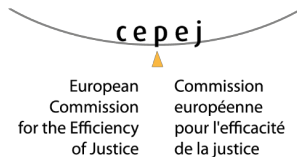


EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE (CEPEJ)

Guidelines on online alternative dispute resolution



Adopted at the 41st plenary meeting
of the CEPEJ (Strasbourg, 4-5 December 2023)



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des litiges*

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Introduction

■ The aim of the European Commission for the Efficiency of Justice (CEPEJ) is (a) to improve the efficiency and the functioning of the justice system of member States, with a view to ensuring that everyone within their jurisdiction can enforce their legal rights effectively, thereby generating increased confidence of the citizens in the justice system and (b) to enable a better implementation of the international legal instruments of the Council of Europe concerning efficiency and fairness of justice.¹

In 2007 the CEPEJ adopted guidelines to better implement the Council of Europe Recommendations, respectively, on family mediation and mediation in civil matters on mediation in penal matters and on alternatives to litigation, meaning alternative dispute resolution (ADR), between administrative authorities and private parties. The guidelines are addressed to member States and all stakeholders involved in the administration of justice, namely, judges, prosecutors, lawyers, and mediators.

The majority of Council of Europe member States has included in their national legal framework specific provisions on mediation and, in some cases, other ADR processes in view of improving the quality and the efficiency of justice. Mediation has become increasingly significant to the point where, in some jurisdictions, the attendance of an initial mediation session is a prerequisite to file a case in court, according to the so-called “opt out” mediation.

■ However, specific legislation devoted to the use of new technology in mediation and other ADR processes is scarce, despite its recent and fast expansion worldwide. This is a challenge as, due to the Covid-19 pandemic, the use of remote mediation sessions has been increased with significant changes in the way processes work, though without any specific update on the legislation applicable.

Furthermore, the development of Artificial Intelligence (AI) applications has opened new prospects for mediation, not as a substitute to human mediators but as a complementary tool to assist in the mediation process. In this case, there are ethical, legal, and technical concerns associated with the use of AI in mediation that must be duly addressed.

Beyond mediation, other ADR processes are in use in Council of Europe member States, such as conciliation or negotiation in relation to which similar issues concerning

¹ Resolution Res(2002)12 establishing the European Commission for the efficiency of justice (CEPEJ), adopted by the Committee of Ministers on 18 September 2002 at the 808th meeting of the Ministers’ Deputies, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016804ddb99.

the use of technologies fully apply.

The CEPEJ has been analysing the impact of digitalisation on justice systems² and studying online ADR mechanisms by private entities, complementing the Guidelines of the Committee of Ministers of the Council of Europe on online dispute resolution mechanisms in civil and administrative court proceedings (CM(2021)36add4-final)³.

Online ADR providers should ensure that, similarly to the face-to-face ADR, individual and legal entities are aware that they are never deprived of the right to access to judicial proceedings according to article 6 of the European Convention on Human Rights (ECHR). Although the use of online ADR processes can be advantageous for parties as they might feel more familiar and comfortable in the online context, where the dispute occurred, this option should not deprive the parties to access judicial litigation. The choice on the use of online ADR processes should be voluntary for the parties in line with national regulations. The rights of access to a court, to adversarial proceedings and to an effective judicial remedy are fundamental rights of individuals that are safeguarded by article 6 of the ECHR.

ADR refers to process such as mediation, that offer out-of-court settlement of disputes. These processes can improve the efficiency of justice by reducing the courts' workload and by offering individuals an opportunity to resolve disputes in multiple fields, such as civil, commercial, family, consumer or administrative, in a cost-effective manner reducing the length and the acrimony associated with judicial proceedings.

Progress has been made in some Council of Europe member States in introducing technology in ADR processes in their legal systems. However, these initiatives must be compatible with key principles, particularly, those related to non-adversarial or consensual means of dispute resolution, namely, confidentiality, voluntariness, and independence of the provider.

The CEPEJ adopted these Guidelines⁴ considering the need to provide member States, and relevant stakeholders with practical tools to assist them in operating online ADR in line with the principles presented in the CEPEJ instruments.

² Guidelines of the CEPEJ on how to drive change towards Cyberjustice, <https://rm.coe.int/16807482de>.

³ https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a2cf96.

⁴ The Guidelines are based on the draft by Federica Casarosa and Maria Conceição Oliveira.

Definitions

For the purpose of these guidelines, the terms below are defined as follows:

- i. **Alternative dispute resolution (ADR)** refers to “methods, such as arbitration, conciliation, mediation and court annexed mediation to resolve a dispute without recourse to litigation. Some of these methods can be applicable to criminal matters”⁵.

Online ADR are these mechanisms used and deployed in an online context, either supported by technology or under a virtual computational environment⁶.

ADR are extra-judicial processes that allow two or more parties to solve a dispute. They include different types of processes that may require the assistance of a third party or may be based on fully or partially automated tools.

According to the CEPEJ Glossary, mediation is defined as “Structured and confidential process in which an impartial third person, known as a mediator, assists the parties by facilitating the communication between them for the purpose of resolving issues in dispute”, while conciliation is defined as “Confidential process by which an impartial third person, known as a conciliator, makes a non-binding proposal to the parties for the settlement of a dispute between them”.

The guidelines will follow the definitions of mediation and conciliation included in the CEPEJ Glossary, however it is possible that the practical implementation of ADR in the online context presents hybrid or new mechanisms of ADR.

- ii. **Artificial intelligence (AI)** refers to “a set of scientific methods, theories and techniques the aim of which is to reproduce, by a machine, the cognitive abilities of a human being”⁷.

Artificial intelligence (AI) is an information system that solves complex problems. Such a system functions by perceiving its environment through the collection and interpretation of collected, structured and unstructured

⁵ CEPEJ Glossary, <https://rm.coe.int/cepej-2019-5final-glossaire-en-version-10-decembre-as/1680993c4c>.

⁶ Ethan Katsh et Janet Rifkin, *Online Dispute Resolution : Resolving Conflicts in Cyberspace* (San Francisco, Jossey-Bass), 2001.

⁷ CEPEJ Glossary, <https://rm.coe.int/cepej-2019-5final-glossaire-en-version-10-decembre-as/1680993c4c>.

data, drawing conclusions from available knowledge, processing information obtained on the basis of this data in order to make decisions on the most appropriate action to be taken in order to achieve the desired goal.

- iii. **Information and Communication Technology (ICT)** refers to technology that allow users to transmit, store, create, share or exchange information.

Information and Communication Technologies include all the types of tools and resources used to transmit, store, create, share or exchange information⁸. The most common examples are Internet, wireless networks, cell phones, and other communication media. Moreover, tools that allow instant messaging, voice over IP (VoIP), and videoconferencing are also included in the definition.

- iv. **Videoconference**

Videoconference refers to a “system that allows two-way and simultaneous communication of image and sound enabling visual, audio and verbal interaction”⁹ during the online ADR session.

⁸ UNESCO glossary, <https://uis.unesco.org/en/glossary>.

⁹ Guidelines of the CEPEJ on videoconferencing in judicial proceedings, <https://rm.coe.int/cepej-2021-4-guidelines-videoconference-en/1680a2c2f4>.

Purpose and scope

These guidelines address the use of Alternative Dispute Resolution processes to resolve disputes, through means that may be used and deployed in an online context.

These guidelines have a wide scope of application including all forms of ADR carried out online, accordingly they include also and most importantly mediation, negotiation and conciliation (outside court proceedings). However, given the specificities of arbitration, this type of dispute resolution procedure will be outside the scope of the current guidelines document.

The current guidelines follow the structure of the relevant CEPEJ guidelines¹⁰, distinguishing between availability, accessibility and awareness, taking into account the specificities that emerge from the use of ICT in the provision of ADR mechanisms and mediation services carried out online.

The guidelines use the term “online ADR” addressing cases of out-of-court dispute resolution processes occurring in an online environment, complementing the Guidelines of the Committee of Ministers of the Council of Europe on online dispute resolution mechanisms in civil and administrative court proceedings (CM(2021)36add4-final)¹¹.

The guidelines have several target audiences. They address (i) States setting up the national legal framework applicable for ADR processes; (ii) they address ADR providers, which may adopt suggestions and approaches listed here, distinguishing among different size and sector specificities, and (iii) the guidelines address the general public in order to raise awareness regarding the availability of online ADR processes and the basic guarantees that they should provide according to Council of Europe standards.

¹⁰ Guidelines of the CEPEJ for a better implementation of the existing recommendation concerning mediation in penal matters, <https://rm.coe.int/1680747759>, Guidelines of the CEPEJ for a better implementation of the existing recommendation concerning family mediation and mediation in civil matters, <https://rm.coe.int/16807475b6>, Guidelines of the CEPEJ for a better implementation of the existing Recommendation on alternatives to litigation between administrative authorities and private parties, <https://rm.coe.int/1680747683>.

¹¹ https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a2cf96.

Guidelines

1. AVAILABILITY

1.1. Member States are encouraged to support the creation of online ADR processes that provide easy, efficient, effective, and reliable means to solve disputes

Member States are encouraged to identify the areas and sectors where online ADR processes governed by law may be more effective and enhance the possibility to solve easily and quickly arising. Though mostly operated by private actors, member States can enhance the establishment of ADR providers through legal and economic incentives set up by legislative interventions. Alternatively, member States may support the use of technologies in ADR through the adoption of soft law instruments (such as guidelines, recommendations, etc.). For instance, the member States may enhance the creation of independent, impartial, transparent, effective, fast and fair ADR procedures (see for example the Directive 2013/11/EU on ADR for consumer disputes). In any case the procedures should not be mandatory and prevent the parties from exercising their right of access to the judicial system. Similar to traditional ADR, the participation in online ADR processes should not deprive a user of the right to be heard by the court. The rights of access to a court, to adversarial proceedings and to an effective judicial remedy are fundamental rights of individuals that are safeguarded under the European Convention on Human Rights. While important, the objectives of achieving efficiency and expediting proceedings cannot justify infringing these rights.

Member States may identify minimum requirements that safeguard access to justice and fair rules of procedure guarantees in the design and deployment of online ADR processes. To verify the compliance with identified basic standards of fair rules of procedure and access to justice can be subject to certification mechanisms set up at national level. In this case, the member State may decide that for specific conflicts or in specific areas, only a certified online ADR service provider can exercise their activity. For instance, the certification mechanism can define specific requirements in order to guarantee that the online ADR providers are impartial and independent, including financially independent, from the parties; have the necessary expertise in relation to the issues arising in the dispute; the procedure is easily accessible; apply clear and fair rules of procedure that are easily and publicly accessible; etc. (see Art. 21(3) of Regulation (EU) 2022/2065 on a Single Market For Digital Services – Digital Services Act).

1.2. When providing online services, ADR providers should give clear and transparent rules of procedure for the resolution of the dispute to the parties before the start of the dispute resolution process

Online ADR can involve different types of dispute resolution procedures, including mediation, conciliation, and negotiation as listed above. Accordingly, it is crucial that the procedure is explained to the parties in advance, in an easy-understandable language. Such transparency can be achieved through different means, the disclosure of basic information on the design and use of online ADR on the Internet website may not be sufficient. Member States may require that press releases, video broadcasts, and webinars or social media publications are also provided by the mediators and other ADR providers to sufficiently inform the parties.

As it will be clarified in Guideline 1.3, the transparency should also apply regarding the use of artificial intelligence-based applications within the process. In this case, the parties should be informed which role is played by the AI-based mechanism in the process and if the latter has a role in the resolution of the case. This disclosure obligation is in line with the regulations, recommendations, ethical codes and guidelines establishing standards for designing, deployment and use of artificial intelligence, as established by the Council of Europe, the United Nations bodies, European Union, Organisation for Economic Co-operation and Development and other international institutions.

One element that parties should be aware of in advance is the cost of the online ADR process. Given that online ADR is suggested as quicker and less expensive alternative to judicial proceedings, the cost of the process should be competitive and should not include hidden costs for the parties. This does not imply that the mediator and other providers are prevented in the pursuit of economic interests in delivering the services. Member States should verify that the allocation of costs does not entail any conflict of interest in the delivery of the decisions by the providers.

1.3. Online ADR providers are encouraged to adopt the technical measures that comply with the most updated standards of safety, fairness and efficiency. Member States are encouraged to set up a regulatory framework that allow to verify the compliance with such standards of safety, fairness and efficiency

To be forward looking and 'future-proof', the online ADR process should be subject to a continuous process of update and upgrade following the ongoing

developments of ICT tools and in particular, as regard the possibility to include and deploy AI based applications.

The literature has highlighted on several occasions that the ICT embedded in online ADR cannot be qualified in the same way as the eventual third party (such as a mediator or negotiator), rather such technologies should be qualified as a ‘fourth party’¹². This shift from a mere ancillary position to a more proactive role is due to the types of technologies used and embedded in the online ADR, which have improved and may include also intelligent software agents empowered to help the parties and the mediator, conciliator or other professionals acting in the ADR field in reaching a solution mutually agreed¹³.

For instance, instant messaging, forums, video and phone calls, video conference, mailing lists, and video presence are tools that do not play an active role in dispute resolution or have autonomy in the decision-making process. However, their deployment can help and support the work of human beings, but the latter are always in charge of the planning and decision. Innovative technologies that can empower the platform to provide planning, strategy definition and decision making are for instance artificial neural networks, intelligent software agents, case-based reasoning mechanisms, methods for knowledge representation and reasoning, argumentation, learning, and negotiation. The latter are based on the use of AI applications. Among the different branches of research addressing AI, there are some that are clearly effective to improve the decisions of online ADR.

Although there is still a limited use of AI tools in the online ADR services available on the market, the member State may envisage the possibility to provide public funding for collaboration with the private sector to develop joint research activities involving both legal experts and computer scientists developing AI-based applications to be used in online ADR.

1.4. Member States should ensure that online ADR providers do not infringe the data protection rights, including, where applicable, the right to information, the right to access data, the right to object to processing data and the right to erasure

Data protection laws should be applicable to any online ADR processes to ensure that the personal data collected, stored, and processed during the dispute settlement procedure are safeguarded against any misuse and is eventually erased. The key

¹² Ethan Katsh and Janet Rifkin, *Online Dispute Resolution: Resolving Conflicts in Cyberspace* (San Francisco, Jossey-Bass), 2001.

¹³ Colin Rule, *Technology and the Future of Dispute Resolution*, *DISP. RESOL. MAG.*, Winter 2015, at 4, 5.

underlying elements of this approach are the lawfulness, fairness, purpose specification, and proportionality of data processing. Responsibility for, and demonstration of, compliance (accountability), transparency, data security and risk management are also essential requirements.

■ The data protection regime identified by the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) may provide the benchmark for safeguarding the rights and interests of data subjects. Special consideration should be given by member States to the Guidelines on Artificial Intelligence and Data Protection adopted in 2019 by the Consultative Committee of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (T-PD) of the Council of Europe (TPD(2019)01)¹⁴.

■ Since the development of online ADR processes, the protection of personal data of parties and third parties involved should be safeguarded. The adoption of the principles of 'privacy by design' and 'privacy by default' should be applied. These principles should be reflected in the choices or technical and organizational measures adopted in the online ADR structure.

1.5. Online ADR providers should ensure an appropriate level of cybersecurity taking into account the need to safeguard confidentiality, availability and integrity of data

■ Online ADR providers should consider both technical and organizational measures protecting personal data also in the day-to-day activity. On the one hand, they envisage technical measures aimed at security of processing, prevention from breaches, and recording of processing activities. On the other hand, organizational measures should ensure that all the participants in the online dispute resolution processes have sufficient knowledge of the rules applicable and their practical implementation, and in particular internal staff, mediators, conciliators, and other online ADR service providers and employees should be trained on the data protection rules and provisions.

■ Cybersecurity is crucial as cyber-attacks are increasingly sophisticated and numerous and may affect not only the integrity of online ADR processes but also hamper the data management systems, with the risk of manipulation and disclosure of confi-

¹⁴ <https://rm.coe.int/2018-lignes-directrices-sur-l-intelligence-artificielle-et-la-protecti/168098e1b7>.

dential information. Technical and organizational measure should be envisaged to enhance their cyber-resilience against attacks. The measure should both aim at preventing breaches but also at mitigating the impact of an attack.

As a counterparty to the principles applicable for personal data, the online ADR processes should also comply with the 'security by design' and 'security by default' principles. Accordingly, the measure to protect the confidentiality (access control and authentication), integrity (prevention from alteration or deletion of data), availability (prevention from disruption or access limitations) of data and networks, should be adopted since the design and development of the technologies that will be used in the online ADR mechanisms. Moreover, such technologies are configured in a way that ensures a higher level of security which should enable the first user to receive a default configuration with the most secure settings possible. The Guidelines of the Committee of Ministers of the Council of Europe on online dispute resolution mechanisms in civil and administrative court proceedings provide already a suitable cybersecurity checklist that online ADR providers can adopt.

1.6. The provider involved in the online ADR processes should have sufficient knowledge about the types of technologies adopted, to avoid that the use of technology may negatively affect the ability of the individual in the dispute solving activity

In order to assure that the use of available types of technologies are appropriate to conduct online ADR processes in compliance with its basic principles in respect of the rights of the parties and their consultants, training should at least enable:

- the identification of the available types of technologies used in online ADR;
- the assessment on the appropriateness, benefits and potential risks of the use of each technology;
- the acquisition of necessary skills on providing appropriate explanation to the parties and consultants on each available technology and its use in online ADR.

1.7. Online ADR providers should make sure that the technology they use is inclusive, particularly taking into account the needs of vulnerable

Online ADR processes should at least take into account the individual approach considering the economic and social conditions (e.g. income, employment, education level and ability to speak a language) that characterise the type of parties that may use their services in order to accommodate the different needs that may emerge. For instance, if online ADR are used in the migration sector it is more than probable that the parties would need translation service. These accommodations should be considered in all the stages of the procedures, as for instance the authentication systems should also consider the specificities of vulnerable groups, such as people with disabilities. Alternative authentication processes must be available. An online ADR system cannot rely only on items or documents that persons with disabilities may not possess, such as a driver's license.

The evaluation of vulnerability should also consider the fact that the digitalisation process may affect the ability of users in making rational choices. Data collection, processing and analysis of behaviours may be the basis for the development of tools and applications that simplify and reduce the cost of some activities. However, the same building blocks, if aimed at exploiting cognitive biases¹⁵, may be used to manipulate the perceptions of the users¹⁶. This might lead to increase vulnerability in the digital context.

2. ACCESSIBILITY

2.1. ADR providers should set up their online service to be user friendly and clearly organised to allow the parties to understand all the steps in the procedure, the outcome and the effect of the agreement. The technical design should be compliant with internationally recognised standards on accessibility

Digital accessibility is then a crucial point that can rely on the guidelines published in 1999 by the Web Accessibility Initiative of the World Wide Web Consortium,

¹⁵ Cognitive biases can affect the rational choices of users and then be exploited, such as the framing (how the choices are presented); and inertia (users are more likely to choose the defaults and the status quo).

¹⁶ Communication from the Commission to the European Parliament and the Council, New Consumer Agenda. Strengthening consumer resilience for sustainable recovery, COM/2020/696 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0696&qid=1620382917569>.

namely the Web Content Accessibility Guidelines (WCAG)¹⁷. Websites, mobile applications, software platforms, and other technologies can be accessible when developed and designed to internationally recognized accessibility standards.

■ The home page is the landing page that allow a first interaction with the ADR providers; therefore it must be understandable and engaging. If any users cannot understand the first steps that must be taken, then users quickly may abandon the process and never return. Similarly, all the content available should be adaptable to the needs and preferences of the parties. For instance, visually impaired individuals, when videoconference is envisaged, should be guided in easily finding the video player on the page, operate the controls, or adjust the volume to hear the video content. If equivalent alternative text (“alt text”) is not provided for all images, then any information communicated through images will be inaccessible for persons who use screen readers.

■ Accessible websites are well-advised not to have blinking and flashing content, because many users find it distracting or annoying. More importantly, a website with these features may be unusable for people with epilepsy or certain cognitive disabilities.

■ The procedural steps applicable to ADR providers should be clearly defined in advance and parties should be clearly informed about the process. The abilities of the parties to follow the online ADR process can be achieved through video tutorials, test meetings with the parties or informal meetings with their attorneys (if present). This support should not be limited to initial training of parties but should rather be continuous during the whole process to solve the technical difficulties that may arise.

2.2. ADR providers should ensure the effective participation of the parties to the online process

■ The ADR providers and the parties should determine whether holding an online session is reasonable and appropriate under the specific circumstances of the dispute, taking into account confidentiality, the effective participation and IT literacy of the parties.

■ ADR providers are encouraged to include a triage phase which refers to the practice of collecting the issues presented by the parties, identifying the needs and problems emerging, to determine the appropriate type of service or approach in order to solve the dispute. Effective triage should include the ability to assess the factual circumstance, the supporting documents needed, and possibly the relevant legal

¹⁷ <https://www.w3.org/WAI/standards-guidelines/wcag/>

sources. This procedural step is useful to provide the parties, which are not represented by a legal advisor, to articulate their claim. The triage function can be a step embedded in the process, particularly useful in the online context when more alternatives are available. Technology-supported triage is also a suitable option when it helps the parties to analyse the conflict, prepare documents for submission and then start the dispute settlement procedure.

■ The ADR providers and the parties should agree on the procedures to be followed in advance as well as technology, software, equipment, type of connection and security.

■ The online ADR providers should give the parties the opportunity to test the audio and video quality, either prior, for example through self-testing or at the start of the online ADR allowing each participant to familiarize themselves with the features of the platform as well as provide adequate training if necessary for its use. During the online ADR session, they should be able to continuously monitor the quality of the image and sound of the video link in order to minimize technical incidents that may affect the right of the parties to participate effectively in the processes. They should suspend the session in case of a technical incident until it has been corrected, depending on its nature. In order to improve the level of knowledge and expertise, the CEPEJ Guidelines on videoconferencing in judicial proceedings (2021)¹⁸ provide also useful elements.

Full names and roles of the participants in the remote session should be known by the parties identified by the online ADR providers before the commencement of the session. They shall request a privacy Statement from all the participants before the session begins.

No photographing, recording, broadcasting or any form of dissemination of the online ADR session or part of it (including the audio track) should be made.

When an interpreter is needed during online ADR session, the presence of the interpreter alongside the participant who does not speak the language agreed to be used should be preferred.

2.3. ADR providers should allow parties to submit information and materials that are relevant for the online ADR process

■ Each party should be able to present their arguments based on relevant documents and materials. The online ADR providers should provide forms to the parties

¹⁸ <https://edoc.coe.int/en/efficiency-of-justice/10706-guidelines-on-videoconferencing-in-judicial-proceedings.html>

allowing them to upload information regarding the dispute at stake, such forms should be adaptable to the different type of ICT used by the parties, such as computer and mobile devices with different operating systems. It would be advisable to consider also alternative formats such as Braille, large print, and accessible electronic formats, to be made available upon request.

Depending on the type of content and on the type of online ADR process the material shall be disclosed to both parties in an accessible and adequate way. The disclosure should be done in a precise and detailed manner and be open to challenge or contest.

Upload and download of documents should be usable by all. The documents themselves must be readable by all participants. PDF/UA is the ISO standard for universal accessibility ensuring PDF documents are available to the largest audience of readers possible. Thus, documents generated in Word, Excel, and HTML can be made fully accessible, including all aspects of those documents such as complex data tables and other visual elements.

Information management should allow parties to retrieve documents quickly, ensuring their authenticity and reliability. Depending on the type of online ADR, the submission of information and materials should also include the possibility to request the deletion of all submitted materials and information to safeguard the confidentiality of the procedure.

2.4. In cases involving vulnerable people or upon request of the parties, the online ADR providers may identify an additional person, external to the process, who can act as a guidance for the parties

Vulnerable people may be subject to higher risks of exploitation, through external influence or pressure. Mediators have an obligation to ascertain that the parties understand the process and are able to decide on the dispute outcome. However, it could be envisaged that an impartial intermediary could assist them in their activities. For example, in case of cognitive disabilities, the intermediary would help the person with a disability to understand the process, making sure that everything is properly explained. The intermediary should be a completely neutral figure, distinguished from the one involved in the online ADR processes, in order to avoid any conflict of interest. A suitable option would be to add, among the preliminary options available, also the possibility for the party to ask for this specific help before the start of the procedure¹⁹.

¹⁹ UN, 2020. "International Principles and Guidelines on Access to Justice for Persons with Disabilities", <https://www.un.org/development/desa/disabilities/wp-content/uploads/sites/15/2020/10/Access-to-Justice-EN.pdf>

3. AWARENESS

3.1. Member States should encourage individuals and legal entities to use online ADR processes, in particular by informing them about the existence of such an option

Along with the activities already adopted by online ADR providers, member States should support awareness raising and training activities aimed at individuals and at legal entities to enhance the flourishing of online ADR mechanisms. These measures should be coupled with the improvement of digital skills for citizens and in particular for vulnerable groups, such as people with disabilities, elderly, migrants, etc.

3.2. Member States should encourage the provision of specific training for lawyers on the use of technologies in case of videoconference and audioconference meetings, covering specific arrangements to address security concerns of their clients

When advising clients on the choice of online meetings to settle their disputes, lawyers should be able to provide them with clear information on their use and support them during the online session. The appropriate use of online meetings for lawyers should be included in the curricula of initial as well as continuous training programmes for lawyers.

Bar Associations should encourage their members to participate in specific training programmes on the use of technologies in dispute resolution sessions.

Legal education should include good practices in order to keep pace with technological advancements, in particular the introduction of online ADR mechanisms in justice systems. Teachers should use real-world examples.

ANNEX

EXAMPLES AND GOOD PRACTICES RELATED TO THE GUIDELINES

GUIDELINE 1.1

Certification of Online ADR

France

■ The Decree no. 2021-95 of 29 January 2021 introduces changes to the certification regime for online conciliation, mediation and arbitration services in France (amending the Decree 2017- 1457 of 9 October 2017 on the list of mediators before the court of appeal and the Decree 2019-1089 of 25 October 2019 on the certification of online conciliation, mediation and arbitration services with a view to the drawing up of lists of mediators by the courts of appeal and the implementation of the certification of online conciliation, mediation and arbitration services).

■ The Decree provides that the online conciliation, mediation or arbitration service must undergo a follow-up audit, which is carried out remotely, barring exceptions. It should be noted that a procedure for transferring certification from one certification body to another has been introduced. The aim is to reconcile the requirement for certification monitoring with free competition between certification bodies. In addition, a procedure for extending previous certification has been introduced. In the event of refusal, suspension or withdrawal of certification by the certification body, an internal appeal mechanism is available to the service provider.

European Union

■ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act)

Article 21 - Out-of-court dispute settlement


1. Recipients of the service, including individuals or entities that have submitted notices, addressed by the decisions referred to in Article 20(1) shall be entitled to select any out-of- court dispute settlement body that has been certified in accordance with paragraph 3 of this Article in order to resolve disputes relating to those decisions, including complaints that have not been resolved by means of the internal complaint-

handling system referred to in that Article.

[...]

3. The Digital Services Coordinator of the Member State where the out-of-court dispute settlement body is established shall, for a maximum period of five years, which may be renewed, certify the body, at its request, where the body has demonstrated that it meets all of the following conditions:

- a) it is impartial and independent, including financially independent, of providers of online platforms and of recipients of the service provided by providers of online platforms, including of individuals or entities that have submitted notices;
- b) it has the necessary expertise in relation to the issues arising in one or more particular areas of illegal content, or in relation to the application and enforcement of terms and conditions of one or more types of online platform, allowing the body to contribute effectively to the settlement of a dispute;
- c) its members are remunerated in a way that is not linked to the outcome of the procedure;
- d) the out-of-court dispute settlement that it offers is easily accessible, through electronic communications technology and provides for the possibility to initiate the dispute settlement and to submit the requisite supporting documents online;
- e) it is capable of settling disputes in a swift, efficient and cost-effective manner and in at least one of the official languages of the institutions of the Union;
- f) the out-of-court dispute settlement that it offers takes place in accordance with clear and fair rules of procedure that are easily and publicly accessible, and that comply with applicable law, including this Article.

 The Digital Services Coordinator shall, where applicable, specify in the certificate:

- a) the particular issues to which the body's expertise relates, as referred to in point (b) of the first subparagraph; and
- b) the official language or languages of the institutions of the Union in which the body is capable of settling disputes, as referred to in point (e) of the first subparagraph.

GUIDELINE 2.1

User friendly service

United Kingdom

AviationADR is a UK based ADR scheme approved by the Civil Aviation Authority (the national aviation regulator) and operated by Consumer Dispute Resolution Limited (CDRL). The system is independent and impartial, with no cost for passengers. It focuses on complaints presented by passengers about airlines and airports that subscribe with platform. It is important to note that the decision resulting from the procedure may include (a) to impose a behaviour on the airline/airport (including issuing of a formal apology); (b) to pay by the airline/airport a financial award in full and final settlement, not exceeding £25,000 by way of compensation for i) actual proven financial loss and/or aggravation, distress and/or inconvenience caused by the act(s) or omission(s) which was/were the subject matter of the complaint and/or ii) any reasonable proven costs incurred by the complainant in bringing the complaint. If the defendant is a member of AviationADR, they will be contractually obligated to implement the decision.

GUIDELINE 1.3

Principles applicable to Artificial Intelligence for Justice

Council of Europe

European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and their environment

Principle 4 - Principle of transparency, impartiality and fairness: make data processing methods accessible and understandable, authorise external audits.

European Union

Proposal for an Artificial Intelligence Act

Article 13 - Transparency and provision of information to users

1. High-risk AI 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. An appropriate type and degree of transparency shall be ensured, with a view to achieving compliance with the relevant obligations of the user and of the provider set out in Chapter 3 of this Title.
2. High-risk AI systems 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.
3. The information referred to in paragraph 2 shall specify:
 - (a) the identity and the contact details of the provider and, where applicable, of its authorised representative;
 - (b) the characteristics, capabilities and limitations of performance of the high-risk AI system, including:
 - i) its intended purpose;
 - ii) the level of accuracy, robustness and cybersecurity referred to in Article 15 against which the high-risk AI system has been tested and validated and which can be expected, and any known and foreseeable circumstances that may have an impact on that expected level of accuracy, robustness and cybersecurity;
 - iii) any known or foreseeable circumstance, related to the use of the high-risk AI system in accordance with its intended purpose or under conditions of reasonably foreseeable misuse, which may lead to risks to the health and safety or fundamental rights;
 - iv) its performance as regards the persons or groups of persons on which the system is intended to be used;
 - v) when appropriate, specifications for the input data, or any other relevant information in terms of the training, validation and testing data sets used, taking into account the intended purpose of the AI system.
 - (c) the changes to the high-risk AI system and its performance which have been pre determined by the provider at the moment of the initial conformity assessment, if any;
 - (d) the human oversight measures referred to in Article 14, including the technical measures put in place to facilitate the interpretation of the outputs of AI systems by the users;
 - (e) the expected lifetime of the high-risk AI system and any necessary maintenance and care measures to ensure the proper functioning of that AI system, including as regards software updates.

GUIDELINE 2.2

Triage

United Kingdom

Resolver is a UK online dispute resolution provider²⁰, which covers several sectors, from telecommunication to travel, from water complaints to property complaints. It also covers the health sector, however, in this case the platform cannot decide the cases related to the National Health Service (NHS), but they provide guidance to claimants in order to follow the existing process²¹. In particular, they provide a free and confidential service, named Patient Advice and Liaison Service (PALS), that offers advice, support and information on health-related matters. Moreover, the platform provides guidelines on the procedure and on the preparatory documents that the claimant may need for the NHS claim.

²⁰ <https://www.resolver.co.uk/>.

²¹ <https://www.resolver.co.uk/rights-guide/health-services>.

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Efficiency of Justice (CEPEJ)**

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The Council of Europe is the continent's leading human rights organisation. It comprises 46 member states, including all the members of the European Union. All Council of Europe member states have signed the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights monitors the implementation of the Convention in the member states.

