

PROTECTING THE CONSUMER IN THE DIGITAL MARKETPLACE – WHERE ARE WE SO FAR?

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MAMO TCV
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A D V O C A T E S

The Annual Consumer Law Conference – Consumer Protection: The Struggle Continues!
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#BETTERDIGITALWORLD

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GENERAL LEGISLATION

- Civil law, including the laws on jurisdiction and applicable law
 - Unfair contract terms
 - Unfair commercial practices
 - Guarantees
 - Product liability
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- Facebook, Google and Twitter to change their Terms of Service

JUDICIAL REDRESS

- ADR – Consumer Alternative Dispute Resolution (General) Regulations and Consumer Alternative Dispute Resolution (Residual ADR) Regulations
- Consumer Claims Tribunal (Arbiter) – Consumer Affairs Act
- Court (including Small Claims Tribunal; European Small Claims Procedure)

- Collective Proceedings Act

THE CONSUMER RIGHTS REGULATIONS

- Apply to all consumer contracts (saving exceptions) but makes specific provision for distance and off-premises contracts
- Online transactions generally fall within the definition of a 'distance contract'
- With respect to distance contracts, traders must:
 - Provide certain, specific information pre-contractually, made available in the appropriate manner, using plain and intelligible language
 - Provide for a period of withdrawal (14 days), saving exceptions
- Details available with 'obligation to pay' + explicit acknowledgement
- Delivery restrictions and methods of payment
- Confirmation of contract

THE DISTANCE SELLING (RETAIL FINANCIAL SERVICES) REGULATIONS

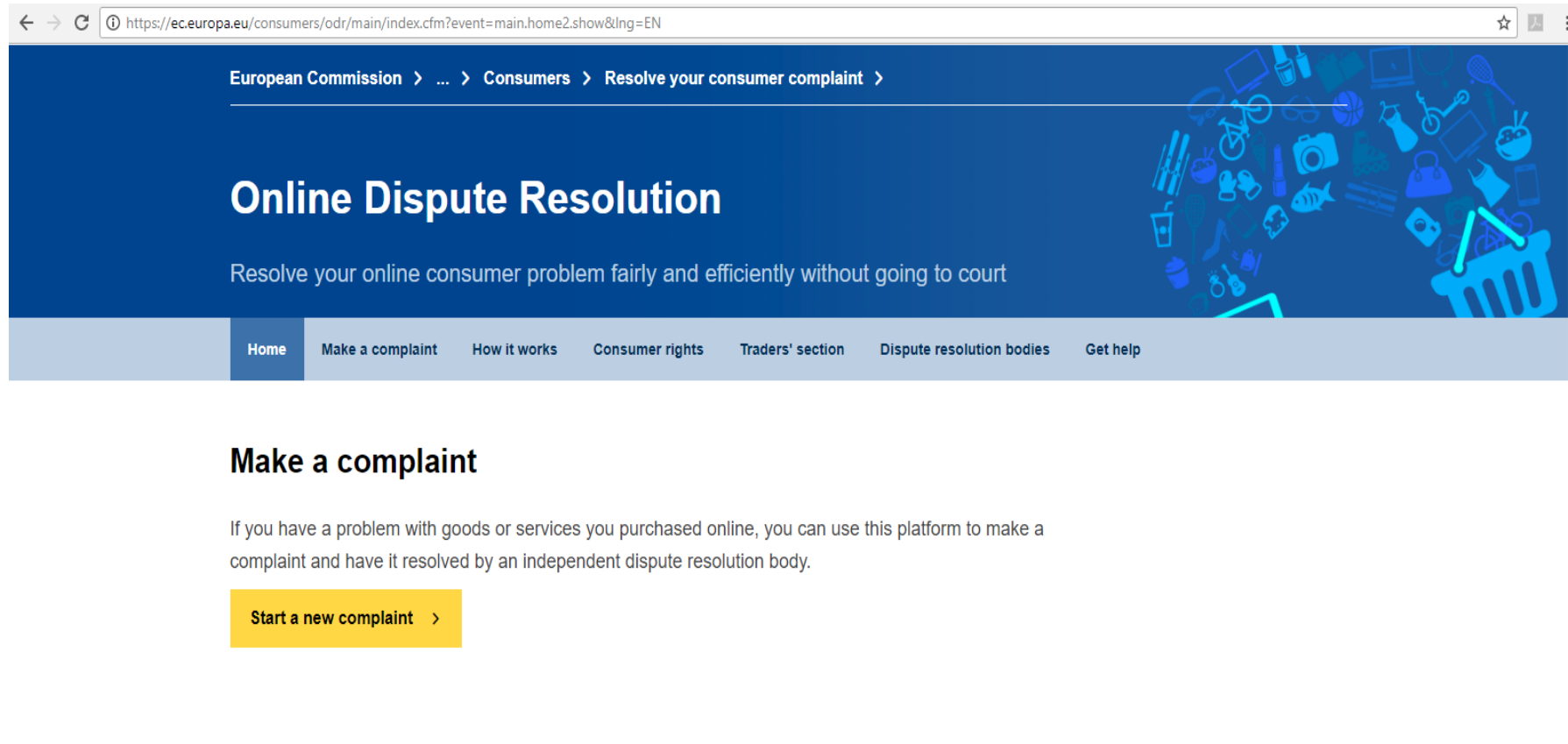
- Apply to any distance contract service provision scheme organised by a financial services supplier, carrying on financial services activities in or from Malta
- List of information to be given pre-contractually, provision of this information in written form
- Right of withdrawal of 14 days (long term business contracts of insurance and personal pension arrangements – 30 days)
- Cancellation of payments made by credit/debit card in case of fraudulent use
- Rights granted to the consumer cannot in any way be waived

ONLINE DISPUTE RESOLUTION PLATFORM

- Regulation (EU) No 524/2013 on online dispute resolution for consumer disputes.
- Operated and maintained by the European Commission – privacy by design and design for all as leading principles.
- Both consumers and traders can use it.
- It comprises:
 - An electronic complaint form
 - Informing the respondent about the complaint
 - Identifying competent ADR entity
 - Electronic case management, allowing parties and ADR entity to conduct the dispute resolution procedure online through the platform
 - Makes information publicly available

ONLINE DISPUTE RESOLUTION PLATFORM

- ODR contact points + network
- ADR entity may agree or refuse to deal with the dispute. If refused, the complainant is informed of the possibility of contacting an ODR Advisor.
- The ADR entity is not obliged to conduct the ADR procedure through the ODR platform, but it cannot require physical presences of the parties unless the parties agree.
- Provides for data protection – access granted only to the ADR entity, and where applicable the ODR contact points. Each ADR entity is considered a data controller.
- Online traders established in the EU have to provide an electronic link to the ODR platform on their websites. They must also state their email addresses.



THE EUROPEAN COMMISSION'S ONLINE DISPUTE RESOLUTION PLATFORM

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THANK YOU



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