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**EVOLVING ROLE OF ADR IN THE EUROPEAN UNION
PLATFORM ECONOMY**

Bachelor's thesis

Programme HAJB08/17 - Law, specialisation European Union and international law

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Tallinn 2017

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The document length is 8295 words from the introduction to the end of conclusion.

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ABSTRACT

The increase in popularity of digital economy has caused a massive migration of professional activities to platforms. The indicators are compelling as the European Union (EU) has taken a lot of focus on the digital economy and its improvement in the recent years as the success of online platforms has created a thriving possibility for innovation and new business models and trade, as the number of EU citizens that use online platforms in daily basis increases. During 2018 one in five enterprises in EU made electronic sales and during 2019 the number of enterprises that used software applications to share and exchange information electronically was one in three.¹ The COVID-19 pandemic has accelerated these processes by increasing the need for smooth non-contact trade and interactions and ease of access to justice due to social distancing which guides the consumers to lean on online alternatives. The protection of people's rights, the consumers in particular, is a crucial concern.

The EU has not built a unified and equal Dispute Resolution Systems (DRSs) for all Member States (MS). The regulatory approach has aimed at the harmonization of Alternative Dispute Resolution (ADR) schemes, and the creation of centralized Online Dispute Resolution (ODR), but some of the issues are still remaining. The main concern has been the technological progress in general, as the MS do not have an equal access to necessary equipment and services, and the technology itself has not yet been in a point where it would be completely safe and reliable. Issue that can be identified in the relation of online platforms and dispute resolution is that ADR has not yet completely embraced the digital opportunities even though many fields the digital alternatives have proved themselves to be more superior in comparison to pre-digitalized era. There are a lot of tools in online communication, programmes and platforms that could be used in order to provide a more simple and easier access to justice for the consumers, as digital solutions help to bring the courts and legal services closer and more in reach through internet for those who seek help. Adapting to the on-going improvement in technology and digital environments would be wise,

¹ *Digital economy and society statistics - enterprises - Statistics Explained*. (2020). Eurostat. Retrieved from https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Digital_economy_and_society_statistics_-_enterprises , 11 April 2021.

even though the changing nature of online environments and technology makes it hard for legislation to answer the changing nature of digital progress.

This thesis will show via comparison that the online and digital alternatives for handling disputes in the commercial law cases will be superior to their non-digital predecessors and discuss what are the potential challenges that need to be addressed for ADR to have a stable and successful integration to the online environment. Successful integration of ADR to digital platforms in the EU is essential for ADR to give a sufficient response in the future for the increasing number of consumer disputes arising from online environments. The question that will be guiding this research is how the digital alternatives became more superior to non-digital systems. The key question will be how the ADR fits in this equation in the current situations and in the foreseeable future. It will be under discussion whether ADR is capable to adapt to the platform economy of the EU without any harm to its fundamental values and the capacity of its methods and enhance access to justice. The main focus will be on the consumer ADR in the EU.

Keywords: Dispute resolution, access to justice, consumer ADR, ADR, ODR, platform economy in the EU

INTRODUCTION

Digitalization has brought the world closer together, as different online platforms and new technological innovations has created a system of interaction that enables communication and exchange of information without physical contact. Many practices have moved on to digital and remote solutions, as the costs are often lower due to the decreased travel as well as time and money consumed on the preparations. In addition, as the recent COVID-19 pandemic has forced many people and service providers to fully rely on platform-based remote alternatives, and therefore, it is natural to expect that also legal practices will be pressured to take advantage on the digitalization and move forward with the rest of the world. As more and more services and tasks can be handled remotely, it is only a matter of time when the practice becomes norm and all service providers are expected to have a digital solutions.

ADR is an alternative way to handle disputes outside the court through collaboration and communication in order to find the best resolution to the dispute through assessment of the situation and by bringing out the views of the parties.² ADR was originally created to help with the overcrowding of the courts³ by flourishing through more cost-efficient, faster and less stressful alternative to deal with disputes, that also offered a desired humane approach as the negotiation based process helped to eliminate the feeling of superior-inferior setting that was present in the regular court houses.⁴ According to Gao⁵ ODR is any dispute resolution method that uses digital assistance and technology to settle the dispute between the parties. This can include using fully automated programmes like Artificial Intelligence (AI) that independently guides the case forward, for example in the EU ODR platform the case is automatically forwarded to the other party and to ADR entity, once the parties reach consensus on the entity. In addition, the ADR entity has the ability to use the platform's case management tool that will provide a possibility to handle the case

² Peters, S. (2020) *Alternative Dispute Resolution and Online Dispute Resolution in the EU: their linkages, legal status, and adoption challenges*. (Bachelor's thesis) TalTech School of Business and Governance, Tallinn.

³ Stražišar, B. (2018). Alternative dispute resolution. *Pravo. Žurnal Vysshey shkoly ekonomiki*, 3, 214-233.

⁴ Delgado, R. (2017). Alternative dispute resolution: critical reconsideration. *SMU Law Review*, 70(3), 595-610.

⁵ Gao, W. (2017). The success and failure of online dispute resolution. *Hong Kong Law Journal*, 47(2), 445-474.

on the platform.⁶ However, the many faces of ODR currently provide a diverse selection of different variations from domain name dispute platforms to digital certificates which has forced the regulatory authorities, such as the EU, to interfere in order to provide rules for the platforms to protect people.⁷

Access to justice and its meaning has been discussed a lot as the world moves toward online and digital opportunities, and according to Schmitz⁸ it can have various approaches on how one may interpret the term. The general idea, nevertheless, is that good access to justice means the ability to seek for legal representation and access to necessary legal entities in order to have the problem solved. This all should be made possible without any unnecessary delays, fast, and should be available to anyone regardless of their social, financial, or power status. The reality, however, is that this rarely happens, as legal processes and their expensive and slow nature varies depending on the state and area, which puts people into unequal standpoints where more fortunate usually have better standing than their more vulnerable counterparts.⁹

Digital platforms and digital economy have provided a new manner of approach for traders and businesses as well as for consumers to access to services and products. They are not superior in every aspect to their non-digital predecessors, but in most cases, they are more efficient and easier to access for the consumers. The anonymity of the internet provides people more freedom to express and fulfil themselves which has created a lot of new invention and business model that help the platform economy thrive. Many states and especially the EU has provided a lot of support and interest in developing digital platforms since they can be seen as a key to the future market.¹⁰ However, successful trade cannot exist without trust between the trader and consumer, and thus it is highly important that the laws are up to date and provide sufficient response to the digital platforms. The anonymity, accessibility, and haziness of distance of the internet can be both weaknesses and strengths, as while it gives people more options and opportunities, it will also detach them from the sense of responsibility more easily than when they have to perform their

⁶ Report from the Commission to the European Parliament, The Council and the European Economic and Social Committee on the application of Directive 2013/11/EU of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and Regulation (EU) No 524/2013 of the European Parliament and of the Council on online dispute resolution for consumer disputes, COM 2019.

⁷ Gao (2017), *supra nota* 5, 446.

⁸ Schmitz, A. J. (2020). Measuring "access to justice" in the rush to digitize. *Fordham Law Review*, 88(6), 2381-2406.

⁹ *Ibid.*, 2387-2388.

¹⁰ European Commission (2021). *Shaping Europe's Digital Future: Online Platforms*. Retrieved from <https://ec.europa.eu/digital-single-market/en/online-platforms> , 25 April 2021.

action in face-to-face encounters. In order to maintain the balance, it is important that the access to justice is secured all time, and it is effortless, easy, and simple for consumers to reach out to legal services and have their case handled professionally, cost-efficiently, in reasonable time, and with no more effort that it took for them to enter into the original online trade contract in the first place. To protect the rights that are set in the legislation on online platforms people need to have good access to justice, meaning that there has to be options or solutions for resolving disputes as effortless as it is to sign a contract on the internet. To achieve this, the legislation and ADR, that concerns digital platforms, has to evolve as the internet does. Question is whether ADR can adapt to the digital era as it is or does it need some fundamental changes in order to do so.

Offline ADR is not the best solution for online disputes as it tends to be time-consuming, costly, and inflexible, especially when adding complex jurisdiction issues in cross-border cases. Platforms have made it possible to engage into contracts with traders all over the world and resolving disputes may end up complicated already due to the differences in the states' legislations and legal and possible travel costs. This has led to the development to improve online and digital ADR as a response to these issues.¹¹

However, every system and idea have its challenges and ADR integrating to online platforms is no exception. The main issue that ADR systems have faced in the EU is the diversity of them as well as the lack of equal access amongst the member states. The unequal starting points in terms of available tech as well as financial costs has been slowing down the progress. Fastly changing online environment requires constant attention and necessary modifications to the legislation which may cause some potential issues. ADR itself is not advertised as well as some other legal services and thus may remain little confusing to people and increase hesitance to use it to solve their disputes, and the diversity in numbers of ADR entities in the EU does not provide help on the matter either.

In this thesis the main focus will be on the consumer ADR law and its current and future role in the European Union's platform economy, as well as to discuss the main reasons for the progress towards the digital world. It investigates the development of digitalization in the EU and how and why the digital alternatives could be superior to non-digital systems. The first part will give a brief overlook on the background of the topic and discuss the development and reasons behind the

¹¹ Shah, A. (2004). Using ADR to Resolve Online Disputes. *Richmond Journal of Law & Technology*, 10(3), 1-25.

development of online platforms and digital ADR, and with also including some information on the best-known digital ADR platforms, including ODR. The second part will discuss the differences between the digital and non-digital ADR by comparing the main weaknesses and strengths of the systems. Main goal of the chapter is to provide a competent overview on the systems and their strengths and why the digital ADR has more potential than its predecessor non-digital ADR. The last section will reflect on the future and the role and place of ADR in the developing platform economy in the EU and discuss its potential as well as what challenges the progress and development of consumer ADR's integration to online platforms will face. This chapter also provides a brief overview on the current proposals and innovations on in what form online ADR could take when it enters the platforms. The thesis will end with short conclusion.

1. BACKGROUND

According to Busch¹² the first online platforms started to flourish in the early days of the internet when providers like eBay started. Platform economy itself in a traditional way, however, is not a new invention as offline platforms exist in the form of second-hand shops or car dealerships as they worked on a similar principle as online platforms by the traders handing their goods to a third party, a platform, to sell and thus did not have to advertise or handle any direct contact with the consumers by themselves.¹³ By present day there are various different digital solutions and alternatives for a consumer and service providers, including search engines, wikis, and communication and transaction platforms, but the very first of online platforms emerged already in the beginning of the internet. According to Cohen¹⁴ online platforms are not an independent entity that emerge on a market as a new innovation and product but rather replace the existing business models by offering more suitable solutions for the current customer base through speed and efficiency.

The stand of EU is that these platforms are a flourishing source for new business models, trade and innovation, as online platforms form a swift passage right into the EU internal market, which is the main reason why the EU is keen on enabling the development and rise of the online platforms.¹⁵ The rapid development and progress of technology and various different services and business models on the platforms require high flexibility in legislation which caused the EU not to take any regulatory action yet.¹⁶ The platforms do not only ease the consumers' access to the market, but also create an easier way for entrepreneurs to bring out their products. However, not all find the platform economy a sustainable and fair alternative for trade, as the issues and concerns especially about the lack of defining legislation and clear terminology or regulation on the online platforms may lead to violations of people's rights.¹⁷ Complex jurisdiction issues in cross-border

¹² Busch, C. (2016). The rise of the platform economy: a new challenge for EU Consumer Law?. *Journal of European Consumer and Market Law*, 5(1) 3-4.

¹³ *Ibid.*, 3.

¹⁴ Cohen, J. E. (2017). Law for the platform economy. *U.C. Davis Law Review*, 51(1), 133-204.

¹⁵ European Commission (2021), *supra nota* 10.

¹⁶ Cohen (2017), *supra nota* 15, 196.

¹⁷ Busch, C. (2020). *In The Role of the EU in Transnational Legal Ordering. s.l.* Edward Elgar Publishing.

cases and financial inequality between states that can be seen through technology gap, as not everyone are able to afford technology.¹⁸ These are all challenges for online platforms that need to be overcome. If the transition to online environments happens before the technology gap is taken care of it possesses a great risk for actually decreasing the access to justice, by decreasing easy access to legal representation and legal aid to certain group of people, and thus destroying the effort to bring justice closer and more available to people.

1.1. Development of online platforms in the EU

The EU has focused into developing online platforms inside the European Single Market, and in order to protect the fundamental rights of users and create a safer digital space the EU has released regulatory legislation, the Digital Service Act and Digital Markets Act, which focuses on creating an equal playing field for the platforms. The main goals are to cherish innovation, competitiveness, and growth in the platforms.¹⁹ This has led to a situation where there are numerous large technology companies that offer different services and structures for parties that are not their direct employees, such as Uber and Airbnb for instance, which have millions of “platform workers”, who are drivers and apartment providers that do not work for the company, but still execute millions of trips and lease contract a day.²⁰ Regardless of the growth, the platforms itself are loosely regulated and do not have an exact definition to go by, which increases the instability in them especially on behalf of the platform workers, as providing service through platform is remarkably easier on a platform compared to traditional offline providers.²¹ The lack of adequate regulation poses a risk for deteriorating the regulatory power of the government and puts the platform workers’ rights right under the power imbalance that lies between the platform providers and platform workers.²²

As the COVID-19 pandemic forced the world to isolation from the traditional meetings and social gatherings, it created an urgent need for digital alternatives in order to continue daily activities sufficiently, including work and private life encounters. However, even though the pandemic has

¹⁸ Schiavetta, S. (2005). Online Dispute Resolution, E-Government and Overcoming the Digital Divide. *20 th BILETA Conference: Over-Commoditised; Over-Centralised; OverObserved: the New Digital Legal World?* Queen’s University of Belfast, 28 April 2005 (1-9).

¹⁹ European Commission (2021), *supra nota* 10.

²⁰ Dekker, B., & Okano-Heijmans, M. (2020). *Europe’s Digital Decade?. Navigating the global battle for digital supremacy*, Clingendael Institute, 13.

²¹ Kilhoffer, Z., Lenaerts, K., & Beblavý, M. (2017). The Platform Economy and Industrial Relations: Applying the old framework to the new reality. *CEPS Research Report, No. 2017/12*, 1-53.

²² Dekker & Okano-Heijmans (2020), *supra nota* 20, 18.

acted in favour of increasing the practical approach to the digital alternatives, it has showed a negative side for decreasing the pace of innovation and upgrade, as the restrictions have made delays in transportation and transfers worldwide, and thus underlining the importance of well-operated connectivity strategies.²³ The importance of digital accessories was brought up also in the speech of President of the European Commission Ursula von der Leyen²⁴ that emphasizes the EU's digital decade and need to execute it with clear and common plans for 2030 by focusing on the principles of the right to privacy and connectivity, cybersecurity, free flow of data, and freedom of speech. Von der Leyen also stressed the need to act fast in order to stay on the edge of innovation on the digital field in order to be able to take actively part in shaping the digital future and its standards in the front line.

The subject of digital decade has been actively present in the EU's goals for 2030, and the vision of EU's digital decade²⁵ consist targets for both businesses and private persons. The general points consist for 80% of the population to attain basic IT skills and provide more profound and sustainable digital infrastructure in order to fight the technology gap amongst the citizen of the MS. The EU encourages businesses and service providers adapt digital solutions to their services and service structures with the goal of 75% of the EU companies using some kind of digital assistance, for example AI or Cloud service, and full digitalization of the key public services by the end of the decade. The development of AI will make a great impact on the digital development and it has a steady foothold in the digital decade an its goals due to its versatile potential that is not limited to only certain area of profession. A competent and functional AI could improve precision, efficiency, and security on various fields from farming and production to medicine and climate change management.²⁶ The development of AI inside the EU and adapting it to the lives of people and businesses is essential in order for EU to stay in the current competition and thus have a possibility to have an influence on the direction that the regulations, and standards will guide the development in order to ensure the creation of AI that acts in accordance with the fundamental principles and rights of the EU and its citizens. Therefore, it is urgent that different areas and fields incorporate the digital alternatives into their structure when possible and adapt,

²³ Dekker & Okano-Heijmans (2020), *supra nota* 20, 3.

²⁴ von der Leyen, U. President of the European Commission. State of the Union Address by President von der Leyen at the European Parliament Plenary. Transcript. Brussels, Belgium. 16 September 2020.

²⁵ *Europe's Digital Decade: digital targets for 2030. European Commission - Europe's Digital Decade: Digital Targets for 2030.* (2021). European Commission. Retrieved from [Europe's Digital Decade: digital targets for 2030. | European Commission \(europa.eu\)](https://ec.europa.eu/europe-digital-decade/digital-targets-for-2030/) 7 May 2021.

²⁶ *White Paper on Artificial Intelligence: a European approach to excellence and trust.* (2020). Accessed from https://ec.europa.eu/info/publications/white-paper-artificial-intelligence-european-approach-excellence-and-trust_en 5 May 2021.

evolve, and transform alongside the progress to protect their future and interests in order to retain their status and ability to influence the changes at the right time.

1.2. Antecedents and development of ADR and ADR technology

1.2.1. Past attempts on implementing ADR to digital solutions

The current state of people's access to justice can be argued since not everyone may have the necessary financial status to afford to go to court and hire legal representatives nor have a possibility to travel to another state in order to handle international disputes.²⁷ In response to this, digital and online ADR has made appearances in the past with more or less successful outcomes in order to provide more cost-efficient and faster way to reach resolution to different issues risen from online environments, and with the help of technology and automated processes many providers have reached this goal.²⁸ For example World Intellectual Property Organization (WIPO) is a leading ADR provider concerning IP and technology disputes, especially domain names.²⁹ The increase of using Information and Communication Technology in settling the disputes which enable more user-friendly ADR options to a wider public due to low costs and fastness.³⁰

One of the greatest weakness that online ADR providers face is the narrow scope of cases that online ADR can handle. Therefore, most of the providers are settling only certain types of disputes, for example Cybersettle.com specifies in monetary worker's and insurance claims and ODR and Squaretrade aids in e-commerce issues. The narrow scope and lack of proper advertisement and awareness has been a cause for failure of online ADR programmes as well, for example Virtual Magistrate Project (VMAG) managed to handle only one case during its lifetime.³¹ In order to provide efficient and fast service, it is important that the online ADR programmes manage to evade cases that are out of scope in order to protect the programmes from overloading with cases and wasting resources and time on sending them away.

²⁷ Cortes, P. (2018). Using technology and adr methods to enhance access to justice. *International Journal of Online Dispute Resolution*, 5(1-2), 103-121.

²⁸ Shah (2004), *supra nota* 11, 3-4.

²⁹ *Alternative Dispute Resolution*. WIPO World Intellectual Property Organization. Retrieved from <https://www.wipo.int/amc/en/>, 11 April 2021.

³⁰ Cortes (2018), *supra nota* 27, 103.

³¹ Shah (2004), *supra nota* 11, 3.

1.2.2. Legal development of digital ADR

The current EU law does not provide a sufficient answer for ADR to easily adapt into the platform economy even though the number of platforms is constantly rising.³² Directive 2008/52/EC³³ did provide a much-needed regulation and clarity into the area of ADR in the EU, but it does not state any information or requirements on the electronic and digital alternatives or solutions, thus creating an uncertainty when interpreting the Directive or any regulation in force concerning ADR.³⁴ With the lack of sufficient regulations there are risk for many issues that could potentially endanger the rights of the users, with the very first being the security of the digital solutions, as there is no regulation nor definition for security in digital ADR.³⁵

However, the development of the digital ADR is not relying only on the ADR's ability to adapt to the current and future digital options and accessories, as the human capital compared to digital access is much lower from the aspiration which inevitably stands as a notable obstacle in the development of digital services, and especially the large gap of digital accessibility remains large inside the EU.³⁶ According to Digital and Society Index (DESI) 2020³⁷ only 58% of the EU citizens have the basic digital skills required to participate in the digital society and consume digital services and products sufficiently. When comparing to the statistics of 85% of population having access to the internet it is safe to state that having a possibility to log in to the internet does not alone ensure the access to digital environments. The low digital accessibility is especially common in the older generation of ages 55-74, where only 35% of people obtain basic digital skills.

The noteworthiness of the gap in digital accessibility becomes a concern especially when considering a more unified ADR entity that would have international jurisdiction, as it would increase the risk of jeopardizing the access to justice in the system due to people's unequal ability and possibility to use the system, which could lead to a situation where citizens of certain states would be more favoured than others due to their better digital accessibility.

³² Busch (2016). *Supra nota* 12, 4.

³³ Directive 2008/52/EC of the European Parliament and Council of 21 May 2008 n certain aspects of mediation in civil and commercial matters (OJ L 136, 24.5.2008, p. 3–8)

³⁴ Mania, K. (2015). Online dispute resolution: The future of justice. *International Comparative Jurisprudence*, 1(1), 76-86.

³⁵ Abedi, F., Zeleznikow, J., & Brien, C. (2019). Developing regulatory standards for the concept of security in online dispute resolution systems. *Computer Law & Security Review*. 35(5).

³⁶ Grinberga-Zalite, G., & Hernik, J. (2019). Digital Performance Indicators in the EU. *Research for Rural Development*, 2, 183-188.

³⁷ European Commission Digital Economy and Society Index (DESI) Thematic chapters 2020.

1.2.3. ODR

According to Cortes³⁸, ODR, the online counterpart of ADR, was a response for the rapid growth of popularity of e-commerce which enabled traders to conclude business with unforeseen large customer base. The relatively small claims needed their own system in order to solve difficulties that the increased number of complaints brought onto ADR and court system. Even though ODR is seen as an online equivalent to ADR, it is not usually fully automated and still requires human interaction when settling for resolution.³⁹

However, even though ODR has had a lot of praise for being a tool in increasing access to justice, as it provides more faster, cheaper, and easier way to settle disputes in theory⁴⁰, the platforms success has been arguable. It has received over 120 000 disputes after its launch, but 80% of them has been closed due to the trader not reacting for the request to enter into ODR, and only 2% of them was successfully transmitted to the relevant ADR entity.⁴¹ This shows a clear weakness of the ODR platform as it does not succeed to its maximum capacity in the very core function of its existence, solving disputes. Nevertheless, the platform has had a lot of positive feedback from the consumers for its easy handling and possibility to handle cross-border cases more efficiently.⁴²

The ability to fill out all forms and communication through internet and having a machine or programme to evaluate the case can be harmful to the nature of the ADR. The development of AI has already caused that different AI algorithms are used in the online ADR, but due to the limited nature of AI in litigation at the moment, it is mostly used only as an assistance in the AI-based predictions.⁴³ It is undebatable, that AI would be increasing the efficiency, cost and speed of the ODR process due to its automation and ability to execute its tasks much faster and from much larger data sample than any human is capable, which in the other hand serves the interest of increasing access to justice. However, the main concerns that lingers in the discussions about AI-based ODR are the risk of losing the human factor and thus compromising the fairness and justness

³⁸ Cortés, P. (2011). Developing online dispute resolution for consumers in the EU: A proposal for the regulation of accredited providers. *International Journal of Law and Information Technology*, 19(1), 1-28.

³⁹ Barnett, J., & Treleaven, P. (2018). Algorithmic dispute resolution—The automation of professional dispute resolution using AI and blockchain technologies. *The Computer Journal*, 61(3), 399-408.

⁴⁰ Schmitz (2019), *supra nota* 8, 2382-2383.

⁴¹ Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: EU Citizenship Report 2020: Empowering Citizens and Protecting their Rights. COM 2020.

⁴² *Ibid.*

⁴³ Rabinovich-Einy, O., & Katsh, E. (forthcoming, 2021). Artificial Intelligence and the Future of Dispute Resolution: The Age of AI-DR. In: M. A. Wahab, D. Rainey & E. Katsh (Eds.), *Online Dispute Resolution: Theory and Practice*. (1-20). *s.l.*, Eleven International Publishing.

of the process⁴⁴ and negotiation, which are fundamental values of ADR. When the human factor and supervisor is removed, there is a risk of the dispute settlement to become faceless form when one has to just tick the boxes without ability to explain their point of view, which is an essential point especially in more complex cases or when the moral rights and wrongs have to be considered in the settlement.⁴⁵ This, in the other hand, clashes with the aspect of access to justice that provides everyone to be entitled to professional legal representment and possibility to be heard.

⁴⁴ *Ibid.*, 10.

⁴⁵ Schmitz (2019), *supra nota* 8, 2383.

2. DISCUSSION ON THE FUTURE OF DIGITAL AND NON-DIGITAL ADR

The overloading of courts that create long ADR processes and delays is one of the central issues in the current ADR and court system, and it is not likely that the situation would be improving in the nearby future. People are having more contact with each other and different companies than ever before as the world grows closer through internet and globalization. However, at the same time as this creates new innovation, business models and trade, it will also cause a natural increase in disputes and issues concerning legal matters. Once everything starts to be one click away, it is important to provide legal services in the same way in order to secure easy access to justice and protect people's rights.⁴⁶

The adaption to online alternatives is necessary in the end, as it is highly unlikely that the digital development in the world would slow down and return to the old pre-technology era business model, especially after the outbreak of the COVID-19 pandemic that has forced many services and professions to move into remote work that utilizes digital platforms and programmes in tasks and communication.⁴⁷

Online platforms do have weaknesses, but they have provided themselves more profitable and easier for people to access even though the progress and development of the platforms is just beginning, and as new generations grow, internet will become an inseparable part of our lives. This means that the field of law has to adapt to the digital environments in order to survive and keep up with the changes, even though in the immediate future the transition will most definitely divide opinions amongst lawyers and lawmakers.⁴⁸ However, despite possible protests the transformation itself will be inevitable due to the high interest of the EU to stay on the edge of innovation in order to be able to take a part in the regulating and shaping the digital future and its opportunities.⁴⁹ By

⁴⁶ Shah (2004), *supra nota* 11, 2.

⁴⁷ Uşaklıoğlu, A. Y. (2020). *The Crucial Effects of COVID-19 on Digital Law*. Retrieved from https://papers.ssrn.com/sol3/Papers.cfm?abstract_id=3572561, 20 April 2021.

⁴⁸ Omoola, S. O., & Oseni, U. A. (2016). Towards an effective legal framework for online dispute resolution in e-commerce transactions: trends, traditions and transitions. *IIUM Law Journal*, 24(1).

⁴⁹ European Commission (2021), *supra nota* 25.

hindering too far behind and keeping too conservative approach to development and innovation the EU DRSs may face a risk of falling behind both in competition and innovation to others, as numerous different digital accessories such as AI will make the digital systems more appealing to the consumers due to their lower cost, and faster and more efficient due process. The aspect of access to justice, however, is important to keep in mind during the transformation to the digital environments and platform based DRSs, as even though the easier access through internet ensures easier access to the service and digital accessories may provide more swift process, the lack of human factor as a monitoring entity⁵⁰ will cause a risk for failing in the very beginning of the process.

Digital ADR possesses a lot of potential to create a more efficient and consumer friendly alternative to settle disputes. Using online alternatives would provide faster and more cost-efficient approach to the process, as resolution would be made in real time with no travel costs for the parties nor their lawyers. This helps to reach better access to justice by providing more straightforward, faster, and easier way to reach the justice system and have professional representation. Through internet and online platforms, it is possible to eliminate factors like wealth, location, and power balance out of the equation and create more equal standing point for all parties.⁵¹

Different communication platforms enable the swift transfer of documents and information that would usually take even weeks to send. International disputes that can easily transform into complicated and time-consuming processes due to the jurisdiction issues and complex choice of law can be avoided by online ADR, as international platforms and internet provides an easier and more straightforward process by bringing all under one regulatory legislation. Online solutions would also provide more equality amongst the parties as it is easier to handle the financial and power imbalance as it is easier for parties and arbitrator to bring distance between each other and thus view the issue objectively. The anonymity of the online platforms also effectively decreases the imbalances by removing the home ground advantage.⁵² Online alternatives also create an opportunity to reduce the caseload of the lawyers as the current state of technology provides a

⁵⁰ Solarte-Vasquez, M. C., & Hietanen-Kunwald, P. (2020). Responsibility and Responsiveness in the Design of Digital and Automated Dispute Resolution Processes. *23rd International Legal Informatics Symposium (IRIS 2020)*, University of Salzburg, Salzburg, Austria, February 27-29, 2020 (451-459). Weblaw.

⁵¹ Manninen, H. (2018). Between Disruption and Regulation - How Do Lawyers Face Digitalisation?. In: Koulu, R., & Hakkarainen, J. (Ed.). *Law and digitalisation: Rethinking Legal services*. Helsinki, University of Helsinki Legal Tech Lab publications. 83-92.

⁵² Shah (2004), *supra nota* 11, 7.

possibility for programmes or AI to complete simple and common tasks instead of human which will lead to faster and cheaper alternative. There are already many operating examples of this such as automated systems for compensation claims for cancelled flights or for resolving issues with parking tickets.⁵³

As any issue, online ADR has some weaknesses too. Implementing technology to the ADR process has created some discussion on the weaknesses of the current systems and legislation, as well as concerns that the change may bring with itself. Shifting to the more automated options will result in the decrease of human factor in the process.⁵⁴ The characteristic of ADR is to resolve disputes through human interaction and communication and taking this aspect away could risk causing some serious modifications to the practice which may bring new issues with itself. Lack of human interaction creates a risk of increase in miscommunication and misunderstanding the situation as reading the micro expressions during the conversation becomes harder which may have a direct affect to the outcome as it becomes harder to have a sufficient overview of the opponent's situation, goals, and intentions which affect greatly their decision making and moral compass. Interfering with computer screens may cause a significant decrease in expressing feeling and emotion that often plays an important role when trying to reach a successful resolution to the dispute. In addition, building trust during the process will be harder to achieve since the question about security is always at stake when dealing with internet.⁵⁵ Also, online communication is more detached and distant than its ordinary face-to-face counterpart and thus often acts as a barrier for feeling secure and creating trust between the parties.⁵⁶ In case of any malfunction or data breach the parties cannot be sure that the conversations and documents are private and secured, as leaks of information could provide the other party also an upper hand in the dispute.⁵⁷ .

⁵³ Koulu, R. & Pakaslahti, H. (2018). Why We Need Legal Technology. In: Koulu, R., & Hakkarainen, J. (Ed.). *Law and digitalisation: Rethinking Legal services*. Helsinki, University of Helsinki Legal Tech Lab publications. 17-49.

⁵⁴ *Ibid.*, 31.

⁵⁵ *Ibid.*, 31.

⁵⁶ Mania (2015), *supra nota* 33.

⁵⁷ Hakkarainen, J. & Gifani, N. (2018). Blockchain – an Outlaw by Nature?. In: Koulu, R., & Hakkarainen, J. (Ed.). *Law and digitalisation: Rethinking Legal services*. Helsinki, University of Helsinki Legal Tech Lab publications. 53-79.

3. FUTURE ROLE IN THE ONLINE PLATFORMS

Having a functioning and reliable DRSs is one of the core elements of the society and necessary in order to have a fair and just approach to issues as well as good and equal access to justice. Due to this, it is highly important that it keeps up with the progress and gives timely and actual responses to rising issues in order to secure the basic rights of people. Lacking behind in the progress or making the wrong changes will have an effect in the lives of millions of people, and thus it is crucial that any issues or potential innovations are dealt respectfully.

The transformation to the digital alternatives will be a big leap for the DRSs due to being a new and relatively untested and unknown field, which creates a risk for unintentional but fundamental flaws that compromise the whole system. In the stage of development, it can easily progress into a chase for a theoretically perfect solution, as the digital decade and alternatives are just in the beginning of their journey. This approach may accidentally lean away from the main aims and goals of the development itself and thus cancel the effort to bring better access to justice into ADR, as forgetting the human-centred vision could cause confusion and difficulties to access and use the systems⁵⁸, which was seen, for example, in the execution and failure of VMAG.

In order to avoid these mistakes and not to lose the opportunity for increasing access to justice through technology and digital alternatives, it is important to consider the innovation and development from the point of view of legal design. According to Corrales⁵⁹ the general meaning of legal design is to combine design and progressive legal thinking together in order to prevent and solve legal issues beforehand with solutions that are more user-friendly for both the consumers as well as for the professionals. A system that is made without considering the user experience in the beginning and during development can easily rise the bar for the consumers to act upon their

⁵⁸ Corrales, M., Fenwick, M., & Haapio, H., (2019). Digital technologies, legal design and the future of the legal profession. In: Corrales, M., Fenwick, M., & Haapio H., (eds), *Legal Tech, Smart Contracts and Blockchain. Perspectives in Law, Business and Innovation* (pp. 1–15). Singapore, Springer.

⁵⁹ *Ibid.*, 6.

legal issues or even consider them as legal issues rather than just bare bad luck⁶⁰, which will simultaneously decrease the access to justice by default.

ADR, like any other legal entity, faces many difficulties when moving into online and digital environments. The main issue with having open ADR platforms is that they do not go under open market like service platforms usually do.⁶¹ The popularity of ADR has not reached its full potential, as there are many disputes that could be handled better with ADR but due to ADR being still quite unknown to people because of, for example, lack of advertisement and awareness, they never reach the system and end up in courts instead. In order for ADR to have a greater and more visible role in the future, it is important to focus bringing the ADR options closer to customers.⁶²

3.1. Current innovations and proposals

Fast development of the Artificial Intelligence opens new opportunities in businesses by providing a possibility to improve their efficiency by for example moving some of the work for the programme or using it to have more precise calculations and prognosis.⁶³ Possibilities for the future of AI are basically limitless, as the full potential has not yet been reached which naturally has caused a need for a coordinated approach in the EU for the development of AI in order to stay competitive in the race of development and thus be able to influence the development with European values.⁶⁴ The main variations of AI that can be seen and used today are programmed AI, which reads a code of rule (IF-THEN) or by having an example case as prior knowledge and acts based on it, or machine learning AI that learns from data that is presented to it and does not require any further coding in addition.⁶⁵ Using the AI could help to decrease the disparities between the MS and provide more equal and overall availability of ADR by creating a centralized model that uses AI to help with distributing and channelling the cases to the right direction⁶⁶

⁶⁰ Taylor Poppe, E. S. (2021). Institutional design for access to justice. *UC Irvine Law Review*, 11(3), 781-810.

⁶¹ Koulu, & Pakaslahti, (2018), *supra nota* 52, 31.

⁶² Sander, F. E. (2000). The Future of ADR: the Earl F. Nelson Memorial Lecture. *Journal of Dispute Resolution*, 2000(1), 3-10.

⁶³ White Paper on Artificial Intelligence (2020), *supra note* 26.

⁶⁴ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions Artificial Intelligence for Europe, COM 2018.

⁶⁵ Barnett & Treleaven (2018), *supra nota* 38, 402.

⁶⁶ Peters (2020), *supra nota* 2, 30-31.

However, the usage of AI in ADR also creates risks and potential challenges. ADR is very linked to the human factor overseeing the process and trusting a programme to have same qualities and reliability in the matter is not certain. Therefore, it is essential that AI will be closely regulated and monitored in order to protect the access to justice of the people. Many fear that the AI will bring with itself many uncertainties and difficulties to protect the rights of the people that may be infringed due to the automatic and algorithmic decision-making that could be used in advantage of misdemeanour⁶⁷, and in order to cure these concerns the trustfulness and accountability around the development and usage of AI must be created⁶⁸. These concerns are noted in the White Paper on Artificial Intelligence - A European approach to excellence and trust (COM (2020) 65)⁶⁹ which provides the goals and benefits of the AI, but more importantly the actions that the EU has taken in order to respond to the uncertainty and lack of trust that lingers in the discussion about AI, such as creating a unified legal framework to regulate the issue as well as provide more control and monitoring over the development of AI through different experts while protecting and ensuring that the development is done in accordance with the values, principles and the legislation of the EU. The main goal is to increase trust to the AI and encourage businesses to incorporate technology and its assisting features such as AI into the business models.

Another suggested solution for implementing algorithmic solutions to ADR is using Blockchain technologies, which originally were meant for cryptocurrencies, but they were later discovered to have potential for other usage also. In conclusion, Blockchain technology enables securing data to decentralized database where it is secured by cryptographic sealing and can shared, replicated, and synchronized in real time.⁷⁰ However, having all data in the one place makes it more prone to possible breaches and hackers that endangers the users. All changes made within the Blockchain are also permanent and cannot be undone which decreases the flexibility of the programme.⁷¹ This enables easy and fast transfer of data without need for third party inference, and thus a proposed alternative for sending and receiving contracts and other documentation due to its more secure nature compared to email, for example. However, making Blockchain into a method of ADR would require much persistence as well as new legislation to cover it.⁷²

⁶⁷ White Paper on Artificial Intelligence (2020), *supra* note 26.

⁶⁸ Communication from the Commission (2018), *supra* nota 63.

⁶⁹ White Paper on Artificial Intelligence (2020), *supra* note 26.

⁷⁰ Barnett & Treleaven (2018), *supra* nota 38, 403.

⁷¹ *Ibid.*, 403.

⁷² Jevremovic, N. (2020). Blockchain, Smart Contracts and ADR. *Collection of Papers Verona Summer School*, Forthcoming.

3.2. Challenges and opportunities in ADR-ODR

Digital platforms and reaching services through online environments are slowly becoming a norm for many people, especially during the pandemic as many physical offices has been forced to move to work online or remotly. This has accelerated online trade and demand as well as guided the enterprises towards partial or full digital solutions which has also increased the need for efficient dispute resolution that is easy to access and available regardless of the state the consumer is living in or their financial and power status.

The current situation with the area of ADR does not fully enable this, as ADR systems are not as clear for the consumers and traders as they could be. There are a lot of prejudice in the system as both of the parties, consumers, and traders, often have misconceptions. The consumers may believe that ADR entities are provided by the trader and thus biased in favour of the trader, and vice versa, misinformed trader may consider ADR biased in favour of the consumer.⁷³ Large selection of different ADR entities and complicated jurisdiction issues possess a potential risk for complications when consumers and traders are trying to find suitable ADR solution especially in the cross-border and international disputes.⁷⁴

In order to protect the people's access to justice it is important to consider possible obstacles that would prevent them to reach professional legal representment for their claims and reach the legal entities fast and effortless. In traditional methods different disabilities including visual, audio, motor, and cognitive has to be considered.⁷⁵ Once the human factor is taken away from the equation, it is likely that the identifications and communication made in the online platform is made through electronic device, for example computer, which might be impossible to some. Issues of digital accessibility, which also consist people who cannot financially afford necessary tools for accessing digital environments, are often overlooked by the makers of the platforms.⁷⁶ Having this kind of discrimination in a legal platform would infringe greatly people's right to justice.

Digital and online ADR relays quite much on the aspect of increasing access to justice by providing more accessible service and equal and adequate representation for everyone and everywhere, as it

⁷³ European Commission (2021), *supra nota* 10.

⁷⁴ Commission Report (2019, *supra nota* 6.

⁷⁵ Larson, D. (2019). Digital accessibility and disability accommodations in online dispute resolution: Odr for everyone. *Ohio State Journal on Dispute Resolution*, 34(3), 431-458.

⁷⁶ *Ibid.*, 432.

does not need to be tied into on state or area and is more affordable. ODR could provide a better response for access to justice, as in some instances it is the only option that is available due to its low cost and large geographical scope.⁷⁷ Concerning the terms of efficiency and better access, a fully functioning and well-regulated online or digital ADR system would be superior in comparison to the old and stiff offline model, which can be seen in the increasing number of different online ADR providers in the online environments.⁷⁸ However, the aspect of removing human factor from overseeing and controlling the process provide a high risk for endangering the nature of ADR, which can be seen well in the statistics of ODR⁷⁹, where there was majority of cases dismissed due to the non-response of a party, as no one is controlling their participation. The lack of overview also increases the risk of failing to ensure that all legal standards are met accordingly, as even though the online environments provide more easier and faster way to enter into contracts, for example, they do not have a necessary capacity to ensure that the fundamental and key elements such as consent and capacity, for instance, are fulfilled.⁸⁰

⁷⁷ Peters (2020), *supra nota* 2, 22.

⁷⁸ Shah (2004), *supra nota* 11, 14-15.

⁷⁹ Commission Report (2019, *supra nota* 6.

⁸⁰ Solarte-Vasquez & Hietanen-Kunwald (2020). *Supra nota* 49, 451-452.

CONCLUSION

The EU has been providing a lot of focus and concentration on upgrading and developing online platforms in order to aid the increase of online businesses, and the recent COVID-19 pandemic has been acting as an acceleration in the process due to restrictions and social distancing. The swift progress, however, has created a gap for DRS to respond accordingly to the increasing online and digital environments and disputes that have risen from them. The multinational and cross-border nature of the transaction and contracts has become a challenge that the offline DRS cannot provide a fully adequate answer due to the complex jurisdiction issues and the distance between the contracting parties. The diversity amongst the ADR entities as well as the MS of the EU is still one of the main issues that DRS faces and moving into online alternatives could provide a partial solution for this issue. However, the transfer from offline to online has proven to have many issues and problems that have to be resolved in order to provide a working and reliable system that answers the need of the people and ensures equal access to justice as well as a up to date response to the development of the digital opportunities and alternatives.

There has been a lot of discussion on how and what would the status of ADR be in the future. There are many possibilities and opportunities on how automated and digital process and aids, such as the AI for example, could bring the legal process, representation, and access closer and more available to consumer while exploiting the cost-efficiency and speed of the online environments. The development of digital assists such as AI and blockchain could be a solution to bring the online ADR closer to consumers and provide a better outcome concerning speed, cost, and efficiency, but the technologies do face some prejudice amongst the consumers and businesses which may reflect on the popularity and trustworthiness of the ADR systems as well. However, the EU has provided response to these concerns and a keen intention on staying on top of the race of development in the AI research, which hopefully encourages businesses and consumers to embrace the digital solutions more actively, as lingering behind in the development and innovation of digital solutions could provide a risk of losing the advantage and ability to influence the development and progress of transformation to digital.

The current offline alternatives are not capable to answer as well to cross-border disputes due to the high costs of the process and distance between the parties, a gap that online ADR could easily fill. This has been successfully reached in some instances, for example WIPO, but in general there are still a lot of issues to answer to, like the scope of applicable cases and the availability of the service. Online ADR withholds a lot of potential, but in order for it to reach it, it would most likely have to change and adapt to the changing nature of the internet and online environments. This does not only create a challenge for the ADR as a process but also to the law-making concerning the platforms.

Some issues that do not require a lot of communication or ability to understand the standing points of the parties do have a lot of potential to have an automated replacement, such as ODR in the e-commerce disputes for example, but the overall picture is not yet ready. However, implementing technology to the process as aid to make it more efficient, and accessible is not that far of a reach. Nevertheless, having a functional and working digital system is no guarantee for better access to justice inside the EU due to the large gap in the digital accessibility and digital skills, which is important to consider during the development of the digital and online ADR.

Having an overall system for international disputes would provide more clear and easier path for consumers and traders to resolve their disputes especially when the world moves more towards a globalized and international market. However, centralized unit for online ADR might not be the best solution in the end, as without efficient and working cooperation with technology it could create a risk for having a “bottle neck” of cases that would cause returning to the original issues with long delays that causes people to not reach justice and be able to file their claims. The current online dispute resolution systems focus on few things only and thus can keep the issues simple and in scope. There is no need to review cases that cannot be handled in the said programme and thus no effort, time or resources are wasted on them.

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