

Ordinance no. 38/2015 on alternative resolution of disputes between consumers and traders

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On the grounds of art. 108 of the Constitution of Romania, recast, and those of art. 1 item I.9 of Law no. 182/2015 empowering the Government to issue ordinances,

whereas the provisions of the 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 2.006/2004 and Directive 2009/22/EC (Regulation on consumer ODR), the Government of Romania hereby adopts this ordinance.

CHAPTER I General

ARTICLE 1 Subject Matter

This Ordinance sets out the legal framework so that the complaints against traders would be voluntarily referred by consumers to the entities that apply alternative dispute resolution procedures in an independent, impartial, transparent, effective and balanced manner, in order to ensure a high level of protection of consumer and smooth functioning of the market.

ARTICLE 2 Scope

(1) This Ordinance applies to the procedures for the out-of-court resolution of domestic and cross-border disputes arising from sales agreements or services agreements concluded between a trader that operates in Romanian and an EU-resident consumer with the involvement of an alternative dispute resolution entity which either proposes, or imposes a solution, and operates in Romania.

(2) This Ordinance does not apply to:

- a) procedures for consumer complaint-handling operated by the trader;
- b) non-economic services of general interest;
- c) disputes between traders;
- d) direct negotiation between the consumer and the trader;
- e) attempts made by a judge to settle a dispute in the course of a judicial proceeding concerning that dispute;
- f) procedures initiated by a trader against a consumer;
- g) health services provided by health professionals to patients to assess, maintain or restore their state of health, including the prescription, dispensation and provision of medicinal products and medical devices;
- h) public providers of further or higher education.

(3) This Ordinance establishes harmonized quality requirements for alternative dispute resolution entities and alternative dispute resolution procedures in order to ensure that, after its implementation, consumers have access to high-quality, transparent, effective and fair out-of-court redress mechanisms.

ARTICLE 3 Definitions

(1) For the purposes of this Ordinance, the terms and expressions below will have the following meanings:

a) consumer - any natural person or group of natural persons organized in associations, as defined under art. 2 item 2 of Government Ordinance no. 21/1992 on consumer protection, recast, as subsequently amended and supplemented;

b) trader - any natural person, or any legal entity irrespective of whether privately or publicly owned, who is acting, including through any person acting in their name or on his behalf, for purposes relating to their business, industrial, production, craft or profession;

- c) sales agreement - means any agreement under which the trader transfers or undertakes to transfer the ownership of goods to the consumer and the consumer pays or undertakes to pay the price thereof, including any agreement having as its object both goods and services related thereto;
- d) services agreement - any agreement other than a sales agreement under which the trader supplies or undertakes to supply a service to the consumer and the consumer pays or undertakes to pay the price thereof;
- e) domestic dispute - a contractual dispute arising from a sales or services agreement where, at the time the consumer orders the goods or services, the consumer is resident in the same Member State as that in which the trader is established;
- f) cross-border dispute - a contractual dispute arising from a sales or services agreement where, at the time the consumer orders the goods or services, the consumer is resident in a Member State other than the Member State in which the trader is established;
- g) alternative dispute resolution procedure, hereinafter referred to as ADR procedure - a procedure, as referred to in art. 2, which complies with the requirements set out in this Ordinance and is carried out by an alternative dispute resolution entity;
- h) alternative dispute resolution entity, hereinafter referred to as ADR entity - any entity which offers the resolution of a dispute through an ADR procedure and that can only be operated in the National Consumer Protection Authority, a central public authority or an autonomous administrative authority with consumer protection responsibilities. In the banking field, the ADR entity is the Alternative Banking Dispute Resolution Centre established pursuant to art. 21. ADR entities are included in the list pursuant to art. 31 para. (2);
- i) competent authority - the Ministry of Energy, Small and Medium Size Enterprises and Business Environment;
- j) European online dispute resolution platform, hereinafter referred to as ODR platform - digital instrument established by the European Commission to facilitate independent, impartial, transparent, effective, fast and fair out-of-court resolution of disputes concerning contractual obligations stemming from online sales or services agreements between a consumer resident in the Union and a trader established in the Union, pursuant to the provisions of the 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 2.006/2004 and Directive 2009/22/EC (Regulation on consumer ODR).

(2) A trader is established:

- a) if the trader is a natural person, where they have their place of business;
- b) if the trader is a company or other legal entity or association of natural persons or legal entities, where they have their main place of business, including a subsidiary, agency or another unit.

(3) An ADR entity is established at the place where the structure performing the ADR procedure carries out activities.

ARTICLE 4 Relation with other legal acts

(1) Unless otherwise provided, should a provision hereunder be in contradiction with any provision in other item of legislation transposing a Union legal act, and which regards procedures for the non-judicial remedies pursued by a consumer against a trader, the provisions of this Ordinance will take precedence.

(2) This Ordinance is without prejudice to Law no. 192/2006 on mediation and organization of the mediator profession, as subsequently amended and supplemented.

(3) The provisions of art. 25 are without prejudice to the rules regarding the provision to consumers of information about the non-judicial remedies contained in the items of legislation transposing Union legal acts.

(4) The provisions of this Ordinance are without prejudice to the provisions of the Government Ordinance no. 27/2002 regulating petition resolution, approved as subsequently amended and supplemented under Law no. 233/2002.

(5) The provisions of this Ordinance are without prejudice to the right to the persons to take actions before

courts having jurisdiction.

CHAPTER II Provisions regarding the ADR entities and ADR procedures

ARTICLE 5 Access to ADR entities and ADR procedures

(1) The disputes covered by this Ordinance and which involve traders pursuing business in Romania may be referred to an ADR entity which meets the requirements hereunder.

(2) ADR entities will meet the following requirements:

- a) maintain an up-to-date website which provides the parties with easy access to information concerning the ADR procedure, and which enables consumers to submit a complaint and the requisite supporting documents online;
- b) provide the parties, at their request, with the information referred to in letter a) on a durable medium;
- c) enable the consumer to submit a complaint offline, that is in writing on paper or other durable medium, as applicable;
- d) enable the exchange of information between the parties via electronic means or, if applicable, by post;
- e) accept both domestic and cross-border disputes, including disputes covered by Regulation (EU) No 524/2013;
- f) take the necessary measures to ensure that the processing of personal data complies with the provisions of Law no. 677/2001 on protection of persons in respect of processing of personal data and free circulation of such data, as subsequently amended and supplemented, as well as with the Ombudsman Order no. 75/2002 laying down specific measures and procedures to ensure a satisfactory level of protection for the rights of the persons the personal data of whom is subject to processing.

(3) Where there is no competent dispute resolution entity for certain industries, a complementary ADR entity may be established pursuant to the provisions of para. (1), which would be empowered to resolve disputes in the respective sector-specific areas.

(4) ADR entities may refuse to deal with a given dispute on the grounds that:

- a) the consumer did not attempt to contact the trader concerned in order to discuss their complaint and seek, as a first step, to resolve the matter directly with the trader;
- b) the dispute is frivolous or vexatious;
- c) the dispute is being or has previously been considered by another ADR entity or by a court;
- d) the consumer has not submitted the complaint to the ADR entity within one year from, as applicable, the date upon which the consumer submitted the complaint to the trader, or the date when the act that gave rise to the dispute was committed or, in case of continued acts, the cessation date thereof;
- e) dealing with such a type of dispute would otherwise seriously impair the effective operation of the ADR entity;
- f) the ADR entity seized is not competent to resolve the dispute.

(5) Where an ADR entity is unable to consider a complaint that has been submitted to them, that ADR entity shall provide both parties with a reasoned explanation of the grounds for not considering the dispute within 21 days of receiving the complaint file.

(6) Refusal to consider a dispute, pursuant to para. (4), shall not significantly impair consumers' access to ADR procedures, including in the case of cross-border disputes.

(7) Where an ADR entity is unable to consider a complaint that has been submitted to them, pursuant to para. (4) and the internal procedure put in place pursuant to para. (8), another ADR entity may decide on whether accept or not the consumer complaint at the request of the latter.

(8) ADR entities will determine the grounds for refusing to deal with a given dispute under their own rules of procedure.

ARTICLE 6 Expertise, independence and impartiality

(1) The natural persons in charge of ADR will possess the necessary expertise and are independent and impartial. This shall be 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 law;
- b) are appointed for a term of office of sufficient duration, however not shorter than 3 years, to ensure the independence of their actions, and are not liable to be relieved from their duties without just cause;
- c) are not subject to any instructions from either party or their representatives;
- d) are remunerated in a way that is not linked to the outcome of the ADR procedure;
- e) without undue delay disclose to the ADR entity any circumstances that may, or may be seen to, affect their independence and impartiality or give rise to a conflict of interest with either party to the dispute they are asked to resolve. The obligation to disclose such circumstances shall be a continuing obligation throughout the ADR procedure.

(2) Without prejudice to the provisions of art. 11 para. (1), ADR entities have in place procedures to ensure that in the case of circumstances referred to in para. (1) letter e):

- a) the natural person in charge of ADR is replaced by another empowered natural person who shall be entrusted with conducting the ADR procedure;
- b) failing that, the natural person concerned refrains from conducting the ADR procedure and, where possible, the ADR entity proposes to the parties to submit the dispute to another ADR entity which is competent to deal with the dispute;
- c) failing that, the circumstances are disclosed to the parties and the natural person concerned is allowed to continue to conduct the ADR procedure only if the parties have not objected after they have been informed of the circumstances and their right to object.

(3) ADR entities may deliver training to the natural persons in charge of ADR. Should such training be delivered, the competent authority shall monitor the training programmes determined by ADR entities on the basis of the information supplied to them pursuant to art. 18 para. (4) letter g).

(4) The structures of the central public authorities or the autonomous administrative authorities designated to conduct ADR procedures, as well the banking ADR center operate independently from the market control and supervision structures and activities.

(5) In the banking field, in addition to the general requirements laid down under paras. (1) and (2), the procedures comply also with the following specific requirements:

- a) the natural persons in charge of dispute resolution are nominated by, or form part of, a collegial body composed of an equal number of representatives of consumer organizations and of representatives of the trader and are appointed as result of a transparent procedure;
- b) the natural persons in charge of dispute resolution commit not to work for the trader or a professional organization or business association of which the trader is a member for a period of 3 years after their position in the dispute resolution entity has ended;
- c) the dispute resolution entity does not have any hierarchical or functional link with the trader and is clearly separated from the trader's operational entities and has a sufficient budget at its disposal, which is separate from the trader's general budget, to fulfil its tasks.
- d) Where the natural persons in charge of ADR are employed or remunerated exclusively by a professional organization of which the trader is a member, they have a separate and dedicated budget at their disposal which is sufficient to fulfil their tasks.

ARTICLE 7 Transparency

(1) ADR entities make publicly available on their websites, on a durable medium upon request, and by any other means they consider appropriate, clear and easily understandable information on:

- a) their contact details, including postal address and e-mail address;
- b) their listing in accordance with art. 31 para. (2);
- c) the natural persons in charge of ADR, the method of their appointment and the length of their mandate;
- d) the expertise, impartiality and independence of the natural persons in charge of ADR, in case of the Alternative Resolution Center provided under art. 21;

- e) the membership ADR entities in networks of ADR entities facilitating cross-border dispute resolution, if applicable;
- f) the types of disputes they are competent to deal with;
- g) the procedural rules governing the resolution of a dispute and the grounds on which the ADR entity may refuse to deal with a given dispute;
- h) the language in which complaints can be submitted to the ADR entity and in which the ADR procedure is conducted;
- i) the types of rules the ADR entity may use as a basis for the dispute resolution, such as legal provisions, considerations of equity, codes of conduct;
- j) any preliminary requirements the parties may have to meet before an alternative dispute resolution procedure can be instituted, including the requirement that an attempt be made by the consumer to resolve the matter directly with the trader;
- k) the conditions under which the parties can withdraw from the procedure;
- l) the costs, if any, to be borne by the parties, including any rules on awarding costs at the end of the procedure;
- m) the average length of the ADR procedure;
- n) the legal effect of the outcome of the ADR procedure, including the fact that decisions issued by ADR entities documenting the outcome of the procedure amounts to an enforceable title under the law, unless appealed against within 15 calendar days of service;
- o) the enforceability of the ADR decision, if relevant.

(2) ADR entities make publicly available on their websites, on a durable medium upon request, and by any other means they consider appropriate, annual activity reports. Those reports shall include the following information relating to both domestic and cross-border disputes:

- a) the number of disputes received and the types of complaints to which they refer to;
- b) any systematic or significant problems that occur frequently and lead to disputes between consumers and traders; such information may be accompanied by recommendations as to how such problems can be avoided or resolved in future, in order to raise traders' standards and to facilitate the exchange of information and best practices;
- c) the rate of disputes the ADR entity has refused to deal with and the percentage share of the types of grounds for such refusal;
- d) in the case of procedures conducted by the Alternative Dispute Resolution Center established pursuant to art. 21, the percentage shares of solutions proposed or imposed in favour of the consumer and in favour of the trader;
- e) the percentage share of ADR procedures which were discontinued and, if known, the reasons for their discontinuation;
- f) the average time taken to resolve disputes;
- g) the rate of compliance, if known, with the outcomes of the ADR procedures;
- h) cooperation of ADR entities within networks of ADR entities which facilitate the resolution of cross-border disputes, if applicable.

ARTICLE 8 Effectiveness of ADR procedures

To ensure sustained effectiveness for the ADR procedures, these will fulfil the following requirements:

- a) the ADR procedure is available and easily accessible online and offline 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 shall 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 ADR procedure is free of charge;
- d) the parties to the dispute are notified as soon as all the documents containing the relevant information relating to the complaint are received by the ADR entity which received the complaint.

ARTICLE 9 Fairness of ADR procedures

In the ADR procedures:

- a) the parties have the possibility, within 15 calendar days since service thereof, a reasonable period of time, of expressing their point of view on the complaint covered by the dispute referred to resolution to the ADR entity, as well as of being provided by the ADR entity 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 or representatives of the consumer associations at any stage of the procedure;
- c) the parties are notified of the outcome of the ADR procedure in writing or on a durable medium, and are given a statement of the grounds on which the outcome is based.

ARTICLE 10 ADR mechanisms

ADR entities can propose and/or impose a solution to the parties. ADR entities can apply both mechanisms as long as they have in place specific procedures for each of them, and they provide clear information to the parties on the consequences of selecting one of the mechanisms. Where ADR entities apply both mechanisms, the consumer shall have the final choice of one of them.

ARTICLE 11 Proposing a solution

(1) For the ADR procedures where a solution is proposed, consumers have the possibility of withdrawing from the procedure at any stage if they are dissatisfied with the performance or the operation of the procedure. Consumers shall be informed of that right before the procedure commences.

(2) The parties, before agreeing or following a proposed solution, are informed that:

- a) they have the choice as to whether or not to agree to or follow the proposed solution;
- b) participation in the procedure does not preclude the possibility of seeking redress through court proceedings;
- c) the proposed solution may be different from an outcome determined by a court applying legal rules;
- d) the legal effect of agreeing to such a proposed solution.

(3) The outcome of the ADR procedure is made available to the parties within a period of 30 calendar days from the date on which the ADR entity has received the complete complaint file. In the case of highly complex disputes, the ADR entity in charge may, at its own discretion, extend the time period by 20 calendar days. The parties shall 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.

(4) The parties, before expressing their consent to a proposed solution are allowed a period of 15 calendar days to agree or disagree thereto. During that 15-calendar day of receiving the dispute resolution note, the parties will submit their decision to either accept or reject the proposed solution.

(5) The outcome of ADR procedures is not binding if only one party accepts the proposed solution.

ARTICLE 12 Imposing a solution

(1) The parties, before agreeing to this manner of dispute resolution, are informed that:

- a) the solution is binding;
- b) they don't have a choice as to whether or not to agree to or follow the solution;
- c) none of the party may withdraw from the procedure;
- d) participation in the procedure does not preclude the possibility of seeking redress through court proceedings;
- e) the proposed solution may be different from an outcome determined by a court applying legal rules;
- f) the legal effect of agreeing to such a proposed solution.

(2) ADR entities will see that the parties agree to the binding nature of the solution.

(3) In a situation where there is no conflict of laws, the solution imposed shall not result in the consumer being

deprived of the protection afforded to them under the domestic legislation of the country where the consumer and the trader are habitually resident.

(4) In a situation involving a conflict of laws, where the law applicable to the sales or services agreement contract is determined in accordance with Article 6(1) and (2) of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), the solution imposed by the ADR entity shall not result in the consumer being deprived of the protection afforded to them under the legislation of the Member State in which they are habitually resident.

(5) In a situation involving a conflict of laws, where the law applicable to the sales or services agreement contract is determined in accordance with Article 5(1) to (3) of the Rome Convention of 19 June 1980 on the law applicable to contractual obligations, the solution imposed by the ADR entity shall not result in the consumer being deprived of the protection afforded to them under the legislation of the Member State in which they are habitually resident.

ARTICLE 13 Outcome of the ADR procedure

(1) Where the parties accept the proposed solution, as well as in case of the imposed solution, the ADR entity shall issue a motivated decision, and where the parties do not accept the proposed solution, the ADR entity issues a report containing a description of the facts, the proposed solution, and the decision of the parties.

(2) Where the trader does not accept the proposed solution, the ADR entity informs the consumer, under a report, of the administrative and judicial review procedures they can pursue to have the dispute resolved.

(3) The decision and, respectively, the report are served to the parties within 15 calendar days of adopting, and is effective as of the service date. These can be challenged before the court having jurisdiction.

(4) Any decision which is not challenged within 15 calendar days from the service date becomes enforceable title by operation of the law.

(5) ADR procedures are concluded within 90 calendar days from the date on which the ADR entity has received the complete complaint file. In the case of complex disputes, the ADR entity in charge may, at its own discretion, extend the time period by 90 calendar days, and inform the parties of any extension of that period and of the expected length of time that will be needed for the conclusion of the dispute.

ARTICLE 14 Liberty

An agreement between a consumer and a trader to submit complaints to an ADR entity is not binding on the consumer if it was concluded before the dispute has materialized and if it has the effect of depriving the consumer of their right to approach the competent administrative authority to have the complaint addressed via administrative channels, or to bring an action before the courts for the settlement of the dispute.

ARTICLE 15 Own rules

(1) Each ADR entity issues its own rules for alternative dispute resolution, which have to observe the principles, rules and requirements laid down hereunder.

(2) The rules at para. (1), as well as any subsequent amendment thereof are submitted to the competent authority.

ARTICLE 16 Effect of ADR procedures on limitation and prescription periods

(1) During the alternative dispute resolution procedure, prescription of the right to bring up actions does not begin to run, and if it has begun to run, it stayed.

(2) The provisions of para. (1) are without prejudice to the provisions on limitation or prescription contained in international agreements to which Romanian is party.

ARTICLE 17 Establishment of ADR entities

(1) ADR entities can be established in observance of the requirements hereunder.

- (2) ADR entities can be funded from public or private funds, or a combination of the two.
- (3) Central public authorities or autonomous administrative authorities which intend to establish ADR entities, as well as the Alternative Banking Dispute Resolution Center provided at art. 21 will submit to the competent authorities the information provided at art. 18, as well as any other information these could reasonably request.
- (4) The competent authority can ask for additional documents or clarifications within 15 calendar days from the date when it received the notice or the latest documents submitted. The central public authority shall submit the documents and, respectively, the clarifications requested within 15 calendar days of receiving the request.
- (5) The competent authority shall submit the result of the assessment to the applicant authority within 30 calendar days from the date when it received the latest document or the latest clarification requested.
- (6) Once the result of the assessment is received, the applicant authority shall establish the ADR entity in observance of the effective legal regulations.

ARTICLE 18 Information to be notified to competent authorities by the bodies which intend to be dispute resolution entities

(1) The dispute resolution entities established on the territory of Romania, which intend to qualify as ADR entities under this Directive and be listed in accordance with art. 31 para. (2), notify to the competent authority the following:

- a) their name, contact details and website address;
- b) information on their structure and funding, including information on the natural persons in charge of dispute resolution, their remuneration, and term of office;
- c) their procedural rules;
- d) their fees;
- e) the average length of the dispute resolution procedures;
- f) the language in which complaints can be submitted and the dispute resolution procedure conducted;
- g) a statement on the types of disputes covered by the dispute resolution procedure;
- h) the grounds on which the dispute resolution entity may refuse to deal with a given dispute in accordance with Article 5(4) and (8);
- i) a reasoned statement on honour whether the entity meets the establishment and operation conditions of an ADR entity falling within the scope of this Ordinance and complies with the quality requirements set out in Chapter II.

(2) In the event of changes to the information referred to in letters a)-h), ADR entities shall without undue delay notify those changes to the competent authority.

(3) The Alternative Banking Dispute Resolution Center provided under art. 21 notifies to the competent authorities, in addition to the information and statements at para. (1), information required to assess compliance by the persons who are members of the Body of Conciliators with the additional specific independence and transparency requirements provided at art. 6 para. (5).

(4) ADR entities communicate to the competent authorities every 2 years information on:

- a) the number of disputes received and the types of complaints to which they refer to;
- b) the percentage share of ADR procedures which were discontinued before an outcome was reached;
- c) the average time taken to resolve the disputes received;
- d) the rate of compliance, if known, with the outcomes of the ADR procedures;
- e) any systematic or significant problems that occur frequently and lead to disputes between consumers and traders. The information communicated in this regard may be accompanied by recommendations as to how such problems can be avoided or resolved in future;
- f) where applicable, an assessment of the effectiveness of their cooperation within networks of ADR entities facilitating the resolution of cross-border disputes;
- g) where applicable, the training provided to natural persons in charge of ADR in accordance with art. 6 para. (3);
- h) an assessment of the effectiveness of the ADR procedure offered by the entity and of possible ways of

improving its performance.

ARTICLE 19 Establishment of the structure in charge of ADR procedures in the National Consumer Protection Authority

(1) A structure in charge of ADR procedures is established in the National Consumer Protection Authority. This structure shall be impartial, and operate independently of the market control and supervision activities.

(2) To have the structure at para. (1) qualified as ADR entity, the National Consumer Protection Authority shall submit to the competent authority the information provided at art. 18, as well as any another information requested by the latter within 60 calendar days from the effective date of this Ordinance.

(3) The organizational structure of the National Consumer Protection Authority shall be supplemented with 25 positions, within the budget approved by the primary budge holder, as required for operation of the ADR entity.

(4) Management of the structure in charge of ADR procedures is provided by a person who render the work independently of the market supervision and control activities, subordinated to the high public servant. The head of this structure reports to the competent authority and is required to provide information on a regular basis to the higher management.

(5) Organization, funding and operating procedures of the structure qualified as ADR entity will be determined under a Government Decision within 120 calendar days from the effective date of this Ordinance.

ARTICLE 20 Residual authority

In the event that the central public authorities or autonomous administrative authorities which have responsibilities for certain sector-specific areas fail to establish ADR entities by 30 November 2015, the ADR entity of the National Consumer Protection Authority may act as competent authority for the purpose of art. 5 para. (3). In this case, the ADR entity may ask for an advisory opinion from the respective authorities about the disputes falling within the scope of their activity.

ARTICLE 21 Alternative Banking Dispute Resolution Centre

(1) For the banking field, the Alternative Banking Dispute Resolution Center, hereinafter referred to as the ADR Center, is established as autonomous non-governmental apolitical not-for-profit legal entity of public interest in order to ensure access of banking customers to resolution, via ADR procedure, of their disputes with traders the business of which is regulated, authorized and supervised/monitored by the National Bank of Romania, as well as with the branches of foreign traders pursuing a banking business on the territory of Romania. The head office of the ADR Center is in Bucharest.

(2) Banking disputes are resolved only under ADR procedures by the ADR Center.

(3) Funding of the ADR Center is ensured:

- a) by the traders which pursue business in the banking field, pursuant to the provisions of para. (1);
- b) from own resources, formed of fee revenues and amounts charged for services rendered to third parties;
- c) from donations and/or sponsorships.

(4) The overall management of the ADR Center is provided by the Steering Board.

(5) The operational management of the ADR Center is provided by a Director appointed by the Steering Board.

(6) The ADR Board is organized and operates pursuant to the provisions of this Ordinance, those of its organization and functioning regulation, and pursuant to the other internal regulations required for its smooth operation.

ARTICLE 22 Steering Board

(1) Operation of the ADR Center is steered by a Steering Board formed of 5 members appointed one each by the following entities:

- a) the National Consumer Protection Authority;
- b) the Romanian Bank Association;

- c) the National Bank of Romania;
 - d) associations of consumers which meet the conditions provided under art. 32 and art. 33 of the Government Ordinance no. 21/1992, recast, as subsequently amended and supplemented;
 - e) an independent member selected by the 4 members appointed pursuant to letters a)-d).
- (2) The Steering Board shall issue its own functioning regulation to be adopted in the first meeting thereof and then approved under a resolution of the Board.
- (3) The Steering Board is led by a chairman elected from the members of the Steering Board, alternately, for a 1-year term of office. The Chairman of the Steering Board is elected in the first meeting thereof.
- (4) The term of the offices of the Steering Board is of 5 years, renewable once. The members of the Steering Board have the duties and powers laid down under the Board's regulation approved by it. Membership of the Steering Board does not result into an incompatibility, or a conflict of interests for the purpose of the law.
- (5) To be appointed as member in the Steering Board, a person shall meet the following conditions:
- a) is a Romanian citizen, a citizen of another Member State of the European Union or belongs to the European Economic Area, or is a citizen of the Swiss Confederation;
 - b) has full capacity of exercise;
 - c) has graduated legal higher education, as evidence by a bachelor's degree;
 - d) enjoys a good reputation, masters adequate knowledges and has appropriate experience to perform the duties entrusted to them;
 - e) has not been convicted under a final judgment for property-related crimes by infringing trust, corruption offences, embezzlement, misrepresentation, tax evasion, the crimes provided under Law no. 656/2002 on prevention and sanctioning money laundering, and instituting measures to prevent and fight against terrorism financing, recast, as subsequently amended and supplemented, or for other offences committed with intent, for which the laws provides for a penalty with imprisonment of at least 3 years.
- (6) The Board members are independent in the decision-making process.
- (7) The office of a member of the Steering Board comes to an end:
- a) on expiry of the term;
 - b) by resignation;
 - c) in case of death;
 - d) due to a final indisposition, meaning unavailability for more than 120 consecutive days;
 - e) on the date when the conviction judgment for perpetration of an offence of those in para. (5) remains final;
 - f) by revocation for violation of the provisions of this Ordinance or for conviction, under a final court judgment, for perpetration of an offence other than those in para. (5) letter e).
- (8) The members of the Steering Board may be revoked in the case provided in para. (7) letter f) by their appointing authority, and respectively by the 4 members of the Steering Board, for the selected independent member.
- (9) In case of a vacancy in the Steering Board due to one of the situations provided in para. (7), a new member shall be designated and appointed in the vacant office, pursuant to the provisions of para. (5), for the remaining term of that office.

ARTICLE 23 Activity of the Steering Board

- (1) The Steering Board carries out its activity, deliberates and makes decisions in plenary session, which is only valid if at least 3 members thereof are present, and adopts resolutions with the votes of the majority of the members present.
- (2) the Steering Board of ADR Center:
- a) adopts the rules regarding the dispute resolution procedure;
 - b) adopts the organizational structure of the ADR Center, the organization and functioning regulation, the internal regulation and the regulation of the Steering Board;
 - c) decides on the scope of the disputes which can be submitted to ADR procedures;
 - d) decides on selection criteria for the members of the Body of Conciliators;

- e) decides on the income and expenditure budget of the ADR Center.
- (3) The Steering Board communicate its point of view on matters in connection with the relations between consumers and traders in the banking field at the request of:
- a) the President's Administration and the Government of Romania;
 - b) Parliamentary commissions, senators and deputies;
 - c) authorities and institutions of the central and local public administration;
 - d) professional organizations and employers' associations;
 - e) consumer protection organizations;
 - f) courts of law and prosecutor's offices.
- (4) The Steering Board draws up an annual activity report pursuant to this Ordinance.
- (5) This report is adopted in the plenary session of the Steering Board, and is published on the website of the ADR Center.

ARTICLE 24 Dispute resolution

- (1) The disputes filed by consumers to the ADR Center are resolved by the members of the Body of Conciliators, pursuant to the procedural rules adopted by the Center.
- (2) The Body of Conciliators carries out its activity pursuant to the functioning regulation of the ADR Center, the procedural rules approved by the Steering Board, as well as of other internal regulations issued pursuant to art. 21 para. (6).
- (3) Members of the Body of Conciliators are natural persons with ADR expertise, selected pursuant to the criteria determined by the Steering Board under the organization and functioning regulation of the ADR Center, pursuant to this Ordinance.
- (4) The organization and functioning regulation of the ADR Center is published, before adoption, for public consultation.
- (5) Members of the Body of Conciliators are required to be independent, impartial, of good reputation, and master adequate expertise.

CHAPTER III

ARTICLE 25 Consumer information by traders

- (1) Traders inform consumers about the ADR entity or ADR entities by which those traders are covered, when those traders commit to or are obliged to use the respective procedures. That information shall include the website address of the relevant ADR entity or ADR entities.
- (2) The information referred to in para. (1) shall be provided in a clear, comprehensible and easily accessible way on the traders' website, where one exists, and, if applicable, in the general terms and conditions of sales or service contracts between the trader and a consumer.
- (3) In cases where a dispute between a consumer and a trader established in the territory of Romania could not be settled further to a complaint submitted directly by the consumer to the trader, the trader provides the consumer with the possibility of referring the matter to the ADR entity. That information shall be provided on paper or on another durable medium.

ARTICLE 26 Assistance for consumers

- (1) The Romanian European Consumer Centre is designated to provide assistance for consumers:
- a) with regard to disputes arising from cross-border sales or services agreements, so that consumers can access the ADR entity operating in another Member State which is competent to deal with their cross-border dispute;
 - b) with regard to disputes regarding complaints received via the online dispute resolution platform, as point of contact for online resolution of consumer disputes, hereinafter referred to as ODR point of contact, pursuant to

the provisions of art. 7 of the Regulation (EU) No 524/2013.

(2) The competent authority shall inform the European Commission of the name and contact details of the point of contact, pursuant to the provisions of art. 7 of Regulation (EU) No 524/2013.

ARTICLE 27 General information

(1) ADR entities, the Romanian European Consumer Centre Network and, consumer associations appropriate make publicly available on their websites, by providing a link to the European Commission's website, and whenever possible on a durable medium at their premises, the list of ADR entities referred to in art. 31 para. (5).

(2) The Ministry of Energy, Small and Medium Size Enterprise and Business Environment encourages relevant consumer organizations and business associations to make publicly available on their websites, and by any other means they consider appropriate, the list of ADR entities referred to in art. 31 para. (5), as well as an electronic link to the ODR platform.

(3) The Romanian European Consumer Centre Network and consumer associations ensure appropriate dissemination of information on how consumers can access ADR procedures for resolving disputes covered by this Ordinance.

(4) ADR entities, the Romanian European Consumer Centre Network and, consumer associations take measures to encourage consumer organizations and professional organizations at national level to raise awareness of ADR entities and their procedures and to promote ADR take-up by traders and consumers. Those bodies shall also be encouraged to provide consumers with information about competent ADR entities when they receive complaints from consumers.

(5) ADR entities, the Romanian European Consumer Centre Network and, the Ministry of Energy, Small and Medium Size Enterprise and Business Environment provide an electronic address for access to the ODR platform.

ARTICLE 28 Cooperation and exchanges of experience between ADR entities

(1) ADR entities cooperate in the resolution of cross-border disputes and conduct regular exchanges of best practices as regards the settlement of both cross-border and domestic disputes.

(2) Where a network of ADR entities facilitating the resolution of cross-border disputes exists in a sector-specific area within the European Union, the Ministry of Energy, Small and Medium Size Enterprise and Business Environment shall encourage ADR entities that deal with disputes in that area to become a member of that network.

(3) Names and contact data of networks at para. (2) are as published by the European Commission.

ARTICLE 29 Cooperation between ADR entities and national authorities enforcing legislation on consumer protection

(1) ADR entities cooperate with the national authorities entrusted with the enforcement of legislation on consumer protection.

(2) This cooperation shall in particular include mutual exchange of information on practices in specific business sectors about which consumers have repeatedly lodged complaints. It shall also include the provision of technical assessment and information by such national authorities to ADR entities where such assessment or information is necessary for the handling of individual disputes and is already available.

(3) Cooperation and mutual exchange of information at paras. (1) and (2) take place in observance of Law no. 677/2001, as subsequently amended and supplemented.

(4) This article shall be without prejudice to provisions on professional and commercial secrecy which apply to the national authorities enforcing legislation on consumer protection. ADR entities shall be subject to rules of

professional secrecy or other equivalent duties of confidentiality laid down in the domestic legislation.

(5) Under a Government Decision, further to the proposal of the National Consumer Protection Authority, within 90 calendar days from effective date of this Ordinance, the means and procedure for cooperation between the structures with ADR entity role and the interested public authority will be determined.

CHAPTER IV Role of the competent authority

ARTICLE 30 Designation of the competent authority

(1) The Ministry of Energy, Small and Medium Size Enterprises and Business Environment is designated competent authority which shall carry out the functions set out in art. 18 and 31, as well as single point of contact with the European Commission. The Ministry of Energy, Small and Medium Size Enterprises and Business Environment notifies the European Commission of its designation as competent authority and single point of contact.

(2) A structure in charge of carrying out the functions of the competent authority and those of the single point of contact with the European Commission shall be established within the Ministry of Energy, Small and Medium Size Enterprises and Business Environment.

(3) The Ministry of Energy, Small and Medium Size Enterprises and Business Environment proposes, under a Government decision, the means of organization, the funding and the operating procedures of the structure provided under para. (2) within 90 calendar days from the effective date of this Ordinance.

(4) The list of the competent authorities including, where appropriate, the single point of contacts are those published by the European Commission in the Official Journal of the European Union.

ARTICLE 31 Role of the competent authority

(1) The competent authority shall assess, in particular on the basis of the information it has received in accordance with art. 18 (1) and (3), whether the dispute resolution entities notified to it qualify as ADR entities falling within the scope of this Ordinance and comply with the quality requirements set out in Chapter II.

(2) The competent authority shall, on the basis of the assessment referred to in para. (1), list all the ADR entities that have been notified to it and fulfil the conditions set out in para. (1). That list shall include the following:

- a) the name, the contact details and the website addresses of the ADR entities referred to in para. (1);
- b) their fees, if applicable;
- c) the language in which complaints can be submitted and the ADR procedure conducted;
- d) the types of disputes covered by the ADR procedure;
- e) the sectors and categories of disputes covered by each ADR entity;
- f) the need for the physical presence of the parties or of their representatives, if applicable, including a statement by the ADR entity on whether the ADR procedure is or can be conducted as an oral or a written procedure;
- g) the effects of procedures pursuant to art. 9-13;
- h) the grounds on which the ADR entity may refuse to deal with a given dispute in accordance with art. 5 para. (4).

(3) The competent authority shall notify the list referred to at para. (2) to the European Commission. If any changes are notified to the competent authority in accordance with the second subparagraph of art. 18 para. (2), that list shall be updated without undue delay and the relevant information notified to the European Commission.

(4) If a dispute resolution entity listed as ADR entity under this Ordinance no longer complies with the requirements referred to in para. (1), the competent authority concerned shall contact that dispute resolution entity, stating the requirements the dispute resolution entity fails to comply with and requesting it to ensure compliance immediately. If the dispute resolution entity still does not fulfil the requirements referred to in para. (1), the competent authority shall remove the dispute resolution entity from the list referred to in para. (2). That list shall be updated without undue delay and the relevant information notified to the European Commission.

(5) The competent authority, as single point of contact, receives from the European Commission the updated

list of ADR entities.

(6) The competent authority shall make publicly available the consolidated list of ADR entities referred to in para. (5) on its website by providing a link to the relevant European Commission website. In addition, the competent authority shall make publicly available that consolidated list on a durable medium.

(7) The competent authority shall inform the European Commission of the ADR entities pursuant to the provisions of art. 2 para. (3) of Regulation (EU) No 524/2013.

(8) By 9 July 2018, and every four years thereafter, the competent authority shall publish and send to the European Commission a report on the development and functioning of ADR entities. That report shall in particular:

- a) identify best practices of ADR entities;
- b) point out the shortcomings, supported by statistics, that hinder the functioning of ADR entities for both domestic and cross-border disputes, where appropriate;
- c) make recommendations on how to improve the effective and efficient functioning of ADR entities, where appropriate.

(9) The report reference is made to in para. (8) shall relate to all ADR entities established in Romania.

CHAPTER V Penalties

ARTICLE 32 Penalties

(1) Unless committed under such circumstances that, pursuant to the criminal law, would make them amount to criminal offences, the following are deemed infringements:

- a) non-compliance by traders with the provisions in art. 25 concerning provision of information about relevant ADR entities to consumers;
- b) pursuit of the alternative dispute resolution activities hereunder by bodies which are not listed pursuant to art. 31 para. (5);
- c) leading the interested persons to believe that they approach an ADR entity when in reality the respective entity is not listed pursuant to art. 31 para. (5);
- d) non-compliance by the ODR contact point of any of the obligations in art. 7 para. (2) of Regulation (EU) No 524/2013;
- e) non-compliance by traders of any of the requirements concerning information for consumers provided in art. 14 paras. (1), (2) and (7) of Regulation (EU) No 524/2013.

(2) The infringements provided in para. (1) are punishable by a fine of between lei 2,000 and lei 5,000.

(3) The amount of the fines provided in this Ordinance shall be updated under a Government decision.

ARTICLE 33 Authority

(1) Infringements are assessed and the penalties are applied, as provided in art. 32 para. (1) letters a), d) and e), by the duly authorized representatives of the National Consumer Protection Authority, whereas those provided in art. 32 para. (1) letters b) and c) by the duly authorized representatives of the Ministry of Energy, Small and Medium Size Enterprises and Business Environment.

(2) The infringements provided in art. 32 are applicable the provisions of the Government Emergency Ordinance no. 2/2001 on the legal regime of infringements, as approved with amendments and supplements under Law no. 180/2002, as subsequently amended and supplemented.

CHAPTER VI Final provisions

ARTICLE 34 Communication

(1) As at the effective date of this Ordinance, the Ministry of Energy, Small and Medium Size Enterprises and Business Environment shall communicate to the European Commission:

- a) where appropriate, the names and contact details of the entities designated in accordance with art. 26;
- b) the competent authorities including the single point of contact, designated in accordance with art. 30.

(2) The Ministry of Energy, Small and Medium Size Enterprises and Business Environment shall inform the European Commission of any subsequent changes to this information.

(3) By 9 January 2016, Ministry of Energy, Small and Medium Size Enterprises and Business Environment shall

communicate to the Commission the first list referred to in art. 31 para. (2).

ARTICLE 35 Coming into force

This Ordinance comes into force 10 days after its publication in the Official Gazette of Romania, Part I.

*

This Ordinance transposes the provisions of Directive 2013/11/UE of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2.006/2004 and Directive 2009/22/EC (Directive on consumer ADR) published in the Official Journal of the European Union series L no. 165 of 18 June 2013.

PRIME MINISTER