Chapter

The Alternative Disputes Resolution System in the European Union: Consumer Protection in Cross-Border Disputes

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Abstract

Consumer protection is defined as a field of study that protects individual consumers against unfair selling practices for goods, services, and digital content. The globalization expansion allows opportunities for increased sales and revenue but is also accompanied by considerable risk that impacts the protection of the economic interests of consumers. This, in fact, may involve misleading advertising and unfair contract terms in cross-border transactions. This paper analyzes the existing European Union ('EU') consumer rights protection legislation, including alternative online dispute resolution procedures. The paper also aims to provide a summary of the achievement in the area of consumer protection and internal market in the post-pandemic era. At the same time, the goal of this paper is to present comprehensive coverage on the protection of financial consumers in cross-border disputes, especially in cases where the other party resides in a different country. Explanation are also provided on how the Italian legislative framework may be considered the best example of crisis management and resolution, by providing more confidence for consumers in cross-border transactions in the post-pandemic era.

Keywords: alternative disputes resolution, ADR, COVID-19, consumer rights, European Law, cross-border disputes

1. Introduction

European measures for consumer protection are intended to protect the health and safety, and economic and legal interests of European consumers, wherever they live, travel, or shop in the EU. The EU provisions regulate both physical transactions and e-commerce and contain rules of general applicability together with provisions targeting specific products, including medicines, genetically modified organisms, tobacco products, cosmetics, toys, and explosives. For this very reason, this area has always been subject to great attention on the part of the European Union, which has sought to establish and fix general guidelines that could protect, in the most efficient way possible, the "weak" party in transnational negotiations.

The present analysis builds on the studies and evaluations performed to date by the EU bodies, and their methodologies in order to identify the most relevant parameters for an evaluation of achievements and benefits. It also presents the interaction and convergence between consumer protection and the measures implemented following the COVID-19 outbreak.

In the light of the above, the analysis covers the period before and following the pandemic, and the enquiry is based on legislative acts proposed, proceeds and enacts during this period, and contains a complete and systematically arranged list of rights created or strengthened for European consumers as well as a list of legislative acts introduced, implemented and also issued on the basis of EU legislation aimed at consumer protection.

The EU in the Treaty on the Functioning of the European Union (TFEU) represents the substantial law on the welfare of consumers and explicitly dedicates several articles to consumer protection, specifically:

- Article 4(2)(F), which establishes consumer protection as a shared competence between the EU and the Member States, obviously, as a result, both legal systems (national and European) will be free to regulate in this area but subject to the condition that the Member States may exercise their competence if the EU has not already done so and, if not, may exercise it only if the EU ceases to do so;

- Article 12, which recognizes the cross-cutting nature of consumer protection, i.e. consumer protection must always be taken into account in all other matters;

- Art. 114, which places the harmonization of national laws within the internal market as a legal prerequisite, focuses on the need to also ensure consumer protection within the framework of new policy developments;

- Article 169, which instead analyses the fundamental principles of consumer protection, stressing that the EU shall contribute to protecting the health, economic interests and safety of consumers as well as safeguarding and promoting their right to education, information and to organize themselves in order to safeguard their interests. In order to do this, the EU will have to adopt measures to support, integrate, and monitor the policies of the various Member States, as well as introduce increasingly effective protective measures against the current background of the establishment of the single internal market.

Similarly, the Charter of Fundamental Rights of the European Union also emphasizes, in Article 38, that a high level of consumer protection must always be guaranteed in EU policies. In the light of this, all the major EU institutions have begun to focus on the figure of consumers and the protection of their interests in the development of their own policies and competences, also setting up *ad hoc* systems to safeguard them—just think of the Committee on Petitions of the European Parliament, competent to deal with petitions, in the form of requests or complaints, in which, clearly, in addition to all the matters in which the EU law intervenes, the area of consumer protection also comes into play.

At the same time, the European Economic and Social Committee (EESC)—the EU's consultative body—has also focused its work on consumer protection, emphasizing the obligation for the major institutions (Council and European Commission) to consult the EESC before making decisions. In addition, the EESC also organizes major

initiatives every year to strengthen the "*weak*" figure of the consumer in the global policy arena, promoting the European Consumer Day and the European Consumer Summit in order to raise the awareness of the "digital transition" and respect for consumer rights, as well as ensuring the transparency of online markets—last summit took place on 10 February 2022. Since the 2000s, therefore, EU started to place consumer protection at the core of its policies, both explicitly and implicitly.

Undoubtedly, among the most significant, in this sense, is the EEC Directive No. 34/1999, which introduced the strict or no-fault liability of the producer in the event of damage caused by defective products, recognizing the possibility for the injured consumer to claim compensation, subject to proof, within 3 years, of the damage suffered, the defect in the product and, obviously, the causal link between them. Furthermore, the EC Directive No. 95/2001 established a system for general product safety in the market, according to which a product, once it has entered the market, will have to comply with certain rules on information provided to consumers as well as precise instructions in order to avoid safety risks, monitoring, and traceability of products.

The novelty of the Directive was also to attempt to focus on possible consumer remedies such as rights to repair, reimbursement, or replacement of the product as well as fines of up to 4% of annual turnover for non-compliant companies in a specific Member State.

Equally important were the EC Directive No. 29/2005, which defined unfair business-to-consumer commercial practices—*i.e.* those that persuade the consumer to take a commercial decision that he or she would never have taken, in particular aggressive and misleading commercial practices—and the EC Directive No. 114/2006 with the aim of protecting consumers from misleading advertising by also setting up a system of supervision by the Courts and administrative bodies of the Member States that would be able to suspend or prohibit unlawful advertising.

Subsequently, starting with the EU Directive No. 83/2011 then updated by the EU Directive No. 2161/2019, the EU began to focus directly on the subject of contracts between consumers and sellers, harmonizing the legislation and establishing a regime applicable to the contracts concluded, specifically for contracts for the supply of water, gas, electricity and contracts for online digital content—whereby, after the 2019 update, the consumer also undertakes to provide his or her personal data as well as the seller will have to comply with various information obligations toward the consumer, such as product characteristics, terms of payment, delivery, and withdrawal—sales and service contracts, including both "in house" and remote (online) contracts.

A turning point in the field of consumer protection, however, was the EU Directive No. 11/2013, which began to guarantee to the consumers the possibility of raising a contractual dispute against an EU supplier regarding a product or service before an Alternative Dispute Resolution ("ADR") body. Fundamental principles behind this directive were, without a doubt, the desire to guarantee the consumer's rights to transparency, effectiveness, independence, and fairness by imposing on the seller the obligation to inform the consumer of these means—ADR—and when he may or may not use them.

Following this, with the evolution of the market on online platforms, the EU decided to intervene also through an online dispute resolution mechanism to defend the interests of the "*weak*" party in transnational contracting in an ever more stringent manner. In this sense, the EU Regulation No. 524/2013 established an online telematic platform through which the consumer, who has purchased goods or services online, can activate an online out-of-court dispute resolution procedure, so-called Online Dispute Resolution ("ODR").

Directive	Legislation	Article	
Consumer Rights Directive 2011/83/EU	Article 114 of the TFEU	Article 169(1) and point (a) of Article 169(2), Article 26(2) of the TFEU	
Directive 2013/11/EU on alternative dispute resolution	Article 114 of the TFEU	Article 169(1) and point (a) of Article 169(2), Article 26(2) of the TFEU; Article 38 of the Charter of Fundamental Rights of the EU.	
Mortgage Credit Directive 2014/17/EU	Article 114 of the TFEU		
Package Travel Directive 2015/2302/RU	Article 114 of the TFEU	Article 169(1) and point (a) of Article 169(2), Article 26(2) of the TFEU	
Resolution	**Legislation**	**Article**	
Regulations (EU) No 524/2013 on online dispute resolution	Article 114 of the TFEU	Article 169(1) and point (a) of Article 169(2), Article 26(2) of the TFEU	–10
Consumer Protection Cooperation Regulation (EU) No 2017/2394	Article 114 of the TFEU		
Regulations (EU) No 524/2013 on online dispute resolution	Article 114 of the TFEU	Article 169(1) and point (a) of Article 169(2), Article 26(2) of the TFEU	
Proposal Proposal for a Directive on a representative actions for the protection of the collective interests of consumers	(Proposal 2018/089 COM/2018/00184 final	Article 114 of the TFEU (cfr. P. 6 of the proposal).	

Table 1.
Treaty foundation of EU instruments orientated toward consumer protection.

Among the most recent interventions, the EU Directive No. 1828/2020 undoubtedly stands out, which, as of 25 June 2023, will replace the previous EC Directive No. 22/2009 and will introduce several relevant procedures aimed at protecting consumers' collective interests by establishing ad hoc procedures for actions of a compensatory nature (aimed at compensation or reparation or replacement or reimbursement and price reduction) and injunctive relief (aimed at having a practice stopped or prohibited) by groups of consumers through a system of representative actions, also cross-border actions, against companies operating in the fields of financial services, tourism, energy, and telecommunications (**Table 1**).

2. The alternative consumer dispute resolution ('CADR') in the European Union

To strengthen consumer confidence in the internal market without barriers, and to allow them to fully benefit from it, it is necessary for consumers to have access to simple, efficient, fast, and low-cost ways of resolving disputes that arise from the sale of good or the supply of services, in particular when shopping cross-border.

The Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes aims to contribute to the proper functioning of the internal market and to protect consumers by ensuring that consumers can, on a voluntary basis, submit complaints against traders to entities offering alternative dispute resolution procedures.

The ADRs were born in the United States during the 1970s to lighten the load of the Courts by trying to identify, especially for the simplest and most modest disputes, an alternative dispute resolution solution. The idea was immediately a huge success to the point that it was the subject of a conference at the American Bar Association where it was discussed the best way to introduce this new litigation settlement instrument, still dominant in the United States today, by transferring the competence to hear low-value cases to bodies outside the Courts through a more informal and very flexible procedure [1].

In the EU, on the contrary, interest in ADRs was born and developed mainly with reference to the objective of creating a single market that sets the figure of the consumer and his fundamental protection as its core.

In this sense, the ADRs, from being mainly instruments for the deflation of ordinary litigation, end up becoming instruments suitable for guaranteeing to every individual an easy access to justice, in a simplified manner, for the fast and low-cost resolution of even complex (transnational) but low value disputes (so-called small claims) as well as a simplified guarantee of the rights recognized at a European level [2].

As a result, the ADRs gradually began to play an increasingly important role in the resolution of consumer disputes in the EU and became the subject of numerous interventions by the EU institutions, such as the Green Paper on consumer access to justice of 1993, as well as the Conclusions of the Tampere European Council of 15 and 16 October 1999, which emphasized the need for Member States to establish alternative out-of-court procedures to speed up and simplify the resolution of transnational low-value commercial disputes involving consumers. This was followed by two recommendations (98/57/EC and 2001/310/EC) that provided various guarantees such as effectiveness and independence in the application and establishment of ADRs that Member States had to comply with [3, 4].

On the basis of these recommendations—non-binding instruments—and in the absence of uniform harmonized standards [5], therefore, numerous Member States began to introduce different ADR procedures. According to studies conducted in 2012, there were more than 750 of such procedures [6] which, however, in the absence of harmonized standards and with only a set of identified common principles, led to the spread of indefinite forms of ADRs that were heterogeneous among themselves but differed according to the national legal traditions of the various Member States.

However, these recommendations also had the great merit of beginning to outline, for the first time, the basic features of the CADR, outlining the basic principles of ADR procedures in order to ensure a balance between the protection of consumer rights and, at the same time, the principles of defense and due process.

This also led to an identification of ADRs in two different typologies: adjudicative ADRs and conciliative ADRs. With reference to the first type, they must respect the principles of transparency, independence, effectiveness, legality, cross-examination, and freedom. The consumer must be provided with specific information with reference to the dispute resolution procedure as well as on its possible outcomes and on possible subsequent appeals, on how to introduce the complaint, on the establishment

of the cross-examination (as an expression of the principle of defense), on the value of the decision whether it will be binding or not, as well as on the costs and their allocation. Moreover, in adjudicative ADRs, there will be no kind of obligation to be assisted by a lawyer and the focus will clearly be on the short time frame in which a decision must be reached, which, in order to guarantee the principle of legality, will have to be motivated by applying the consumer protection rules based on the national law of the State where the adjudicating body is established or where the consumer is habitually resident or, at least, guarantee the minimum EU standard laid down in the relevant EU directives.

By contrast, with reference to conciliatory ADRs, they simply require that the consumer be made aware of all the alternative possibilities and, therefore, be able to go to the Court or apply to an ADR body to have his rights safeguarded. In the light of this, therefore, this second type of ADR, governed by the Recommendation No. 2001/301/EC, is certainly less stringent than adjudicative ADR, as it simply requires that consumers be made aware of all their possibilities and then consciously choose the solution proposed in ADR or decide to go to the Court. In fact, precisely in this regard, the consumer in conciliatory ADR must always be informed of the issue in a clear and comprehensible manner, advising him of his possibility of accepting or not the outcome of the procedure as well as of the fact that a more favorable solution could be reached in Court; it always remaining understood that, the completion of an ADR procedure does not preclude the consumer from being able to apply, at any time, to an ordinary court or other ADR body to have his interests safeguarded.

2.1 The harmonization of "CADR" procedures in the European Union: EU Directive No. 11/2013 and EU Regulation No. 524/2013

It was, however, with the EU Directive No. 11/2013 that all the aforementioned principles were finally extended and all the ADR procedures that had arisen in the various Member States, with reference to the subject of ADR in consumer disputes—so-called "CADR"—were harmonized.

The essential objective of this Directive was precisely to provide ADR procedures for any type of dispute, both domestic and cross-border, concerning contractual obligations arising from sales or service contracts between EU established sellers or suppliers and EU resident consumers, through ADR procedures that meet the requirements of quality and effectiveness by facilitating an amicable settlement of the dispute, especially if cross-border [7, 8].

In addition, the Directive has a very broad scope of application, in fact, pursuant to Article 2, it will apply to all the above-mentioned types of disputes including contracts concluded online, as long as they have, as their purpose, the sale of goods or services, including digital ones. On the contrary, it will not apply to B2B disputes, to transactions and negotiations between the parties, to B2C procedures, and to dispute resolution systems managed directly by the professional or company (so-called "in-house").

Again, a fundamental aspect is that the Directive No. 11/2013, however, will apply only and exclusively to intra-community disputes, since consumers and businesses must both be resident or domiciled in the European Union or must have a secondary branch there.

Clearly, the Directive also establishes, for the purpose of the proper conduct of the ADR procedure for the comprehensive protection of consumer rights, a number

of principles that will have to be respected in order to guarantee the necessary procedural standards.

In this sense, based on Article 6 *et seq.*, the compliance with these principles will have to be ensured:

- Principle of competence, independence, and impartiality of ADR bodies;

- Principle of transparency, since ADR bodies will have to provide specific information to consumers through easily accessible websites, also clarifying the requirements for access to the procedure and the rules of the procedure itself;

- Principle of effectiveness and efficiency, according to which ADRs must always be easily accessible to all parties, regardless of their location, without prejudice to the possibility of discontinuing the procedure at any time and submitting the matter to the ordinary Courts without incurring a duplication of procedure costs in that case—obviously, the use of the procedure free of charge must not lead to its excessive use by the consumer, since the consumer is obliged to contact the professional/company beforehand to try to settle the matter;

- Principle of equity, according to which each Member State may ensure that the parties are properly informed of their rights, as well as having complete freedom in accepting or not accepting the proposed solution—which by resorting to the ordinary procedure could be more favorable—and that it must necessarily be done in writing and must be reasoned;

- Principle of freedom, according to which any C2B agreement before an ADR body will not be binding on the consumer if it was reached before the dispute arose or if it would deprive the consumer of his right to subsequently pursue an ordinary procedure. It is therefore clear from this that the consumer will not be able in any manner to bind himself, through compromissory clauses, to the outcome of an ADR procedure before the dispute arises [9].

- Principle of legality, according to which the outcome sought in ADR must not, in any way, deprive the consumer of the protection guaranteed by the mandatory national provisions of habitual residence of the consumer and of the professional/company.

An additional recently introduced tool of fundamental importance for safeguarding consumer rights is the ODR system, governed by the European Regulation No. 524/2013. The ODR system provide a platform that allows consumers, resident in European Members States, to resolve, out-of-court, a dispute arising from contracts for goods and services, concluded online.

In this respect, major websites and e-commerce applications of companies based in the European Union or in a non-member country, which sell their goods and services to consumers residing in the European Union, from the entry into force of the aforementioned Regulation No. 524/2013/EU, will have to mandatorily inform consumers about the possibility of using the ODR instrument in case a dispute arises. Moreover, with ODR, the consumer, after having purchased online on a website or an e-commerce application, has the possibility to submit his complaint to a competent body and speed up the dispute procedure by trying to avoid lengthy litigation and try to solve the dispute out of court.

A major problem still unresolved with regard to the ODR system, however, is that only large companies have equipped themselves with such in-house mechanisms, making it practically inaccessible for smaller companies to set up such an internal dispute resolution system. As a result, such a system ends up facilitating only the in-house dispute resolution systems of the large multinationals, handling consumer complaints quickly and swiftly, leaving the provision of such a tool inaccessible for smaller companies, against which consumers will have to resort to the other ADRs provided.

2.2 The numerous dark issues of EU Directive No. 11/2013 and the tricky balance between the CADRs and national laws

The Directive No. 11/2013 has undoubtedly tried to protect the position of the "*weak*" party in transnational negotiations, attempting to create a common discipline for CADRs, harmonizing all the principles and bringing together the various types of ADRs that have arisen in the Member States but, nevertheless, many critical aspects remain unresolved by the Directive that require, perhaps, a new and more effective intervention by the European legislator.

First of all, as indicated in recital 6, many professionals/companies established in a specific Member State, with low-quality standards and where no ADR mechanisms are provided for, will undoubtedly be at a competitive disadvantage with respect to professionals/companies established in Member States that guarantee not only well-defined ADR procedures but also much higher quality standards. Precisely for this reason, States have been required to set up consumer-to-business dispute resolution bodies—"C2B"—on their territory that guarantee high-quality standards that are accessible to all. In the light of this, an initial criticism is evident since the directive does not extend to Business to Consumer disputes—the extension of ADR procedures is left to the States' discretion also to "B2C" disputes—but the scope of application is circumscribed solely to C2B disputes.

Secondly, the provision of the enforceability of the Directive No. 11/2013 only to consumers/companies established in the European Union will result in an unjustified exclusion in the access to the CADR procedures for those consumers who have contracted with a company established outside the EU territory, even if the same one, perhaps through an online contract, has addressed its activity to European consumers. In fact, referring also to the EU Regulation No. 1215/2012, it is clear that the aforesaid consumers will have no choice except to file an ordinary judicial proceeding to see their interests protected—a procedure that is certainly much more expensive and much longer and that will therefore cause a potential consumer to think twice about interfacing with a non-EU company.

Thirdly, with reference to respect for the principle of legality and the non-derogation of the mandatory rules of each Member State of the consumer's habitual residence, pursuant to Article 6 of the EC Regulation No. 593/2008, it is noted that ADR mechanisms may easily not be able to know the mandatory rules of a Member State since they only have to guarantee a general knowledge of the law. As a consequence, the Member States, then, will necessarily have to provide a parallel mechanism for reviewing the decisions taken in ADR in order to verify the effective application of and compliance with the national mandatory rules [10].

Furthermore, another fundamental aspect to which attention must be drawn is, without doubt, the difficult balancing between the discretionary power recognized to Member States, in their procedural autonomy in the field of ADR, and EU law. In this sense, with reference to recital 45 of the EU Directive No. 11/2013 and to Article 47

of the Charter of Fundamental Rights of the European Union, "the purpose of ADR procedures should be neither to replace judicial procedures nor to deprive consumers or professionals of the right to apply before the Courts," thus leaving the parties the right to choose between starting an ADR procedure or an ordinary procedure. However, this "freedom of choice" inevitably ends up clashing with the discretion of Member States to maintain mandatory mediation or conciliation systems as a condition for any possible or future ordinary proceedings. The European case law has dwelt on the issue establishing, in the light of the famous *Alassini Case-law* [11], that mediation/conciliation as a condition of procedural eligibility to be able to file a subsequent ordinary proceeding was not identifiable as contrary to the principles of effectiveness and efficacy, the cornerstones of the EU Directive No. 11/2013 as long as the outcome of the conciliation/mediation procedure itself is not binding, thus not affecting the parties' right to file an ordinary proceeding.

In the light of this, the Italian judge of the Court of Verona, section III civil division, requested a clarification from the European Court of Justice (ECJ) by way of a preliminary referral, by order of 28/1/2016, on the consistency between the compulsory mediation established by the Italian legislator in consumer disputes and the principles set forth in the Directive No. 11/2013, which is instead inspired by the purely voluntarist nature of the ADR procedures. In light of this, the ECJ [12] replied to clarify the issue definitively by emphasizing that *"Member States are free to choose the means they deem appropriate to ensure that access to the judicial system is not hindered, it being understood that, on the one hand, the fact that the outcome of the ADR procedure is not binding over the parties and, on the other hand, the fact that limitation or prescription periods do not expire during such a procedure represent two remedies which, among others, would be appropriate to achieve this objective*"—paragraph 56.

Further highlighting that, *"the requirement of a mediation procedure as a condition for the admissibility of a judicial remedy may thus prove to be consistent with the principle of effective judicial protection where such a procedure does not lead to a decision binding on the parties..."*—paragraph 61. On the basis of this, therefore, was emphasized the perfect admissibility of the Italian provisions on this matter. It being understood that the mediation procedure—for the performance of which the ECJ also stressed, at paragraph 65, the unnecessary need for the consumer to be assisted by a lawyer—preparatory to the commencement of subsequent ordinary proceedings, should not have any kind of binding character for the consumer who will therefore be fully free not to accept the outcome and to continue through ordinary proceedings to have his interests protected.

3. How the COVID-19 pandemic plagued European Consumer Rights: the Irish Airlines case

The impact of the COVID-19 pandemic has, without a doubt, caused huge problems in the sphere of consumer protection, contributing, in a period of such confusion and economic collapse for States, to consumer rights taking a back seat compared to the massive economic crisis that companies, often supported by necessary State intervention, had to contend with.

In this sense, the COVID-19 pandemic "*destroyed*" the economy of certain sectors such as primarily tourism and air transport, making State intervention in this regard inevitable. Emblematic, in this regard, was the Irish example where, as highlighted by the special report of the European Court of Auditors entitled *"Air passenger Rights*

during the Covid-19 Pandemic," it was pointed out that the fundamental rights of air passengers were in no way protected during the pandemic. Similarly, refunds for delays or cancelations did not follow a common guideline causing more than 5000 consumer complaints from across Europe to be lodged against Irish airlines, raising the total number of cross-border complaints before the Irish European Consumer Centre (ECC) by 130% in 2019. Furthermore, and perhaps even more importantly, it was that the Member States in providing state aid, however legitimate in the opinion of the European Commission, to airlines in great financial difficulty, never cared about the position of passenger reimbursement, focusing their state aid solely on keeping these companies in business.

As a result, consumers did not find any form of protection, based on the guarantees recognized to them by the EU law, receiving, following the various claims, only vouchers—which can only be issued with the explicit consent of the passenger—instead of financial reimbursements which, according to the EU consumer law, must be issued within 7 days after the cancelation of the flight. Again, such vouchers should normally have a maximum duration of 12 months to be cashed in, but, on the contrary, airlines have extended their duration without giving consumers the opportunity to proceed with the cashing in.

As a result, even bookings made through external sites—travel agencies or online platforms—suffered major delays in the refund process because the transition from airline to consumer had to interface with an external third party that had managed the booking process. This clearly complicated the situation enormously and the ECC found it very difficult to deal with the multitude of complaints filed, while also having to ensure that refunds—which during the pandemic period amounted to approximately EUR 4 million—would be made by the airlines as quickly and as reasonably as possible [13].

The COVID-19 pandemic also caused many other problems, leading to the increasing dependence of consumers on e-commerce, especially due to difficulties in finding certain goods. This has resulted in countless online purchases, especially cross-border and with non-EU countries with no or less regulated consumer protections, inevitably making it incredibly difficult for European institutions to maintain high standards of consumer protection and guarantees during the pandemic years. Furthermore, the absence of *ad hoc* legislation has led on the one hand to the establishment of specific, non-harmonized national procedures and, on the other hand, to the inability of the European institutions to cope with a legislative gap by not providing remedies for consumers in these specific situations.

3.1 The post-pandemic scenario regarding the consumer's rights in the EU

In light of the above, having overcome the first disorienting stage of the pandemic, also and above all at the regulatory level, the EU institutions began to focus attention once again on the recognition of fundamental consumer guarantees, through a series of new measures and guidelines for States. In June 2020, the European Commission started to promote the first public consultations to discuss how consumer protection could be improved and increased, especially in view of the health emergency caused by the pandemic.

As a consequence of this, from 2021 to date, various measures were promulgated to deal with the aftermath of the pandemic by allowing consumers to claim their rights, which had been infringed and sidelined, during such an emergency situation, while also trying to stimulate cross-border cooperation, thus ensuring an increasing

harmonization of consumer protection measures, seeing their rights and position strengthened, especially with regard to cross-border negotiations.

This was due to the European institutions' awareness of the strong consequences and changes that the pandemic has caused, such as, first and foremost, the abrupt acceleration of the digitalization of services, which can, in the same way, entail increasing risks for consumers to find themselves involved in online scams in a market that is often unregulated and unsecured toward them.

In light of these circumstances, on 22 February 2021, the New Consumer Agenda 2020–2025 (Agenda 2025) was officially released, which, updating the previous Agenda of 2012, promotes and incentivizes the digital and green transition in the freedom to provide services across the European Union. The Agenda 2025 establishes a long-term vision of consumer protection by designating consumers as playing an active role in the green and digital transition that will involve the EU working together with Member States to establish the rights to be protected, addressing the needs of different consumer groups—such as those with disabilities—and promoting higher standards of protection for European consumers who purchase goods from sellers established outside the EU [14].

In particular, the Agenda 2025 focuses on five different types of key interventions:

1. Digital transformation: countering misleading and manipulative online advertising of consumers' intentions and revising the Marketing of Financial Services Directive in order to strengthen consumer protection in the digitalization of financial services;

2. Effective enforcement of consumer rights: by strengthening coordination and support to Member States by supporting national authorities in tackling illegal or fraudulent online commercial practices;

3. Green transition: increasing transparency and access to quality information to enable consumers to make informed choices, ensuring the availability of sustainable products in the European market;

4. International cooperation: Increasing cooperation with international partners in an even more globalized world in which the cross-border market, through the digital instrument, is starting to play an increasingly leading role. In addition, a plan to strengthen the safety of products sold online has been promoted with China starting in 2021, and the aim is gradually to extend a comprehensive and sustainable technical and regulatory plan for all the EU's main trading partners.

5. Safeguarding the needs of certain groups of consumers who are particularly vulnerable—children, the elderly, etc.—or in economic difficulty as a result of the pandemic.

Furthermore, the EU, realizing that consumer spending now accounts for more than 54% of the GDP of the whole European territory, opted for a long-term plan in order to increase again, after the setback due to the pandemic, the position of consumers in the European economic dynamics. In light of this, the Agenda 2025 emphasizes how these outcomes can then be achieved through a series of actions needed to address the tricky challenges, highlighted even more in the context of the current

pandemic, and to strengthen cooperation among Member States, EU institutions, and stakeholders. This is the only way to provide a fundamental boost to the sustainable recovery and resilience of the EU economy and consumers in the post-pandemic scenario.

Clearly, however, the plan outlined in Agenda 2025 will have to constitute a starting point for subsequent interventions, by the European legislator, in the sphere of other matters related to the need for consumer protection, such as the directives on unfair commercial practices, energy efficiency of Energy-Related Products that will have to be revised in the logic of a new sustainable and "circular economy" that, inevitably, contrasts with the so-called "programmed obsolescence" idea. In addition, it will also be necessary to reinforce the responsibilities and obligations of intermediaries and online platforms—especially with reference to illicit products or illegal activities—as well as to strengthen civil liability for damages caused by Artificial Intelligence—used to induce consumers to take decisions even contrary to their own interests—which inevitably push toward a necessary reform of the EC Directive No. 95/2001 on general product safety.

4. Conclusions

While the presentation focuses on the substantive increase of consumer protection taking into account substantial law as well as procedural law, the analysis also points out the legislative initiatives that strive at the further development of the Internal Market and building a genuine EU economic arena. Although these initiatives are not labeled as consumer protection measures, they do intend to have a positive impact on the welfare of consumers.

Moreover, the impact of COVID-19 in the EU civil justice system has been analyzed and encouraged the ADR mechanisms to generate more confidence for consumers in cross-border transactions. As a matter of fact, Courts encourage disputing parties to explore the possibility of compromise via ADR mechanisms before agreeing to adjourn any hearings. Further, the online environment provides additional practical and economic benefits during a time of uncertainty and delays, and it represents the best mechanism to use when the parties reside in different countries.

In a scenario of uncertainty and lack of consumers' confidentiality, the Italian civil system is represented as best example of ADR resolution mechanism, by providing out-of-court settlements, collective redress, and crisis management procedures, with the aim to establish a systematic stability and financial consumer confidence in the cross-border transactions system in the new post-pandemic era [15].

Conflict of interest

The authors declare no conflict of interest.

Appendices and nomenclature

EU	European Union
TFEU	Treaty on the Functioning of the European Union
EESC	European Economic and Social Committee
ADR	Alternative Dispute Resolution

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ODR	Online Dispute Resolution
CADR	Alternative Consumer Dispute Resolution
B2B	Business to Business
B2C	Business to Consumer
C2B	Consumer to Business
ECJ	European Court of Justice
ECC	European Consumer Centre
Agenda 2025	New Consumer Agenda 2020–2025

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