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**THE IMPORTANCE OF ONLINE DISPUTE RESOLUTION (ODR) IN ESTABLISHING
A NEW ERA FOR CONFLICT RESOLUTION IN E-COMMERCE**

INDEPENDENT COLLEGE DUBLIN
MASTER OF ARTS IN DISPUTE RESOLUTION

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Abstract

In this dissertation, there will be a critical analysis of the European Online Dispute Resolution system, which has the ODR Platform as its facilitating mechanism. This research will take into consideration mainly the development of the cross-border electronic commerce in Europe, the structure and services offered by the ODR Platform, as well as the analysis of the applicable legislation and issues concerning the protection and redress of consumers who use the internet to make purchases or purchase services. This critical analysis is focused on identifying the benefits of Technology and the ODR Platform to resolve issues arising from purchases made over the internet within the European Union and how this dispute resolution system can provide greater confidence between consumers and traders. The main objective of this paper is to show the importance of Online Dispute Resolution in establishing a new era for dispute resolution in Europe and verify if and how Online Dispute Resolution (ODR) can be an efficient, fast, and safe procedure for dispute resolution. To this end, quantitative and qualitative data obtained through a survey answered by consumers who buy on the European online market and through the European Commission's annual reports on the functioning of the ODR Platform were analysed. From this, it was possible to conclude that the ODR Platform meets only a part of the consumers' needs the reason why its necessary to improve the system was proven to completely meet its proposed objectives.

Keywords: Online Dispute Resolution (ODR); ODR Platform; ODR Regulation; Consumer Disputes; Enforcement of outcomes.

List of Abbreviation

ADR – Alternative Dispute Resolution

B2B – Business-to-Business

B2C – Business-to-Consumer

CADR – Consumer Alternative Dispute Resolution

ECC - European Consumer Centre

EU – European Union

GDP – Gross Domestic Product

ODR – Oline Dispute Resolution

TFEU - Functioning of the European Union

UNCITRAL - United Nations Commission on International Trade Law

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Introduction

Currently, we live in the digital age, where technology is part of everyone's daily life. The possibility of solving everything over the internet helps us to optimise our time. Work, shopping, social media, research, everything can be done over the internet. Therefore, the resolution of issues over the internet related to our daily activities are, in fact, a necessary consequence of all this technological evolution.

Because of this evolution, the European Union saw the need to create security and protection mechanisms for those who buy over the internet and those who sell. Considering this need, mechanisms for resolving online conflicts were created by using an Online Platform to allow conflicts arising from the European electronic market to be resolved more quickly, effectively, and safely, to benefit not only consumers but also traders.

This Online Dispute Resolution (ODR) allows problems related to purchases made on the internet to be resolved through an online platform, avoiding the use of traditional litigation, which is often impractical, time-consuming, and more expensive due to the values of the disputes.

For online dispute resolution to be possible, the European Union created the ODR Platform, operated by the European Commission. The platform was created in January 2016 but was made available only a month later, as it was awaiting approval from the other countries of the European Union.

Many authors consider Online Dispute Resolution (ODR) as a branch of Alternative Dispute Resolution (ADR) that uses the benefits of technology to facilitate dispute resolution between parties, involving negotiation, mediation or arbitration, or a combination of three. Aiming at consumer protection and the development of commerce, the European Union has made available the ODR Platform to resolve online conflicts resulting from purchases and

services acquired through the internet within the European Union, which has been strengthening consumer confidence in e-commerce and increasing economic development.

European Union regulations provide that consumers and traders within the European Union may use the ODR Platform to route contractual disputes between them regarding goods and services purchased online to an agreed alternative dispute resolution provider while respecting fundamental principles such as impartiality, transparency, efficiency and equity. Therefore, whenever ADR regulations apply to commercial establishments, they must inform the consumer of the possibility of using the ODR Platform for dispute resolution instead of opting for litigation or other means of resolving conflicts.

The creation of these mechanisms can be considered a great achievement for the European online market, given that consumers have long struggled to resolve issues related to products and services purchased over the internet, often even giving up complaints due to the slowness and value to submit your case to Court or other in-person dispute resolution system. These difficulties caused the consumer to lose interest in shopping online, weakening online commerce.

This work has as main objective to show the importance of online dispute resolution in the establishment of a new era for conflict resolution, as well as to verify if and how Online Dispute Resolution (ODR) can be an efficient, fast, and safe procedure for dispute resolution, bringing protection to both parties and ensuring an effective remedy for the consumer.

To make this possible, Chapter 1 of this paper will do a literature review, initially presenting a comparative analysis of dispute resolution systems (Alternative Dispute Resolution and Online Dispute Resolution), showing how Online Dispute Resolution can be an efficient, fast, and safe procedure for conflict resolution. A critical analysis of the development of ODR in Europe will be presented, analysing the currently used regulation and

how this procedure can be efficient and useful for consumers and traders.

In the first topic of the literature review, a conceptual overview of ADR and ODR will be presented, punctuating the forms, advantages, disadvantages, and limitations of these procedures. The second topic will focus on the regulations applicable to ODR in Europe, as well as the perspective of the United Nations Commission on International Trade Law (UNCITRAL) on ODR and its set of non-binding projects and rules, concluding with a critical observation about the development of the procedure until the present moment within Europe. This topic will also demonstrate how the ODR Platform works and how consumers can access the system. Finally, the third and final topic of the literature review will deal with the protection of consumers who use this conflict resolution system and the question of implementing the results obtained.

Chapter 2 will present the methodology used to obtain the proposed results and how the primary research was conducted, considering that the data were collected through a survey aimed at consumers residing in Europe, who use websites from stores located in Europe to make purchases or services online, and the European Commission's reports on the functioning of the ODR Platform. Chapter 3 will present the data collected and how it was obtained, detailing the understanding of consumers in each proposed question, illustrated through graphs. Chapter 4 will show the result and analyse the data collected in a more discursive way. Finally, Chapter 5 will present a critical analysis, including the information obtained from the literature review and the data collected in the survey and reports from the European Commission about the functioning of the ODR Platform.

To conclude, this research will show if and how Online Dispute Resolution (ODR) can be the most beneficial way to resolve conflicts related to internet purchases and the protection that this procedure provides to consumers, and if this procedure can build the truth among parties and assist in the development of the European online market, reducing

physical complaints and ensuring a fair, fast, and inexpensive dispute resolution procedure.

For this reason, in general, this researcher believes that this study will bring a valid contribution to the field of Online Dispute Resolution (ODR) in Europe, suggesting better ways of communication and dissemination of the online dispute resolution system, as well as the improvement the execution of the resulting system, so that it is possible to achieve the objective proposed by the European Union when the ODR Platform was created.

1. Literature review

1.1. Online Dispute Resolution Overview

1.1.1. The Concept and Differences of Alternative Dispute Resolution (ADR) and Online Dispute Resolution (ODR).

Initially, it is essential to understand the differences between Alternative Dispute Resolution (ADR) and Online Dispute Resolution (ODR) to understand the characteristics of each one, as well as the effects of their applicability in the world of dispute resolution. On the one hand, it is possible to verify that ADR is closely linked to offline extrajudicial dispute resolution procedures, involving the physical presence of a neutral and impartial third party, who interacts with the parties in real-time, face to face. However, with the advent of technology and the current use of these benefits by the population, a new way of solving conflicts using technology has emerged. Consequently, the relationship between the use of information technology (ICT) and ADR has led to the constitution of the main element of the development of ODR (Rule, 2016).

Alternative Dispute Resolution (ADR) is the set of techniques that allows dispute resolution out of court. To avoid court methods, consumers choose to use alternative means of dispute resolution, avoiding longer and more costly procedures. Thus, by opting for this procedure, consumers request a neutral third party to facilitate dispute resolution between them and traders (Plevri, 2019). ADR is a procedure covering mediation, conciliation, and arbitration, where an impartial third party facilitates conflict resolution without the need for traditional court proceedings and litigation (Mnookin, 1998). This impartial third party is an ADR Entity that can suggest or impose the solution of the conflict or facilitate a dialogue

between the parties to reach a solution satisfactory to both. Therefore, if compared to litigation, ADR is a faster, simpler, and cheaper process.

ADR is, therefore, a procedure that consumers can use to resolve problems arising from purchases or services they have purchased. It is an important dispute resolution alternative because it encourages consumers to resolve issues they face because of problems with products and services (See EU Commission Website).

In contrast, Online Dispute Resolution (ODR) uses the online ADR procedure and is characterized as a faster and less costly procedure for the parties (Cortes, 2011). It resolves disputes outside the courts, based on information and communication technology (Hornle, 2009). According to Colin Rule, ODR is an extension of ADR that uses technological means to resolve conflicts without creating a new activity. In both ADR and ODR, the objectives and principles based on impartiality, transparency, efficiency, equity, legality, and justice are the same. The author further states that ODR can take a broad scope meaning "any use of technology to complement, support or administer a dispute resolution process" (Rule, 2002, p. 44).

ODR brings new opportunities for dispute resolution using different mechanisms that improve with technological evolution while maintaining the same principles and objectives of ADR. The main difference between the two forms is the means used to resolve the conflict: Parties in person (ADR) or Online Platform (ODR) (Rule, 2016).

Many scholars understand that ODR arose because of the large number of claims arising from small business transactions and the difficulty of communication due to cultural barriers, geographical and language differences. (Rabinovich-Einy, 2001). It is a process where the parties can meet by mutual agreement at any time, considering the time zone difference. The purpose of using technology is to ensure fast, fair, and confidential communication (Council Regulation n. 910/2014, Article 3).

No doubt, the use of ODR was initially strongly criticized given the obstacles of online development and considering that technological tools are no substitute for rich detail and face-to-face communication, which includes body language and emotions. In contrast, according to Hammond's study, this anonymity and asynchrony keep parties calm and reduce the stress caused by how issues are handled in person (Hammond, 2003).

Furthermore, scholars understand that Online Dispute Resolution (ODR) is an effective mechanism for resolving conflicts arising from cross-border commercial transactions due to its practicality, low cost, and speed. The parties can solve the issue without the need to move from one place to another. (Katsh and Rifkin, 2001).

Because of all the tools available to the parties for online dispute resolution, ODR must increasingly present itself as a safe and reliable procedure, resembling the ADR system. Technology undoubtedly brings complex issues to dispute resolution, especially on ethical matters, strongly observed in ADR. ODR service providers need to improve their software frequently, updating their tools and skills to provide a service effectively (Rule, 2016).

Therefore, it can be observed that ODR has entered a new era, complemented by political support and increased public awareness. It is worth noting that since 2006 The United Nations Commission on International Trade Law (UNCITRAL) Working Group III initiated a project to draft a standard of legal rules addressing issues related to cross-border commercial transactions conducted over the Internet. They have created a draft that includes three rules: 1. automated/assisted negotiation without a human neutral; 2. mediation/conciliation; 3. recommendations. If the dispute is not resolved by negotiation within ten days, it goes to the next phase and ultimately will go to the trial phase. These rules apply to consumer and commercial disputes involving cross-border relationships, where traditional means of dispute resolution are not feasible. The intent is to establish an internationally accepted agreement and reliable normative framework for ODR, including

guidelines, minimum requirements, legal principles, and cross-border enforcement mechanisms.

1.1.2. Forms of Online Dispute Resolution (ODR)

a) Online Mediation

Mediation is a means of dispute resolution that seeks to benefit all parties involved, seeking to achieve a satisfactory outcome for all. Online mediation is nothing more than electronic communication where a neutral third party is engaged to facilitate conflict resolution between the parties (Abernethy, 2003). As in the face-to-face process, in online mediation, the role of the mediator and the steps of the mediation process remain the same, but the tools used for the development of the process are different (Cortes, 2011).

With technological development and the possibility of using a fast and low-cost procedure, face-to-face communication has been increasingly replaced by online contact, where many times companies even count on the help of software to assist the parties in resolving conflicts (Cortes, 2011).

However, despite being a more flexible procedure, ODR still faces some obstacles, especially about the ability of users to use electronic means of communication and building trust throughout the process, which is why it should be used for resolving less complex and lower value cases involving purchases or services purchased over the Internet by consumers (Cortes, 2011).

Technology still does not allow the use of videoconferencing in all cases, often being used only to complement communication. However, online mediation is usually limited to e-mail and web-based textual communication, leaving aside body language and tone of voice. It is worth pointing out that this procedure does not represent a step backwards, since many

people feel more comfortable not having to resolve the conflict face-to-face, but it will undoubtedly affect the mediator's understanding and conduct (Rabinovich-Einy: 2002).

Still, it is worth noting that communication in online mediation is generally asynchronous, that is, communication that is not established at the same time and space, which causes the parties to communicate at their convenience, taking into account the time zone for example. Also, by using electronic means, parties can be allowed to delete messages sent in haste and respond after a moment's reflection (Kohler et al., 2004)

The main form of regulation is the Mediation Directive 2008/52/EC, implemented by the Cross Border Mediation Regulations (EU Directive) 2011/1133 and the Civil Procedure Rules that encourage mediation. However, there are no mandatory provisions for its implementation, which according to Courts, may lead to an increase in the impact of this Directive and the number of Mediations in the EU.

b) Negotiation

Online negotiation is a process that allows parties to use electronic medium to reach an agreement. Unlike mediation and arbitration, negotiation does not involve a neutral third party (Thiessen, 2011). There are two types of online negotiation. The first is assisted negotiation, where categories of solutions are offered to the consumer in case of a dispute. A classic example of this is eBay's ODR Platform, which provides the consumer who is dissatisfied with the purchased product three options for resolution: product exchange, partial refund, or reshipment of the product. The second type is the blind/automated bid negotiation, where there is a divergence of understanding between the parties on the kind of repair and its value. In this case, both parties can offer a negotiation proposal and invite the other party to make their offers with the help of specific software. These online negotiation models promote direct negotiation between the parties without the need for a neutral third party, making it a

faster and less costly process than traditional ADR negotiation. (Wahab et al., 2011).

c) Arbitration

Arbitration is a form of private adjudication where a third party (the arbitrator) is chosen and paid by the parties to resolve the conflict. The arbitrator renders a binding and enforceable decision. The decision takes into account legal aspects and equitable considerations. A foreign arbitral award can be recognized in most countries through the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (Wahab et al., 2011).

In traditional arbitration, the agreement must be in writing, but in ODR, an electronic deal must provide sufficient record for it to be considered valid. This issue of the agreement's validity directly implies the issue of enforceability of this document (Cortes, 2011).

Regarding the enforcement of the award, the big problem is knowing which Court to enforce if the consumer is resident in one country and the trader in another. The Court to which the execution is submitted may analyse whether it is competent or not, according to the procedural rules of the country (written form; production of evidence held), which ends up being a problem for the parties (Cortes et al., 2014).

It is worth noting that it is common for companies to force consumers to solve their issues through arbitration, ruling out the possibility of court proceedings. However, considering that arbitration is an agreement where the parties must enter voluntarily, such procedure becomes questionable from the moment the consumer is not aware of the nature of the process. Because of this, EU law Directive 93/13/EC establishes some restrictions on the validity of such clauses in consumer contracts. In effect, consumers will be allowed to agree to an arbitration clause to resolve their disputes only after the dispute has arisen. This is consumer protection. Thus, if consumer protection provisions are not observed, the invalidity

of the contract may be recognized, which will lead to the annulment of the arbitration award (Cortes et al., 2014).

d) Hybrid

Hybrid ODR refers to a combination of several dispute resolution mechanisms aimed at achieving an efficient and effective outcome for both parties. It resembles a multi-layered ADR, also known as the escalation clause. In this case, the parties agree to use different procedures if a dispute arises (Berger, 2006).

UNCITRAL Working Group III also designed a multi-step procedure to prepare the legal instruments on ODR. Such a procedure consists of three stages: negotiation facilitated settlement and a final step, which would correspond to a non-binding recommendation or a binding arbitral award, depending on the jurisdiction (UNCITRAL, 2015).

1.1.3. Advantages of Online Dispute Resolution

ODR is still a largely voluntary process that uses technology as a means of facilitating conflict resolution. Convenience is one of the most attractive features of ODR over offline options. While it is still necessary to learn how to use technology to maximise the advantages, there are undoubtedly many advantages to using Online Dispute Resolution (ODR). For this reason, it is necessary to build systems that appeal to users, ensure a safe and less costly process (Gaitenby, 2001).

Pre-communication through the digital platform assists in redirecting the problem to a faster and fairer resolution for both parties. There is greater control of the procedure when it occurs online, especially searching for the balance between the parties and emotional control of the same. In addition, the parties can analyse the documentation and better reflect on the

case. The fact that all proceedings take place online allows the parties to put aside hostility and anger and focus on finding a satisfactory solution to this conflict (Clark, Cho and Hoyle, 2010). The parties can think more profoundly before answering any questions or taking a position on the situation without being easily intimidated (Jeretina, 2018).

Undoubtedly using the internet to resolve the conflict can speed up the procedure, given that the parties have more flexibility to use asynchronous ODR communication, allowing the parties to use the system at the most convenient time (Zuckerman, 2001). This asynchronous communication allows the parties to be prepared to produce their best response without the feeling of intimidation that usually occurs in the offline system (Rule, 2002). According to Bridges and Cavanagh, online ODR often uses confidential procedures that encourage the parties to communicate more honestly because of the trusting environment in which an agreement is sought (Ponte and Cavanagh, 2005).

Therefore, the online conflict resolution process is a flexible process, where the parties have the opportunity to shape the method according to their needs, which ends up encouraging a consensual approach to the problem, facilitating its resolution, and bringing balance to the relationship. This flexibility creates a more neutral and less intimidating environment, unlike what occurs in a face-to-face dispute (Austin, 2017).

Furthermore, ODR is a less costly process than litigation, which primarily benefits those who cannot afford a litigation process. Moreover, the costs are distributed among the parties, which provides a sense of equality. Especially in low-value disputes where the claims are international, ODR makes it possible to resolve a conflict that would probably not have been possible if traditional means had been necessary. In cross-border matters, for example, it is possible for the parties to resolve the matter electronically, provided the parties agree to the jurisdiction of the ODR provider, and it also allows the parties to resolve the dispute at a time that is more convenient when there is a time zone difference. (Braeutigam, 2006). Also,

ODR facilitates self-representation and quick settlement of outcome, which further reduces the time and costs needed for dispute resolution (Jeretina, 2018).

The speed of the online procedure is also another advantage of ODR. According to the Online Platform, the parties will have a maximum period of 90 days to resolve the dispute, quoted from submitting the complaint in the electronic system (See ODR Platform Website).

It is a confidential process where the issues dealt with will be kept confidential, meaning that the parties can speak freely about the matter.

Therefore, speed in the procedure, the convenience of accessing the Platform remotely, efficiency in conflict resolution, fairness, cost savings, ease of storing digital data, ease of crossing international and extrajudicial borders are advantages of this procedure.

1.1.4. Disadvantages of Online Dispute Resolution

Online Dispute Resolution (ODR) may have some disadvantages compared to face-to-face Alternative Dispute Resolution (ADR) procedures, especially when it comes to gathering information and feelings that originate mainly from body language and may have substantial disadvantages in some situations. These nuances make differences and can have negative results in mediation or negotiation, for example. The lack of this personal relationship can interfere with building trust between the parties and the facilitator. Thus, although technology provides flexibility in the conflict resolution procedure, there are still procedural problems that need to be overcome (Clark, Cho, and Hoyle, 2010).

Among several aspects, it is important to consider that ODR is a less personal form of conflict resolution, which can be a disadvantage, especially when it comes to capturing information through body language and feelings. Furthermore, connecting the parties to the

mediator becomes somewhat difficult, which can impact trust-building (Ebner et al., 2021).

Communication is fundamental to conflict resolution, but ODR can cause a misrepresentation of identity due to the lack of personal contact, leading to a communication breakdown. For a given case, if there is no specific training, there can be complications in interpreting written communications, even causing possible biases in terms of religion, gender, birthplace, or physical appearance (Jeretina, 2018).

Another concern includes issues of secrecy of the documents submitted, which can be saved or accessed by third parties without authorization or sent to other people. (Clark, Cho, and Hoyle, 2010). The materials provided are always available, and although many service providers are explicit and taxing about their security procedures, there are no certain guarantees when it comes to the internet (Ebner et al., 2021).

Accessibility can be considered another disadvantage because, to access the online dispute platform and download the documents, you must have a good internet connection. Otherwise, communication will be challenging. Furthermore, the parties must be comfortable using the online system. Otherwise, the conflict resolution attempt can be seriously affected, not bringing any benefit to the parties (Ebner et al., 2021).

The manifestations occur in writing, which can make the process difficult for those who have difficulty communicating in this way or even because of the language, which is why the shared language, or the translation service provided must be adequate to meet the parties' needs (Jeretina, 2018). Furthermore, it is a non-binding process, which does not produce legal precedents unless the ODR process results in a judgment.

Therefore, although there is a high degree of flexibility, there is a procedural flaw, which can cause the failure of representation, confidentiality, and privacy issues (Clark et al., 2003).

1.2. ODR an Approach for Consumers and Traders in Europe

1.2.1. Online Dispute Resolution (ODR) in Europe

Dealing with civil matters in general, and aiming at reducing the workload of the Courts, the Committee of Ministers of the Council of Europe created Recommendation 12/1986, which generated the commitment of the European Union to introduce out-of-court dispute resolution mechanisms to improve the efficiency of the small claims settlement procedures. Among important regulations on the subject is the European Commission Communication on Consumer Redress in 1985 and The Supplementary Communication from the Commission on the Consumer Redress of 7 May 1987 (Vilalta, 2013).

In 1993, the Green Paper on Consumer Access to Justice and Conflict Resolution Mechanisms in the Single Market was published. The Commission invited member states to work together to find the best ways to resolve conflicts in cross-border trade (Vilalta, 2013).

In 1996, The Commission of the European Communities published a communiqué called "Action Plan on consumers access to justice and the settlement of consumer disputes in the internal market", setting out specific criteria for the creation of out-of-court procedures applicable to consumer disputes (Vilalta, 2013).

In 1998, the European Union published a Recommendation for "decision-making bodies" defining several principles that, in a way, could be used by ODR. However, there was no mention of the Internet or e-commerce in the document (Cortes et al., 2014).

In subsequent years, the search for alternative methods of conflict resolution in Civil Law continued and strategies to increase consumer confidence in electronic means of conflict resolution. Thus, from the year 2000 on, the formal interest of the European Union in ODR began, effectively initiating the possibility of conflict resolution using online applications.

In July of that year, article 17 of Directive 2000/31/EC on electronic commerce was

published, establishing that the Member States shall encourage courts to act to ensure adequate procedural guarantees for the parties, especially in the case of conflicts arising from consumer relations (Cortes et al., 2014). The Directive requires Member States to ensure that laws will not impede the use of ADR mechanisms, including those using electronic channels. (Vilalta, 2013).

In 2001, the EU issued a Recommendation focused on third parties who do not decide the dispute, defining principles such as impartiality, transparency, efficiency, and fairness, which partially overlapped those established in the 1998 Recommendation. Also, in recital 6 of the Recommendation, it was established that electronic commerce facilitates cross-border transactions about consumer relations, especially those of lower value, because the use of this technology, effectively and following safety standards for its users, results in a simpler, faster, more effective, and low-cost dispute, eliminating the need for personal contact. (Recommendation 2001/310/EC).

In 2002, the European Commission published The Green Paper on Alternative Dispute Resolution in Civil and Commercial Law, aiming to improve access to justice through ADR procedures.

In 2005, the European Union created a network of European Consumer Centres (ECC-Net) that provides communication structure and technical support to incorporate all ADR and ODR mechanisms. The purpose of this is to avoid litigation by raising awareness and encouraging parties to resolve their disputes amicably and out of court.

Since then, because of the growth of the digital marketplace and increasing consumer trust and protection, the United Nations and the European Union have recognized the need to use the tools provided by ODR to increase redress options in digital commerce. To make this possible, the United Nations Commission on International Trade Law (UNCITRAL) established a working group in 2010 to develop rules for resolving low-cost, high-volume

cross-border disputes arising from the digital mechanism (Cortés and Lodder, 2014).

According to Rafal Morek, in 2010, one in five consumers in the European Union experienced problems when purchasing products or services through the Single Market, and only a small proportion of these consumers sought or obtained the appropriate redress. According to Morek, this has led to a 0.4% drop in the EU's GDP. However, he says a study estimates that if consumers had an adequate ADR service available to them, there could be a saving of 22.5 million euros a year, or 0.19% of the EU's GDP (Morek, 2013).

In 2013, the European Parliament adopted important regulatory measures for ADR in consumer disputes, intending to increase ADR use in the European Union, providing consumers with a faster, cheaper, and more informal way to resolve disputes with traders, whether in the domestic or international market. The first regulation was a resolution dealing with and proposed directive on ADR (Directive 2013/11/EC), and the second was a proposed regulation on ODR (ODR Regulation 524/2013).

The ODR Regulation and the ADR Directive point the way to the institutionalization of ODR in Europe and present the first balancing point between making the ODR procedure effective and subjecting ODR to access to justice standards (De La Rosa, 2018). The ODR Regulation complements the ADR Directive, so they should be used together (Lovitoky, 2016).

Indeed, ODR has had a positive impact on consumer dispute resolution, as the dispute resolution platforms offered have demonstrated that resolving disputes arising from purchases and services purchased over the internet can be easier and more accessible for consumers (De La Rosa, 2018).

The result of this has been the quest for strengthening the rules that aim to promote the use of ODR as the main online dispute resolution mechanism to stimulate the internal market by valuing the consumer, making the electronic market a reliable and safe

environment (Cortés and Lodder, 2014).

1.2.2. Directive ADR and ODR Regulation

In May 2013, two measures related to the alternative resolution of consumer disputes were enacted by the European legislator. They are the ADR Directive and the ODR Regulation, which present mechanisms for out-of-court settlement of consumer disputes, ensuring affordable access to justice (Ruhl, 2013). The main objective is to ensure that European consumers have access to mechanisms for out-of-court settlement of disputes that are simple, fast, efficient, and low cost for consumers to overcome the difficulties in finding a solution to their complaints, avoiding the fragmentation of the Internal Market.

Such mechanisms are extremely important since there is a presumption that consumers are afraid to make cross-border purchases, given the existence of legal barriers and the lack of confidence, due to the fear of not being able to solve possible problems arising from this purchase. Because of this, it is crucial to make a legal analysis of the cross-border issues of ADR and ODR procedures because the growth of the Internal Market is affected according to the number of international consumer disputes that are resolved (Hodge, 2013).

According to article 8 of Directive 2013/11/EC, Member States are responsible for ensuring that ADR procedures are available and easily accessible and effective for consumers and traders, and so that they can resolve the situation from anywhere, and without the need to hire a lawyer. It must therefore be a free service or available at a nominal fee to consumers. In contrast, the ODR Regulation required the European Union to create an ODR Platform so that disputes could be directed and resolved more quickly and online.

Therefore, considering an international perspective, the existence of different legal schemes can be considered an element of competition between the Member States, leading to

the fragmentation of the Internal Market (Recital 21 of the ADR Directive). Moreover, although each member state's legislation has specific ADR and ODR rules for consumers, cross-border perspectives are usually ignored, creating barriers in cross-border transactions (Hodge, 2013).

To better understand the origin of the ADR Directive and the ODR Regulation, it is essential to note that both instruments were based on article 114 in combination with article 164, both Treaty on the Functioning of the European Union (TFEU). However, this did not make much sense since article 114 is about Approximations of Laws, and article 164 is about Judicial Cooperation in Civil Matters, all referring to the competence of the European Union in the internal market. Instead, they should have been based on Article 81 (1) and (2) g of the TFEU, which establishes the possibility for the European legislators to adopt measures necessary to ensure the development of alternative dispute resolution methods. As justification, it was claimed that this article is limited to matters of judicial cooperation in civil cases, having cross-border implications. Consequently, it was not permitted to extend the use of the ADR Directive and the ODR Regulation to domestic consumer contracts (Ruhl, 2013).

The aim of the ADR Directive is for Member States to ensure the provision of nationally certified, fair, and independent alternative dispute resolution entities (Art. 1 ADR Directive).

According to Art. 5 and its paragraphs of the Directive, Member States may fulfil the obligation by ensuring the existence of at least one residual ADR entity operating in all sectors or by having recourse to an ADR regime established in another Member State. Such entities must provide properly updated and easily accessible websites so that consumers can submit their complaints online or offline, domestic, and cross-border disputes, including those described in ODR Regulation 524/2013. However, these entities are not required to

offer the services in all European languages but are authorized, with the consent of the Member State, to establish the specific type of disputes they will accept.

Notably, the rules contained in the Directive apply to the out-of-court settlement of domestic and cross-border disputes arising from contract sales, purchases, or services where traders are established in the European Union and consumers residing in the European Union, as provided for in Article 2 of the Directive. However, the Directive only covers claims made by consumers, whether online or offline. The Directive does not allow the trader to file the claim because of its more advantageous condition and the hypo sufficiency of the consumer (Cortes, 2010).

Moreover, the ADR Directive also establishes quality standards and principles, such as impartiality, transparency, effectiveness, fairness, and freedom, which are considered minimum requirements for the certification of a consumer dispute resolution entity - CADR, remembering that Member States may require other requirements for the certification of the entity (ADR Directive Articles 6-11).

It is worth noting that despite the care taken to provide a quality service, the decisions cannot be published due to opposition to the principle of transparency, which could facilitate the predictability of the outcome.

Another critical issue when it comes to ADR is that although company participation in ADR is voluntary, companies are obliged to inform consumers of the existence of the certified ADR entity by including the entity's website on their website. The same occurs in the case of a dispute, where the trader must inform the consumer about ADR and whether they are participating in this procedure, as determined in article 13 of this Directive. The obligation contained in this article is undoubtedly a way to promote awareness of the ODR and ADR process as an alternative form of dispute resolution in the marketplace.

Member States are responsible for appointing the competent authority for certifying

ADR schemes and supervising ADR entities (Article 18 and 20 Directive). To become an ADR entity, some information must be provided, as foreseen in Art. 19 of the Directive.

Effective compliance with the Directive is safeguarded through Art. 22, which provides for the application of proportionate sanctions in the event of non-compliance.

According to Pablo Cortes, the certification scheme of ADR entities presents, without a doubt, a competitive advantage, considering that non-certified entities that deal with e-commerce litigation will not be included in the ODR European Platform, bringing, therefore, a greater confidence of consumers in using the Platform to solve their conflicts.

Thus, to further improve the procedures for alternative resolution of consumer disputes, in February 2016, the ODR Regulation established the use of an online platform to facilitate the resolution of these conflicts.

According to the ODR Regulation, the ODR Platform will be monitored by the European Commission and a group of expert assistants. This regulation is restricted and applies exclusively to domestic and cross-border disputes arising from transactions involving goods or services between consumers and traders (B2C) established in the European Union, as provided in article 2 of the ODR Regulation. It means that this regulation does not cover business-to-business (B2B) disputes.

Among the existing problems that arise from these transactions, most of them are related to the delivery of goods, products that do not correspond to what was offered on the Internet, and problems with defective products.

A major positive point of this regulation is article 2, paragraph 2, which states that the trader may also bring a claim against the consumer, provided the national legislation of his member state allows for the resolution of disputes through ADR means.

However, a significant question arises as to the scope of applicability of the ODR Regulation and the ODR Platform since the initial argument was that these mechanisms could

resolve many types of disputes and not only limited to B2C.

The justification for this is that the ODR Regulation was the first attempt of the European Commission to create its mechanism to solve disputes arising from the electronic marketplace. It does not mean that it does not seek to reach other types of conflicts by expanding the System, but rather that because of the kind of conflict (B2C), it is more convenient to initially establish the System in general, including forms and software, which means that the success of the Platform will lead to its expansion.

1.2.3. The ODR Platform

The main objective of the ODR Regulation 524/2013 is the establishment of a European ODR Platform in the format of an interactive website offering a single point of entry for consumers and traders seeking to resolve disputes out of court, if issue arises from transactions or purchases made online within the European Union (Loutocky, 2016).

The ODR Platform was officially launched in February 2016, managed by the European Commission and accessible through the "Your Europe Portal", whose estimated implementation cost was €4.586 Million (See European Commission Website). This tool is designed to operate as a single, user-friendly online entry point for consumers to send their complaints to the trader directly or to a CADR Entity registered on the European Commission website (Cortes, 2016). The system also allows traders to file complaints against consumers, provided that the legislation of the consumer's place of residence permits this type of dispute to be resolved through ADR procedures (Cortes, 2015).

To assist ADR Entities, the ODR Platform provides a free electronic case management tool. This tool is an option for ADR entities that have not yet fully developed their technological infrastructure. Thus, through this management, the Entities can provide

their services online to the parties (Cortes, 2015).

The role of the ODR Platform is to raise awareness about alternative dispute resolution processes involving consumers and online merchants by providing ODR technology as a means of facilitating the process, making individual redress more accessible and fairer for the parties involved in the dispute (Cortes, 2015).

Aiming to achieve this goal, the EU legislation that regulates the ODR Platform seeks harmonization of consumer protection policy for the proper functioning of the Internal Market, which is why it limits disputes to B2C (Zheng, 2020). It is worth noting that the set of common rules governing the operation of the ODR Platform additionally regulates the role of national Platforms (Cortes, 2016). In reality, what happens is that the European Union, aiming to improve consumer redress, tries to take advantage of the potential of national ADR schemes to operate efficiently, not only at the national level but also at the cross-border level. National Platforms function as Clearing Houses in their Member States, facilitating communication between parties and connecting them to the nationally approved ADR Entity (Cortes et al., 2014).

However, the ODR Platform does not offer parties the economic possibility to negotiate by themselves and resolve the dispute between them beforehand without the intervention of an ADR provider. In other words, the ODR Platform itself cannot resolve the conflicts that arise, as it has no automated negotiation tools. It means that there is always a need for an ADR provider, which is considering a severe limitation of the ODR Platform. Therefore, the Platform is restricted to the Clearing House and, referred to the role of CADR Entity, does not contribute to avoiding future conflicts (Zheng, 2020). However, the justification for this is that its format only represents Europe's first step in this kind of procedure, which can be changed later.

The ODR Platform has its functions outlined in Article 5, paragraph 4 of the ODR

Regulation, which allows parties to resolve their dispute using the free case management tool (ODR Regulation, Art 5). Interested parties will initiate the dispute resolution procedure by submitting an electronic complaint form made available by the ODR Platform, easily accessible in any European language (Art. 8 ODR Regulation). The fact of submitting the complaint in your native language undoubtedly facilitates the process at first. However, the ODR Platform works as a clearinghouse, linking the party to an ADR Entity, which will choose by itself the language in which the process will be conducted, which can lead to an unbalanced relationship, leaving the consumer at an extreme disadvantage (Cortes et al., 2014). Thus, the level of language of each consumer is what ends up defining the accessibility of the CADR process (Cortes, 2016).

Therefore, it is observed that language appears as a limiting factor of the Platform, considering that communication in a conflict resolution process is crucial for its fair and effective development. Thus, language ends up being a challenge for many cross-border cases since consumers expect to solve the conflict in their native language (Flash Eurobarometer Report, 2011). From this, it is evident that although the consumer can handle the language in an online transaction, the mastery of the foreign language may not be enough to participate in an ADR process (Cortes, 2015).

Continuing with the procedure in the ODR Platform, once the complaint is sent through, it will be forwarded to the defendant and, after the parties are aware of it, the competent ADR Entity will be identified, which must be voluntarily accepted by both parties. After the parties agree on the responsible ADR entity, the complaint is forwarded to that Entity, which must resolve the dispute within a maximum period of 90 days, as determined by Article 10 of the ODR Regulation. Therefore, it can be observed that the ODR Platform makes available several tools to facilitate the resolution of the conflict and guarantee the efficiency of the procedure.

However, it is worth highlighting that after 30 days from the date of the complaint and the parties do not reach an agreement on the choice of the ADR Entity, or if the trader or the Entity refuses to start the process, the complaint will be filed. In this case, the ODR Platform will inform the parties of other alternative means to seek competent redress (Cortes, 2016).

At this point, the effectiveness of the ODR Platform is questionable because the consumer is only informed that the trader has not accepted the dispute after 30 days when the case is already closed. It would be more appropriate if merchants would include on their websites whether or not they intend to participate in the ADR process, even though they are required to make the link to the Platform available on their website due to the requirement made by the ODR Regulation.

In any case, as a means of encouraging the use of the electronic dispute resolution tool, online traders, and intermediaries, even those who have no intention of using alternative dispute resolution procedures, must provide on their websites a link to access the ODR Platform. Once the complaint is made, the Platform will inform consumers whether the merchant is affiliated with the System or committed to any ADR Entity. If the parties are not verified as being affiliated, the Platform will invite the parties to choose an approved ADR Entity to assist them in resolving the dispute. If affiliated, it must inform on its website and sales policies the specific ADR entity to which it is affiliated (Article 13, ADR Directive). The ODR Regulation emphasizes the importance of the ODR platform being a user-friendly mechanism to assist all users, which is why it must provide all clarifying information about the procedure or the ADR entity competent to decide the case.

In addition, each Member State is required to provide an ODR contact point with at least two ODR counsellors and must communicate their name and contact details to the European Commission. This responsibility may also be attributed by the Member States to the European Consumer Centres, Consumer Associations, or any other body, as provided in

article 7 of the ODR Regulation. The function of these contact points is related to the submission of complaints, operation of the Platform and provision of information on consumer law (Konnios, 2016).

It is important to emphasize that, as mentioned above, online traders established in the European Union are required to provide on their websites, in an accessible place, their email address, and an electronic link directing the consumer to the ODR Platform, informing the possibility of using the services, even if they have no interest in participating of ADR procedure (Article 14, ODR Regulation). Such a link should also be included by CADR entities, the European Consumer Centre network, and business or consumer associations. While the idea of mandatory requirements is important to make it easier for traders and consumers to resolve disputes arising from purchases or services purchased online, it is crucial to know how these are monitored or controlled to ensure that traders are complying with the requirements. From this came the study "Online Dispute Resolution: Web-Scraping of EU Traders Websites", conducted in 2018, which used a database of 19,580 EU Online Traders to assess whether the link was "easily accessible" (Gelder et al., 2018, p 9). The study showed that only 28% of online merchants display the ODR Platform link on their website and are considered easy to moderately accessible by consumers. However, most of them present the email address. It was found that traders' compliance with the ODR link depends on factors such as the merchant's industry, the size of the company, and the country in which it is established. In 91% of cases, merchants include the ODR Platform link in their "Policies and Conditions" (Report Web-Scraping, 2017, Results).

Regarding the conclusion of the process, at the end of each dispute, the CADR Entity must notify the ODR Platform about the date of receipt of the complaint, the subject matter of the dispute, the date of conclusion and the outcome the case (Article 10, ODR Regulation). However, it is questionable whether the transmission of the information after each phase of

the process would be more effective than transmitting it only after the conclusion. At the end of the process, personal data and documents will be kept in the database for only six months and will be deleted automatically after this period. Non-compliance with the provisions contained in the ODR Regulation allows member states to take effective and proportionate measures, applying sanctions if necessary, in the event of non-compliance.

The European Commission manages the Platform and, therefore, must report annually to the European Parliament and the Council on the functioning and progress of the Platform. Every three years, the Commission must submit to the Parliament a detailed report, with a proposal to adapt the Regulation if necessary (Article 21, ODR Regulation).

1.3. The Protection of Consumers Who Use the ODR System

1.3.1. The Consumer Protection

Consumer protection is commonly part of a country's public policy, which creates laws and regulations to make the commercial relationship more balanced. The notion of consumer protection arose from the need to understand whether it was fair that a trader freely decided all the terms and conditions of a contract with a consumer who usually does not have enough knowledge to negotiate on certain issues. This protection came through laws and regulations, aiming to make the commercial relationship more balanced (Cortes, 2010).

A consumer is anyone acting for personal purposes without any commercial goal. From a legal point of view, the consumer is the one who needs protection, in the statement of the fact that he is the weakest party in the relationship, besides not having the technical knowledge or the necessary knowledge to deal with certain situations. On the other hand, the

trader may be a natural or legal person who acts in a commercial and in a professional capacity (Cortes, 2011).

According to Girot, consumer law should be defined as "the notion of reasonable expectations of the parties" (Girot, 2001). Thus, to achieve adequate protection, the contract law must balance the facilitating function, where the parties must have the freedom to do what they want (freedom of contract), as well as the protective role, whose goal is to prevent abuses of the stronger party over the weaker party when negotiating the terms of a consumer contract, which will contribute to market individualism and consumer welfare (Adams et al., 2007).

Currently, electronic commerce is the fastest growing worldwide, offering the consumer a great diversity of products and companies with a large potential customer base. In the European Union, the growing increase of Internet users has had a significant impact on the growth of business for consumer e-commerce (B2C) (Cortes, 2011). With this growth came initially two directives for consumer protection, the Directive on Distance Selling and the Directive on Electronic Commerce (Directives 97/7EC, 2000/3/EC), whose objectives are to ensure minimum rights for consumers, as well as to harmonize the laws of the Member States, to facilitate and boost the internal market, so that they guarantee in their legal system the possibility of forming, concluding, and executing electronic contracts (Directive 2000/3/EC Article 9). The European Union sees the improvement of consumer protection as an effective way to increase consumer confidence in the electronic marketplace, which will result in the development and growth of B2C e-commerce (SWD, 2016).

European consumer protection legislation is increasingly being extended to include ODR as an important form of European consumer redress. Authentically, the ADR Directive and the Regulation in ODR are used, based on articles 169 (1) and 169 (2) (a) of the TFEU (Hornle, 2012). Since 2000, ODR has been discussed in the academic literature as an

important redress tool in international electronic commerce, especially in lower value consumer issues (Katsh et al., 2001). However, according to article 169 (2) (b) of the TFEU, the competence of the European legislator is limited to measures that support, supplement, and monitor the consumer law protection policies of the Member States (Ruhl, 2015).

In this context of cross-border relations involving low-value transactions, consumers are, in a way, deprived of adequate access to justice since they need to resort to the systems of the Member States where the company is established (Hill, 2008). This situation ends up preventing consumers from entering into agreements on dispute resolution mechanisms of their choice (Brand, 2012).

Because of these issues, it is observed that the success of ODR is closely linked to the legal protection of the consumer to achieve a fair and effective procedure (Cortes, 2010). However, online dispute resolution mechanisms must be made available to consumers within a secure legal framework (Liyanage, 2012), which will facilitate the growth and development of this dispute resolution mechanism, ensuring quality and fair process for the parties (Cortes, 2010).

According to article 10 of the ADR Directive, entitled "Loyalty", agreements signed in advance, before the occurrence of the dispute, where a trader or consumer decides to submit a claim to an ADR Entity shall not be binding if the agreement has the effect of depriving the consumer of filing a lawsuit (ADR Directive, 2013, Article 10). In the same context, Article 11 of the same ADR Directive, entitled "Legality", provides that ADR procedures aimed at resolving the conflict by imposing a seal on the consumer must not result in the deprivation of the consumer's rights, as conferred by the Member State of residence (ADR Directive, 2013, Article 11).

It is worth noting that the current structure of ODR also prevents the use of ADR agreements before consumer disputes. However, after the dispute arises, nothing prevents

merchants and consumers from entering an ADR procedure (Hanriot, 2016). However, it is a fact that after the dispute arises, the lack of trust between the parties may lead to a lack of interest in using an ADR process, which consequently hinders the use of ODR. For this reason, some authors have proposed creating a mandatory ODR clause, aiming to facilitate the resolution of the conflict using this tool (Cortes, 2010).

Moreover, although the consumer protection policy is much broader nowadays, the mechanisms of public enforcement are not sufficient to guarantee, by themselves, the consumer's right. It means that if consumer protection legislation is not associated with adequate means of enforcement, consumer confidence in the market and consumer protection ends up being compromised (Cortés, 2010).

Regarding public enforcement, some national agencies such as the European Consumer Centre (ECC) and other national consumer associations provide consumer assistance in resolving disputes, but cooperation between these bodies on cross-border issues is somewhat limited (ECC Ireland Report, 2006). Because of these limitations, the European Commission has presented several initiatives to promote cooperation between these bodies, as these assistants aim to inform consumers about sellers to avoid disputes, especially those related to fraudulent issues. An example of this is the European Consumer Centre (ECC) software in Denmark, called Howard Shopping Assistant (See ECC Denmark), where the consumer will enter the name of the company and access information to know if the site is reliable or not. It is, therefore, an important tool to make the online market reliable in the eyes of the consumer.

Therefore, what can be observed nowadays is that the European Union is defining general conditions of consumer protection in its legal framework so that they are also implemented in the legal frameworks of the Member States, because alternative means of conflict resolution through online platforms present, without a doubt, countless advantages

for the consumer, besides being easy to use (Kolesar et al., 2017). However, the market cannot be left as the sole regulator of a Fair ODR system. The European legislature must take steps to encourage the use of ODR across the board by creating public legal standards, which will result in a quality ODR process, preventing abuses against the weaker party (Cortes, 2011). On the other hand, the Member States must provide penalties to be applied in violation of the legislation, taking all necessary measures for its application, ensuring the application of effective, proportional, and dissuasive penalties (Barletta et al., 2021).

1.3.2. **The Data Protection**

The growth of e-commerce is linked to consumer confidence in the online system. There must be confidence in the online purchasing and dispute resolution systems available to consumers. Article 8 of the EU Charter of Fundamental Human Rights protects personal data, which also extends to the purchasing process. Article 16 of the Treaty on the Functioning of the European Union (TFEU) also states that everyone has the right to the protection of data that concerns them. Nevertheless, legal and technology issues arise when it comes to security and record-keeping inherent to ODR, to what extent the data provided on online platforms are truly safe and secure (Clark et al., 2010).

Regarding the ODR processes, which are conducted online and depend on the capacity and intelligence of machines, it is also questioned to what extent the data and information made available are safe and how the issue of data protection and confidentiality works in dispute resolution (Katsh, 2015).

Security is an important issue not only for ODR but for e-commerce in general because it refers to the users' trust in the technology. There must be protection and security in the transmission and storage of information, where unauthorized third parties cannot access

this data (Schultz et al., 2002).

In the words of David R Wilkinson, trust is the "third significant factor critical to the development of the e-society" in addition to "awareness" and "access" (Wilkinson, N/D). In this sense, Katsh and Rifkin believe that although trust is important for the success of companies on the Web, it is often ignored and neglected. It is security that promotes consumer trust in the ODR system (Katsh, 2001).

During the ODR process, there is a large exchange of information and documents between the parties. However, this information can be transmitted to other parties via e-mail, chat room, videoconference, or other available technological means. The simple statement of reliability made available in the ODR provider does not guarantee that the information will not be transmitted or accessed by third parties (Pecnard, 2004).

Notably, many means have been developed to maintain the security of the parties' personal data, such as passwords, usernames, digital and encrypted signatures. However, it is essential to consider that the complexities arising from technological evolution can create various problems that can affect the transmission of communications between parties and the violation of this confidential data (Bills, 2002).

In the ODR process, the system has a mechanism for automatically storing the information exchanged between the parties, which many consider being one of the great benefits of the online dispute resolution procedure (Bills, 2002). However, such a tool can create privacy problems regarding personal information, which is why the parties must have control over who can access this information and under what terms (Pecnard, 2004).

Therefore, ensuring confidentiality in the ODR process is challenging. In the case of ADR processes, for example, the documentation is presented physically, and it is easier to destroy all information at once when the process is finished. In ODR, however, this is more difficult since all information is digitized and saved to an ISP or hard drive (Solovay and

Reed, 2003). Moreover, although encryption technology increases data protection security, there are always ways of violating this mechanism (Delfs and Knebl, 2015). It shows that using the technology requires more efficient security mechanisms in the transmission and storage of data used in the ODR process (Zheng, 2020).

Therefore, to increase the parties' trust in the ODR process, ODR Entities must provide a secure framework to protect this exchange of information. Asymmetric cryptography technology, such as electronic signature, has been widely used to ensure the sender's identity and integrity of e-mail correspondence, while hypertext transfer protocol has become the transmission protocol for communication (Schultz et al. 2002).

In the EU ODR Platform, the data provided by the parties is initially stored by an ADR entity to which the dispute has been submitted. The EU Commission should have access to this personal data if it is necessary to carry out enforcement procedures and monitor the use of the ODR Platform. It is important to note that the data shall only be available for the duration of the dispute proceedings, as parties may need access to this information until the end of the proceedings. However, this data shall be automatically deleted no later than six months from the date of the transmission of the data to the ODR Platform (Regulation on Consumer ODR, Article 12). Also, according to Article 13 of the Regulation on Consumer ODR, the European Commission shall take the necessary technical measures to ensure the security of the information processed on the ODR Platform.

It is important to note that in addition to the information transmitted by the parties, other information such as agreements, decisions and electronic records must remain confidential. Although electronic data is subject to leakage, ODR entities must employ a confidentiality policy, taking responsibility for protecting all such information (Tech Advisor Website, 2019). These prevention mechanisms include the use of the closed system, creating firewalls or encryption for the storage site system, or even blockchain. The violation or

access of this data by unauthorized third parties could lead to the liability of the ODR entity for not having adopted the necessary security measures (Kohler et al., 2004).

1.3.3. Enforceability of ODR Outcomes

According to the Council of Europe, enforcement is "the putting into effect of court decisions, and also other judicial or non-judicial enforceable titles in compliance with the law which compels the defendant to do, to refrain from doing or to pay what has been adjudged" (source: Recommendation Rec (2003) 17 of the Committee of Ministers to member states on enforcement). In other words, it is the means used to make the parties comply with a judicial decision or obligations arising out of extrajudicial enforcement titles, using judicial means to do so. However, in the ODR context, enforcement also includes sanctions arising from contractual clauses (Zheng, 2020).

ODR is an online means of providing consumers with efficient solutions to cross-border disputes. As such, the success of this online mechanism also depends on a good enforcement program because if the outcome obtained in the ODR process does not become a reality, it will create frustration for the parties, potentially diminishing confidence in the ODR scheme (Cortes, 2010). Obviously, in ODR cases where the parties agree on an outcome between themselves, there is less problem because both parties have a high degree of compliance with that outcome. However, when a neutral and impartial third party makes the decision, the rate of non-compliance increases, which is why monitoring compliance with these outcomes is necessary, as well as an effective enforcement process when necessary (Habuka et al., 2017).

Therefore, the enforcement of ODR results encounter many obstacles, and the

complexity of this issue increases when it comes to contracts. For a better understanding, a distinction needs to be made between the non-adjudicative and adjudicative ADR mechanism and between the binding or non-binding nature of the outcome. If the result is binding, the consumer may proceed to judicial enforcement of the outcome. In the case of a non-binding outcome, there is nothing the party can do outside of private enforcement mechanisms or traditional court proceedings, where the party will have to initiate the claim again. In non-judicial processes, parties usually reach an agreement with the assistance of a neutral third party, in mediation, or even via automated or assisted conciliation (UNCITRAL ODR Draft Procedural Rules, 2010, Articles 5-7). For example, in online mediation, the parties usually choose whether the outcome will have a binding or non-binding effect. By choosing a binding effect, the party may resort to the courts to enforce the agreement in case of non-compliance by the other party. This choice of jurisdiction to enforce the result is extremely important to avoid legal uncertainties as to the place of enforcement and applicable law (Cortes, 2010).

Article 6 of the Mediation Directive itself provides that the parties, or one of them with the explicit consent of the other, may request the enforceability of the agreement, allowing the agreement to be enforceable as long as it is not contrary to the legislation of the Member State where the request is made (Mediation Directive, Article. 6). Moreover, the Mediation Directive does not predict how the enforcement procedure will be, leaving these issues to the Member States (Cortes, 2010).

However, it is necessary to consider that dealing with cross-border disputes is not something simple. It can generate high costs for the parties, in addition to delays, jurisdictional issues, and different laws to be applied. As mentioned before, the location of the online mediation is crucial, as it will determine the applicable legislation and delimit the rules for the conduct of the procedure (Gibbons, 2002). These rules and guidelines are usually

determined according to where the consumer is or where the mediator receives and sends communications, as also occurs in arbitration proceedings (Wahab, 2004).

Therefore, although the effectiveness of ODR is sometimes problematic, an ad hoc solution can be implemented, depending on whether or not the procedure is adjudicative or whether the outcome is binding. It allows the parties to seek enforcement before a court or public authority or even use private enforcement mechanisms. For such enforcement to be possible, it is necessary that the binding decision obtained in the ODR process be supported by public regulation (Hanriot, 2016).

Public enforcement is the procedure that depends on the assistance or intervention of a public authority, such as courts, registry offices, and administrative bodies, because although ODR aims to provide an extrajudicial result, often this decision or agreement is not fulfilled by the parties voluntarily. Public enforcement may not be the best option for those who have used ODR as a dispute resolution mechanism since traditional judicial means are more time consuming and costly (Solovay, 2003).

In the case of the arbitral award, for example, there is a legal framework for enforcing the ODR result. The requirements and standards of an arbitral award are usually established in each state's arbitration legislation. In some jurisdictions, the parties may deviate from these formal legal requirements and agree on the formal requirements applicable to the award (Zheng, 2021). National legislation on electronic communications (Electronic Signature Law and Electronic Commerce Law) should also be taken into consideration.

The requirement of an arbitral award in writing and legibly signed by an arbitrator is usually provided by law, either implicitly or explicitly (Lew et al., 2003), as also provided by the UNCITRAL Model Law on International Arbitration (Wolff, 2017).

However, in the context of online dispute resolution, the question arises as to how these requirements will be met.

In this case, for the written requirement to be met, the principle of functional equivalence is used, provided for in the UNCITRAL Model Law on e-commerce, whose objective is to harmonize national rules that admit data messages according to written formal requirements. This principle may be used to establish the legal effect of online arbitral awards in parallel with traditional arbitral awards. Thus, the writing requirement will be met by a data message, provided that the information contained therein is accessible to be used for further reference (UNCITRAL, Article 6). Furthermore, according to Art. 8 of the UNCITRAL Model Law on Electronic Commerce, the originality requirement is satisfied when there is a guarantee of the integrity of the information from the moment it was generated until its final form as a data message. However, it is essential to understand that the general principles do not prevent national legislation from establishing other formal requirements for online awards. In addition, the approaches taken to give legal effect to signatures will depend on the type of electronic signature used and national legislation (Zheng, 2021).

However, it is worth noting that public enforcement may be appropriate for high-value e-commerce disputes between large companies but is not a good choice for low-value ODR disputes involving merchants and consumers. Because of this, UNCITRAL Working Group III on ODR proposed a private mechanism for the enforcement of ODR results, more suitable for smaller disputes, where private enforcement is defined as an alternative form of judicial enforcement of an arbitral award or settlement agreement, which provides for automatic enforcement of the outcome of the proceeding and creates incentive mechanisms, especially financial, to encourage compliance with the awards or agreements (Zheng, 2021).

The automatic enforcement mechanism relies on private entities that control social resources, such as monetary or technological control over valuable assets. In this case, the ODR decision already made can be enforced by these private parties based on the previous

user agreement made between private parties and disputing parties. The enforcement is done automatically by a third party. The User Agreement authorizes this third party to make decisions and enforce these decisions without the courts' involvement (Komnios, 2016). However, along with this automatic enforcement procedure comes legitimacy concerns, as third parties will take control of social resources, and there is still no specific regulatory means addressing the issue. Another concern is the lack of judicial review of the ODR decision when private entities can directly execute them. Nevertheless, it is worth noting that the parties can appeal to the courts if they are not satisfied with the decision in the ODR process, but this hardly happens, given factors such as time and cost (Zheng, 2020).

In the incentive-driven enforcement mechanism, reputation and punitive measures create incentives for the parties to voluntarily comply with the ODR decision because they want to maintain a good reputation in the marketplace or because they do not want to be penalized, losing opportunities to compete in the market. However, there are also flaws in the procedure due to the lack of uniform standards and the possibility of traders manipulating the reputation management system (Zheng, 2020). In this regard, UNCITRAL Working Group III on ODR found that ratings and trust marks can be compromised by fraudulent originators, who can mask their identities by assigning false ratings or trust marks (UNCITRAL note on private enforcement). Therefore, the third-party classifiers perform the role of arbitrator and service provider, which may compromise the neutrality of third-party accreditors, which can be resolved through a process of oversight by the government (Zheng, 2020).

Therefore, the lack of mechanisms to effectively enforce these decisions online is a barrier to the development and growth of ODR, reducing the confidence of the parties in the procedure and discouraging the use of ODR as an effective means of conflict resolution.

Many scholars believe that the development and growth of ODR are hindered mainly because of legal uncertainty about ODR enforcement.

Since ODR providers perform a public function, the government must require them to comply with minimum legal requirements and standards so that later, if necessary, the courts can be required to enforce the outcome in case of non-compliance (Thornburg, 2001). One must consider that when parties voluntarily agree to an ODR process, both parties are expected to comply as agreed. However, in the case of non-compliance with this agreement, the national court may be called upon to enforce the agreement reached in the ODR process. Therefore, if the agreement is not made effectively, respecting the legal requirements, all the work done in the ODR process will be rendered useless.

2. Research Methodology and Methods

2.1. Introduction

Research is essential for progress in some field of life, enabling the discovery of new facts, products, concepts, and ways of doing things, whatever the area of activity (Best, 1986). Research is an intellectual activity that is also considered to be the application of methods to solve problems and show how to reach a particular result. In the words of P.M. Cook, "Research may be defined as a method of studying problems whose solutions are to be derived partly or wholly from facts."

According to Mark Saunders et al., the research process is an "unwrapping of an onion", which means that for each inner layer to be seen, it is necessary to remove each outer layer, one by one. Therefore, for the goal to be achieved, it is needed to fulfil each stage correctly.

Still, he adds that "the term methodology refers to the theory of how research should be undertaken" (Saunders et al., 2007). Therefore, the research methodology is important because it shows how a researcher systematically conducts a study to obtain a valid and reliable result meeting the research objectives in the end.

This study aims to understand if and how technology can be beneficial for the resolution of online disputes arising from cross-border e-commerce transactions within the European Union and what the barriers are for the development and improvement of such mechanisms to reduce physical claims and ensure a fair, fast and inexpensive dispute resolution procedure.

This chapter two will show how the research and data collection were carried out and

the means of obtaining information to achieve the intended objectives, including the methodology of the study from the strategy used in the research to the disclosure of results. To this end, the philosophy, approaches, strategies, choices, time horizon, data collection and limitations will be described.

2.2. Philosophies

The research philosophy is how the research data is collected, analysed, and used. According to Saunders et al. (2016), research methodology is based on a philosophical theory, which will imply research strategies and techniques. As such, and to assist researchers in developing their studies, philosophy is divided into two most relevant branches, the Ontological and the Epistemological.

According to Crotty (2003), Ontology is "the study of being. It is the study that deals with actual knowledge (A. Crowther, 2020). It is the branch of philosophy that studies the nature of being and the essence of its existence (Burrell and Morgan, 1979). It is the philosophy concerned with the statements and observations made about the essence of the fact (Guba & Lincoln, 1994). To deal with this reality, there are two dominant schools, Realism, which defends the idea of the existence of only one reality, and Relativism, which preaches the existence of several truths (A. Crowther, 2020).

On the other hand, Epistemology refers to the study of the nature of knowledge and how it is acquired (Beker et al., 2007). It is the philosophy of expertise observed by people, where they understand and interpret, considering their own perspectives (González, 2020).

Once the philosophy is defined, it is precious to describe the perspectives by which the research will be analysed. In the EMIC perspective, the study is carried out, considering the perspective and understanding of insiders in a certain group. The insider's perspective on

culture provides insight into cultural nuances and complexities (Pike, 1990). The ETIC perspective, on the other hand, considers perspectives from outside the group. It is based on the cultural accounts of outsiders (Pike, 1990).

This research will use Relativistic Ontology Philosophy. It will seek to identify the different perceptions of consumers regarding the online conflict resolution system, identifying the system's advantages, disadvantages, and limitations and how it affects those who use this new procedure.

Therefore, this research will use the EMIC Epistemology, considering that we will be involved with consumers during the study. The choice of this philosophy is justified considering that the research analyses the understanding of people who answered the proposed survey and who are included within the community of consumers who use the Internet to purchase products or services within the European Union, in addition to data presented in the annual reports of the European Commission (2017, 2018, 2019) on the functioning of the European ODR Platform.

2.3. Approaches

After choosing the philosophy, it is necessary to select the approach to develop the research. This approach establishes patterns of information collection and can be deductive or inductive.

The deductive approach allows the development of a hypothesis based on the literature review performed, where the researcher will test this hypothesis taking into account particular contexts related to his or her research, which is why, in the words of Gale et al. (2013), it is characterized by "basing analysis on pre-existing theory. In contrast, in the inductive approach, patterns and relationships are identified to form a theory about a

particular phenomenon (Trochim and Donnelly, 2008). The results of this inductive approach are context-specific and cannot be generalized to a broader population (A. Crowther, 2020).

Because it is an approach best suited for small samples, this research used an inductive approach, as data were gathered through literature review, data presented in the European Commission's annual reports (2017, 2018, 2019) on the operation of the European ODR Platform, and through primary research, indicating patterns in the data collected so that conclusions could be drawn.

2.4. Strategies

The research strategy refers to how the study will be conducted, outlining all the steps until its conclusion. The research began with the survey of a problem that required deep literature study and systematic review of grounded literature, leading to an understanding that resulted in the development of a survey directed to a specific group of people to obtain a satisfactory result, complemented with data presented in the annual reports of the European Commission (2017, 2018, 2019) on the functioning of the European ODR Platform.

In this research, the external strategy used was a Survey containing ten multiple-choice questions, where one of them presented a hypothetical situation that described three forms of conflict resolution. The choice of this strategy arises from the intention of researching with a broad population involving European consumers who use the Internet to purchase products and services online within the European Union and to verify how they prefer to solve problems arising from these transactions. Such choice is justified considering that the main evidence comes from the participants themselves (De Costa et al., 2019).

2.5. Choices

Considering the purpose of the research and its approach is necessary to choose the method of data collection that will be used, quantitative, qualitative, or mixed method. The qualitative method refers to the collection and interpretation of non-numerical data. It can be used to understand how an individual subjectively perceives and gives meaning to their social reality. In the quantitative method, phenomena are investigated by collecting quantifiable data in numerical form, applying mathematical models and statistical techniques for data analysis (Creswel, 2002).

Finally, the mixed method is a mixture of quantitative and qualitative methods. The main strength of this combination of quantitative and qualitative methods is that one compensates for the weakness of the other (Azorin and Cameron, 2010).

The mixed method will be applied in this study to answer the research question if and how Online Dispute Resolution can be an efficient, fast, and safe way to resolve conflicts online. Qualitative data will be used to define concepts and procedures used by the ODR Platform as a tool to solve disputes arising from the European electronic market. Furthermore, we will consider advertising aspects of the process, how it reaches consumers and whether ODR can be an effective consumer redress. Quantitative data will be used to investigate the survey results answered by consumers using the European electronic marketplace, aiming to answer the research question.

It is worth mentioning that the data collection did not follow a specific order, which justifies the choice of the mixed method, combining qualitative and quantitative methods also to eliminate the weaknesses of each one.

2.6. Time Horizon

It is the amount of time required to complete the research. According to Saunders et al. (2007), a time horizon is necessary for research design, regardless of the methodology used, and maybe longitudinal or cross-sectional. Longitudinal studies are repeated over a long period, while cross-sectional is limited to a specific period.

This research will use a cross-sectional time horizon, since the study aims to collect information and understandings among consumers who make purchases or acquire online services within the European Union, who have somehow experienced problems arising from these purchases, and who are aware or not of the online dispute resolution system provided by the ODR Platform in operation since 2016, remembering that the present time was considered. The longitudinal study would not be suitable for this research due to the time it would take.

2.7. Data Collection and Analysis

The research populations for this research were consumers who use e-commerce to purchase products and services and those who use or know about the ODR Platform as a tool to resolve disputes arising from such purchases made over the Internet within the European Union. Since it is not possible to identify each element of the population, it is not possible to use probability sampling. Therefore, non-probability sampling was used, and a convenience sample of 64 consumers answered the proposed questionnaire.

To collect data for this research, a survey was created in the online platform Google Forms, which was later disseminated on LinkedIn, Facebook, and WhatsApp study groups so that people who shop online within the European Union could voluntarily and anonymously

answer the questions and contribute to this research. The survey included ten multiple-choice questions that sought to identify people who shop online in the European Union, if these people have ever had any problems arising from these purchases and how they were solved.

Moreover, it was questioned about the knowledge of the ODR Platform as a mechanism for resolving disputes arising from problems with products purchased over the Internet to verify whether these services are appropriately disclosed and how this comes to the consumer's attention. Finally, in one of the questions, situations involving forms of conflict resolution and their procedures, including costs, practicality, and deadlines, were posed to verify how these mechanisms are seen in the eyes of the consumer and identify which option is most suitable for them.

To complement the data collected in the survey, we also used data presented in the annual reports of the European Commission (2017, 2018, 2019) on the functioning of the European ODR Platform.

2.8. Research Limitations

Initially, it is important to consider that due to technological evolution and practicality, the online market grows more and more every day and is used by people worldwide. Although this research is limited to collecting information from consumers living in the EU who purchase or purchase services over the Internet from European sites, limitations were found during the study, especially related to this selected population.

Therefore, the subject population of this research is vast, as it includes all consumers residing in the EU who use the Internet as a means of shopping or purchasing services on online sites within the European Union, and how these people usually solve problems arising from these transactions. Because of this breadth, it would not be possible to catalogue this

population, so it would not be possible to use non-probability sampling. Consequently, the result of this research cannot be considered precise and generalised since it is based on the analysis of the answers obtained in a total of 65 surveys.

Another fact that can be considered limiting is adopting the inductive approach to analyse the data collected, whose results are context-specific and cannot be generalised to a broader population (A. Crowther, 2020). In this research, the population object of this research is vast, and if compared to the modest sample collected, it does not produce a precise and generalised result, as desired.

3. Presentation of Data

The means of data collection used for this research was a survey, as previously mentioned. The questionnaire made available to consumers was undoubtedly a fundamental tool for collecting sufficient data to meet the objectives of this research. Each question was individually important in its peculiarity for the achievement of a satisfactory result, later complemented with data extracted from the annual reports of the European Commission (2017, 2018, 2019) on the functioning of the European ODR Platform.

Starting with the information obtained from the survey, the following ten questions portray the view and opinion of consumers using the European electronic marketplace regarding the online shopping system, ODR Platform and dispute resolution mechanisms.

Question n. 1: Have you ever made purchases on the internet from stores located in the European Union?

The objective of this first question was to identify, among those who were willing to answer the survey, the percentage of people who usually use the Internet to purchase products or services in the European Union. Among the 65 people who answered this question, 90.8% informed that they have made purchases on websites of stores located in the European Union, against only 10.2% who have never used the Internet to carry out this type of transaction.

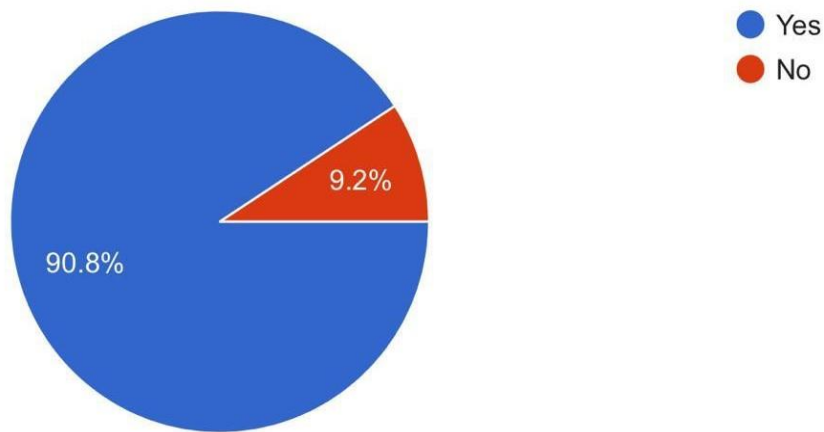


Figure 1

Question n. 2: How often do you make purchases over the internet?

This question aimed to obtain information about the frequency with which people usually purchase over the internet, which helps to understand the development and growth of the electronic market. This question was answered by 65 people, showing that 50.8% make purchases over the internet monthly, 29.2% every six months, and 9.2% weekly. Among all the respondents, 10.8% informed that they rarely buy on the internet (once a year, they avoid buying and only three times in a lifetime).

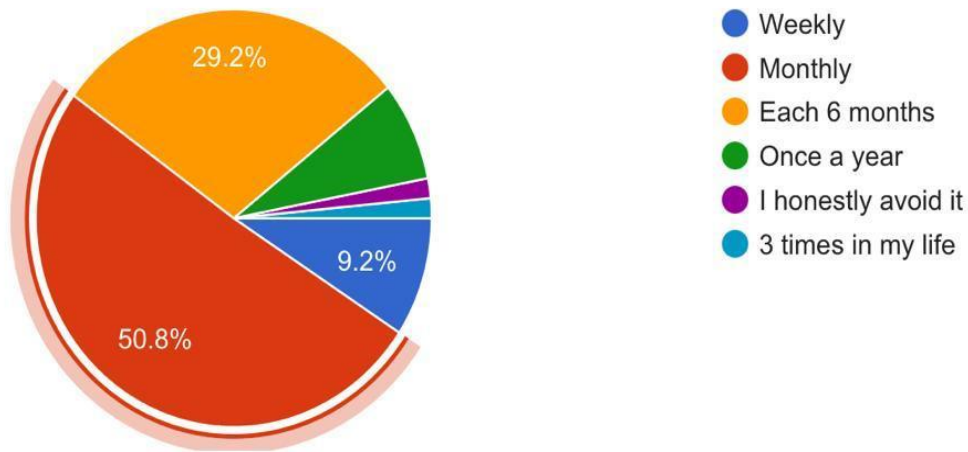


Figure 2

Question n. 3: Have you had any problems with purchases made over the internet?

This question was included in the survey to identify the fragility of the online market and how often people end up having problems due to these purchases made in the electronic marketplace. Thus, considering the 65 people who answered this question, 52.3% affirmed that they had never had problems, while 47% informed that they had already had problems.

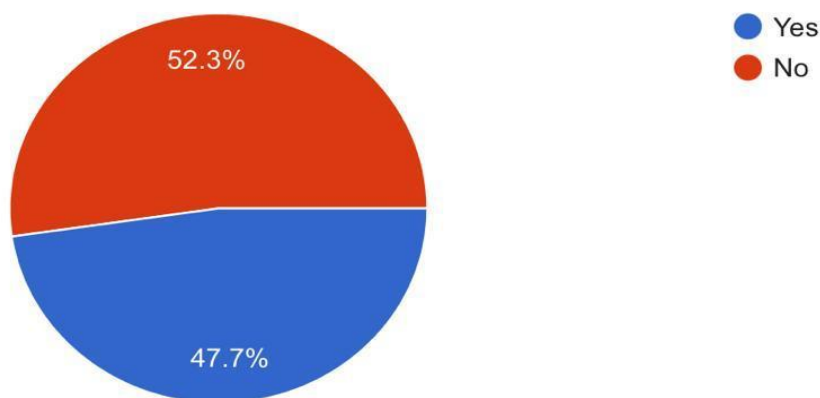


Figure 3

Question n. 4: When somehow you had problems with the purchase made over the internet, did you resolve it directly with the company?

The method of resolving issues arising from online transactions is important to understand how consumers who use this mechanism solve these problems. It is fundamental to verify the consumer's first attitude when faced with this type of situation and how the trader solves the problems arising from purchases. Among the 65 respondents, 56.9% reported that they resolved their issues directly with the vendor, 36.9% said they never had a problem. Only 6.2% could not resolve the issue directly with the trader.

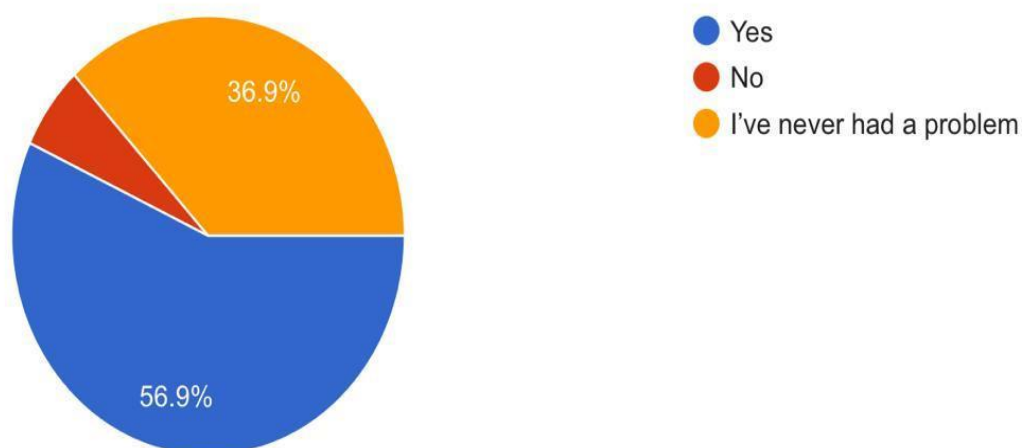


Figure 4

Question n. 5: In your opinion, if there is a problem due to a purchase made over the internet, how do you prefer to solve it?

Assuming that making purchases online has become something easy and practical for consumers, it is necessary to understand how they prefer to solve problems arising from these

purchases. Considering the 65 people who answered this question, 70.8% informed that they prefer to solve the issues online, 26.2% through a phone call, and only 3% face to face. None of the 65 people informed that they are interested in solving the problems judicially in this question.

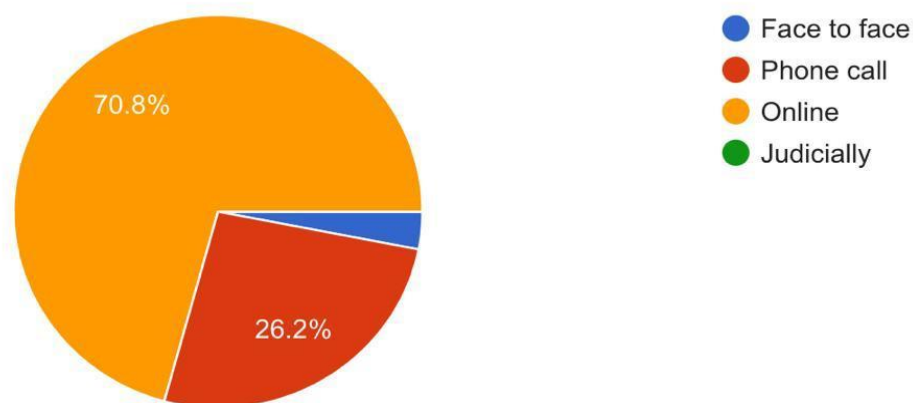


Figure 5

Question n. 6: Have you ever heard about Online Dispute Resolution (ODR) Platform as a tool for conflict resolution?

The purpose of this question is to verify how far the publicity given to the ODR Platform, used to solve problems arising from purchases or services purchased over the Internet within the European Union, goes and how the existence of this Dispute Resolution System reaches the consumer. The result analyzed the answers of 65 people, where 61.5% have never heard about the ODR Platform, while 38.5% are aware of the existence of this mechanism.

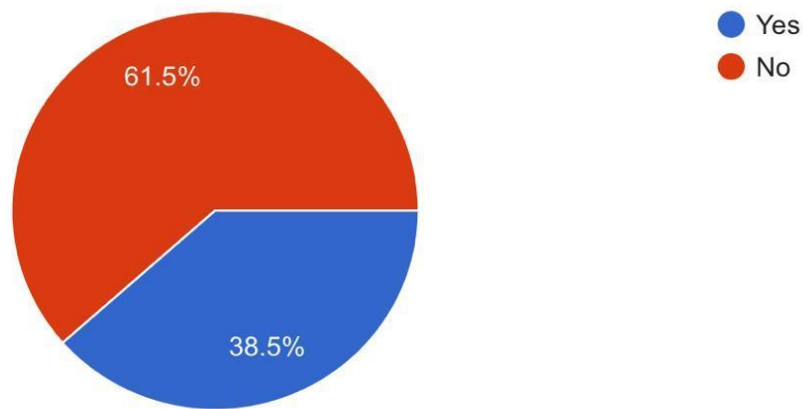


Figure 6

Question n. 7: If you answered “yes” to question 6, how did you hear about ODR Platform?

Still, to verify the advertising of the ODR Platform or how their services are advertised to reach consumers, this question was answered by 30 people who reported in question 6 that they had heard of the ODR Platform.

Considering these 30 people, we notice different answers, and the great majority informed that they heard about it through the online stores' websites (23,3%) or googled search (20%). Another 10% reported that they learned about it in college when doing their Master's degree. The remaining people are divided between knowing friends and thorough legal knowledge.

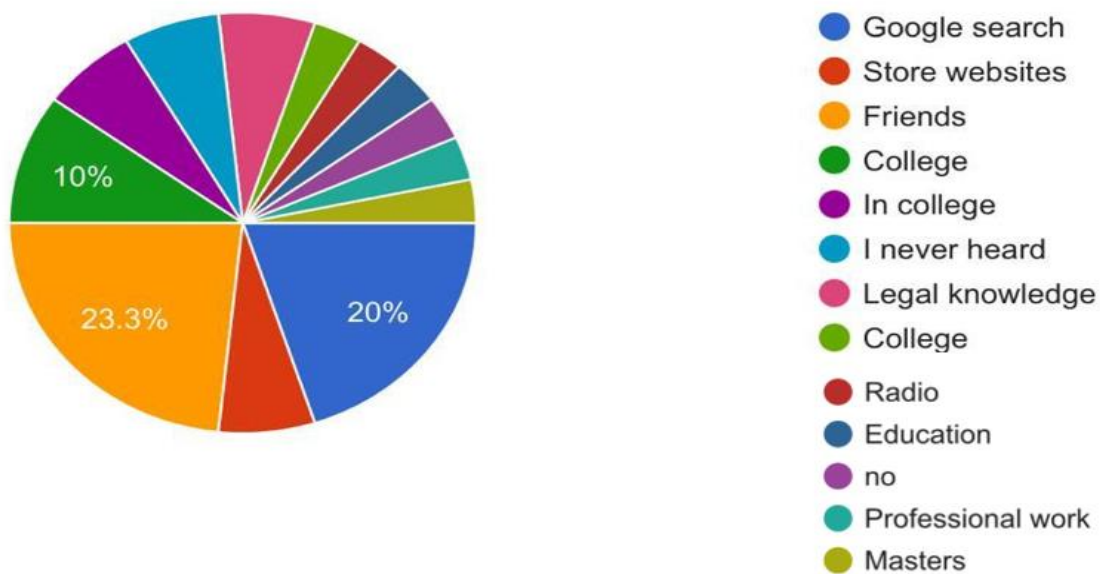


Figure 7

Question n. 8: Assuming that it was necessary to use the internet to resolve a conflict, knowing that the Platform has a data protection system, would you feel comfortable making your documents and personal information available electronically to solve your problem?

This question aimed to analyze the security issues of the online dispute resolution system and how this is perceived in the consumers' eyes who, to solve problems using this mechanism, have to make documents and personal data available on an online platform. Sixty-five people answered this question. It was found that the vast majority (81.5%) do not feel comfortable and secure in making their personal data or documents available on an online platform. Only 18.5% answered that they would have no problem in making the documents available online.

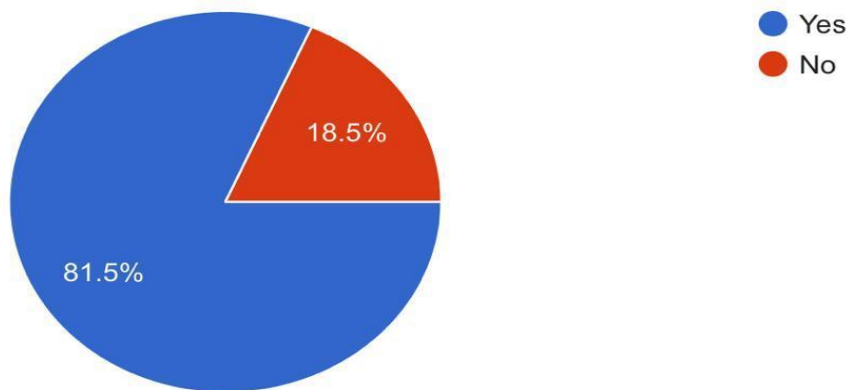


Figure 8

Question n. 9: Assuming that you had problems with a purchase made over the internet and were unable to resolve your issue directly with the trader, which of the three options below would be most interesting in your opinion to solve your problem:

- a) **You have the possibility to submit your situation to the Court. You hire a lawyer, present all the necessary documentation, bear the necessary costs and await a decision from the judge.**
- b) **You seek to solve the problem through a face-to-face mediation where a disinterested third party will assist in the process so that you and the merchant reach a satisfactory agreement. You must bear costs with the mediator, with expenses resulting from the travel to the place where the product was purchased, and present the necessary documentation.**
- c) **You have the possibility to solve your question online through the use of a digital platform. There will be no costs for using this platform, but you will need to make your documents and information available on the online system. The communication will be in writing and in your native language if it is convenient.**

This question presented a hypothetical situation where dispute resolution procedures were described, showing, in a general way, the step-by-step of each one. This question aims to verify how consumers feel more comfortable in solving problems arising from purchases made online. Sixty-five participants answered this question; 89.2% chose option "c", preferring to solve the issues online. Only 11.8% preferred to solve problems in person or in Court.

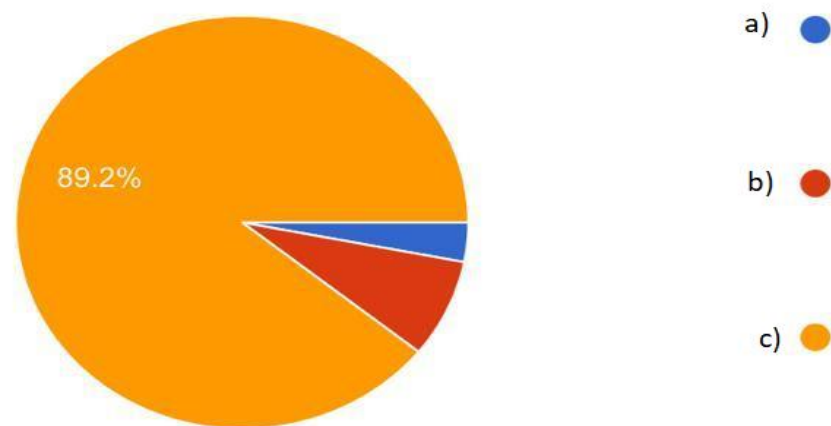


Figure 9

Question n. 10: Considering the previous question, what factors led you to choose these options?

This question was designed to verify why people answered a specific option in question 9. Sixty-five people responded to this question. It was found that 93.9% said they chose the third option because of the practicality and speed. Moreover, it was observed that none of the participants understands that solving the problem judicially is the best option.

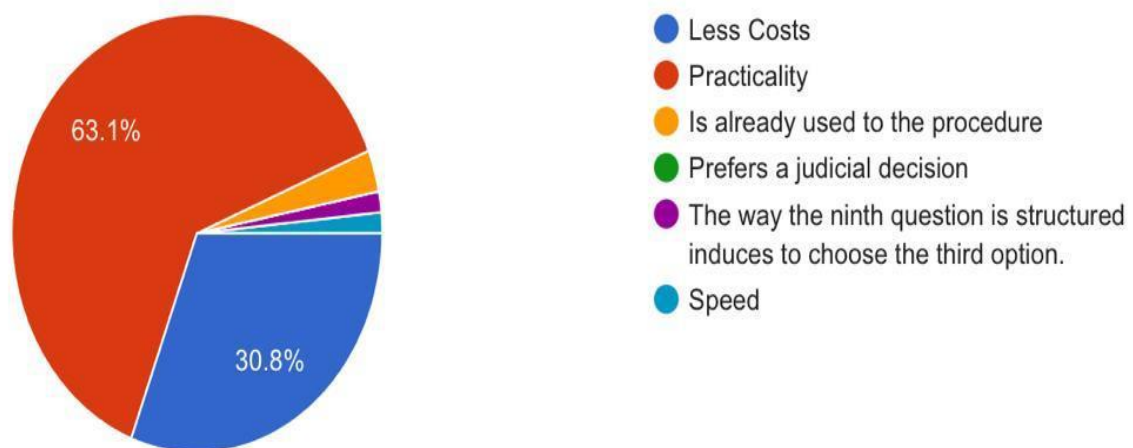


Figure 10

It is worth mentioning that for data collection, an inductive approach was used, considering that the population of consumers who purchase products and services over the internet is vast, which is why it was already known that the results would be based on the answers of those who were willing to answer the survey, which in this case was summarized in a small sample of 65 people. It was also one reason why the mixed method was chosen so that there would be a better balance between data collection and results.

Moreover, it is observed that the questions keep intimate relation with the need to achieve the objectives of this research, demonstrating how the resolution of conflicts online,

despite its current limitations, maybe the most appropriate means to meet the consumers who shop online and who seek greater convenience and speed not only when making purchases, but also in the resolution of disputes, should this occur.

Turning to the extracts from the annual reports published by the European Commission (2017, 2018 and 2019) on the functioning of the European ODR Platform, it was found:

2017 Report: The 2017 report, the first evaluation report of the system, collected data between the period from February 15, 2016, to February 15, 2017, where it was found that 1.9 million people accessed the European ODR Platform and 24,000 submitted complaints, which evidences a significant movement in the system already in the first year of operation. However, 85% of the complaints presented were automatically closed by the system since there was no manifestation from the merchant to participate in the process. Still, 9% of the complaints were expressly denied by the merchants, and in 2/3 of these cases, the merchant informed that he contacted or would contact the consumer directly to solve the problem. In 4% of the complaints, it was found that the parties considered giving up even before choosing the ADR entity. Finally, only 2% of the complaints were submitted to an ADR organization, with only 1% having an outcome.

2018 Report: The 2018 report, the second evaluation report of the System, collected data between the period from February 15, 2017, to February 15, 2018, where it was found that 5 million people accessed the European ODR Platform and 36,000 submitted complaints, which evidences a significant growth in the use of the System if compared to the first year. However, 81% of the complaints submitted were automatically closed by the System, as there

was no manifestation from the merchant to participate in the process. Still, 13% of the complaints were expressly denied by the traders. In 4% of the complaints, it was found that the parties considered giving up even before the choice of the ADR entity, which can characterize a possible resolution of the issue using other means. Finally, only 2% of the complaints were submitted to an ADR organization.

2019 Report: The 2019 report, the last System evaluation report as of the date of this research, collected data between January to December 2019, where it was found that 2.8 million people accessed the European ODR Platform, which shows a significant drop compared to the 2018 report. In the same year, a self-test tool was launched so that consumers could simulate the best solution for their issue. According to the data, an average of 20,000 people performed the self-test monthly, which increases the interaction index with the Platform. However, this tool has brought about a drop in the number of complaints. In this year of 2019, 83% of the complaints presented were automatically closed by the system because there was no manifestation from the merchant to participate in the process. Still, 11% of the complaints were expressly denied by the merchants. In 4% of the complaints, it was found that the parties considered giving up even before the choice of the ADR entity. Finally, only 2% of the complaints were submitted to an ADR organization, with only 1% having a final result. It is worth noting that 20% reported that their case was resolved among those who filed a complaint, either within or outside the Platform.

4. Data Analysis/Findings

This section will examine the data obtained from the European Commission's annual reports (2017, 2018, 2019) on the functioning of the European ODR Platform, as well as data found in the survey, which was based on a set of questions aimed at consumers who make purchases or acquire services over the internet on websites of stores located in the European Union. In addition, the survey aimed to verify to what extent consumers are aware of the existence of the ODR Platform as a mechanism for resolving conflicts arising from transactions carried out in the electronic market in Europe and whether there is, in fact, a feeling of security when the need to provide data and information in an online system. Finally, the general results of the survey will be reported, taking into account the ten proposed questions.

The survey containing 10 multiple choice questions created in the online platform Google Forms was made available on Facebook, LinkedIn and study groups on WhatsApp to obtain a more significant number of participants to answer them anonymously and voluntarily. The focus, in this case, was to bring out the importance of ODR in resolving conflicts between consumers and merchants and show that ODR can be an efficient, fast and safe way to solve these issues.

Undoubtedly, the survey was fundamental for the development of this study and the achievement of the proposed objectives, besides providing a better view of the ODR system from the consumer's perspective, and how this system has been showing within the European community that carries out transactions in the European electronic market.

The first aspect to consider is the publicity of the system. This aspect is important because no matter how complete a system is, it cannot be regarded as effective and efficient if it is not known by the population for which it is intended. What was observed from the

survey results was that, among the 65 participants, more than half had never heard of the ODR Platform (61.5%). On the other hand, when confronted with the real concept of ODR and a brief idea of how the procedure works, a large majority (89.2%) would choose to solve their issues using ODR.

This result suggests that many consumers who transact online in Europe are not fully aware of this type of online dispute resolution mechanism but would choose it if they knew how it works in practice, avoiding further stress resulting from problems with purchases made over the Internet. Moreover, it was evidenced that low cost and practicality are the most sought-after benefits by those who use the electronic market, especially when it comes to dispute resolution.

However, security and confidentiality are still questionable, especially when it comes to the availability of data and information on the internet. The data obtained with the response of 65 participants showed that 81.5% do not feel confident in providing information and data on the internet, which reflects the insecurity regarding the protection of data in online systems. However, at the same time, this situation suggests that if the consumers find convenience, low cost, security and confidentiality, they would not seek other means of conflict resolution, such as face-to-face or judicial ADR.

Considering the annual reports of the European Commission (2017, 2018, 2019) on the functioning of the European ODR Platform, it was possible to see that the ODR Platform marked significant progress in the Conflict Resolution sector in the EU, especially when considering the short time of operation of the System, which started in 2016. However, the Platform presents some limitations that should be considered, given that the objective of this System is to ensure a faster, more efficient and effective dispute resolution procedure. The Platform's communication with the consumer to inform him if the trader will participate in the process presents some deficiencies. The European legislation requires that all traders who

sell products or services over the internet must be registered on the ODR Platform and insert the link to the Platform on their websites. Despite this requirement, traders are not obliged to participate in ADR processes. However, when filing a claim on the Platform, the consumer is not immediately informed whether the trader will participate in the lawsuit or not. This information will only be passed on to the consumer 30 days after presenting the complaint when the process is already being filed.

However, from the analysis of the data in the report, what is suggested is that although merchants do not pursue ADR, they often contact the consumer directly when notified to try to resolve the complaint amicably through a conversation.

In addition, the report showed that conducting communication activities to promote the Platform generated an increase of approximately 3.1 million visits to the Platform compared to the first year, which again suggests the importance of more detailed dissemination of the System to the population.

Corroborating such evidence, and considering the survey carried out, it is verified, among the 65 participants, that consumers frequently use the Internet to carry out transactions in the European electronic market. However, what can be noticed from the data collected is that the dissemination of the System as a facilitator for the resolution of conflicts is still considered insufficient. Accompanying such deficiency, problems of trust in the ODR Platform, especially in the questions of security and data protection, end up being an obstacle to the growth of the use of the Platform.

On the other hand, it is observed that the proposal of the System is crucial for the consumers because it was demonstrated that if they know how each form of conflict resolution works (ADR, ODR and Judicial), most of them will choose the most practical and less expensive one.

5. Discussion

The previous chapters aimed to present concepts and the main differences between Alternative Dispute Resolution (ADR) and Online Dispute Resolution (ODR). They also dealt with the regulation of ADR and ODR in Europe, besides presenting how the ODR Platform works, its benefits, limitations, and challenges, especially regarding issues of disclosure, trust, security, and execution of results. The chapters analyse these aspects to understand how the European ODR Platform can be used as an effective mechanism of access to justice for the consumer, providing an effective, fast, and secure online dispute resolution system for those who use it.

This study aimed to show that the use of effective means of publicizing the Platform as a means of facilitating dispute resolution, as well as the use of effective ways of enforcing results, can create a more accessible, secure, and reliable environment for those who use this system, strengthening the electronic marketplace.

The critical analysis of this study is focused on the effectiveness of the European Online Dispute Resolution System through the use of the ODR Platform and its effective applicability as a consumer redress mechanism, as ODR is considered the link between the European digital marketplace and ADR, it is possible to believe that Internet shopping within the European Union can be safer if there is an effective means of consumer redress out of court and easy access to justice, which will result in a greater demand for an out-of-court means of resolving consumer disputes. In this case, the mechanism used to facilitate the resolution of conflicts arising from the European digital market is the ODR Platform.

5.1. Practical considerations on the ODR Platform in Europe

According to Cortés (2011), online platforms are used to facilitate negotiation between parties, encouraging the discovery of common ground to reach an agreement.

Undoubtedly, the ODR Platform represents progress in the e-commerce sector, especially considering that it is a new mechanism that started working in 2016. However, some limitations deserve to be considered since it is observed that the deficiency of regulation ends up reflecting directly in the practical result, preventing the achievement of the objective completely of the European Platform.

As verified in the data collected in the survey, most people who use the European electronic market seek to solve any problems online, quickly, practically and with less possible costs. For this to happen, the procedure between the presentation of the complaint and the result needs to be effective and fast because if the issue is not resolved, the consumer will have to look for other ways to solve the problem.

However, the ODR Platform still has problems communicating the course of the procedure after the complaint has been filed. Cortés (2016) noted that when distributing the complaint, consumers are not immediately transmitted by the ODR Platform whether the trader has refused to participate in ADR proceedings. This communication only happens 30 days from the complaint distribution, when the process is already being filed. Although the ODR Regulation states that the European online trader is obliged to make the ODR Platform link available on its website, there is no obligation to participate in ADR proceedings.

The issue of "no mandatory" to participate in an ADR procedure is acceptable, as it is a voluntary process where the parties have a free choice as to whether or not to participate. However, this issue can be solved by inserting a tool in the ODR Platform system to automatically inform the consumer that the trader is not interested in using this procedure. Or,

according to Cortés, to encourage the participation of the trader in ADR processes, it would be interesting to promote incentives for the trader to use the ADR procedure, such as, for example, tax or fee reduction. Not least because, according to the European Commission's 2020 report, 42% of disputes submitted to resolution by the Platform were resolved bilaterally.

However, even after a few years of operation, the ODR Platform is still under-utilized. It has not yet reached its full potential, which is why awareness and perception of the procedure by users and acceptance of ADR by traders are still some of the challenges.

What can be observed not only from the data collected in the survey but also from the data collected in the three European Commission reports on the functionality of the ODR Platform is that if there is an effective procedure of communication, determination of ADR entity after distribution of the complaint and a rapid response system for the trader about his participation in the ODR process, there could be an increase in the acceptance of the ODR Platform as an effective and rapid means of dispute resolution. The automation of the System may lead to the achievement of the proposed goal of the ODR Platform.

As De La Rosa (2018) suggests, for ODR to become real and contribute to the growth of the online market, it is necessary that Member States and ADR entities join forces in this direction, synchronizing their actions, and that the European Union promotes the financing of new tools or even platforms for better functionality.

5.2. The Protection of Consumer: Data Protection, language, and enforcement

This study has shown that consumer protection in consumer relationships is a fundamental and well-appointed part of the ODR Regulation. Data protection, language, and enforcement of results are indispensable to guarantee access to a fair dispute resolution

mechanism.

Considering the data protection of the consumer who uses the ODR Platform System, it has been observed that the security of data available on the Internet is important not only for ODR but for e-commerce in general (Schultz et al., 2002). When someone makes data available on the Internet, he/she assumes that the data is being transmitted and stored securely. However, the complexity and growth of technology create problems that can affect the system, causing a breach of confidentiality.

As stated in article 12 of the Regulation on Consumer ODR, when parties make data available in the ODR Platform System, this data will remain available in the system during the entire process and automatically deleted within six months from the date of data transmission to the ODR Platform.

The survey conducted for this study, considering the 65 people who participated, showed that most consumers (81.5%) do not feel secure in making their documents and personal data available online, even though the system is "apparently secure". On the other hand, the survey shows that these same consumers (89.2%) prefer to solve problems arising from purchases or services purchased online. It demonstrates that providing a secure technological mechanism for online dispute resolution can provide more effective use of the system and the faster, more effective, safe, and reliable resolution of consumer disputes.

Language is another essential aspect to consider, especially when it comes to cross-border disputes where consumer and trader speak different languages. Considering that the EU has several official languages, the choice of language to resolve cross-border disputes can be crucial to reach a satisfactory result.

From the analysis of the functionality of the ODR Platform, it was observed that the consumer, when filing the complaint, will be able to fill out the form using his native language because he will count on a free translation system provided by the Platform.

However, since the Platform does not resolve the conflict by itself, linking the complaint to a CADR entity to act as a facilitator, this entity will be responsible for defining the language that will be used to resolve the dispute (Lodder, 2014).

Although the ODR Regulation determines that each Member State make available a contact point with consultants to assist consumers, these points have limited functions, which do not include the translation of the CADR process, which, in a certain way, ends up limiting the accessibility of the consumer, generating an unbalanced situation in the consumer relationship. In the words of Lodder and Cortes, "this system is likely to favour repeat-players, such as traders".

Therefore, the adoption of measures to implement tools that enable the translation of each step of the process would be beneficial not only for the consumer but also for traders.

Finally, this study analysed the issue of the execution of the results of ODR processes because the success of this mechanism depends on a good program of results execution, considering that if the result obtained in the process does not become real, it will cause frustration in the parties, besides the decrease of awareness in this type of process (Cortes, 2010).

Although this issue has not been portrayed in the survey, due to the limitations found during the research, and considering that none of the participants used the ODR Platform, the literary research have shown that the development and growth of ODR encounter obstacles mainly because of the legal uncertainty about ODR enforcement.

According to Zheng (2020), the use of reputation-driven enforcement mechanisms and punitive measures create incentives for parties to comply with the ODR decision voluntarily, either because they do not want to have their reputation affected in the marketplace or because they do not want to be penalized by losing opportunities to compete in the market. However, it is also necessary to establish a quality standard for technology to

not manipulate the reputation management system. According to UNCITRAL Working Group III on ODR, for example, it has been found that fraudulent actors can corrupt Trustmark ratings.

Indeed, as rightly pointed out by Thornburg, since ODR providers perform a public function, the government must require that decisions meet minimum legal standards and requirements to be able to require the courts to enforce the outcome. Of course, when parties agree, it is assumed they will abide by it, but one must be prepared if non-compliance occurs. If the ODR decision does not meet the minimum requirements to be directly enforced in court, the entire procedure used in ODR will be lost, and the parties will have to start again before the court.

Conclusion

The technological evolution and the creation of the digital marketplace have brought the need to improve the tools for using the online buying and selling system. Along with development comes the concern about the system's functionality, costs, security, accessibility, and efficiency. Since 2016, the European Union has provided consumers and traders with a digital platform for resolving disputes related to products and services purchased over the Internet within the European Union. Advantages and Disadvantages add up to this newly created mechanism, but it also shows that its enhancement can lead to the most effective, inexpensive, and secure way to resolve conflicts arising from the digital marketplace, being more beneficial than using face-to-face means of dispute resolution.

The main purpose of this study was to show the importance of online dispute resolution in establishing a new era for dispute resolution, bringing particularities about Online Dispute Resolution (ODR) to show how this system can be efficient, fast, and safe for the resolution of disputes, bringing greater protection for both parties and ensuring effective redress for the consumer.

Thus, this study presented a structured order so that it was possible to understand, in a general way, the concepts and peculiarities of ODR and ADR, their forms, advantages and disadvantages, in addition to the regulation applicable to the online resolution of conflicts. Also, it was presented how the ODR European Platform works, its benefits and challenges, and considerations about the protection of consumers who use the system.

During the study, it was possible to observe the importance of an efficient and safe online dispute resolution system for consumers who buy products or services online in the European Union.

Although the ODR Platform apparently observes all the principles of ODR, it was

found that there is still a need to improve the legislation that deals with electronic commerce to make it more effective in this type of dispute resolution. The incorporation of real incentives to encourage consumers and merchants to use the ODR Platform would overcome the potential obstacles presented by the system.

This study observed that the ODR Platform still has some limitations, as it cannot resolve conflicts by itself. The system must be synchronized with the contact points provided by the European Member States and with the CADR entities.

It was also verified that the ODR Platform presents a favourable mechanism for presenting complaints because the form is easy to fill out and can be written using any language of the European Union since the Platform provides an automatic translation tool. However, this easiness is not guaranteed after choosing the CADR entity that will conduct the process since it will determine which language will be used during the whole process.

Another vital issue identified is that the ODR Platform does not present an automatic mechanism of direct communication with the consumer to inform when the merchant has not accepted to participate in the ODR process. This information is only transmitted 30 days after the distribution of the complaint, when the process is already being filed, which breaks, in a certain way, the agility of the procedure.

Besides, it was verified that there is still certain insecurity regarding the real protection of data and documents made available on the Platform, considering the great movement of this information during the process, and considering that the documents will only be deleted after six months of their availability in the system. Security and confidentiality are still something that worries consumers, but it can be overcome with the adoption of adequate technological measures, such as encryption, electronic signatures and making the Platform responsible in case of data and information violation.

The last aspect analysed was the question of enforcement of results obtained in the

ODR process. The ODR Platform does not present private mechanisms of execution of results, which means that if the decision is not complied with by the parties, it is necessary to go to court to enforce it.

However, in general, considering the doctrinal aspects presented in this study, data collected in the survey and the European Commission annual reports on the functioning of the ODR Platform, it was possible to conclude that the new digital era and electronic commerce require the existence of an online dispute resolution system, especially for cross-border issues. In Europe, the ODR Platform mechanism, which, despite presenting an adequate proposal to solve online cross-border disputes in a quick, effective, and less expensive way, still needs to be improved, as data shows that the Platform currently partially meets the users' needs.

There is still a need for greater awareness of the ADR/ODR process and acceptance by retailers, adapting the system to the needs of its users to ensure an effective and appropriate means of redress for the consumer.

Reflection

The great challenge of this research in my conception was, initially, the structural issue and how to delimit the most important aspects to achieving the objectives that were proposed, especially considering the consumer's perspective in the face of an eminently new online dispute resolution system made available by the European Union. In addition, the fact that this research was conducted during a global pandemic turned data collection into something challenging and somewhat limited.

Understanding how the European Online Dispute Resolution System works caught my attention provided a valuable experience, as I was already aware of another type of Online Dispute Resolution System available in another jurisdiction, although I never delved into it to better understand the systems.

Obviously, this work will not offer a definitive solution to the problems and limitations presented by the ODR Platform System. However, the topic has aroused my interest because the ODR Platform has proven to be an important dispute resolution mechanism that delivers a proposal that can contribute to the development of the European electronic market and the adequate redress of the consumer who uses the Internet to purchase and acquire services.

The collection of external data using survey and the complementation with data from the annual reports of the European Commission about the functioning of the ODR Platform were essential to answer the research question, although challenging, considering difficulties to reach the selected population due to the pandemic. However, within my limitations, I believe it was possible to accomplish what was proposed to contribute positively to the field of online dispute resolution.

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