ARE YOU READY TO IMPLEMENT THE NEW EU RULES ON ALTERNATIVE DISPUTE RESOLUTION?

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Technology Transactions Alert

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On 15 February 2016, the European Commission's new online dispute resolution ("**ODR**") platform for consumer disputes with traders will go live. It can be accessed **here**. From this date, all online traders and online marketplaces established in the EU will be required, by law, to provide an "easily accessible" link to this ODR platform on their website.

WHERE HAVE THESE REQUIREMENTS COME FROM?

These new rules originate from two pieces of new European legislation; Directive 2013/11 on alternative dispute resolution for consumer disputes ("**ADR Directive**") and Regulation 524/2013 on online dispute resolution for consumer disputes ("**ODR Regulation**"). This legislation (1) obliges Member States to establish national lists of bodies offering alternative dispute resolution ("**ADR**") procedures; (2) establishes a new EU-Wide ODR platform to enable consumers to submit a complaint to such bodies; and (3) imposes information obligations on EU traders and online marketplaces to facilitate access to these ADR methods. The intention behind these measures is to increase consumer awareness of out-of-court dispute resolution options which may be simpler, quicker and cheaper and to help inspire confidence in consumers when buying from traders outside their home country, thereby further opening the EU market and making an important contribution to the EU's digital single market strategy.

REQUIREMENTS UNDER THE ADR DIRECTIVE

Since 9 July 2015, all European traders selling to consumers have had access to a certified provider of ADR to help them resolve any disputes that arise with consumers. In the UK, a list of current approved ADR providers can be found **here**.

The new rules do not oblige European traders to use ADR in practice (unless they are already bound to do so under applicable regulations, trade association rules or contract) but they are, nonetheless, obliged to inform consumers (1) that approved ADR providers exist to settle complaints; and (2) whether or not the trader agrees to settle disputes by way of ADR. This information is to be provided if the trader is unable to resolve a dispute internally, and must be provided through a durable medium (which includes email).

In effect, this requires all traders established in Europe, to incorporate this step into their current complaints process, even if it does not go on to accept ADR as a means of settling the dispute. While this may seem odd in practice, it is hoped that this requirement will incentivise traders to engage in ADR rather than having to confirm an unwillingness to do so in writing.

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Further information requirements are imposed on European traders who are already subject to mandatory ADR (e.g. this might be the case where a trader operates in a regulated sector such as gambling services).These information requirements were introduced last year, but to date it is unclear how many European businesses are fully compliant with the new requirements.

REQUIREMENTS UNDER THE ODR REGULATIONS

From 15 February 2016, EU traders that sell goods/services through a website or other electronic means (e.g. by mobile phone) must ensure that their website:

- states the trader's email address; and
- has an easily accessible link to the ODR platform. EU online marketplaces must also add this link.

Further requirements apply to those traders that are already required to settle disputes by way of ADR.

In practice, these requirements will oblige all online traders and marketplaces established in Europe to amend their websites to provide this link in a convenient location for consumers to find it, as well as to provide an email address for further enquires. Establishment is defined broadly under the legislation and may lead to some debate as to the extent these requirements apply to foreign businesses operating websites and online portals that are accessible by EU customers.

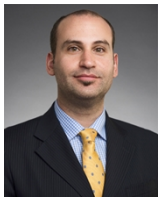
Failure to adhere to these requirements may lead to regulatory enforcement action in the relevant Member State.

In the UK, traders who fail to comply with these requirements could be subject to a Trading Standards civil enforcement action and a court order requiring compliance, a breach of which could be punishable with an unlimited fine or up to 2 years imprisonment.

In Germany, the new requirements are market conduct rules. Under the German Unfair Competition Act, traders who fail to comply with these requirements may be subject to competitors' cease and desist claims as well as to claims for damages, account of profits or requests for information regarding the extent of a breach.

Businesses should closely review these changes and prepare to implement amendments to their websites and online platforms before 15 February 2016.

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