



2023/2211

19.10.2023

COMMISSION RECOMMENDATION (EU) 2023/2211

of 17 October 2023

on quality requirements for dispute resolution procedures offered by online marketplaces and Union trade associations

(notified under document C(2023) 7019)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 292 thereof,

Whereas:

- (1) Directive 2013/11/EU of the European Parliament and of the Council ⁽¹⁾ ensures that consumers within the Union have access to high quality alternative dispute resolution ('ADR') procedures to resolve contractual disputes arising from the sale of goods or services by traders established in the Union to consumers resident in the Union.
- (2) The recent evaluation of that Directive concluded that an increasing number of consumers are using online marketplaces to purchase goods and services and have recourse to dispute resolution procedures, provided by those online marketplaces as part of their services. Such dispute resolution procedures are not regulated by Directive 2013/11/EU and their fairness can therefore not be ascertained. In order to ensure that consumers using such dispute resolution procedures are treated fairly and with the highest level of professional diligence, it is recommended that such procedures adopt the relevant quality criteria set in Directive 2013/11/EU.
- (3) The evaluation of Directive 2013/11/EU also revealed that cross-border ADR procedures are rarely used due to the numerous barriers that exist when using those procedures in cross-border context. Certain trade associations do provide cross-border dispute resolution systems that are not linked to specific national ADR procedures. In order to provide a consistent level of protection to consumers, it should be recommended that those trade associations comply to the extent possible with the relevant quality criteria in Directive 2013/11/EU.
- (4) Online marketplaces and trade associations which provide dispute resolution procedures as part of their services should inform the consumers and traders of the main characteristics of such procedures prior to the start of a procedure, so that the parties can decide whether or not to pursue their dispute through such means. Moreover, those online marketplaces and trade associations should regularly publish reports with a self-assessment of their procedures, as regards their compliance with the requirements hereby recommended. When automated procedures are used to resolve disputes, this should be made public and consumers and traders should be allowed to require that the outcome of the procedure is reviewed by a natural person,

HAS ADOPTED THIS RECOMMENDATION:

PURPOSE OF THE RECOMMENDATION

1. The aim of this Recommendation is to promote high quality criteria of the dispute resolution procedures offered by online marketplaces and Union trade associations by ensuring effectiveness and fairness of those procedures and the expertise, independence and impartiality of the natural persons in charge of those procedures.

⁽¹⁾ 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 (OJ L 165, 18.6.2013, p. 63).

DEFINITIONS

2. Terms defined in Directive 2013/11/EU have the same meaning when used in this Recommendation. In addition:
- (a) 'online marketplace' means an intermediary service using an online interface which allows consumers to conclude distance contracts with other traders for the sale of products or services;
 - (b) 'Union trade association' means any trade association with members established in different Member States;
 - (c) 'dispute resolution procedures' means any procedure offered by an online marketplace and Union trade association for the resolution of disputes:
 - concerning contractual obligations stemming from sales contracts, including for the supply of digital content, or service contracts, and/or
 - related to consumer rights arising from Union acts concerning the precontractual and post-contractual stages of such contracts,between a consumer resident in the Union and a trader offering goods, digital content or services to consumers resident in the Union.

SUBJECT MATTER

3. It is recommended that online marketplaces and Union trade associations which provide dispute resolution procedures for the benefit of consumers and traders as part of their services, apply the relevant quality criteria set out in Directive 2013/11/EU in order to provide fair and impartial dispute resolution.

EXPERTISE, INDEPENDENCE, IMPARTIALITY

4. More specifically, in line with Article 6 of Directive 2013/11/EU, it is recommended that online marketplaces and Union trade associations aim to ensure that the natural persons in charge of dispute resolution procedures possess the necessary expertise and are independent and impartial. It is recommended that this is guaranteed by ensuring that such persons:
- (a) possess the necessary knowledge and skills in the field of alternative or judicial resolution of consumer disputes, as well as a general understanding of the applicable law;
 - (b) are not subject to any instructions from either party or their representatives;
 - (c) are remunerated in a way that is not linked to the outcome of the procedure.

EFFECTIVENESS

5. In line with Article 8 of Directive 2013/11/EU, it is recommended that online marketplaces and Union trade associations ensure that their dispute resolution procedures are effective and aim at ensuring the following:
- (a) the dispute resolution procedure is available and easily accessible online to both parties irrespective of where they are;
 - (b) the parties have access to the procedure without being obliged to retain a lawyer or a legal advisor, but the procedure does not deprive the parties of their right to independent advice or to be represented or assisted by a third party at any stage of the procedure;
 - (c) the dispute resolution procedure is free of charge or available at a nominal fee for consumers;
 - (d) the online marketplace or Union trade association which has received a complaint notifies the parties to the dispute as soon as it has received all the documents containing the relevant information relating to the complaint;

- (e) the outcome of the dispute resolution procedure is made available within a period of 90 calendar days from the date on which the online marketplace or the Union trade association has received the complete complaint file. The parties should be informed of any extension of that period and of the expected length of time that will be needed for the conclusion of the dispute.

FAIRNESS

- 6. In line with article 9 of Directive 2013/11/EU, it is recommended that online marketplaces and Union trade associations should ensure that in their dispute resolution procedures:
 - (a) the parties have the possibility, within a reasonable period of time, of expressing their point of view, of being provided by the online marketplace or the Union trade association with the arguments, evidence, documents and facts put forward by the other party, any statements made and opinions given by experts, and of being able to comment on them;
 - (b) the parties are informed that they are not obliged to retain a lawyer or a legal advisor, but they may seek independent advice or be represented or assisted by a third party at any stage of the procedure;
 - (c) the parties are notified of the outcome of the dispute resolution procedure in writing or on a durable medium and are given a statement of the grounds on which the outcome is based.
- 7. It is recommended that online marketplaces and Union trade associations ensure that:
 - (a) the parties have the possibility of withdrawing from the procedure at any stage if they are dissatisfied with the performance or the operation of the procedure. It is recommended that they are informed of that right before the procedure commences;
 - (b) the parties, before agreeing or following a proposed solution, are informed that:
 - (i) they have the choice as to whether or not to agree to or follow the proposed solution;
 - (ii) participation in the procedure does not preclude the possibility of seeking redress through court proceedings;
 - (iii) the proposed solution may be different from an outcome determined by a court;
 - (c) the parties, before agreeing to or following a proposed solution, are informed of the legal effect of agreeing to or following such a proposed solution;
 - (d) the parties, before expressing their consent to a proposed solution or amicable agreement, are allowed a reasonable period of time to reflect.

ADDITIONAL RECOMMENDATIONS

- 8. It is recommended that online marketplaces and Union trade associations ensure that when they make use of automated procedures to resolve disputes this is made public and that the parties of the dispute are granted a right to request that the outcome of the procedure be reviewed by a natural person.
- 9. It is recommended that online marketplaces and Union trade associations publish self-assessment reports on regular basis, covering periods not exceeding two years, on how the quality criteria set in this Recommendation has been implemented. This information should be available on their website.
- 10. It is recommended that online marketplaces and Union trade associations inform consumers and traders, prior to the start of the dispute resolution procedure, about key elements and procedural rules applied, such as languages used, documentation needed, average duration, possible costs. They should also clearly state the grounds on which they may refuse to deal with a given dispute.

11. It is recommended that Member States contribute to the communication of this Recommendation to online marketplaces and Union trade associations that are offering dispute resolution procedures to consumers residing in their respective territories.

ADDRESSEES

12. This Recommendation is addressed to online marketplaces and Union trade associations providing dispute resolution procedures between traders and consumers residing in the Union and to the Member States.

Done at Brussels, 17 October 2023.

For the Commission
Didier REYNDERS
Member of the Commission
