, the national implementation process and availability of ADR providers in Member states Happen at a very different pace throughout the Union.¹⁷⁹ In addition to this, there are different levels of quality provided by the existing ADR bodies. This leads to the next point of national acceptance of ADR.

On the one hand, in the Netherlands, the well-established ADR and settlement culture is crucial for ADR which means it is a part of the national approach to settle disputes and all Dutch consumers does not have to endeavor about or accept ADR.¹⁸⁰ Parties know where to complaint and what to expect from the procedure and the government does not have to fund the system because of the full coverage of ADR. Online tools are also used within more stages of the process, diagnosing providing the progress of the dispute online, and even facilitating the initiation and conclusion of the whole procedure in catching up with the European Consumer ODR standards.¹⁸¹ As a consequence of the self-regulatory approach the procedures and workflow systems, ADR entity is considered no more than an online reference tool to existing bodies.¹⁸² Moreover, traders in the Netherlands start to become aware of (and often confused about) their legal obligation to put an electronic link to the ODR platform on their website.¹⁸³ The Implementation

¹⁷⁹ Xandra E. Kramer, Emma van Gelder and Erlis Themeli, 'E-Justice In The Netherlands: The Dutch Pragmatic Approach To Digitalisation' (ssrn.com, 2018) <<https://ssrn.com/abstract=3167543>> accessed 9 August 2018.

¹⁸⁰ Eline Verhage, 'The Implementation Of The Consumer ADR Directive In The Netherlands' (Oxfordscholarship.com, 2016)<<http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780198766353.001.0001/acprof-9780198766353-chapter-12#acprof-9780198766353-chapter-12-biblitem-786>> accessed 8 August 2018.

¹⁸¹ Xandra E. Kramer, Emma van Gelder and Erlis Themeli, 'E-Justice In The Netherlands: The Dutch Pragmatic Approach To Digitalisation' (ssrn.com, 2018) <<https://ssrn.com/abstract=3167543>> accessed 9 August 2018.

¹⁸² 'Alternative Consumer Dispute Resolution In The EU (Commissie Voor Consumentenaangelegenheden Alternatieve Geschillenbeslechting In De EU (2012/3)' (Ser.nl, 2012) <https://www.ser.nl/~media/files/internet/talen/engels/2012/2012_03.ashx> accessed 5 August 2018.

¹⁸³ Eline Verhage, 'The Implementation Of The Consumer ADR Directive In The Netherlands' (Oxfordscholarship.com, 2016) <<http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780198766353.001.0001/acprof-9780198766353-chapter-12#acprof-9780198766353-chapter-12-biblitem-786>> accessed 8 August 2018.

Act enlightens the first legislative interference by the Dutch legislator in the self-regulatory Dutch consumer dispute resolution landscape. The new triage layers system that Dutch ADR landscape for consumer disputes has ensured better ODR services.

On the other hand, the UK government is also considering whether it ought to hold the mixed approach making it obligatory for traders operating in specific regulated sectors, or whether this obligation ought to be broadened to all industries to make it less confusing and more accesible for consumers to attain individual redress. It is presented that full compulsory coverage is likely to occur in the due course which will probably occur in an incremental and piecemeal manner, growing first in other regulated sectors, for instance, transport, starting with the airlines. Additional factors leading entire compulsory coverage rely upon the political will of the UK government and the time and the effect that the implementation of the Directive may have – in this way, if the majority of traders choose involuntarily, it will be simpler for the government to make it compulsory for the minority to join an ADR entity.¹⁸⁴

The capability of ADR to satisfy its purpose of being conclusively identifiable, open and the pathway to opt for consumers to resolve their complaints might be depleted by an incomplete or minimum implementation of the Directive. This will directly affect the up and coming usage of ODR regulation. As a result, existing ADR bodies in the Member States offer different quality, processes, and results. ODR Platform ensures the stability of access to justice. Additional work must be done to meet the Directive's requirements for consumer ADR and ODR to achieve their potential. It will be captivating to study how these systems develop over the next decade, and how European consumers learn to accept them.¹⁸⁵

¹⁸⁴ 'The Impact of EU Law in the ADR Landscape in Italy, Spain And The UK: Time For Change Or Missed Opportunity?' (lra.le.ac.uk, 2015) <<http://hdl.handle.net/2381/33050>> accessed 11 August 2018.

¹⁸⁵ Naomi Creutzfeldt, 'Implementation Of The Consumer ADR Directive' (Ssrn.com, 2016) <<https://ssrn.com/abstract=2729208>> accessed 16 August 2018.

In nations like the UK or the Netherlands, high degrees of access to online dispute resolution can reasonably be shown yet it is too soon to make acceptance on how this converts into a pragmatic eagerness to use ODR for Turkey.

4. THE NEED OF LEGAL FRAMEWORK FOR CONSUMER ONLINE DISPUTES IN TURKEY

“As 18th largest economy in the world with a GDP of almost US\$800 billion, Turkey has been making reforms to its judicial system for the past 10 years with an ambitious target of becoming one of the 10 largest economies in the world by 2023, which is the centenary of the foundation of the Turkish Republic.”¹⁸⁶

This chapter attempts to define the position of ODR in Turkey. This chapter indicates the relevant developments in relation to ODR. Turkey has various institutions that have helped in the development of alternative dispute resolution methods are examined. Furthermore, ODR is based on similar principles envisaged in ADR such as access to justice, an alternative mechanism to the court.

4.1. Background of Turkey

Due to the geographical entryway and therefore connections with Europe and Asia through the Bosphorus Strait, Turkey has already a strong trading relationship with the EU. The rise in the importance of e-commerce in Turkey brings some advantages and disadvantages. In general, consumer protection under the Constitution ensures for the right to access to justice for all. However, this right is easily hampered by varied reasons. For instance, the intensive workload of the consumer courts is threatening the effectiveness of consumer courts to protect consumers’

¹⁸⁶ Pelin Baysal, 'Turkey - The International Arbitration Review - Edition 7 - The Law Reviews' (Thelawreviews.co.uk, 2016) <<https://thelawreviews.co.uk/edition/the-international-arbitration-review-edition-7/1136462/turkey>> accessed 12 August 2018.

rights in Turkey.¹⁸⁷ Although technological developments in dispute resolution processes are also improving internationally, Turkey still suffers from low online transaction rates; therefore trust factor is one of the most considerable factors, worth to be examined to detect the disputes and enhance the economy of Turkey. ODR could be the best mechanism towards an era of digitalization to eliminate e-consumer disputes and create trust to improve easy access to justice.

Turkey's legal system is based on civil law, and there are some specialist courts known as consumer courts.¹⁸⁸ When a Turkish consumer could not settle the disputes with alternative methods such as the Arbitration Committee, and after that, they have rights to seek in consumer courts. In spite of the developments in B2C e-commerce context and technology, no legislation points the introduction and implementation of ODR directly. ODR is not well-known enough in Turkey, not in the literature. In contrast, ODR has been examined in other jurisdictions since it has been expanding issue of concern in the developing world. As a result, the impact of the technology is rapidly changing the face of dispute resolution.

4.2. The Key Developments towards ODR for Consumer E-disputes

The continuous rise in consumerism in Turkey, it is undeniable that Turkish consumer protection requirements would derive to meet EU levels. Regarding these reforms, significant provisions were made, and new laws were established by the government during the year of 2015. The E-Commerce Law and the Law on Protection of Personal Data were approved as new laws, and precisely one of the most significant changes has had as a conclusion of this process has been its Consumer Protection Law.

¹⁸⁷ 'Instrument For Pre-Accession Assistance (Ipa li) 2014-2020 Turkey Judiciary Action Document 2015' (Ec.europa.eu, 2015) <<https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/turkey/ipa/2015/ipa2015-038-404.3-judiciary.pdf>> accessed 27 May 2018.

¹⁸⁸ Pelin Baysal and Beril Yayla Sapan, 'Litigation & Dispute Resolution 2018 | Turkey | ICLG' (Litigation & Dispute Resolution 2018 | Turkey | ICLG, 2018) <<https://iclg.com/practice-areas/litigation-and-dispute-resolution-laws-and-regulations/turkey>> accessed 12 August 2018.

4.2.1. The Developments in B2C E-commerce

Due to the connections with the other nations, Turkey is one of the largest and quickest developing B2C e-commerce markets in Eastern Europe.¹⁸⁹ Turkey's internet market has been skyrocketing in the recent years; it positions in the leading 30 nations worldwide by logistic development.¹⁹⁰ As Hurriyet Daily News stated one of that *"..Tremendous development in communication and transportation infrastructure in Turkey has helped e-commerce to boom."*¹⁹¹

Remarkably, the E-commerce Foundation report, published in December 2017, asserted that although 49 million people (48% of the population) represents internet consumers, only 29% of them did digital shopping in 2016 and B2C digital transactions grew 30.5% that accounts for US\$ 5,852 million targeting for international companies.¹⁹² There are four main advantages that Turkey's e-commerce market to improve: *"(i) use of credit cards; (ii) sound logistics infrastructure; (iii) high use of mobile internet; and (iv) social media and 56.8 million credit cards and 100.2 million bank cards are being used in Turkey, which carries Turkey to 2nd tier in Europe in the number of credit cards and to 1st tier in bank cards."*¹⁹³

There are many domestic B2C e-commerce players in Turkey, namely, Hepsiburada.com, GittiGidiyor.com, and N11. The marketplace in Turkey is a convenient e-commerce model for foreign investors with players such as GittiGidiyor.com was owned by eBay, and N11 was

¹⁸⁹ 'Turkish B2C Ecommerce Is Expected To Double By 2019 - Report' (Thepaypers.com, 2015) <<https://www.thepaypers.com/ecommerce/turkish-b2c-ecommerce-is-expected-to-double-by-2019-report/760867-25>> accessed 29 July 2018.

¹⁹⁰ Ibid.

¹⁹¹ Ahmet Can, 'Turkey Aiming Big in E-Commerce: Minister' (Hürriyet Daily News, 2017) <<http://www.hurriyetaidailynews.com/turkey-aiming-big-in-e-commerce-minister-122809>> accessed 29 July 2018.

¹⁹² 'Why Turkey Is The New Ecommerce Hotspot?' (BoaCompra, 2018) <<https://boacompra.com/en/blog/why-turkey-is-the-new-ecommerce-hotspot?#mcl>> accessed 25 July 2018.

¹⁹³ Pinar Bülent and Eylül Topanoğlu, 'Turkey's New Emerging Market: E-Commerce - Consumer Protection - Turkey' (Mondaq.com, 2018) <<http://www.mondaq.com/turkey/x/377342/Consumer+Law/Turkeys+New+Emerging+Market+ECommerce>> accessed 8 June 2018.

launched by Turkish Dogus Group and South Korean SK Group.¹⁹⁴ At present, Alibaba also has planned to invest in the most popular online fashion retailer, Trendyol which has a significant position in Turkey's fragmented e-commerce market.¹⁹⁵

In order to create secure, transparent and accessible e-commerce environment, the Turkish government regulated e-commerce with different laws. One of them is the Law on Electronic Commerce which is parallel with the Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular, electronic commerce, in the Internal Market, therefore it governs; *'(i) commercial relations; (ii) liabilities of online service providers; (iii) agreements to be executed through electronic devices; (iv) obligation to provide information; and (v) sanctions.'*¹⁹⁶

The primary law including consumers and consumption, the Law No. 4077 on Protection of the Consumers (hereinafter 'Former Consumer Code') was very narrow and only regulated consumer transactions for the goods and service market, while the Consumer Code was established to fulfill both the provisions of the new Turkish Code of Obligations No. 6098 and European Commission's related directives.¹⁹⁷ It was valid until 28 November 2013 while the Law No. 6502 on Protection of the Consumers (hereinafter 'Consumer Code') came into force on 28 May 2014 with a series of intensive legislation work.¹⁹⁸

¹⁹⁴ 'Turkish B2C Ecommerce Is Expected to Double By 2019 - Report' (Thepaypers.com, 2015) <<https://www.thepaypers.com/ecommerce/turkish-b2c-ecommerce-is-expected-to-double-by-2019-report/760867-25>> accessed 29 July 2018.

¹⁹⁵ 'Alibaba To Invest In Turkey Ecommerce Company Trendyol' (Thepaypers.com, 2018) <<https://www.thepaypers.com/ecommerce/alibaba-to-invest-in-turkey-ecommerce-company-trendyol/773777-25>> accessed 29 July 2018.

¹⁹⁶ Pinar Bülent and Eylül Topanoğlu, 'Turkey's New Emerging Market: E-Commerce - Consumer Protection - Turkey' (Mondaq.com, 2018) <<http://www.mondaq.com/turkey/x/377342/Consumer+Law/Turkeys+New+Emerging+Market+ECommerce>> accessed 8 June 2018.

¹⁹⁷ 'Consumer Protection And Market Surveillance In Turkey' (english.gtb.gov.tr) <<https://english.gtb.gov.tr/commerce/consumer-protection-and-market-surveillance/consumer-protection-and-market-surveillance-in-turkey>> accessed 10 August 2018.

¹⁹⁸ 'Consumer Protection And Market Surveillance In Turkey' (english.gtb.gov.tr) <<https://english.gtb.gov.tr/commerce/consumer-protection-and-market-surveillance/consumer-protection-and-market-surveillance-in-turkey>> accessed 10 August 2018.

In parallel with these changes, new requirements were needed in the distance contracts, whose significance has been rapidly rising as a result of enhancement of communication possibilities, the Distance Sale Agreements Regulation (hereinafter 'the DSA') which was established by Article 48/6 of the Consumer Code.¹⁹⁹ The DSA was drafted on the basis of ADR Directive, being almost a copy of the Directive.²⁰⁰ For instance, pursuant to Article 9/1 of the DSA, Turkish consumers have right the withdraw from the agreement within 14 days, without presenting any reason and/or paying any penalty in distance sale contracts and Article 16/1 of the Regulation provides for the seller/provider to complete the performance of the contract within the undertaken period starting from the date when the consumer's order reaches to the seller/provider. If the subjects of performance are goods, the performance time for the contract (in other words, delivery time) is 30 days at the most.²⁰¹

Without a doubt, by harmonizing the EU directives and regulations, the Turkish government aims to promote e-commerce by regulating consumer protection law. It is crucial for Turkey's possible sustainable e-commerce environment to be supported by rules and e-commerce investments.

4.2.2. Consumer Protection Law

No legal element that deals particularly with the practice of ODR in Turkey. However, a various law can act as footstones for the development of ODR. Today, consumer protection is an imperative issue also for the Turkish law. In particular, consumer is considered on weak position both socially and economically. First and foremost, consumers are protected by Consumer Protection Law. In general, the Turkish Constitution emphasizes in Article 2 that the Republic of Turkey is a democratic, secular and social state governed by the rule of law. Moreover, under Article 36, everybody has the right to a legal remedy either as plaintiff or defendant and the right to fair trial before the courts. Finally, under article 172 of the Constitution *"State shall take measures to protect and inform consumers and shall promote consumers to take the initiative to*

¹⁹⁹ Alper Alper Utaş, 'DISTANCE CONTRACTS IN TURKISH CONSUMER LAW' (Dundarsir.com) <http://www.dundarsir.com/uploads/video/174-2/Distance_Contracts.pdf> accessed 15 August 2018.

²⁰⁰ Ibid.

²⁰¹ Ibid.

self-protect their rights.” In the sense of these provisions, it may be said that the Turkish government has a responsibility to enact an adequate mechanism for awareness of access to justice and also it has to provide state protection for those who have weak social and economic position in the society.²⁰² According to Umit Gezder, on the one hand, this constitutional provision creates the basis for an application in relation to government protection, and on the other hand, it gives consumers the right to establish consumer organizations.²⁰³

In issues correlated to consumer e-disputes, by establishing Consumer Code and the DSA, Turkish government aimed to have full harmonization with the EU practices and legislations, therefore, the Consumer Code covers all types of consumer transactions and practices concerning consumers. More precisely it regulates sales to consumers over the Internet and the other digital platforms and defines the rules of advertisement to protect consumers.²⁰⁴

The Consumer Code also ensures legal institutions for the resolution of consumer disputes which has a two-level system of resolving consumer disputes i.e. Arbitration Committees and Consumer Courts.

²⁰² Pelin Baysal, 'Turkey - The International Arbitration Review - Edition 7 - The Law Reviews' (Thelawreviews.co.uk, 2016) <<https://thelawreviews.co.uk/edition/the-international-arbitration-review-edition-7/1136462/turkey>> accessed 16 August 2018.

²⁰³ Naomi Creutzfeldt and others, 'Consumer Protection In Turkey: Law, Informality And The Role Of The Media' (Academia.edu, 2016) <http://www.academia.edu/29186870/Consumer_Protection_in_Turkey_Law_Informality_and_the_Role_of_the_Media> accessed 16 August 2018.

²⁰⁴ 'Law On Consumer Protection Law No:6502' (English.gtb.gov.tr, 2013) <<http://english.gtb.gov.tr/data/55e84f501a79f52b9c3d8c6a/6502%20say%C4%B1%C4%B1%20kanun%20%C4%B0ngilizce.pdf>> accessed 12 August 2018.

Consumer Courts

In general, Consumer Courts²⁰⁵ are special courts of the primary way to deal with consumer disputes in Turkey. The Consumer Courts shall settle only a certain monetary threshold.²⁰⁶ Pursuant to Article 70 of the New Law *“Consumer courts are authorized in cases related to the disputes that may arise from consumer transactions and implementations directed at the consumer.”*

Alternative Methods for Consumer Disputes: Arbitration Committees for Consumer Problems

The New Act also ensures legal institutions for the resolution of consumer disputes in the form of Arbitration Committees for Consumer Problems (district and regional commissions)²⁰⁷ under Article 66 of the New Law. Before going to consumer courts, consumers have the opportunity to settle disputes via Arbitration Committees. However, it is important to note that Consumer Courts remain to be the most competent authorities of resolution in the matter of dispute settlement.

Arbitration Committees were established in 81 provinces and 893 districts of Turkey.²⁰⁸ Pursuant to the Regulation on Consumer Arbitral Commissions, complaints are submitted in writing.²⁰⁹ Consumers may either use the form set out in the Regulation or provide their name, ID number, address and information about the complaint. The complaint may be submitted electronically, through the state electronic portal (e-devlet), which involves an electronic signature function.²¹⁰

²⁰⁵ There are consumer courts in Ankara, İstanbul, İzmir, Adana, Antalya, Bursa, Samsun, Konya, Mersin and Kayseri provinces. Complaints outside those provinces should be filed at civil courts, which can function as consumer courts, in the first instance. Naomi Creutzfeldt and others, 'Consumer Protection In Turkey: Law, Informality And The Role Of The Media' (Academia.edu, 2016) <http://www.academia.edu/29186870/Consumer_Protection_in_Turkey_Law_Informality_and_the_Role_of_the_Media> accessed 16 August 2018.

²⁰⁶ Ibid.

²⁰⁷ The Arbitral Commission for Consumers maintains offices at provincial directorates of commerce and district governors' offices. Ibid.

²⁰⁸ Ibid.

²⁰⁹ Ibid.

²¹⁰ Ibid.

The decision making of the District Arbitral Commission may last up to six months, with the possibility of an extension for another six months. Consumers must apply to the District Arbitral Commission for claims below 4,000 Turkish Lira, and to the Provincial Arbitral Commission for claims below 6,000 Turkish Lira and claims between 4,000 to 6,000 Turkish liras must be referred to Provincial Arbitral Commission in the cities with metropolis status. There is no application to the Arbitral Commission for Consumers shall be made for disputes exceeding the amounts as mentioned above.²¹¹ Larger claims are typically taken to consumer courts.

The Commission's decisions are binding on both parties²¹², and appeals may be submitted to the consumer courts within fifteen working days of notification of the decision.²¹³ The appeal does not suspend the execution of the decision of the Commission. Parties may request a temporary injunction. The decision of the consumer court on an appeal against a decision of the Arbitral Commission for Consumers is final.²¹⁴ Applications to consumer courts are exempt from court fees. The decisions of the Arbitral Commission for Consumers are made in accordance with the provisions of the Enforcement and Bankruptcy Law related to the execution of a writ.²¹⁵

Although Arbitration Committees are working effectively, a majority of the Turkish consumers (84%) do not prefer to solve their complaints via consumer support centers and 61% of consumers do not know anything about consumer arbitration committees.²¹⁶

²¹¹ 'Law On Consumer Protection Law No:6502' (English.gtb.gov.tr, 2013) <<http://english.gtb.gov.tr/data/55e84f501a79f52b9c3d8c6a/6502%20say%C4%B1l%C4%B1%20kanun%20%C4%B0n%20gilizce.pdf>> accessed 12 August 2018. Article 68 (1)

²¹² Ibid Article 70. (1)

²¹³ Ibid Article 70 (2)

²¹⁴ Ibid Article 70 (5)

²¹⁵ Ibid Article 70 (2)

²¹⁶ . Naomi Creutzfeldt and others, 'Consumer Protection In Turkey: Law, Informality And The Role Of The Media' (Academia.edu, 2016) <http://www.academia.edu/29186870/Consumer_Protection_in_Turkey_Law_Informality_and_the_Role_of_the_Media> accessed 16 August 2018.

Consumer Associations for Awareness

In order to increase awareness, the Consumer Union and consumer association are working as an NGC consisting of volunteers. The association aims to inform and educate consumers about their rights and help them to seek justice. For instance, the Consumer Rights Centre (Tuketici Haklari Merkezi), provides free legal assistance for consumers.

Online Complaint Service

In Turkey, there are also many approaches that consumers can pursue to complain about goods and services. A Private company which is called Sikayet Var ensures information for companies and facilitates their communication with consumers which is likely to a private ombudsman. Sikayet Var is on Facebook (136K followers) and Twitter (29.4K followers), and has a smartphone application and a YouTube channel which means consumers are most likely to be attracted to informal methods of resolving their disputes at a time when formal methods are not working for them.²¹⁷

Another website for consumer complaints is sikayetim.com (mycomplaint.com) which targets to increase consumer awareness in line with EU standards. Like other complaint platforms, this site allows consumers to submit their complaints and the website connects the relevant companies. If a company replies to the complaint in five days, the website publishes the complaint together with the company's positive or negative response. Otherwise, the site only publishes the complaint.²¹⁸

Moreover, ICPEN is an international network of consumer protection authorities that protect members from fraudulent, deceptive and unfair commercial practices around the world by

²¹⁷ Naomi Creutzfeldt and others, 'Consumer Protection In Turkey: Law, Informality And The Role Of The Media' (Academia.edu, 2016) <http://www.academia.edu/29186870/Consumer_Protection_in_Turkey_Law_Informality_and_the_Role_of_the_Media> accessed 16 August 2018.

²¹⁸ Ibid.

ensuring information about consumer challenges that cross-borders. As the ICPEN presidency transitions to Turkey, the new website will continue to assist global consumer enforcers in the detection, identification and response to illegal conduct affecting consumers transacting across international borders.²¹⁹

4.3. Is Turkey Ready to Have ODR Systems for Consumer E-disputes?

In addition to the abovementioned developments towards dispute resolution process, the existing examples of online dispute resolution increase crucial questions about the best approach of regulation. While there is no ODR law but there are provisions related to ADR for consumer disputes.

Turkey has to strengthen ADR schemes with technological developments to operate the processes. In the present, consumer is not mainly protected by only consumer protection law but by several including e-commerce law. In 2016, Turkey has organized a meeting within the context of Technical Assistance and Information Exchange instrument of the European Commission (TAIEX). The conference aimed to develop ADR mechanisms and its harmonization with EU regulations. The participants of that workshop (called as EU and The Future and The Function of Alternative Dispute Resolution) were EU consumer law experts, consumer organization representatives, and the Arbitration Committee members. The final declaration of that workshop is fundamental and must be considered. There had been stated that since 1995, within the context of Arbitration Committee, Turkey had made important steps towards ADR, to settle the cases quicker, easier more efficient and less costly manner. Statistically, 1011 Arbitration Committees have received 3.1000.000 applications (far beyond the ones in Europe) this number shows that Arbitration Committees are trying to solve the cases in a practical way.²²⁰

²¹⁹ 'Turkey Takes up the Presidency of International Consumer Protection and Enforcement Network (ICPEN) 2017-2018' (english.gtb.gov.tr) <<https://english.gtb.gov.tr/news/turkey-takes-up-the-presidency-of-international-consumer-protection-and-enforcement-network-icpen20172018>> accessed 7 August 2018.

²²⁰ Tüketici Akademisi | Alternatif Uyuşmazlık Çözümünün İşlev Ve Geleceği Çalıştayı İstanbul'da Düzenlendi' (Tuketiciakademisi.gov.tr, 2016) <<http://www.tuketiciakademisi.gov.tr/tr-tr/haberler/alternatif-uyusmazlik-cozumunun-islev-ve-gelecegi-calistayi-istanbulda-duzenlend>> accessed 23 August 2018.

Secondly, Turkey's economic and social necessities have led to consider about transformation into an information society; therefore Turkey's endeavors transformed itself into an information society by implementing the e-Transformation Turkey project. The main objectives were defined such as *"Policies, laws, and regulations regarding ICT will be re-examined and changed if necessary, with respect to the EU acquis; e-Europe+ Action Plan, initiated for the candidate countries, will be adapted to Turkey."* ²²¹

Furthermore, the 2007 OECD E-government Studies in Turkey stated that *"Turkey is making strong progress in implementing e-government. Turkey has achieved quick wins in the e-government arena by prioritizing projects that make government more efficient, effective, transparent and accountable."*²²² Turkey has been trying to achieve greater coherence with EU. As part of the e-government, UYAP was built up as an e-justice system to provide fast, reliable soundly operated and accurate judicial system. The central network project includes all Courts, Offices of Public Prosecutors and Law Enforcement Offices together with the Central Organization of the Ministry of Justice to realize these aims.²²³ Lawyers and citizens are able to investigate all their files, deposit their case fee, submit any document or claim and file a case to any court of Turkey via Internet by using their e-signature.²²⁴ Moreover, E-government gives consumers to complain online through Arbitration Committees. They only need to explain the dispute clearly.

The developments in ICT sector in Turkey is also growing faster than the world average. ICT spending on Hardware, IT services and telecommunication services in Turkey is expected to increase to USD 35 billion by 2018.²²⁵ In consideration above information, Turkey is already

²²¹ 'Contribution Of Turkey To Progress Report' (Bilgitoplumu.gov.tr, 2004) <http://www.bilgitoplumu.gov.tr/wp-content/uploads/2014/04/E-Europe_2003_Progress_Report.pdf> accessed 23 August 2018.

²²² Behire Esra Çayhan, 'IMPLEMENTING E-GOVERNMENT IN TURKEY: A COMPARISON OF ONLINE PUBLIC SERVICE DELIVERY IN TURKEY AND THE EUROPEAN UNION' (Onlinelibrary.wiley.com, 2008) <<https://onlinelibrary.wiley.com/doi/pdf/10.1002/j.1681-4835.2008.tb00245.x>> accessed 13 August 2018.

²²³ 'NATIONAL JUDICIARY INFORMATICS SYSTEM (UYAP)' (UYAP) <<http://www.e-justice.gov.tr/General-Information>> accessed 13 August 2018.

²²⁴ Ibid.

²²⁵ 'ICT - Invest In Turkey' (Invest.gov.tr, 2018) <<http://www.invest.gov.tr/en-US/sectors/Pages/ICT.aspx>> accessed 14 August 2018.

accomplished e-government service that has been operating since 2006. It shows that Turkey is able to embrace the technology which is also the main elements of ODR. With the increase of ICT should lead Turkey to implement ODR to settle consumer e-disputes.

Without a doubt, Turkey is preparing itself to implement ADR schemes following the current Directive which means that Turkey is aware of the developments of EU regarding to consumer e-disputes. In spite of the success of the Arbitration Committees, consumers are not aware of the benefits of out of court mechanisms. In order to increase consumer's awareness, National Government Organizations are focusing on consumer protection topics, providing a platform for complaints and linking complainants with the companies.

For the future model of ODR which will be definitely needed to implement in Turkey due to technological developments and therefore the emergence of B2C e-commerce. ODR systems could be the best solution to resolve consumer e-disputes for the future consumer needs. In Turkey, There are public and private institutions that consumer can easily complain, and learn how to access to justice online which shows that Turkey is improving in this field.

Likewise the Dutch system, ODR systems could be established in Turkey either through self-regulating or through perceiving ODR in the existing ADR law. While it remains to be seen which trend in ODR regulation will prevail, it must be kept in mind that the development of the Internet has changed the dynamics of the regulatory environment. *"The reasonable policy-making must rely on careful consideration of all the modalities of regulation."*²²⁶

²²⁶ Rafal Morek, 'Regulation of Online Dispute Resolution: Between Law and Technology' (Studylib.net, 2005) <<http://studylib.net/doc/5911383/regulation-of-online-dispute-resolution-#>> accessed 9 June 2018.

²²⁶ Pablo Cortés and Arno R. Lodder, 'Consumer Dispute Resolution Goes Online: Reflections on the Evolution of European Law for Out-Of-Court Redress' (Lra.le.ac.uk, 2014) <https://lra.le.ac.uk/bitstream/2381/33184/5/MJ_21_01_0014.pdf> accessed 9 June 2018.

CONCLUSION

Digital communication and Internet based activities, more generally, have for sure added both new dimension to potential disputes and new tools for dispute resolution. But surviving and successful applications of technology to dispute resolution will, I suspect, need to be informed by the best scholarship and adjudicative and non-adjudicative methods for settling disagreements.” (Martin, P.W)²²⁷

The aim of this thesis was to display the arch academic debates in legal scholarship on the development of the legal framework in EU and other jurisdictions, concerning the ADR Directive and ODR Regulation which are interconnected with each other. It also aimed to project an alternative thought process for research by linking it to how to implement ODR systems in Turkey, which is noticeably absent in the existing literature. ADR laws and principles, as well as flexible judicial procedures, such as ombudsman schemes, the implementation process of the EU Member State legislation, were significant to mention as most of these principles also apply to ODR processes.²²⁸ Most of the discussions are limited to only the ODR Platform since this is the current and common link to resolve consumer e-disputes in Europe.

The first chapter of the thesis introduced the theoretical ODR to define its concept. The first thing to mention that the impact of the ICT plays a prominent role in the online dispute resolution process. ODR has become straight out of ADR and ICT tools which have driven the development and refinement of ODR all proceeded to the ADR field. ODR is intimately bonded to the global nature of the Internet, therefore in the long term, similar to the Internet and ICT, the extension of ODR is inescapable. This brings out consumer e-disputes which are not suitable for traditional court processes. Taking into consideration of consumer’s weak position conducting B2C transactions, ODR would have a dual role of resolving their disputes and enhancing their

²²⁷ Peter W. Martin, 'Digital Technology, Access to Legal Information, And Dispute Resolution - Viewed from the Third World' (Law.cornell.edu, 1996) <<https://www.law.cornell.edu/papers/ncr96pwm.htm>> accessed 24 May 2018.

²²⁸ Arno R Lodder and John Zeleznikow, Enhanced Dispute Resolution Through The Use Of Information Technology (Cambridge University Press 2010).

confidence through them. One significant point of the EU legislation is mainly composed of the preliminary initiatives was also underlined at the end of this chapter was evidence of that. As a father of ODR, Colin Rules stated: *“ODR is the future of ADR. ODR offers the strongest opportunity for ADR to expand and deliver to its fullest potential.”*²²⁹

In the second chapter, the potential ODR platform was introduced after the preliminary organizations which brought out several principles to comply with the out of court mechanisms. Even though ADR schemes for consumer disputes in Turkey have not taken off to the online environment yet, it is important to note that existing alternative methods are rapidly integrating technology in their processes, allowing the consumers to complain at least partly online. Without a doubt, one single mechanism is not ideal for all type of claims, ODR could be suitable to maximize the opportunities for resolving consumer e-disputes and minimize the drawbacks of access to justice. In accordance with the EU legislation, the consumer protection is obtaining a higher level of uniformity across the Member States. As a matter of fact, the Directive could function even without the Regulation, however the Regulation could not be carried out without the Directive.

In chapter three, regarding the two Dutch and UK's legislation, both of them have developed consumer protection law. In order to achieve more integrated e-commerce, a greater legal harmonization at national and international levels could be needed. In contradictory, Turkey is also trying to enhance its internal market by promoting the B2C e-commerce market. It has become a vibrant place to invest for digital businesses in B2C e-commerce indicates that the country is giving importance to e-commerce; therefore it is vital to implement ODR for the future. Furthermore, these countries have been applying the Directive in their judicial system. However, the focal point in this thesis was focusing on how to incorporate a framework for Turkey by studying legal framework for ODR in the Netherlands and the UK, used to solve consumer disputes, by defining the framework relating the consumer trust issues and legal

²²⁹ 'Is ODR ADR? A Response to Carrie Menkel-Meadow' (Colinrule.com, 2018) <<http://www.colinrule.com/writing/ijodr.pdf>> accessed 25 April 2018.

responses required in the given jurisdictions to increase the development of ODR in the resolution of consumer e-disputes.

With reference to countries chosen for this thesis to exert its attention on a comparative analysis, the EU Member States legislations specifically the UK and the Netherlands, are chosen because of the alternative, or addition, small claims procedures, both of them have state-run alternative dispute resolution bodies (such as consumer complaints boards or ombudsman schemes) which operate outside the ordinary court system could be efficient for Turkey whereas there is no small claims procedure within the court system but there is compulsory alternative to an arbitration committee for disputes under a certain monetary limit. Based on the Netherlands experience, a self-regulatory framework for ODR in Turkey would grant consumer trust in e-commerce. Furthermore, due to the similarities between the legal systems of Netherlands and Turkey, the Dutch system could be the best choice to take lessons from its experiences. In order to grant consumer trust in B2C e-commerce and therefore promote e-commerce activities which are significant to determine Turkey's economy from a global standpoint, Turkey should warrant the regulation and protection of consumers in B2C e-commerce transactions.

According to the findings of this research, chapter four analyzed whether there is the need to ODR in Turkey. Currently, Turkey's legislation does not identify ODR as one of the methods of dispute resolution. Nevertheless, it is open to the outlook of a developing ICT sector, regulations and the combination of various features of ODR such as the projected increase in confidence on electronic communication technology and the expansion of the Internet in Turkey. By considering the developments mentioned above, it is obvious that ODR is needed for the future consumer needs. Its effectiveness in comparison with face-to-face meetings could ensure the essential foundation for future ODR research. . Moreover, Turkey need to promote alternative methods of dispute resolution which should also interconnect with the development of policy. Due to the nature of the EU legislation, ODR has to be explicitly regulated in the legislation.

In conclusion, although Turkey may face with some hurdles in developing these mechanisms such as non-awareness of consumer about ADR, linguistic and cultural differences, however this thesis does not deal with the cultural and social aspects of comparative analysis. Though these aspects will form massive part in an adjudication of justice concerning ADR and ODR, and therefore only legislators should take into consideration these aspects that Turkey would be able to see the success of ODR systems in the future.

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