# Legal mediation and innovation in the process of enlargement of the European Union: strengthening consumer rights and access to justice

# სამართლებრივი მედიაცია და ინოვაცია ევროპული კავშირის გაფართოების პროცესში: მომხმარებელთა უფლებებისა და მართლმსაჯულებაზე ხელმისაწვდომობის განმტკიცება

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## Abstract

**Introduction:** Background: In the context of the Republic of Moldova's European integration, legal mediation and alternative dispute resolution (ADR) play a strategic role in modernizing access to justice and strengthening consumer protection. **Objectives:** This paper approaches mediation as an instrument of legal innovation to align national mechanisms with European Union standards and values, addressing the tension between party autonomy, consumer protection, and state obligations. **Methodology:** The research combines a legal-doctrinal analysis of Moldovan legislation and EU instruments (such as Directive 2013/11/EU) with a comparative examination of European ADR models, utilizing secondary comparative literature and proposed public policy indicators. **Results:** Findings indicate that formal alternative resolution mechanisms are insufficient unless they are accessible, independent, transparent, fast, predictable, and adapted to the digital environment. The study outlines a Moldovan ADR model featuring effective consumer information, procedural digitalization, enhanced entity independence, limitation period suspensions, and collective mechanisms. **Conclusions:** Mediation should function as a complementary component of effective remedies and European legal culture rather than a marginal alternative to the courts, transforming it into an essential infrastructure for the rule of law.

**Keywords:** mediation; consumer; access to justice; legal innovation; European integration.

## აბსტრაქტი

**შესავალი:** მოლდოვის რესპუბლიკის ევროპული ინტეგრაციის კონტექსტში, სამართლებრივი მედიაცია და დავების ალტერნატიული გადაწყვეტა (ADR) სტრატეგიულ როლს ასრულებს მართლმსაჯულებაზე ხელმისაწვდომობის მოდერნიზაციასა და მომხმარებელთა უფლებების დაცვის განმტკიცებაში. წინამდებარე ნაშრომი მედიაციას განიხილავს როგორც სამართლებრივი ინოვაციის ინსტრუმენტს, რომელიც ეროვნულ მექანიზმებს ევროკავშირის სტანდარტებთან და ფასეულობებთან ათანაბრებს, მხარეთა ავტონომიას, დაუცველი მხარის (მომხმარებლის) დაცვასა და სახელმწიფოს ვალდებულებებს

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შორის ბალანსის დაცვით. **მეთოდოლოგია:** კვლევა აერთიანებს მოლდოვის კანონმდებლობისა და ევროკავშირის ინსტრუმენტების (მაგ. 2013/11/EU დირექტივა) იურიდიულ-დოქტრინალურ ანალიზს დავების ალტერნატიული გადაწყვეტის ევროპული მოდელების შედარებით ექსპერტიზასთან, მეორად შედარებით ლიტერატურასა და საჯარო პოლიტიკის შეფასების ინდიკატორებზე დაყრდნობით. **შედეგები:** შედეგები აჩვენებს, რომ ალტერნატიული გადაწყვეტის მექანიზმების ფორმალური არსებობა არ არის საკმარისი - ისინი უნდა იყოს ხელმისაწვდომი, დამოუკიდებელი, გამჭვირვალე, სწრაფი, პროგნოზირებადი და ციფრულ გარემოზე მორგებული. ნაშრომი გვთავაზობს მოლდოვურ მოდელს, რომელიც მოიცავს მომხმარებელთა ეფექტიან ინფორმირებას, პროცედურების ციფრულზაციას, სუბიექტების დამოუკიდებლობის გაძლიერებას, ხანდაზმულობის ვადების შეჩერებას და კოლექტიური მექანიზმების განვითარებას. **დასკვნები:** მედიაცია არ უნდა აღიქმებოდეს სასამართლოების მარგინალურ ალტერნატივად; ის უნდა წარმოადგენდეს ეფექტიანი სამართლებრივი დაცვის საშუალებისა და ევროპული სამართლებრივი კულტურის შემადგენელ კომპონენტს, რაც კანონის უზენაესობის განმტკიცების მნიშვნელოვანი ინდიკატორია.

**საკვანძო სიტყვები:** მედიაცია, სამართლებრივი ინოვაცია, ევროპული ინტეგრაცია, დავების ალტერნატიული გადაწყვეტა, მომხმარებელთა უფლებების დაცვა.

## 1. Introduction

Access to justice cannot be reduced to the formal possibility of bringing a claim before a court. In a society shaped by standard-form contracts, e-commerce, complex financial services and cross-border transactions, effective access presupposes remedies that are proportionate to the value of the dispute, to the consumer's degree of vulnerability and to the cost of the procedure. Seen from this angle, mediation and alternative dispute resolution are more than techniques for settling conflicts; they are forms of legal innovation (Charter of Fundamental Rights of the European Union, 2012, art. 47).

In the Republic of Moldova, mediation is an alternative method of dispute resolution based on the voluntary participation of the parties and on the intervention of an impartial mediator, under the conditions laid down by national legislation (Law no. 9/2026).

The topic is of particular significance for the Republic of Moldova at the current stage of its rapprochement with the European Union. Accession to the European legal space is not a matter of simply transposing normative texts; it also requires an institutional infrastructure capable of turning declared rights into usable remedies. Consumer protection illustrates this requirement with particular clarity: a consumer who cannot enforce a right because of cost, delay, lack of information or technical obstacles enjoys only nominal protection (Ministry of Economic Development and Digitalization [MDED], n.d.).

Our working hypothesis is that the effectiveness of mediation in consumer disputes depends on a shift from a voluntarist and predominantly individual conception towards a model of legal accessibility, in which the State, traders, alternative resolution entities and consumer protection organisations jointly build an ecosystem of remedies. The central research problem is therefore to identify how the Republic of Moldova can adapt European standards without mechanically copying institutions designed for a different level of economic and digital development.

## 2. Materials and methods

The research combines legal-doctrinal analysis with a comparative examination of European models of alternative dispute resolution. The doctrinal component draws on the specialised literature on mediation, consumer ADR, access to justice and the regulation of dispute resolution mechanisms, particularly the works of Hodges, Benöhr and Creutzfeldt-Banda; Hopt and Steffek; Cortés; and Fejős and Willett. The normative analysis covers the legislation of the Republic of Moldova and the relevant European Union instruments. While the comparative method serves to distinguish between the formal transposition of standards and the effective functioning of the mechanisms, the empirical dimension is addressed indirectly through the findings of comparative research already published in the literature. The article does not rely on original empirical data; rather, the indicators proposed for the Republic of Moldova are intended as a framework for further research and the evaluation of public policies.

## 3. Results

### *3.1. Mediation as a form of legal innovation*

Hopt and Steffek examine mediation as an institution that must be assessed not only in terms of its flexibility and the autonomy it affords the parties, but also in light of the regulatory questions raised by its integration into the civil justice system. Their comparative study, which covers the law and practice of mediation in twenty-two jurisdictions, discusses regulatory models, the institutional embedding of mediation, the structure of the procedure and the available empirical evidence (Hopt & Steffek, 2013, pp. 3–130). This perspective is especially pertinent to consumer disputes, where formal consent does not, in itself, guarantee a fair outcome. The effectiveness of mediation must therefore be assessed in relation to the level of information available to the consumer, the genuine freedom of consent and the preservation of access to the court.

The legal nature and value of mediation remain contested in the doctrine. Fejős and Willett analyse the alternative resolution of consumer disputes from the standpoint of effective access to justice and show that the effectiveness of voluntary mechanisms depends on whether the regulatory framework creates real incentives for traders to participate and to comply with the outcome of the procedure (Fejős & Willett, 2016, pp. 33–60). Taking a broader view of the regulation of dispute resolution, Steffek calls for principled and functional regulation, in which the various mechanisms – negotiation, mediation, conciliation, arbitration and adjudication – are evaluated according to their function and the values they are meant to protect (Steffek, 2013, pp. 33–61). Read together, these positions suggest that the voluntary nature of mediation should not be confused with passivity on the part of the legislator: party autonomy requires institutional safeguards if the procedure is to function as an effective remedy.

Hodges, Benöhr and Creutzfeldt-Banda situate consumer ADR within a broader architecture of civil justice and consumer protection. Their comparative research considers both the institutional diversity of national systems and data on caseloads, costs and duration of proceedings, relating ADR mechanisms to courts and regulators (Hodges, Benöhr, & Creutzfeldt-Banda, 2012, pp. xxxii–xxxiv, 1–23). Mediation, then, cannot be studied solely as a procedural technique for resolving conflicts; it must also be examined in terms of its capacity to offer the consumer an effective, intelligible and proportionate path to redress.

Legal innovation is not confined to the introduction of technology into procedures. It entails rethinking the way in which the law delivers protection, allocates responsibilities and manages conflict. The classical model of justice is built around adjudication: an authority determines who is right, and the solution is imposed through the coercive power of the State. Mediation follows a different logic, seeking to restore communication and to reach a solution accepted by the parties themselves. In consumer disputes, however, the autonomy of the parties is far from equal, since the trader usually holds superior information, resources and bargaining power.

For this reason, mediation cannot be judged by the criterion of consensus alone. An agreement is legitimate only if it has been reached in conditions of adequate information, genuine freedom and protection against economic pressure. Where these conditions are absent, mediation risks becoming a mechanism for shifting risk onto the consumer, in which the weaker party accepts an inferior solution merely to avoid the cost and length of a dispute.

Directive 2013/11/EU establishes an architecture based on independence, impartiality, transparency, effectiveness, speed and fairness. While recognising the voluntary nature of participation, it safeguards the right of access to the courts and requires that the parties be informed of the legal effects of the solution (Directive 2013/11/EU, 2013). The underlying idea is clear: the out-of-court solution is meant to complement judicial protection, not to compete with it.

### *3.2. European standards and their relevance for the Republic of Moldova*

Directive 2013/11/EU seeks to ensure access to independent, impartial, transparent, effective, fast and fair out-of-court procedures. Article 5 emphasises the accessibility of ADR entities, including the possibility of submitting complaints online and exchanging information electronically. Articles 9 to 12 protect fairness, freedom of choice, legality and the effect of the procedure on limitation periods. Article 13 lays down the traders' obligations to inform consumers, and Article 14 provides for assistance in cross-border disputes (Directive 2013/11/EU, 2013, Arts 5, 9–14).

In the Republic of Moldova, Chapter IX of Law no. 105/2003 on consumer protection constitutes the main legal framework for the alternative resolution of consumer disputes (Law no. 105/2003). The Ministry of Economic Development and Digitalization presents alternative dispute resolution as a consumer protection mechanism and highlights the role of the national framework in bringing domestic practice closer to the standards of Directive 2013/11/EU (MDED, n.d.). The fact that national authorities are engaged in information and institutional capacity-building activities in this field confirms the topicality of the issue.

Regulatory transposition, however, must be accompanied by an analysis of how the framework actually functions. A legal framework may replicate European concepts and still remain underused if the public is unaware of the procedure, if traders lack incentives to participate, if ADR entities are underfunded or if the outcome cannot be enforced in a simple and predictable manner. Herein lies the difference between formal harmonisation and effective legal convergence.

### *3.3. Consumer vulnerability and the limits of autonomy*

Modern contract law can no longer proceed from the fiction of absolute equality between the parties. Consumers frequently adhere to pre-formulated contractual terms, do not negotiate individual clauses and lack access to the information available to the professional. In the digital environment, this imbalance may be amplified by manipulative interface design, personalisation algorithms, recurring subscriptions and difficulties in identifying the trader.

In this context, the principle of party autonomy must be read together with the principle of effective protection. The consumer's consent to mediation is not sufficient in itself; it must be preceded by clear information on the nature of the procedure, its costs and duration, the right to withdraw, the effects of the agreement and the possibility of bringing the matter before a court. Moreover, any contractual term requiring the consumer to waive access to the courts in advance must be scrutinised in light of mandatory rules and standards of fairness.

Mediation may thus be conceived as a procedure that holds the trader accountable. The trader should not merely agree to a dialogue, but also explain its position, provide the relevant documents and participate in good faith. Such an obligation would not turn mediation into a parallel jurisdiction; it would, however, prevent it from being reduced to a mere formality.

### *3.4. Digitalisation and online mediation*

The compatibility of traditional mediation with digital tools can be explained through a functional approach to dispute resolution. Hopt and Steffek show that the regulation of mediation should proceed from the functions of the procedure and the safeguards that define its legitimacy, rather than from a single technical form of conduct (Hopt & Steffek, 2013, pp. 3–130). Following the same logic, the digitalisation of hearings and communication does not create a distinct legal institution; it changes the environment in which the principles of mediation are exercised. Whether traditional and online mediation are compatible therefore depends on the preservation of voluntariness, confidentiality, the mediator's impartiality, equal opportunities to participate and informed consent.

At national level, the doctrine on digital mediation remains less developed than the European and international literature, which justifies further research into the compatibility between the principles of Law no. 9/2026 on mediation and the use of digital tools. The issue is not only whether an online meeting is technically possible, but whether confidentiality, the identification of the parties, the security of documents, the free and unvitiated expression of consent and human control over the process can be guaranteed.

A hybrid model of mediation therefore appears preferable for the Republic of Moldova. Depending on the nature of the dispute and their own capacities, the parties should be able to choose between an in-person hearing, a videoconference, a secure exchange of documents or a combination of these. Such a model retains the advantages of traditional mediation – human contact, direct communication and the active role of the mediator – while drawing on the benefits of technology. It also reduces the risk that people with limited digital skills are excluded by the very mechanism designed to facilitate their access to justice.

Emma van Gelder explores this problem through theoretical and empirical research on online consumer dispute resolution. She shows that ODR can broaden access to remedies through more accessible, faster and more convenient procedures, while drawing attention to risks concerning algorithmic transparency, the fairness of text-only procedures, differences between audio and video participation and the time actually

afforded to the parties to present their case. Her findings support the conclusion that digitalisation cannot automatically be equated with accessibility (van Gelder, 2022).

In his analysis of the European framework for out-of-court redress, Pablo Cortés argues that merely harmonising the submission of complaints through an ODR platform and referring the parties to ADR entities does not, in itself, realise the full potential of the system. He stresses the need for incentives to participate in ADR, to settle amicably and to comply voluntarily with the outcome of the procedure (Cortés, 2015, pp. 114–141). This insight is relevant for the Republic of Moldova: digitising a procedure that is little known or rarely used does not solve the problem of access to justice; it merely transfers the same difficulty to an electronic medium.

The need to reconcile classical and digital (online) mediation stems primarily from the operationalisation of the process through electronic communication and remote hearings. In practical terms, online mediation can optimise costs, save travel time and allow parties located in different places to take part simultaneously. Digital mediation should not, however, be conceived as an institution competing with traditional mediation, but as a technological means of performing the same legal function.

Online mediation can reduce costs, remove geographical barriers and facilitate access for persons with reduced mobility. It is particularly valuable in low-value disputes, where travelling to an institution or consulting a lawyer may be disproportionate to what is at stake. At the same time, digitalisation should not be mistaken for accessibility. A sophisticated platform may exclude people who lack digital skills, a stable connection or the means to use an electronic signature.

For the Republic of Moldova, a functional model should combine three channels: online filing, physical filing and assistance by telephone or through local centres. The platform could include simplified forms, model complaints, explanations in Romanian and, where appropriate, in Russian, deadline notifications and a case-tracking mechanism. Personal data and business information must be protected by clear rules on security, access and retention.

A further issue concerns artificial intelligence and automated resolution tools. Such tools may help classify complaints and identify the applicable rules, but they must not replace human judgement in situations involving vulnerability, discrimination or significant consequences. Technological innovation is legitimate only insofar as it remains subject to transparency, human oversight and the right to contest.

### *3.5. From normative transposition to empirical effectiveness*

Scientific research on mediation must distinguish between the normative existence of a mechanism and its actual use. Hodges, Benöhr and Creutzfeldt-Banda compare consumer ADR systems using, among other things, data on caseloads, costs and duration of proceedings, thereby demonstrating the value of an assessment that goes beyond the text of the law (Hodges, Benöhr, & Creutzfeldt-Banda, 2012, pp. xxxii–xxxiv). By the same logic, future research on the Republic of Moldova should look not only at the number of mediators or entities available, but also at the number of consumer disputes referred to mediation, their average duration, the cost borne by the consumer, the rate of agreements, the rate of enforcement and the reasons why traders refuse to participate.

The empirical approach adopted by Hodges, Benöhr and Creutzfeldt-Banda suggests that the evaluation of an ADR system must go beyond a mere inventory of rules and institutions and examine how the mechanism actually operates (Hodges, Benöhr, & Creutzfeldt-Banda, 2012, pp. xxxii–xxxiv). Applying such a methodology in the Republic of Moldova would make it possible to move from an intuitive assessment of the success of mediation to an evaluation based on verifiable indicators. Legal innovation, in this sense, is measured neither by the number of digital tools created nor by the mere transposition of a directive, but by the capacity of the mechanism to deliver effective, accessible and fair remedies to those it is meant to serve.

## 4. Discussion: problems and solutions for the Republic of Moldova

The first problem is the low level of public awareness. Information for consumers should not be confined to an obscure page of the trader's website. A two-stage information model is needed: the alternative resolution mechanism should be indicated in the contract, and individualised information should be provided once a direct complaint has been rejected or left unresolved. This information should specify the competent institution, the costs, the approximate duration and the fact that access to the court remains open.

The second problem concerns the independence of the resolution entities. In sectors where the mechanism is funded by traders, safeguards are needed with regard to the appointment of the persons in

charge, the publication of conflict-of-interest rules, the transparency of funding and the possibility of reviewing decisions. Independence is not merely a personal quality of the mediator; it is a structural condition of the institution.

The third problem relates to the enforcement of agreements. A mediation agreement should be capable of being converted into an enforceable title, or another instrument with clear legal effect, without unduly complex procedures. At the same time, the consumer must be informed before signing of the consequences of waiving other claims. Standard agreement templates, with mandatory sections on the subject matter, the deadline for performance, the remedy in case of non-performance and costs, would be useful in this respect.

The fourth problem is institutional fragmentation. The consumer may deal with the trader, the consumer protection authority, the mediator, the court and non-governmental organisations without knowing which route is appropriate. What is needed is a single point of guidance that does not necessarily resolve every dispute but directs the person to the right mechanism. Such a point could be integrated into a public portal and connected to legal aid services.

The fifth problem is the insufficiently developed collective dimension. Individual disputes do not always reveal the systemic nature of a commercial practice. Directive (EU) 2020/1828 on representative actions provides a benchmark for the protection of the collective interests of consumers (Directive (EU) 2020/1828, 2020). Against this background, the Republic of Moldova could consider mechanisms enabling representative organisations to inform affected consumers and to facilitate their access to appropriate remedies.

On the basis of these findings, we propose a six-pronged model: (1) a single national portal for complaints and mediation; (2) public standards for the accreditation and monitoring of ADR entities; (3) the suspension or protection of limitation periods during the procedure; (4) mandatory and intelligible information for consumers; (5) special procedures for low-value disputes and vulnerable persons; and (6) annual reporting on the number of cases, their duration, the rate of agreements and the level of enforcement.

These solutions should be implemented gradually and assessed against verifiable indicators. Measuring the number of agreements reached is not sufficient, since a high settlement rate may conceal the acceptance of unbalanced outcomes. The assessment should also capture the satisfaction of the parties, the gap between the initial claim and the result obtained, the enforcement rate, the access of vulnerable groups and the number of cases that subsequently reach the courts.

At the doctrinal level, the findings confirm the need for an integrated approach: classical mediation provides the relational framework and the safeguards inherent in human intervention, while digital mediation can extend accessibility and operational efficiency. It is the compatibility of the two forms, rather than the substitution of one by the other, that best responds to the current requirements of consumer protection.

## 5. Conclusions

Mediation in consumer disputes is an area in which legal innovation can have a direct effect on market confidence and access to justice. European standards show that alternative resolution must be fast and accessible, but also fair, transparent and compatible with the right to bring the matter before a court. For the Republic of Moldova, the challenge lies not only in adopting rules close to European ones, but in building mechanisms that are functional, known and credible.

Mediation should not be presented as a way of reducing the courts' caseload at any cost. Its legitimate purpose is to provide the consumer with an adequate, proportionate and effective remedy, without turning economic vulnerability into an obligation to compromise. Understood in this way, access to justice encompasses both the right to obtain a judicial decision and the right to benefit from out-of-court procedures that respect fundamental guarantees.

Finally, the European integration of the Republic of Moldova can be strengthened through a person-centred model of mediation, supported by technology but governed by legal principles. Such an approach would transform mediation from a peripheral mechanism into part of the infrastructure of consumer protection and into an indicator of the maturity of the rule of law.

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