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Can Artificial Intelligence and Modern Technologies Address the Common Issues of Consumer Online Dispute Resolution in the EU?

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Can Artificial Intelligence and Modern Technologies Address the Common Issues of Consumer Online Dispute Resolution in the EU?

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Summary. The article examines the current status of Online Dispute Resolution (ODR) in the European Union, explicitly evaluating its advantages and disadvantages. In addition to examining the evolution of the ODR mechanisms, the author sheds light on the challenges encountered in their implementation, such as concerns about trust, transparency, and accessibility. Moreover, this analysis investigated the potential implications of artificial intelligence and contemporary technologies on the transformation of the EU's consumer ODR framework. The ADR/ODR system of the EU has been subject to criticism for several weaknesses, including inconsistent implementation, insufficient supervision, and the lack of mandatory participation for traders. The lack of a specialised supervisory mechanism has also led to shortcomings in the oversight process. The Directive does not impose a requirement for traders to participate in ADR procedures; nevertheless, there exists significant heterogeneity in the regulations that govern these procedures. The lack of binding enforcement for final decisions arises from the requirement of Member States to agree upon and acknowledge the mechanisms for recognition and implementation. The EU ODR Platform operates as a mechanism for referring cases to ADR bodies. Nevertheless, the entity in question does not actively participate in the resolution of disputes based on their substantive merits, and its jurisdiction is primarily limited to smaller entities. Artificial intelligence (AI) has the potential to enhance transparency, objectivity, and legitimacy within online dispute resolution systems, thereby potentially giving rise to a two-tier system. The author suggests that in order to bring about significant legislative changes, it is necessary to incorporate certain provisions. These provisions should mandate the enforcement of decisions made in alternative dispute resolution (ADR) processes for consumers and also facilitate the seamless integration of artificial intelligence (AI) into this system. Otherwise, it is unlikely that AI will substantially impact the efficiency and effectiveness of the EU ADR/ODR system, as its primary challenges are rooted in areas beyond the scope of AI, such as the enforcement of decisions.
Keywords: legal technology, artificial intelligence, e-commerce, online dispute resolution.

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Ar dirbtinis intelektas ir šiuolaikinės technologijos gali padėti spręsti bendras vartotojų ginčų sprendimo internetu problemas ES?

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Santrauka. Straipsnyje nagrinėjama dabartinė internetinio ginčų sprendimo (EGS) padėtis Europos Sąjungoje, aiškiai įvertinant jo pranašumus ir trūkumus. Autorius ne tik nagrinėja ODR mechanizmų raidą, bet ir nušviečia problemas, su kuriomis susiduriama juos įgyvendinant, pavyzdžiui, susirūpinimą keliančius klausimus dėl pasitikėjimo, skaidrumo ir prieinamumo. Be to, šioje analizėje nagrinėtas galimas dirbtinio intelekto ir šiuolaikinių technologijų poveikis ES vartotojų GES sistemos transformacijai. ES AGS / ODR sistema buvo kritikuojama dėl kelių trūkumų, įskaitant nenuoseklų įgyvendinimą, nepakankamą priežiūrą ir privalomo prekybininkų dalyvavimo trūkumą. Dėl specializuoto priežiūros mechanizmo nebuvimo taip pat atsirado priežiūros proceso trūkumų. Direktyvoje nenustatyta reikalavimo prekiautojams dalyvauti GAS procedūrose, tačiau šias procedūras reglamentuojantys teisės aktai yra labai nevienodi. Galutinių sprendimų privalomo vykdymo trūkumas atsiranda dėl reikalavimo valstybėms narėms susitarti dėl pripažinimo ir įgyvendinimo mechanizmų ir juos pripažinti. ES GES platforma veikia kaip bylų perdavimo GAS institucijoms mechanizmas. Vis dėlto minėtas subjektas aktyviai nedalyvauja sprendžiant ginčus iš esmės, o jo jurisdikcija pirmiausia apsiriboja mažesniais subjektais. Dirbtinis intelektas (DI) gali padidinti skaidrumą, objektyvumą ir teisėtumą internetinėse ginčų sprendimo sistemose, taip potencialiai sukurdamas dviejų pakopų sistemą. Autorius siūlo, kad, siekiant reikšmingų teisėkūros pokyčių, būtina įtraukti tam tikras nuostatas. Šios nuostatos turėtų įpareigoti užtikrinti alternatyvaus ginčų sprendimo (AGS) procesuose priimtų sprendimų vykdymą vartotojams, taip pat palengvinti sklandų dirbtinio intelekto integravimą į šią sistemą. Priešingu atveju mažai tikėtina, kad dirbtinis intelektas turės esminės įtakos ES AGS ir (arba) AGS sistemos veiksmingumui ir efektyvumui, nes pagrindinės problemos kyla srityse, kurios nepatenka į dirbtinio intelekto taikymo sritį, pavyzdžiui, sprendimų vykdymo užtikrinimo srityje.

Pagrindiniai žodžiai: teisinės technologijos, dirbtinis intelektas, el. prekyba, ginčų sprendimas internetu.

Introduction

In recent times, the Internet has significantly transformed the manner in which consumers and businesses engage with one another. The proliferation of online shopping and the ease of conducting international transactions have resulted in numerous disputes and conflicts, encompassing a wide range of issues such as product quality concerns and failure to deliver goods. In today's world, the phenomenon of conflict is very common and universal, and therefore, there is a huge need to develop processes to minimise and manage it. The ideal dispute resolution process is characterised by the outcome of both parties experiencing a higher level of satisfaction compared to their initial state prior to engaging in the process. Unfortunately, it is not feasible to resolve all conflicts using this approach. The judicial system faces an enormous number of minor cases, resulting in a disproportionate allocation of time and resources towards decision-making processes within the courts. All of these issues create the ideal conditions for the growth of online dispute resolution.

Despite the clear need for accessible and effective dispute-resolution mechanisms, traditional legal procedures frequently fail in the online realm. The time and expense of litigation, as well as the complex jurisdictional issues that arise in cross-border disputes, are significant obstacles for consumers seeking redress. Therefore, consumer ODR in the EU is at a crossroads that requires innovative solutions to simplify and improve the dispute resolution process.

Nevertheless, despite being implemented for several decades, the notion of online e-commerce dispute resolution, which initially possessed explicit and clear objectives, has not succeeded in demonstrating a satisfactory level of efficiency.

Novelty: The relevance of this subject matter cannot be exaggerated. The primary objective of the European Union's digital transformation agenda is to optimise the advantages derived from the digital

economy while concurrently guaranteeing the safety and protection of consumers. In a contemporary period characterised by the prominence of digital commerce and technological progress, the efficacy of Online Dispute Resolution (ODR) assumes significance not only from a legal standpoint but also as a socio-economic concern.

Research objective and tasks: Hence, the objective of this article is to conduct an analysis of the current ODR platforms, initiatives, and regulations within the EU, with a focus on identifying their respective strengths and limitations. This study aims to examine the development of the European Union's ODR mechanisms (Section I), with a particular focus on the prevailing obstacles that hinder their efficacy. These challenges include issues related to trust, transparency, and accessibility (Section II). Furthermore, this article examines the potential implications of artificial intelligence and contemporary technologies on the possible transformation of the consumer ODR framework within the European Union. The paper explores the role of artificial intelligence, machine learning and data analytics in addressing the effectiveness and appropriateness of modern technologies in solving common problems plaguing consumer ODR in the EU (Section III).

State of the art. Notable researchers, including Carlo Pilia, Pablo Cortés, Eline Verhage, Voet Stefaan among others, have dedicated their efforts to studying various aspects related to the European Union's internal market, e-commerce, and the establishment of ADR/ODR systems within the EU. The examination of the system's interaction with contemporary technologies has been explored by scholars such as Orna Rabinovich-Einy and Ethan Katsh, John Zeleznikow, Bostrom, Haegen, Susskind, and various others.

Methods: The research methodology employed in this study involves the application of the analytical descriptive method, complemented by historical, comparative, and method of systematic analysis.

1. Consumer ADR/ODR framework in the EU

Today, e-commerce and online trading offer entrepreneurs and consumers a vast array of opportunities. At first glance, the benefits are obvious: it saves time, effort and money to purchase goods or services, but on the other hand, disputes arising from these relationships require a simple, efficient, quick and inexpensive way to resolve them as an alternative to court proceedings.

According to the estimation made by the European Commission, implementing a well-organised dispute resolution system has the potential to generate annual savings of approximately €22.5 billion, which at the beginning of the last decade was 0.19% of EU GDP (EC Questions & answers on Alternative Dispute Resolution 2013). That is why, anticipating the further growth of e-commerce, the EU implemented instruments such as Directive 2013/11 (Consumer ADR Directive) and Regulation 524/2013 (Regulation on consumer ODR**)** to ensure the public's access to convenient and effective online dispute resolution. EU Directive 2013/11 marked a turning point in consumer protection, as it began to guarantee consumers the opportunity to submit a dispute regarding a product or service against an EU supplier to an alternative dispute resolution body (EU Directive 2013/11/EU on ADR).

Furthermore, it mandated Member States to establish domestically recognised alternative dispute resolution (ADR) organisations, which can be accessed online (ODR), for the purpose of managing consumer grievances and overseeing their resolution.

The ODR system itself was primarily developed to meet the needs of ADR, and many of the developments in relation to ODR are based on the functions that are inherent in traditional ADR entities but which have been transferred to an online environment. Furthermore, it is worth noting that Online Dispute Resolution (ODR) is grounded in the fundamental principles of Alternative Dispute Resolution

(ADR), namely impartiality, transparency, fairness, and access to justice, which only emphasises the connection between them. Contrarily**,** Katsh and Rabinovich have presented an alternative perspective, asserting that the endeavour to transfer traditional alternative dispute resolution methods to an online platform has encountered significant difficulties. They highlighted that online dispute resolution has rapidly evolved to establish distinct processes that differ from the conventional functions of traditional dispute resolution mechanisms (Katsh *et al*., 2017, p. 33–34).

The legislators attempted not to create artificial barriers or competition to the already existing system of alternative dispute resolution, such as arbitration or mediation, but rather to fill the gaps in the resolution of online disputes (where both the judiciary and the methods of resolving issues needed improvement) and to create an ecosystem that would enable the resolution of disputes outside of court.

Therefore, the Directive established only minimal harmonisation criteria, in accordance with which Member States merely supplemented or modified their existing national landscapes.

The rationale behind this approach was rooted in the presence of already existing consumer ADR systems in various sectors within certain countries prior to the implementation of the Directive. Consequently, there was substantial variability in the ADR models across different countries.

The Member States took measures to ensure the presence of certified entities, whether private or public, in every sector of the economy. Alternatively, they established an additional certified entity that encompassed the entirety of the economic sector. The aforementioned principle also extends to regulatory bodies. In a few states, a solitary competent authority has been designated to oversee the operations of ADR entities, whereas, in other countries, a network of competent authorities has been established based on the specific sector in which these entities function. Nevertheless, it is crucial to acknowledge that the Directive does not impose a compulsory requirement to promote the application of ADR mechanisms in any specific industry, granting the states the autonomy to exercise their own discretion in this matter. With regard to the application of Regulation No. 524/2013, the EU has expanded the system of alternative dispute resolution for consumer disputes by introducing this instrument. The European Commission realised that ADR processes should be complemented by technology, and this led to the adoption of the ODR Regulation as a supplement to the ADR Directive.

As can be seen, Article 1 of this Regulation makes it clear that it shares the Directive's objective in the area of consumer protection and establishes a new objective in the form of the efficient functioning of the EU internal market (EU Regulation on consumer ODR). Even Professor C. Hodges believes that dispute resolution is only one of the two pillars upon which the market's proper functioning is based, and ADR is the other (Hodges, 2019, p. 42, 59–90).

Another essential provision is the Regulation's scope. Similarly to the Directive, the Regulation applies to the out-of-court settlement of disputes concerning contractual obligations arising from sales contracts, but it focuses on Internet transactions and e-commerce. According to the Regulation, the established system outlined in Article 8 offers a means of out-of-court dispute resolution that is characterised by its speed, efficiency, and affordability, as facilitated by the Platform (EU Regulation on consumer ODR). The Platform addresses disputes arising from the purchase of goods or services online and is designed to facilitate coordination between consumers, sellers and European-certified online dispute resolution organisations. It was made available to the general public on 15 February 2016, and since 1 July 2017, it has also been available for EEA consumer-seller disputes. The ODR Platform functions as a search engine for European-certified ADR entities and can be conveniently accessed via the Your Europe portal.

Therefore, websites or applications of EU-based or non-EU-based suppliers who provide services to EU customers must inform consumers of the ODR's availability in the event of a dispute. The Platform

is not intended to resolve complaints based on their merits; instead, it serves as a referral platform, as the dispute is resolved by the dispute resolution bodies listed on the Platform.

The ODR Platform's procedure consists of multiple steps: consumers submit their complaints via an online form, and the seller receives an automatic notification and an invitation to propose an ODR authority.

Then, the parties have thirty days to agree on a competent ADR body. The complaint is automatically closed if the online vendor fails to propose a dispute resolution body or fails to reach an agreement within the specified time frame. If the consumer agrees to the proposed ADR entity, the ODR Platform automatically transfers the complaint to the accepted body. Within ninety days of receiving all documents from the parties, the ADR body must review the complaint and propose a resolution. In 2019, the European Commission published a report on the Platform's work, and the results showed its relatively low efficiency.

There are currently four reports of the European Commission on the performance of the European ODR Platform and the ODR mechanism in general, which can be analysed to demonstrate that the data reflects a reasonably large number of consumer appeals since the launch of the Platform, approximately 9 million, as well as a substantial number of complaints filed. Nevertheless, 81% of cases were automatically closed after 30 days without reaching the ODR entity. However, 20% of respondents stated that their dispute was resolved on or off the Platform, and another 18% were still in discussion with the trader (EC Report on Functioning of ODR Platform, 2020).

In July 2019, the European Commission made revisions to the ODR Platform, incorporating a novel functionality termed "direct talks." This enhancement facilitates the resolution of conflicts between consumers and traders by enabling them to engage in bilateral discussions directly on the ODR Platform.

Nevertheless, the involvement of a certified third party has transformed this procedure into a non-ADR process. Consequently, the equitable outcome of the dispute resolution process cannot be assured for consumers, mainly due to the existing power asymmetry between the involved parties. According to the report, the merchant rejected 11% of the complaints in this case, and 4% were withdrawn by one of the parties. As a result, only 2% of complaints reached the ADR body. According to the 2021 Report of Functioning ODR Platform, in 2020, an average of 5% of EU consumers filed their complaints with an ADR body, and only 8% would contact an ADR body if they had a problem in the future (EC Report on Functioning of ODR Platform, 2021).

2. The pitfalls that were placed at the outset

It remains unclear why the concept, which initially had straightforward and unambiguous objectives, has failed to demonstrate satisfactory effectiveness despite a decade of implementation.

Currently, there exist several factors that hamper the success of the online dispute resolution mechanism despite its prolonged existence. Several factors are involved in this context:

Low customer awareness. The level of customer awareness regarding the ODR mechanism is relatively low despite the presence of ODR platforms and organisations. A significant number of consumers and merchants remain uninformed or choose not to use these platforms;

Limited availability of dispute resolution bodies and their inconsistency. The European Commission has adopted a minimum harmonisation approach, resulting in a lack of online dispute resolution (ODR) bodies in certain EU Member States or a complete absence of such bodies in specific market sectors. Consequently, consumers face challenges in accessing ODR services;

Lack of trust in the system. The absence of trust in the system arises from consumers' potential scepticism towards online dispute resolution (ODR) platforms and governing bodies, caused by doubts regarding their impartiality, effectiveness, and enforcement capabilities;

Language barriers pose a significant challenge for consumers who desire to take advantage of online dispute resolution (ODR) mechanisms. This challenge arises from the limited availability of institutions and platforms that offer ODR services exclusively in specific languages;

*Technical issues***,** such as website outages or software glitches, reduce the efficacy of ODR platforms and frustrate users;

The issue of *enforcement* is typically regarded as a fundamental aspect of the overall framework of online dispute resolution. The enforcement mechanism, being non-compulsory and subject to the discretion of its member states, undermines user trust and leads to feelings of frustration, wasted time, and other related concerns.

The aforementioned list of issues remains substantial, thus suggesting delving into each of them with greater elaboration.

Low awareness

By setting out in legislation the information requirements for traders, state regulators, and consumer ADR/ODR entities, the EU has sought to address and prevent problems arising from consumers' and traders' lack of awareness of the existence of such dispute resolution mechanisms. Article 5 of Directive 2013/11/EU on Alternative Dispute Resolution obliges ADR entities to maintain a regularly updated website that facilitates convenient access to relevant information (EU Directive 2013/11/EU on ADR). According to Article 14 of Regulation (EU) No 524/2013 on Online Dispute Resolution (ODR), it is mandatory for online traders and marketplaces to include a hyperlink to the ODR platform on their respective websites (EU Regulation on consumer ODR). Unfortunately, the procedure remains insufficiently familiar among participants.

First, this situation is due to the slow implementation of the ADR/ODR mechanism in countries, which does not contribute to strengthening culture. This is the reason why many countries in Eastern Europe and the Baltic States, such as Estonia, Romania, Lithuania, Latvia, Slovenia, and Slovakia, have lower public awareness ratings than Belgium or the Netherlands (BEUC Report, ADR for Consumers, 2022, p. 13).

Second, the information available to consumers regarding ODR mechanisms is frequently disorganised and scattered. The majority of the information on the websites of ODR entities consists of abstract statistics from annual reports and does not provide the clarity that consumers seek. Only 28% of traders comply with the information requirement to include a link to the ODR platform, and 8% of traders are aware of the system's existence but do not wish to use it (EC Final report on ODR Web-Scraping, 2018, p. 26).

In order to solve these weaknesses, some modifications were made to the Platform's homepage and messaging system, alongside the creation of new information pages and a feedback system. The Commission additionally implemented a focused communication campaign regarding ADR, intending to enhance traders' knowledge and engagement with the ODR Platform. Consequently, there was a 54% surge in the number of registered traders on the Platform in 2018, followed by an additional 24% increase during the initial five months of 2019.

Limited availability of dispute resolution bodies

The issue of minimum harmonisation within the Directive was likely one of the strategic errors made by European legislators, as it has given rise to a new set of issues. The landscape of alternative dispute resolution bodies is currently comprised of more than 430 certified entities dispersed across a complex web of diverse systems (2nd ADR Assembly, Summary report, 2021). In addition, the structure of ADR/ODR varies from country to country, ranging from sectoral and internal systems to broader ones (such as an ombudsman). Analysing the reports on the outcomes of utilising ODR mechanisms reveals a significant disparity between Scandinavian, Central European, and Eastern European nations (EC Final Report on ODR Web-Scraping, 2018, p. 27).

The greatest number of complaints were filed in states with a robust culture of alternative dispute resolution, as well as in nations with strong authorities and consumer organisations. Continuing with the subject of harmonisation, it is also important to note that the differences relate not only to languages, applicable laws, and funding mechanisms but also to the dispute resolution procedures themselves, including the role of the ADR entity or the binding or non-binding nature of decisions.

The Netherlands, for instance, has a solid architecture with four main bodies that have a long history of promoting dispute resolution and rely on the self-regulation of ADR actors. A good example is the Dutch health insurance industry, which affords the opportunity to resolve systemic issues directly with the service provider. The insolvency resolution authority is required to refer the case to the regulator if the service provider fails to take action within three weeks (Verhage, 2016, p. 233). Sweden has adopted a more structured approach to dispute resolution, with state-funded primary ADR bodies as well as industry-created bodies. Belgium possesses a unique advantage of the Belmed portal, which stands as the sole national website providing consumers with comprehensive information and facilitating their access to the ADR/ODR scheme (Voet, 2016, p. 21). The French model places significant reliance on domestic intermediaries, resulting in the existence of over 90 certified ADR bodies in France. However, it is worth noting that public ombudsmen hold a crucial position in the energy and finance sectors. Consequently, France has enacted legislation that mandates participation in any of the numerous ADR systems (Voet et al., 2022, p. 27).

The Italian lawmakers have opted for a hybrid approach by refraining from certifying ADR entities with decision-making authority over consumers while still permitting these entities to enforce decisions upon traders. Carlo Pilia raises concerns regarding the complex relationships among various stakeholders and enforcement methods, arguing that these factors do not sufficiently guarantee the protection of consumers (Pilia, 2016, p. 218). The presence of fragmentation poses challenges for customers, particularly when the ADR/ODR entity does not provide comprehensive coverage for a specific economic sector. As a result, customers may be required to engage with multiple entities to resolve their issues efficiently. The heterogeneous system also raises questions regarding applicable law, as in the majority of cases, the consumer's country of residence governs national ADR schemes. For example, Under Rome II, if a German consumer orders a product from a French website targeting the German market, the French ADR scheme must apply German law (Ecommerce Europe reply, 2022. p. 2). This appears to be a challenging situation for the national authority, which explains its reluctance to review submitted complaints, including those submitted through the ODR Platform.

The application of the Regulation is also not equitable for merchants and buyers. While buyers can file complaints with an ODR body regardless of its location or the country where the merchant is located, the merchant can only file a complaint against the buyer in the buyer's country of residence due to legal restrictions and the development of ODR mechanisms there. Considering the cross-border

nature of e-commerce, this creates issues for consumers and businesses, and the voluntary nature of merchant participation in ADR/ODR mechanisms makes it very difficult to encourage their participation, resulting in an overall decrease in efficiency and a loss of user confidence.

Perhaps a possible way to deal with such a problem might involve granting the ADR/ODR body the authority to settle disputes based on the legal framework of the country where the website or marketplace is officially registered. Alternatively, consumers could be provided with the option to approach the ADR/ODR body in their country of residence, irrespective of the registration location of the trader.

In essence, the wide range of different ADR frameworks poses challenges for consumers and traders, particularly in Member States with a substantial number of certified ADR providers. Moreover, businesses operating in jurisdictions lacking ADR/ODR mechanisms may face a competitive disadvantage compared to those based in the states that not only ensure well-defined ADR procedures but also maintain significantly higher quality standards. The Directive, which gave Member States broad scope and discretion to cover the market, has led to inconsistent implementation of ADR authorities' quality and credibility. Some states have gone beyond the Directive by requiring legal qualifications for the provision of ODR services, while others have written legislation too broadly to cover several sectors. The Directive does not set out a specific supervisory mechanism to be established by Member States, which results in gaps in the effectiveness of supervision. In some countries or industries, institutions providing ADR services are closely supervised and regularly evaluated for quality, while in others, there may be no supervision at all. This lack of supervision is a concern for consumer confidence in the use of ADR mechanisms.

Lack of trust

Trust plays a crucial role within the ADR/ODR system, as it was established as an alternative to traditional court systems that typically operate on the fundamental assumption of complete mistrust between the involved parties. It is also believed that parties are more likely to reach an agreement and resolve a conflict if they trust each other. Noam Ebner identifies several factors that influence the formation of trust or mistrust, including the *presence or absence of knowledge and expectations of fairness* (Ebner et al., 2015, p. 153). Professor Amy Gangl identifies that the assessment of the legitimacy of decisions is influenced by factors such as the belief that the decision-making process takes into account the views of the parties, the neutrality of the process without favouritism, and, most importantly, trust in the entire system (Gangl, 2003, p. 121). However, despite the fact that trust is a virtually eternal issue that affects all types of business, it is exacerbated on the Internet, particularly when it comes to financial transactions. The ODR system is not immune to this issue, as the dispute resolution process is a point where the parties' financial and emotional interests intersect.

Knowledge

In order for individuals to have faith in ODR systems, it is essential that they have adequate information, knowledge, and comprehension of the dispute resolution process. However, as previously mentioned, in the current ODR structure, there are still many questions among users regarding the clarity of the process, as internal complaint procedures are not fair, and the process frequently lacks transparency. In addition, consumers usually do not comprehend the difference between unregulated and regulated schemes, so they are increasingly subjected to a dispute resolution process that does not meet or fall short of their expectations**.** The European Commission has done extensive work in this area, such as

integrating infographics and simple information on EU rights into the ODR platform to assist consumers in determining whether a decision was made fairly or whether negotiations occurred.

Expectations of fairness

All parties participating in the ADR/ODR process anticipate a certain level of fairness. In her analysis, Susan S. Raines emphasises the correlation between the parties' perceptions of fairness and their levels of trust and familiarity with one another, as well as their trust in the online dispute resolution (ODR) system. Raines suggests that if users lack trust in the online intermediaries involved in the ODR process, this lack of trust may negatively impact their willingness to accept the dispute resolution method (Raines, 2006, p. 359). Researchers from KU Leuven also note that the problem of trust is not only bilateral between buyers and traders but rather trilateral, as both consumers and traders perceive ADR actors as biased against them. The former are very sceptical about non-public ADRs, as well as those funded by traders themselves. As an example, when initially choosing an ADR entity, traders often display a tendency to favour entities that not only correspond to their specific sectors of operation but also exhibit a greater probability of aligning with their own interests, as noted by Cortes (Cortés, 2016). A study conducted by KU Leuven also reinforces the problem of trust on the financial side and confirms the interdependence of price and participation. In other words, the greater the cost of participation for traders, the lower the participation and cooperation of traders themselves (Voet, 2022, p. 21).

At its core, the Directive envisioned that the dispute resolution process should be free or, if this is not possible and the process is paid, it should be attractive, accessible, and not too costly for the end consumer. Nonetheless, in practice, traders frequently bear the procedural costs or pay fees for dispute resolution, even when the outcome of the procedure is not in their favour. In cases where the entity receives financial support from the private sector, traders already bear the burden of covering the administrative expenses associated with operating these institutions. Consequently, small traders perceive no compelling reason to engage in and remit subscription fees, considering ADR/ODR entities as consumer protection agencies.

One of the tools introduced by European institutions, together with consumer associations, to build trust is the Ecommerce Europe Trustmark. It is associated with a particular set of moral and ethical guidelines. The company that publishes the Trustmark on its website indicates that it has committed to complying with the digital market standards; if the Trustmark is used without authorisation, the relevant merchant is blacklisted (Ecommerce Europe reply, 2022. p.3). Undoubtedly, the developers of ODR systems are trying to create platforms that ensure their credibility, but users give the final evaluation of the product, so it is the responsibility of ODR service providers to build trust in the system. Definitely, providers need to be more thorough with the information on their websites. In particular, detailed instructions on the stages and possible outcomes of the process, the functionality of their system, data protection, up-to-date contacts, providing feedback between the parties (this applies to situations where traders do not respond to complaints), etc. Many ADR providers are too engrossed in digitalisation and online activities to take into account the category of people who do not have access to technology or who use it poorly, leaving them with no choice but to resolve the issue as face-to-face consultations, which are frequently excluded from the procedure. In certain European Union Member States, there are instances where certified ADR organisations fail to adhere to their transparency obligations by neglecting to publish reports on their activities. This lack of compliance has a detrimental impact on the level of trust between consumers and traders. It is anticipated that such enhancements will promote a more favourable environment for the development of trust in the future.

Language barriers and communication

Upon implementing the Directive, several principles were established to ensure the appropriate execution of the ADR and consumer protection procedures. The abovementioned principles encompass the competence, independence, and impartiality of the ADR bodies, alongside the principle of transparency. The latter relates specifically to the criteria governing the information that ADR institutions ought to publish on their websites. The information provided covers the contact information of the entities and their neutrals, the extent of their activities, the languages in which complaints can be lodged, the rules governing complaint resolution, the typical duration of procedures, the legal implications of the outcomes, and a hyperlink to the European Commission's website containing a comprehensive list of certified entities, among other details. In the existing framework of the ADR system within the EU, it is frequently observed that traders assume the initial responsibility of selecting and financing the ADR/ODR entity in cross-border disputes. Consequently, the resolution of such disputes predominantly takes place through an entity located in the trader's respective member state.

As a result, in the majority of these disputes, consumers are required to file a complaint in a foreign language, resulting in inconvenience and unreasonable expectations, as consumers expect the process to be conducted in their native language or in the language of the transaction. It is worth noting that the ODR Platform provides its users with an automated translation tool for complaints that a human checks, but in most cases, this is not enough. Hence, the matter of language poses a significant challenge in cross-border disputes, particularly those involving relatively small amounts.

Scholars also direct their attention towards the aforementioned issue. For instance, Cortes notes that language confuses the parties, drastically alters the game's rules, and can lead to impossible obstacles in multilingual disputes (Cortes, 2016, p. 11).

In addition to language issues, there is also a problem with communication, as one of the weakest links in the dispute resolution process is the rejection of a complaint within 30 days if the parties cannot agree on which entity will resolve their dispute. In accordance with the Regulation, the ODR Platform requires consumers to provide the email address of the trader for communication purposes. However, consumers frequently encounter situations in which merchants publish incorrect email addresses and contact information and regularly use such email addresses to send spam. Therefore, the complaint cannot be processed further if the trader fails to respond to the Platform's email. Furthermore, the Platform itself does not inform consumers that the merchant has refused to participate in the dispute resolution. At one point, it was proposed that the ODR Platform should allow traders to declare their unwillingness to participate in any ODR process and that such a declaration would be automatically forwarded via email to the complainant, informing him that his complaint would not be considered. However, the Commission has decided to abandon the automatic complaint referral system, which seems rather odd given that it reduces the effectiveness of the Platform itself. In such a scenario, the consumer has to either contact the information agency and inquire about the existence of entities they can contact directly, which adds layers of bureaucracy, or attempt to resolve the issue directly with the trader.

Decision enforceability

Typically, the consumer ADR procedure is based on a pre-trial ADR agreement, meaning that the consumer enters into an agreement to resolve any future disputes through ODR prior to the occurrence of a dispute. This clause normally appears in the main contract between the consumer and the merchant, but the consumer is not bound by it (EU Directive 2013/11/EU on ADR).

Donnelly and White rightly note that reimbursement plays a key role in any consumer-oriented market (Schrijver, 2021, p. 25); however, if look at the text of the Directive, Article 9(3) states that "Where, in accordance with national law, ADR procedures provide that their outcome becomes binding on the trader once the consumer has accepted the proposed solution, Article 9(2) shall be read as applicable only to the consumer" (EU Directive 2013/11/EU on ADR), consequently, the final decision can only be binding if the Member State accepts such a mechanism. Article 10(2), in turn, contains such provisions as "Member States shall ensure that in ADR procedures which aim at resolving the dispute by imposing a solution the solution imposed may be binding on the parties only if they were informed of its binding nature in advance and specifically accepted this. Specific acceptance by the trader is not required if national rules provide that solutions are binding on traders" (EU Directive 2013/11/EU on ADR). Therefore, the decision rendered by the ADR entity can be considered legally enforceable upon the parties involved, considering that they have been duly notified of the decision in advance and have explicitly given their consent to it. This provision additionally clarifies that the trader's consent is not obligatory if the legislation of the Member State stipulates that the decision is legally binding upon the trader.

The enforcement of a mediation agreement could be considered as a potential course of action. Specifically, within Directive 2008/52/EC, Article 6(2) explicitly acknowledges the potential for mediation agreements to be enforced in a court: "The content of the agreement may be made enforceable by a court or other competent authority in a judgment or decision or in an authentic instrument in accordance with the law of the Member State where the request is made" (Mediation Directive 2008/52/EC).

Thus, in the event that a consumer engages in a mediation agreement with a trader that arises from the ODR process, these provisions can be utilised as a basis for submitting an application to enforce it. Nevertheless, the enforcement of mediation agreements remains limited in the European Union when it comes to cross-border cases. This implies that the consumer will be required to pursue legal action in the Member State where the trader is located in order to secure recognition and implementation of the agreement by the local court.

Undoubtedly, the deliberate use of ambiguous language in the legal act is presumably aimed at maximising the Directive's applicability to a wide range of relational domains. Moreover, Article 8(e) of the ADR Directive states that "the outcome of the ADR procedure is made available within a period of 90 calendar days from the date on which the ADR entity has received the complete complaint file" (EU Directive 2013/11/EU on ADR).

Nevertheless, a significant issue arises from the lack of a clear definition in the Consumer ADR Directive regarding the specific elements that constitute a comprehensive complaint. Thus, ADR bodies have the authority to determine the point at which they deem a complaint to be fully submitted, a circumstance that occasionally results in delays within the complaint resolution procedure.

Still, the lack of judicial enforcement of alternative dispute resolution decisions constitutes a notable drawback, resulting in a weakened commitment to the ADR process. This limitation stands as a significant obstacle to the advancement of ADR.

3. AI in a consumer online dispute resolution. Way to effectiveness

Nowadays, the world, including the legal world, is being overwhelmed by a wave of modern technologies and artificial intelligence, which raises the question of whether the use of artificial intelligence can become a panacea for most of the "childhood diseases" in ODR systems, or will it create even greater obstacles?

The assessment of technological advancements and their effectiveness should be conducted with regard to their ability to promote fair procedures and decisions. However, during the development of the ADR Directive, the digitalisation of procedures and the development of artificial intelligence for dispute resolution were in their nascent phases. Even the ODR Regulation itself contains the provision "...there is currently a lack of mechanisms which allow consumers and traders to resolve such disputes by electronic means;…" (EU Regulation on consumer ODR).

But what exactly is artificial intelligence? There is currently no clear, unambiguous, and universally accepted definition of artificial intelligence. One of the most common definitions of artificial intelligence is the capacity of a machine to act intentionally, reason logically, and interact with its environment as a human would. The EU AI Act recognises artificial intelligence as a "family of technologies that can bring a wide array of economic and societal benefits across the entire spectrum of industries and social activities" (EC Proposal. AI Act, 2021).

For many people, the term "intelligence" implies that the most advanced systems are "conscious" in some sense. In order to comprehend this, it would be better to examine a few basic types of artificial intelligence. (ANI) - These are systems that execute well-defined and limited tasks, typically at or above the expert level. These are examples of the so-called narrow or weak AI. Such systems can perform a specific task very well, in some cases even better than humans (e.g., face recognition). Artificial intelligence (AGI) is a much more complex task. It involves the development of general-purpose machines that can do everything or almost everything that an intelligent human can do. Scientists also predict that by the end of the 21st century, so-called superintelligence (ASI) will emerge. Bostrom defines it as any intelligence that significantly exceeds human cognitive abilities in almost all areas of human interest (Bostrom, 2014, p. 328), and the invention of such technologies will likely lead to the singularity era, which, at the moment of our existence, looks somewhat utopian.

Interestingly, that law is also built on hard-to-understand semi-structured data, including legislation, case law, lawyer's briefs, and legal doctrine. Moreover, legal processes can be likened to algorithms, wherein an impartial decision maker uses predetermined rules to arrive at a result based on given inputs. Therefore, this article looks more reasonable in focusing on "weak AI" and considering the potential role of technology in ODR systems based on an understanding of the limitations of AI.

The potential role of artificial intelligence in ADR is broad, and several areas of application can be identified, such as decision support systems, which are characterised by the ability to provide information on the level of agreement between two parties;

and knowledge or reasoning support systems, in which artificial intelligence technology, using algorithmic capabilities to access information, analyses past experience and applies it to the current situation, avoiding past mistakes.

These technologies and algorithms are referred to as Quantitative legal prediction (QLP), which is a subset of the phenomenon known as legal analytics. QLP can be defined as the application of data mining techniques to the legal field in order to develop predictive models for behaviour or future events based on a variety of analytical and statistical techniques (Haegen, 2021, p. 80). QLP is primarily useful as an informational tool. QLP offers valuable information regarding the legal landscape and the potential prospects of a lawsuit or complaint, which may not be easily accessible to litigants or parties involved in dispute resolution. However, this information becomes feasible when dealing with extensive data sets.

Furthermore, QLP has the potential to serve as a valuable decision-support tool. It has the capability to effectively identify cases that are considered "easy" due to their high predictability in terms of outcome. These cases typically involve simple and repetitive administrative matters, such as speeding or

parking violations, or they involve the identification of patterns in consumer disputes (Haegen, 2021, p. 81). Major online platforms such as eBay, PayPal, and Amazon already use these technologies to manage consumer complaints. The ODR system on eBay automatically provides dissatisfied customers with the option to return a product, receive a partial refund, or get another one.

In the form of chatbots or algorithmic complaint analysis, websites have automated tools to handle consumer questions and complaints. According to Pablo Cortes, individuals who have successfully resolved their disputes through online dispute resolution services tend to exhibit higher levels of trust in these systems (Cortes, 2014, p. 172). This trust is based on the expectation that any future disputes will be resolved in a consistent manner. This statement is supported by an empirical study conducted by eBay, which reveals that the most active buyers on their platform are those who have prior experience in resolving disputes using eBay's ODR software. These users increased their commercial activity more than users who had no experience with e-commerce dispute resolution. Moreover, the percentage of buyers who did not buy anything within seven weeks after a losing dispute was 33% higher than the percentage of buyers who did not buy anything within seven weeks after a winning dispute (9% vs. 12% respectively) (Pubel, 2018, p. 146). Thus, it can be seen that buyers who lose a dispute tend to buy less, while buyers who win a dispute continue to buy after the dispute is over. This phenomenon can be attributed to the fact that online users have developed an expectation for fast transactions and quick resolution of disputes. According to the common rule, when a marketplace or merchants offer consumers a reliable mechanism for resolving complaints, it increases consumer loyalty towards those merchants.

Another vital technology could be intelligent interface systems, which aim to bridge the gap in communication between humans and systems, allowing, for example, the use of human language as input and output to the system, which avoids translation problems. This technology would be very relevant for use on the European ODR Platform, as 50% of complaints submitted through the platform are cross-border. The matter of language continues to be highly significant, as communication with the ODR platform is exclusively conducted in the language used by consumers (EC Report on Functioning of ODR Platform, 2021). Once a complaint has been filed with an ADR body, subsequent communication and the process of resolving the dispute will be conducted in the language selected by the ADR entity. Typically, this language aligns with the preference of the trader involved. It is worth noting that certain ADR entities may not entertain complaints submitted in a language other than their designated language.

Despite the fact that AI is altering the future, many experts have expressed concern regarding deep learning and black boxes. The introduction of the technology also raises various issues of algorithmic bias, fairness, and transparency. This is true of any predictive model in any field, but the dangers associated with these challenges are more pressing in the legal domain, given the far-reaching consequences that legal decisions can have on people's lives and livelihoods. The presence of bias of any kind invalidates the outcome. Multiple components of the model can be biassed, including the training data, the data itself, and the algorithm's architecture. Similarly, the algorithms themselves, written by software engineers, can reflect and propagate their personal biases, even if these biases are unconscious. In other words, bias in these systems can again lead to significant injustice. Model bias describes how well a model fits the data used for training. However, extreme caution is required because more complex models have a tendency to retain every detail of the training data, thereby losing sight of the big picture. Complex models may be incapable of generalising to new data, even if the new data differs slightly from the training data.

Dr. Ayelet Sela, an expert in the field of law and technology and specifically in online dispute resolution systems, examines the inherent absence of neutrality in the design of such systems. Online

technologies are inherently non-neutral as the design and programming of software tools are influenced by and endorse specific values and behaviours. Therefore, differences in technological characteristics can exert a substantial influence on both the procedure and the result. As already mentioned, a system will only be as neutral as the people who program it (Sela, 2018, p. 99).

An important issue in the implementation of predictive models within the legal domain is the potential regulatory impact on QLP. The changing nature of law is a potentially fatal flaw due to the fragility of deep learning models. Given the very frequent legislative changes, both in terms of quantity and time, this poses severe challenges for developers and legal professionals. More and more academics are concerned that developers of online courts and ODR platforms are not adequately considering the data required to evaluate their effectiveness. The development of algorithms that make decisions separately from substantive law could be a potential solution to the problem of legislative variability.

A good example is Lex Machina, which can predict the probability of success in US patent litigation with greater accuracy than human patent attorneys. However, neither the system nor the data underlying its predictions are legal documents. Instead, Lex Machina uses information such as the names of judges, law firms, and attorneys, as well as the nature and value of claims in over one hundred thousand past cases. It turns out that with enough such data, computer statistics can outperform the legal method in predicting court behaviour (Susskind, 2021, p. 282).

Also, transparency alone is insufficient to resolve the issues caused by opacity. It is likely that ensuring complete transparency will result in the so-called transparency fallacy: parties to the process will lack the time, resources, and expertise to perform any meaningful work on the algorithm. It is cognitively impossible to analyse an algorithm with hundreds of parameters and millions of data points effectively. For transparency to be effective, it must be purposeful. Otherwise, it leads to unintentional opacity, which occurs when large amounts of information create information overload and make it nearly impossible to locate the desired information. Or it can lead to the necessity to engage third-party experts, which makes the process much more complicated and expensive, undermining the basic principles of ODR based on speed and efficiency. In addition, trade secrets protected by intellectual property law will prevent complete transparency in corporate services.

There is also a risk of limiting access to the services offered by AI in ODR, as it requires people to be confident in interacting with modern technology but does not take into account older generations and vulnerable groups. This problem currently exists in most ADR systems, which, in an attempt to be progressive and technologically advanced, force people to go through several cumbersome automated complaint processing systems before they can file a complaint. Therefore, it is important that consumers have the opportunity to speak to a human being, not just an algorithmic bot, when they require advice. Such direct contact with the ADR authorities should be possible at a very early stage of the procedure to give consumers the opportunity to express and explain their concerns.

Quite recently, the world has been shaken by the phenomenon of the ChatGPT model, which is positioned as a state-of-the-art language model capable of understanding and generating human-like text based on the context provided. This has led to the idea that this technology could be used to facilitate communication between disputing parties, offer impartial and objective assistance throughout the negotiation process, be used in litigation, or become part of the mediation process.

However, on 14 June 2023, the European Parliament voted in the first reading Proposal for a Regulation of The European Parliament and of The Council laying down harmonised rules on artificial intelligence and amending certain Union legislative acts, known as the “EU AI Act” (Artificial Intelligence Act). This is undoubtedly a revolutionary event, as the EU Artificial Intelligence Act is the first comprehensive piece of legislation regulating the use of artificial intelligence. In April 2021,

the European Commission proposed the first EU regulatory framework for AI, stating that AI systems that can be used in various fields should be analysed and classified according to the risks they pose to the users (European Parliament Press Release, 2023).

Thus, the priority of the European Parliament was identified, with the objective of ensuring that AI systems used in the EU are safe, transparent, traceable, non-discriminatory, and environmentally friendly and that humans should control AI systems to prevent harmful outcomes. The Regulation is based on a risk-based approach (Section II contains a list of prohibited AI types) (EC Proposal. AI Act, 2021) that differentiates between the use of AI that poses (i) an unacceptable risk, (ii) a high risk, and (iii) a low or minimal risk. Artificial intelligence systems that pose an unacceptable risk to humans will be prohibited. AI systems that have a negative impact on security or fundamental rights will be categorised as high-risk systems and will fall into two categories:

1) Artificial intelligence systems used in products subject to EU product safety legislation.
2) Artificial intelligence systems fall within eight specific areas that must be registered in the database (ANNEX III) (EC Proposal. AI Act, 2021).

In addition, Annex III contains the eighth category of systems with a high risk of use. Specifically: "Administration of justice and democratic processes:(a) AI systems intended to assist a judicial authority in **researching and interpreting facts and the law and in applying the law to a concrete set of facts."** (EC Proposal. AI Act, Annex III, 2021).

Also, paragraph 40 of the AI Act's preamble states that "Certain AI systems intended for the **administration of justice and democratic processes** should be classified as **high-risk**, considering their potentially significant impact on democracy, the rule of law, individual freedoms as well as the right to an effective remedy and to a fair trial. In particular, to address the risks of potential biases, errors, and opacity, it is appropriate to qualify as **high-risk AI systems intended to assist** judicial authorities **in researching and interpreting facts and the law and in applying the law to a concrete set of facts.***"* (EC Proposal. AI Act, 2021).

In addition, as stated in Article 13 of the proposal, all high-risk AI systems will be evaluated prior to their introduction to the market and throughout their life cycle, particularly with regard to transparency**.** It states that high-risk artificial intelligence systems *"*shall be designed and developed in such a way to ensure that their operation is sufficiently transparent to enable users to interpret the system's output and use it appropriately*"* and "shall be accompanied by instructions for use in an appropriate digital format or otherwise that include concise, complete, correct and clear information that is relevant, accessible and comprehensible to users*"* (EC Proposal. AI Act, 2021). Moreover, generative AI, such as ChatGPT, is subject to transparency requirements and must adhere to the following: disclose that AI created the content and publish a summary of copyrighted data used for training (European Parliament News, 2023).

If the Regulation is finally implemented, many intriguing questions will arise, such as to what extent decisions made by judges using Chat GPT or other systems will be legally binding and whether the judge himself will be viewed as legitimate by the general public. What, after all, is the purpose of involving a third party in the form of a judge or mediator if the parties can use technology to resolve a dispute themselves? How should technologies that interpret facts be utilised? Or should we refrain from using such technologies for legal argumentation until the system is able to provide decision-making reasoning? Currently, there are more questions than answers. However, in support of one of them, the idea that we should refrain from using systems based at least on language models, a recent study has been published (Zou et al., 2023, p. 20) that confirms the possibility of hacking any language model to get the desired result and answer. This significantly undermines the credibility and prospects of using

Chat GPT, BardAI or any other similar technology. However, it should be emphasised that AI exists to serve humans, not to replace them, and definitely, it is our future.

Conclusions

1. Low customer awareness, limited availability of dispute resolution bodies, a lack of system trust, language barriers, technical difficulties, and decision enforcement are some of the factors impeding the ODR mechanism's success.
2. Customers face challenges due to system fragmentation, especially when the ADR/ODR entity does not provide comprehensive coverage for a specific economic sector. Furthermore, the Directive does not impose any requirements on traders to participate in ADR procedures; it is up to EU member states to make participation mandatory. Even in jurisdictions where participation is required by law, traders may choose not to participate in the ADR procedure. This situation frustrates customers and creates a vicious cycle that restricts their access to timely and effective justice.
3. Trust is essential in the ADR/ODR system, which is an alternative to traditional court systems that assume complete distrust between parties. Users require accurate information and understanding of the dispute resolution process, but the current structure lacks clarity and transparency.
4. AI can be applied to decision support systems, as well as knowledge and reasoning support systems. Intelligent interface systems could bridge the gap between humans and machines, allowing for human language input and output. However, AI raises issues of algorithmic bias, fairness, and transparency. Online technologies are inherently non-neutral, and differences in technological characteristics can have a significant impact on the procedure and results. Integrating technologies like artificial intelligence into online dispute resolution systems necessitates greater transparency, objectivity, and legitimacy. However, AI will have no significant impact on the effectiveness of the EU`s ODR system because the main issues are beyond the scope of AI. To ensure the successful implementation of AI, the legislation governing the operation of the ODR system for consumers must be reviewed.
5. It would be desirable to amend the Regulation and broaden the scope of the Platform so that it can be used to resolve merit-based disputes.
6. It would also be necessary to review and amend the Directive and Regulation in order to create a more consistent landscape for the ADR mechanism, impartiality, mandatory participation of disputing parties in the process, and mandatory enforcement of decisions.

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